

SOUTH DAKOTA CIVIL PROTECTION ORDERS

Survivors across the country seek safety through civil protection orders. Courts use these vital orders to issue stay away orders, or order an abuser pay medical bills, and even make temporary custody decisions. The remedies are important, but jurisdictions often have several types of orders and the distinctions are not always clear. This resource provides a brief overview of the different types of civil protection orders in each jurisdiction, answering vital questions such as: who can apply; and who can be restrained? The orders included in this resource are limited to those where a survivor can apply themselves, other protective measures may exist in your jurisdiction—reach out to VRLC’s TA team if you have questions!

In South Dakota, there are 3 types of civil protection orders:

- ☐ **Domestic Violence Protective Orders** are available for individuals seeking protection from domestic violence committed by a family or household member, including someone with whom they are in a dating relationship (SDCL § 25-10).
- ☐ **Protection from Stalking, Physical Injury, or Crimes of Violence Orders** are available for individuals seeking protection from any individual who stalked, physically injured, or committed a violent crime against them (SDCL § 22-19A).
- ☐ **Vulnerable Adult Protective Orders** are available for vulnerable adults seeking protection from any individual who abused them; vulnerable adults include certain adults over 64 and certain adults with disabilities (SDCL § 21-65).

DOMESTIC VIOLENCE PROTECTIVE ORDER

Who can apply?	A victim of domestic abuse. Domestic abuse is defined as any of the following committed by a person with whom the individual has an eligible relationship: • Physical harm, bodily injury, or attempts to cause either, or inflicting fear of such harm or injury; or • Stalking. <i>SDCL § 25-10-1.</i> See “Who can be Restrained?” for the eligible types of relationships.
Can minors apply?	The law does not specify whether a minor is eligible for a protection order, but does say “any person” with an eligible relationship can apply. <i>SDCL § 25-10-3.1.</i>
Who can be restrained?	An individual with whom the petitioner has one of the following relationships: • Spouse or former spouse; • A significant romantic relationship or has been in such a relationship within the past 12 months; • Has or is expecting a child in common; • Parent and child, including a relationship by adoption, guardianship, or marriage; or • Siblings, whether of the whole or half blood, including a relationship through adoption or marriage. <i>SDCL § 25-10-3.1.</i> Significant romantic relationship: The court shall consider, among other things, the following factors: • The length of time of the relationship; <i>continued on next page</i>

SOUTH DAKOTA PROTECTION FROM DOMESTIC ABUSE ACT

Who can be restrained?	• The frequency of interaction between the parties; • The characteristics and the type of the relationship. <i>SDCL § 25-10-3.2.</i>
What types of relief may a court order?	The court may issue a temporary protection order and grant whatever relief it deems appropriate, including the following: • Prohibit the respondent from engaging in domestic abuse; • Exclude the respondent from the petitioner's residence. <i>SDCL § 25-10-6.</i> In a final order, the court may provide any of the above relief as well as relief as follows: • Award temporary custody of, visitation with, or support of minor children; • Establish temporary support of spouse; • Order that the abusing party obtain counseling; • Order other relief the court deems necessary. If any minor child resides with one of the parties, the order also must include that the restrained person receive parenting classes approved by the Department of Social Services. <i>SDCL § 25-10-5.</i>
How long does the order last?	An ex parte temporary protection order is effective for a period of 30 days. <i>SDCL § 25-10-7.</i> Duration for a final protection order may not exceed 5 years. <i>SDCL § 25-10-5.</i>

SOUTH DAKOTA PROTECTION FROM DOMESTIC ABUSE ACT

Can the order be renewed?	Yes. The court may modify the terms of an existing order for protection as long as: • The renewal request is made before the current order expires; • Notice is provided to all parties; and • There is a hearing held on the renewal request. <i>SDCL § 25-10-10.</i>
Is a hearing with the respondent required?	A hearing is not required to obtain an ex parte temporary order for protection. <i>SDCL § 25-10-6.</i> A hearing is required for final protection order. A hearing must occur within 30 days of an ex parte order being granted. The respondent must be served with the petition, affidavit, and notice of the hearing and be given opportunity to appear. <i>SDCL § 25-10-5.</i>

STALKING, PHYSICAL INJURY, OR CRIME OF VIOLENCE PROTECTION ORDER

Who can apply?	A victim of stalking, an individual physically injured as a result of an assault, or a victim of a crime of violence. Stalking is defined as: • Willfully, maliciously, and repeatedly follow or harass another person; • Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or • Willfully, maliciously, and repeatedly harassing another person by any verbal, electronic, or written means. <i>SDCL § 22-19A-1.</i> Crime of violence is defined as any of the following crimes: • Murder or manslaughter; • Rape; • Aggravated assault; • Riot; • Robbery or burglary in the first degree; • Arson; • Kidnapping; • Sexual assault of a child under 16; • Child abuse; or • Any other felony where the perpetrator used force or was armed. <i>SDCL § 22-19A-1.</i>
Can minors apply?	The law does not specify whether a minor is eligible for a protection order.

