

INSTRUCTIONS FOR REQUESTING A DOMESTIC VIOLENCE PROTECTION ORDER

IMPORTANT! READ BEFORE USING THIS PACKET

ND Legal Self Help Center staff and court employees cannot help you fill out the form(s).

You may seek assistance from a Certified Domestic Violence Sexual Assault Advocate for help with filling out the forms. Information about Certified Domestic Violence Sexual Assault Advocates is found below.

If you need legal advice or legal representation, consult a lawyer licensed to practice in North Dakota.

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you will have to abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov/ndlshc.

These instructions and forms are not a complete statement of the law. They cover the basic procedure for petitioning a North Dakota District Court for a Domestic Violence Protection Order. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.

[Chapter 14-07.1 of the North Dakota Century Code](#) governs Domestic Violence Protection Orders in North Dakota.

[Rule 34 of the North Dakota Supreme Court Administrative Rules and Orders](#) governs Certified Domestic Violence Sexual Assault Advocates.

Who Should Use this Packet?

A spouse or former spouse, a family member, a parent, a child, a person related by blood or marriage, a person presently residing with the abusing person or who has resided with that person in the past, a person who has a child in common with the abusing person, persons who are in a dating relationship, or any other person with sufficient relationship to the abusing person as determined by the Court.

Brief Overview of the Domestic Violence Protection Order Process:

Petition Filed: The Petitioner completes and files with the court a notarized petition requesting a domestic violence protection order.

Temporary Domestic Violence Protection Order Issued: The court may issue a temporary domestic violence protection order if the court finds that the petition alleges an immediate and present danger of domestic violence, based upon an allegation of a recent incident of actual domestic violence.

Hearing Scheduled: A hearing is scheduled on the petition for a domestic violence protection order not later than fourteen (14) days after the court issues the temporary domestic violence protection order.

Hearing Held: The hearing is held to determine if the court will extend the temporary domestic violence protection order and grant a domestic violence protection order. At the hearing, the Petitioner must show evidence of actual or imminent domestic violence.

Domestic Violence Protection Order Granted/Dismissed: If the court finds that the Petitioner proved at the hearing that there is evidence of actual or imminent domestic violence, the court may grant a domestic violence protection order against the Respondent.

If the court finds that the Petitioner did not show evidence of actual or imminent domestic violence prove at the hearing, the case will be dismissed.

Definitions:

Certified Domestic Violence Sexual Assault Advocate – A person who:

1. Is certified to provide direct support services to alleged victims of domestic violence or sexual assault;
2. Is affiliated with a domestic violence sexual assault program;
3. Has completed forty-two (42) hours of domestic violence and sexual assault training relating to the services and proceedings under Chapter 14-07.1 and Section 12.1-31-01.2 of the North Dakota Century Code; and
4. Has completed, in each year following the year of certification, twelve (12) additional hours of training.

Domestic Violence – Physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.

Petitioner – Person requesting action.

Protected Party – Victim of the conduct complained of in the petition.

Respondent – Person alleged by Petitioner to be engaged in domestic violence.

What Does a Certified Domestic Violence Sexual Assault Advocate Do?

A Certified Domestic Violence Sexual Assault Advocate may:

1. Assist with completing printed forms for proceedings pursuant to Chapter 14-07.1 and Section 12.1-31-01.2 of the North Dakota Century Code; and
2. Sit with the petitioner during court proceedings.

How to Find a Certified Domestic Violence Sexual Assault Advocate:

Contact CAWS North Dakota for information about Certified Domestic Violence Sexual Assault Advocates in your area. CAWS North Dakota is a nonprofit organization that represents 20 domestic violence and sexual assault crisis intervention centers throughout North Dakota.

CAWS North Dakota
525 N 4th Street
Bismarck, ND 58501
(701) 255-6240
(888) 255-6240
www.cawsnorthdakota.org

Is a Certified Domestic Violence Sexual Assault Advocate My Lawyer?

