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PROTECTION ORDERS: A DAY IN COURT

Filing for a Protection Order is stressful. No one likes to be put in the position where they need the courts and law enforcement officers to help protect them from someone who was once a part of their life. One way to help reduce your stress and anxiety is to understand the process and what your day in court will look like.

You should always have a qualified attorney represent you in Court and assist you in filing the necessary paperwork. Although you are able to represent yourself, it can be overwhelming and nerve-racking. Plus, having a skilled advocate fighting for you in court helps increase the likelihood that you will be successful.

Protection Order proceedings look different depending on the county and state you live in. When you go to court, you are given a date and time. Depending on where you live and the court schedule that day, you may have an individual time where your matter is the only matter the court hears at that time or you may have a time that is shared with other cases that are called by the Judge in an unknown order (often referred to as a "cattle-call"). Many larger counties, such as Minnehaha and Lincoln counties in South Dakota, use a roll call method to hear these matters where you will share your time slot.



Whether or not your protection order proceeding is the only case on the judge's docket or if you're in a "cattle-call," it is important to note that you will only have a limited amount of time to present your case.

To be successful, you need to use this time wisely and be prepared. Your attorney will bring the evidence you have given them to support your case (with copies for the judge, you, and the opposing party). If you have any witnesses who have seen first-hand the events described in your petition, they will also need to be in attendance and ready to testify.

What are the penalties for violating a Protection Order?

- Violating a Protection Order (even a temporary one) in South Dakota is crime punishable by up to 1 year in jail or a \$2,000 fine or both.
- Protection Orders are enforceable in South Dakota even if they were issued in another state or by the reservation.



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The Judge will use terminology that may seem foreign, such as petitioner and respondent. The "Petitioner" is the individual seeking the Protection Order, and the "Respondent" is the individual the Protection Order is being sought against.

When you (the Petitioner) file for your permanent protection order, you may elect to also ask for an Ex Parte Order of Protection. An Ex Parte Order of Protection restrains the respondent until a hearing can be had on the permanent status. Ex Parte Orders are only granted if you can show irreparable injury and/or death is likely if the petition not granted immediately. If you live with the Respondent, one of you will have to move from the home during this process and likely permanently. If the Ex Parte Order of Protection is granted, the judge will schedule a hearing within 30 days to determine if your petition meets the necessary requirements for a protection order.

If the Petitioner fails to appear, the protection order is dismissed. If the Respondent fails to appear and no one appears on their behalf (such as their attorney), the Protection Order is granted.

At the hearing, the judge will listen to both parties, witnesses, and review the evidence. At that time, the judge will determine whether the petition meets the required standard of proof (whether you proved your case under the law). The law requires the judge to ensure you met the legal standard, regardless if they believe you or not. As such, it is vital that you give the judge sufficient evidence to meet each one of your required factors. Protection Orders are granted for stalking, harassment, and domestic abuse. They can last a maximum of 5 years from the date of the Order.

Protection orders are criminal orders and may include the following requirements:

- Move out of the joint home
- No contact with petitioner and/or their family
- Maintain a certain distance away from the respondent at all times
- Anger management classes
- Counseling requirements
- Supervised visitation (if minor children are involved)
- Temporary custody
- Temporary child support
- Restriction from going to certain places, such as places of employment
- Removal from the joint home
- Turning over fire arms

Even if you are granted a protection order, you may want to seek criminal charges through the State’s Attorney or other civil relief as available under South Dakota law. Your attorney should discuss your other options with you so you can make the best decision for you and your family.

**This article is only intended to give general information and not specific legal advice. Consult with an attorney on your situation before taking any legal action.*