

INSTRUCTIONS FOR REQUESTING A SEXUAL ASSAULT RESTRAINING ORDER

IMPORTANT! READ BEFORE USING THIS PACKET

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

A state's attorney may advise and assist any person in the preparation of documents necessary to secure a sexual assault restraining order under [North Dakota Century Code § 12.1-31-01.2](#). Be aware that there are limitations on the amount of assistance a state's attorney may provide.

Beginning December 1, 2017, 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 are unsure how to proceed, or 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, 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 basic procedure for petitioning for a sexual assault restraining order. If the forms do not fit your circumstances, consult a lawyer. 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.

Beginning August 1, 2017, adult victims of sexual assault, or the parent, step-parent or guardian of minor child victims of sexual assault, may petition a North Dakota District Court to grant a sexual assault restraining order.

[Section 12.1-31-01.2 of the North Dakota Century Code](#) governs sexual assault restraining orders in North Dakota. (Section 12.1-31-01.2 was enacted by the 65th (2017-2018) North Dakota Legislative Assembly.)

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

Who Should Use this Packet?

- Any adult person who is a victim of sexual assault; **or**
- The parent, step-parent, or guardian of a minor child (under 18 years of age) who the parent, step-parent, or guardian reasonably believes is a victim of sexual assault.

Brief Overview of the Sexual Assault Restraining Order Process:

Petition Filed: The Petitioner completes and files with the court a notarized petition requesting a sexual assault restraining order.

Temporary Sexual Assault Restraining Order Issued: The court may issue a temporary sexual assault restraining order, if the court finds that the petition alleges reasonable grounds to believe the sexual assault was committed by the Respondent.

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

Hearing Held: The hearing is held to determine if the court will extend the temporary sexual assault restraining order and grant a sexual assault restraining order. At the hearing, the Petitioner must show the court that there are reasonable grounds for the court to believe the sexual assault was committed by the Respondent.

Sexual Assault Restraining Order Granted/Dismissed: If the court finds that the Petitioner proved at the hearing that there are reasonable grounds for the court to believe the sexual assault was committed by the Respondent, the court may grant a sexual assault restraining order. The sexual assault restraining order may not exceed two years.

If the court finds that the Petitioner did not prove at the hearing that there are reasonable grounds for the court to believe the sexual assault was committed by the Respondent, the case will be dismissed.

Definitions:

Sexual Assault – Non-consensual sexual contact as defined in [North Dakota Century Code Section 12.1-20-07](#), which states:

“A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

- a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
- b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
- c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in [chapter 19-03.1](#), or other means for the purpose of preventing resistance;
- d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
- e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or
- f. The other person is a minor, fifteen years of age or older, and the actor is an adult.”

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.

Petitioner – Person requesting action. The Petitioner is either:

- The adult victim of sexual assault; **or**
- The parent, step-parent or guardian or the minor child who is the victim of sexual assault.

Protected Party – Victim of the sexual assault complained of in the petition.

Respondent – Person alleged by Petitioner to have committed sexual assault.

What Does a Certified Domestic Violence Sexual Assault Advocate Do?

A Certified Domestic Violence 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 SEXUAL ASSAULT RESTRAINING ORDER FORMS

1. Petition For Sexual Assault Restraining Order
2. Confidential Information Form
 - (located after Page 3 of the Petition)
3. Protection/Disorderly Conduct/Sexual Assault Restraining Order Cover Sheet

Petition For Sexual Assault Restraining Order

NOTE: There must be a separate petition for each Respondent.

Top of Form (Caption):

- Fill in the County and Judicial District at the top (caption) of the page. The Case No. will be assigned by the Clerk of Court in Step 2.
 - You can find a map of North Dakota Judicial Districts at <http://www.ndcourts.gov/Court/Districts/Districts.htm>. Counties are within the Judicial District.
- You are the Petitioner.
 - Use your full, complete name, not nicknames.
 - If there are multiple Protected Parties against one Respondent they can all be included on one petition.
- The other person is the Respondent.
 - Try to use the full, complete name of the Respondent, not nicknames.

First Sentence:

- Fill in your (the Petitioner's) full, complete name.

Paragraph 1:

- If you, the Petitioner, are the victim of sexual assault, put a checkmark (✓) in the first box.

- If your minor child is the victim of sexual assault, put a checkmark (✓) in the second box. Put a checkmark (✓) in box that indicates your relationship. Fill in the initials of the minor child. (You will provide the minor child's full, legal name in the Confidential Information Form.)

Paragraph 2:

- Fill in your, the Petitioner's, address.

Paragraph 3:

- If you, the Petitioner, are the victim of sexual assault, put a checkmark (✓) in the first box. Fill in your age. (**Do not** provide your birthdate. You will provide your birthdate in the Confidential Information Form.)
- If your minor child is the victim of sexual assault, put a checkmark (✓) in the second box. Fill in the minor child's age. (**Do not** provide the minor child's birthdate. You will provide the minor child's birthdate in the Confidential Information Form.)

