

SOUTH DAKOTA PROTECTION ORDER FROM ACTS OF DOMESTIC ABUSE, ACTS OF STALKING, OR ACTS OF PHYSICAL INJURY

READ THESE INSTRUCTIONS AND REVIEW THE FORMS BEFORE BEGINNING TO FILL THEM OUT

APPLICATION INSTRUCTIONS FOR THE VICTIM OF DOMESTIC ABUSE, STALKING, OR PHYSICAL INJURY

REQUIREMENTS OF THE LAW. You may seek a protection order from “domestic abuse” or from “stalking.” If you do not qualify for a domestic abuse protection order, you may still qualify for a protection order for stalking. In order for the judge to grant a protection order, you must meet certain criteria.

SHOULD BE A RESIDENT OF THE COUNTY. You should file in the county where one of you resides.

IF YOU ARE SEEKING A PROTECTION ORDER FOR DOMESTIC ABUSE

MUST BE A HOUSEHOLD MEMBER. The one against whom you seek an order (the abuser) must be a “household member” which means he/she is (1) a spouse, (2) a former spouse, (3) a relative by adoption or blood, (4) a person living in the same household, (5) a person with whom you have lived, or (6) a person with whom you have had a child. If your relationship is not one of the above, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking as defined later in these instructions.

MUST ALLEGE PHYSICAL HARM. The person against whom you seek an order (1) **must have caused you physical injury or harm**, (2) **must have attempted to cause you physical injury or harm**, or (3) **you are afraid that the person is about to cause you physical injury or harm**. If the person has not done any of these things, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking as defined later in these instructions.

IF YOU ARE SEEKING A PROTECTION ORDER FOR STALKING OR FROM PHYSICAL INJURY

MUST ALLEGE STALKING. The person's acts of harassment must **seriously alarm, annoy or harass** you. The person against whom you seek a stalking order must have: (1) **followed or harassed** you in a willful and malicious manner and have done so **more than once**; or (2) made believable **threats** against you **with the intent to make you fearful of great bodily injury**; or (3) **harassed** you in a willful and malicious manner by means of verbal, electronic, digital media, mechanical, telegraphic, or written communication and have done so **more than once**. The person must intend to carry out the threats and have the apparent ability to do so, or (4) **you, as the petitioner, have suffered physical injury** as a result of an assault or a crime of violence.

(5) **A crime of violence is** murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony sexual contact or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device. It also includes an attempt or conspiracy to commit the above-described crimes.

**IF YOU MEET THE LEGAL CRITERIA STATED ABOVE, YOU MAY
COMPLETE THE FORMS WITH THE FOLLOWING INSTRUCTIONS**

1. **FILL OUT THE PETITIONER AND RESPONDENT INFORMATION SHEETS AND THE PETITION AND AFFIDAVIT FOR A PROTECTION ORDER** (*please print names*). You are the PETITIONER; the person against whom you seek a protection order is the RESPONDENT.
2. **THE PETITION AND AFFIDAVIT MUST BE THE TRUTH.** *Do not sign your name at the end of the form.* You will need to sign it before a court clerk and swear to its truth or if you are unable to take it to the Clerk's Office yourself, you may sign it before a notary.
3. **REQUIREMENT FOR AN IMMEDIATE ORDER.** If you are requesting that the judge grant you an immediate temporary protection order without the Respondent having notice of your request or an opportunity to be heard, **YOU MUST BE ABLE TO CLAIM THAT IMMEDIATE AND GREAT INJURY, LOSS OR DAMAGE WOULD OCCUR IF YOU HAD TO WAIT UNTIL A HEARING.**
4. **JUDGE MUST SIGN THE ORDER.** The judge will review your petition and affidavit. If the judge grants you a temporary protection order and/or a hearing, the clerk will prepare certified copies of the orders. *You will need to pick up the copies of the orders at the Clerk of Courts Office where you filed.*
5. **DELIVER FORMS TO THE SHERIFF.** Take two copies of the forms to the Sheriff Office, in the County where the petition is filed.
6. **KEEP ONE COPY OF THE SIGNED FORMS WITH YOU AT ALL TIMES.**
7. **YOU MUST ATTEND THE HEARING FOR THE PROTECTION ORDER.**
8. **THE HEARING IS THE TIME SET FOR YOU TO PROVE YOUR CASE.** You will need to bring with you to the hearing any witnesses that have 1st hand knowledge of the incidents that have occurred, any documentation such as pictures, phone logs, email messages, text messages, etc.

**IF THE RESPONDENT VIOLATES ANY PROTECTION ORDER,
CALL THE POLICE IMMEDIATELY**