No, a Certified Domestic Violence Sexual Assault Advocate is not your lawyer and cannot act as your lawyer at the hearing. You may choose to have both a Certified Domestic Violence Sexual Assault Advocate assist you and a lawyer represent you. If you retain a lawyer, you are responsible for payment of the lawyer's fees.

If you decide to find a lawyer to represent you, you may find the following options of interest. Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.

The State Bar Association provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is www.sband.org.

For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by city by clicking on "Cities" in the blue NAVIGATION box in the upper left of the webpage.

STEP 1: PREPARE THE DOMESTIC VIOLENCE PROTECTION ORDER FORMS

1. Petition For Protective Relief
2. Protection/Disorderly Conduct Restraining Order Cover Sheet

Petition For Protective Relief

Page 1:

- Fill in the County at the top left of the page. The Case No. will be assigned by the Clerk of Court in Step 2.
- You are the Petitioner.
 - If there are multiple Protected Parties against one Respondent they can all be included on one petition.
 - **NOTE: There must be a separate petition for each Respondent.**
- The Respondent is the person from whom you are seeking protection.
- Try to use full, complete names, not nicknames.
- Fill in the blank lines with your full name, county of residence, and the address where you currently live. (address is optional)
- Check the box if there are children living with you and the number of children. Fill in their names, date of birth (DOB) and indicate whether they are the Respondent's children and if they are to be a Protected Party. For example:

○ John Doe 01/01/2011 Yes Protected Party

- Fill in the full name of the person you are seeking protective relief from.
- Fill in your relationship to the Respondent - (married, divorced, dating, etc.)
- Fill in the Respondent's place of residence.

Page 2:

- Fill in any other places where the Respondent can be found. If possible, include addresses.
- Fill in the name, address, and phone number of the Respondent's employer.
- Complete the description of the Respondent - height, weight, age, DOB, and sex. Any special identifying marks (glasses, long hair, beard, tattoos, scars, piercings, etc.) and general appearance of the Respondent.
- Fill in the areas where you want the Respondent to be excluded from – residence, work, daycare, or other optional places.
- Check the box if children are involved and circle whether you want or do not want custody.
- Check the box if children are involved and circle whether you are or are not willing to grant visiting rights to the Respondent.

Page 3:

- If you are willing to allow visitation, complete the Visitation Proposal.
- Check the box if you are asking the Respondent to surrender property – list the property.
- Check the box if you need financial assistance from the respondent.
- Check the box if you are requesting any further relief. Write in the relief requested.
 - If you are unsure what type of further relief you should request, contact a Certified Domestic Violence Sexual Assault Advocate to assistance **before** you complete and file the petition. The Certified Domestic Violence Sexual Assault Advocate may be able to assist you with determining further relief.
 - You may also retain a lawyer licensed to practice in North Dakota.
- **Check the box if there is an outstanding Court Order that addresses visitation, custody, or contact between you and the Respondent.**
 - Examples of orders that address visitation, custody or contact between you and the Respondent include:
 - a divorce judgment or decree,
 - a legal separation judgment,

- a judgment establishing parenting rights and responsibilities between unmarried parents, or
 - a paternity judgment.
- You must describe the incidents that took place between you and the Respondent. Start with the most recent incident.
 - Use separate sheets of paper to type or write the incidents.
 - Type or write on only one side of the separate sheets of paper.
- Check the box if the Respondent has used, displayed, or threatened to use a firearm or other dangerous weapon in acts of violence against you. Briefly describe the incident, including dates, places, and times, starting with the most recent incident. Attach additional sheets if needed. Do not write on back of form.
- List any civil or criminal actions involving both you and the Respondent. Include any outstanding visitation or custody orders and other civil or criminal actions involving you and the Respondent.

Page 4:

- **Do Not sign** the Petition for Protective Relief until you are in front of the Notary Public or Clerk of Court. The Notary or Clerk will witness your signature. You will need to show a driver's license or photo identification so the Notary or Clerk can verify your identity. If you are unsure of what type of identification to bring, contact the Notary Public or Clerk of Court.