Paragraph 4:

- Fill the Respondent's address.

Paragraph 5:

- Fill in the Respondent's age. (**Do not** provide the Respondent's birthdate. You will provide the Respondent's birthdate in the Confidential Information Form.)

Paragraph 6:

- If you, the Petitioner, are the victim of sexual assault, put a checkmark (✓) in the first box. Fill in your relationship to the Respondent.
- If your minor child is the victim of sexual assault, put a checkmark (✓) in the second box. Fill in the minor child's relationship to the Respondent.

Paragraph 7:

- List the actions that support your request for the Temporary Sexual Assault Restraining Order. Include dates and as many details or facts as you can to show why you need the Order. (Attach additional sheets if necessary; the page with your signature should be the last page of the document.)

Paragraph 8:

- List the names of any persons who may have witnessed the events you list in your Petition.

Paragraph 9:

- If you, the Petitioner, are the victim of sexual assault, put a checkmark (✓) in the first box of Paragraph 9(a), 9(b) and 9(c).
- If your minor child is the victim of sexual assault, put a checkmark (✓) in the second box of Paragraph 9(a), 9(b) and 9(c).

Paragraph 10:

- This paragraph requests the required hearing for a sexual assault restraining order.

Final Paragraph:

- Read the final paragraph carefully! By signing the Petition, you are swearing the information you provide in the Petition is true and correct, and that you understand that if the restraining order is granted, you cannot modify or dismiss the restraining order unless the court approves.

Signature and Notarization:

- You may fill in the lines for your, the Petitioner's, "Printed Name," "Address," "City, State, Zip Code," and "Telephone Number" before you sign.
- **Do Not sign** the petition until you are in front of a 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.

Confidential Information Form *(located after Page 3 of the Petition)*

NOTE: The information on this form is confidential and is not placed in a publically accessible portion of the court file.

Top of Form (Caption):

- Fill in the top of the form exactly as you filled in the top of the Petition for Sexual Assault Restraining Order form. The Case No. will be assigned by the Clerk of Court in Step 2.

Petitioner, Respondent and Minor Child Information:

- Full Information Column:
 - Fill in the full information for the Petitioner, Respondent and Minor Child (if applicable).
- Redacted Information Column:
 - Fill in the information as it appears in the Petition for Sexual Assault Restraining Order form.

Date and Signature:

- The Petitioner signs and dates the completed form.

Protection/Disorderly Conduct/Sexual Assault Restraining Order Cover Sheet

- Complete the Protection/Disorderly/Sexual Assault Conduct Restraining Order Cover Sheet. **All areas marked with an * must be completed.** 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 ORIGINAL, COMPLETED FORMS WITH THE CLERK OF COURT:

1. Petition For Sexual Assault Restraining Order
2. Confidential Information Form
3. Protection/Disorderly Conduct/Sexual Assault Restraining Order Cover Sheet

You will not be required to pay a filing fee. (See [North Dakota Century Code Subsection 12.1-31-01.2\(12\).](#))

After your Petition is filed with the Clerk of Court, the Clerk of Court will forward it to the Judge or Judicial Referee for review. If the Judge or Judicial Referee finds that the petition alleges reasonable grounds to believe the Respondent committed sexual assault, the Judge or Judicial Referee may sign a Temporary Sexual Assault Restraining Order.

The Temporary Sexual Assault Restraining Order is generated by the Clerk of Court and 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 Temporary

Sexual Assault Restraining Order, the Order is in effect and any violations should be reported to police.

STEP 3: ATTEND THE HEARING

A hearing date will be scheduled within fourteen (14) days of the approval of the Temporary Sexual Assault Restraining Order unless extended or upon showing that despite the exercise of due diligence the Respondent could not be served with the Temporary Sexual Assault Restraining Order.

The hearing date will be listed in the Temporary Sexual Assault Restraining Order. **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.

You, as the Petitioner, are required to prove to the Judge or Judicial Referee that there are reasonable grounds to believe the Respondent committed sexual assault. 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 or Judicial Referee will determine whether the Temporary Sexual Assault Restraining Order should be extended, and whether a Sexual Assault Restraining Order should be issued for a set period of time. The set period of time cannot be for more than two (2) years.

IF THE PETITION IS GRANTED

If, after the hearing, the Judge or Judicial Referee determines that there are reasonable grounds to believe that the Respondent committed sexual assault, the Judge or Judicial Referee may sign the Sexual Assault Restraining Order and specify the length of the Order. The Clerk of Court will send a copy of the signed Sexual Assault Restraining Order to the local law enforcement agency with jurisdiction over the residence of the victim. Report any violations of the Order to local law enforcement.