Protection/Disorderly Conduct Restraining Order Cover Sheet

- Complete the Protection/Disorderly Conduct Restraining Order Cover Sheet. All areas marked with an * must be completed. Try to fill out as much information as you can on this form. Attach additional sheets if needed; do not use the back side for additional information. This form is designed to help law enforcement enforce the Judge's order.

STEP 2: FILE THE FOLLOWING WITH THE CLERK OF COURT:

1. Petition For Protective Relief
2. Protection/Disorderly Conduct Restraining Order Cover Sheet

There is no filing fee for victims seeking a civil protection order.

After your Petition is filed with the Clerk of Court, the Clerk of Court will forward it to the Judge for review. **If the Judge finds the Petition for Protective Relief alleges an immediate and present danger of abuse based upon a recent incident of actual or threatened domestic violence, the Judge will sign an Ex Parte Temporary Domestic Violence Protection Order.**

The Ex Parte Temporary Domestic Violence Protection Order may include the following emergency relief:

- Restraining any party from having contact with or committing acts of domestic violence on another person.
- Excluding the Respondent or any person with whom the Respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
- Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
- Requiring the Respondent to surrender to local law enforcement any firearms or dangerous weapons under the Respondent's control.

The Temporary Order does not provide for support, counseling, or attorney fees.

The Ex Parte Temporary Domestic Violence Protection Order is generated by the Clerk of Court.

The Temporary Order, along with a copy of the Petition for Protection and the Notice of Hearing will be served on the Respondent by local law enforcement. A copy will be mailed to you at the address you provide to the Court in the Petition form.

Once the Respondent is served with the Ex Parte Temporary Domestic Violence Protection Order, the Temporary Order is in effect and any violations should be reported to police.

STEP 3: ATTEND THE HEARING

A hearing date will be scheduled within 14 days of the approval of the Ex Parte Temporary Domestic Violence Protection Order. Service must be made on the Respondent at least five days prior to the hearing. If service cannot be made, the Court may set a new hearing date.

You must appear at the hearing. If you are working with a Certified Domestic Violence Sexual Assault Advocate, the advocate can attend the hearing with you.

If you have any witnesses to the facts you included in your petition, you may bring them with you to the hearing.

The hearing also gives the Respondent the opportunity to give the Respondent's side of the story and present any witnesses to the facts alleged in the Petition.

At the hearing, the Judge will determine if there is evidence of actual or imminent domestic violence by the Respondent.

IF THE PETITION IS GRANTED

If the Court determines there is evidence of actual or imminent domestic violence, the Judge will sign the Domestic Violence Protection Order and specify the length of the Order. The Court may amend the Order at any time upon a subsequent petition filed by either party.

The Domestic Violence Protection Order may include any or all of the following relief:

- Restraining the Respondent from threatening, molesting, injuring, or having contact of any kind with the Petitioner and/or the child(ren).
- Excluding the Respondent from the Petitioner's and/or Protected Party's household.
- Awarding temporary custody and/or visitation rights with minor child(ren), requiring payment of child support and/or spousal support.
- Recommending or requiring counseling with a domestic violence program or other appropriate agency.
- Requiring the Respondent to pay reasonable attorney fees and costs.
- Awarding temporary use of personal property, including motor vehicles, to either party.
- Requiring the Respondent to surrender weapons under the Respondent's control to local law enforcement if there is probable cause of future actual or threatened violence.
- Appointing a guardian ad litem for the benefit of the minor child or minor children. The court may direct either or both parties to pay the guardian ad litem fees established by the court.

The Clerk of Court will send a copy of the Domestic Violence Protection Order to the local law enforcement agency with jurisdiction over the residence of the victim. The Domestic Violence Protection Order will be served on the Respondent. Report any violations of the Order immediately to local law enforcement.