STALKING, PHYSICAL INJURY, OR CRIME OF VIOLENCE PROTECTION ORDER

Who can be restrained?	Any person. <i>SDCL § 22-19A-8.</i>
What types of relief may a court order?	The court may grant an ex parte temporary protection order with whatever relief it deems appropriate, including: • Restraining any person from committing acts of stalking or physical injury as a result of an assault or a crime of violence. <i>SDCL § 22-19A-12.</i> In a final protection order, the court may issue an order that: • Restrains any party from committing acts of stalking or physical injury as a result of an assault or a crime of violence; or • Includes any other relief the court finds appropriate. <i>SDCL § 22-19A-11.</i>
How long does the order last?	An ex parte temporary protection order is effective for a period of 30 days. <i>SDCL § 22-19A-12.</i> Duration for a final protection order may not exceed 5 years. <i>SDCL § 22-19A-11.</i>
Can the order be renewed?	Yes. Upon application, notice to all parties, and a hearing, the court may modify the terms of an existing order for protection. <i>SDCL § 22-19A-14.</i>
Is a hearing with the respondent required?	A hearing is not required to obtain an ex parte temporary order for protection. <i>SDCL § 22-19A-12.</i> <i>continued on next page</i>

STALKING, PHYSICAL INJURY, OR CRIME OF VIOLENCE PROTECTION ORDER

Is a hearing with the respondent required?

A hearing must occur within 30 days of an ex parte order. The respondent must be served with the petition, affidavit, and notice of the hearing, and be given opportunity to appear.
SDCL § 22-19A-10.

VULNERABLE ADULT PROTECTION ORDER

Who can apply?	The following may petition for a PVA: • The vulnerable adult; • The guardian, conservator, attorney-in-fact, or guardian ad litem of the vulnerable adult; • A witness to the abuse of the vulnerable adult; or • An adult protective services worker who has conducted an investigation. <i>SDCL § 21-65.10.</i> A vulnerable adult is defined as: A person 65 years of age or older who is unable to protect himself or herself from abuse as a result of age or a mental or physical condition, or an adult with a disability such that they are unable to protect themselves or provide for their own care. <i>SDCL §§ 21-65-1(15), 22-36-1(1).</i>
Can minors apply?	No.
Who can be restrained?	Anyone who has committed abuse of a vulnerable adult, including: • Physical abuse – physical harm, bodily injury, attempt to cause either, or fear of imminent such harm; • Emotional and psychological abuse – willful, malicious, and repeated infliction of a sexual act, unreasonable confinement, harm or destruction of property or pets, demeaning conduct, derogatory remarks, or threats of harm; • Neglect – failure to provide adequate food, clothing, shelter, or medical care caused by a caretaker when the vulnerable adult does not have the means to provide for themselves; or <i>continued on next page</i>

VULNERABLE ADULT PROTECTION ORDER

Who can be restrained?	Financial exploitation. <i>SDCL § 21-65-1(4).</i>
What types of relief may a court order?	The court may grant an ex parte temporary protection order with whatever relief it deems appropriate, including: - Restraining any person from committing vulnerable adult abuse; and - Excluding any person from the dwelling or the residence of the vulnerable adult. <i>SDCL § 21-65-3.</i> In a final order, the court may provide relief as follows: - The respondent vacates the residence in which the petitioner lives; - That the respondent provides suitable alternative housing for the vulnerable adult; - That the respondent be restrained from committing vulnerable adult abuse; - That the respondent be restrained from entering any relevant premises (such as a home, place of work, etc.); - That the respondent be restrained from exercising any powers on behalf of the vulnerable adult through a court-appointed guardian, conservator, or guardian ad litem, an attorney-in-fact, or another third party; and - Any other relief that the court considers necessary. If the vulnerable adult is a victim of financial exploitation the court may: - Direct the respondent that they may not exercise control over the funds, benefits, property, resources, belongings, or assets of the vulnerable adult; - Require the respondent to return custody or control of the funds, benefits, property, resources, belongings, or assets to the vulnerable adult; - Require the respondent to follow the instructions of the guardian, conservator, or attorney-in-fact of the vulnerable adult; and <i>continued on next page</i>

VULNERABLE ADULT PROTECTION ORDER

What types of relief may a court order?	Prohibit the respondent from transferring the funds, benefits, property, resources, belongings, or assets of the vulnerable adult to any person other than the vulnerable adult. <i>SDCL § 21-65-12.</i>
How long does the order last?	An ex parte temporary protection order is effective for a period of 30 days. <i>SDCL § 21-65-7.</i> A protection order shall be for a fixed period of time not to exceed 5 years. <i>SDCL § 21-65-14.</i>
Can the order be renewed?	Yes. The order can be renewed if the court finds that the respondent continues to pose a threat to the safety of the vulnerable adult, a person residing with the vulnerable adult, or a member of the vulnerable adult's immediate family, or continues to present a risk of financial exploitation of the vulnerable adult. The number of extensions that the court may grant is not limited. <i>SDCL § 21-65-14.</i>
Is a hearing with the respondent required?	A hearing is not required to obtain an ex parte temporary order for protection. <i>SDCL § 21-65-3.</i> A hearing must occur within 30 days of an ex parte order. The respondent must be served with the petition, affidavit, and notice of the hearing, and be given opportunity to appear. <i>SDCL § 21-65-7.</i>

HOW TO APPLY

An application for a protective order may be filed in circuit court or in a magistrate court with a magistrate judge presiding located where any party to the proceedings resides.

Forms and Filing Information can be found through the [South Dakota Legal Self-Help website](#).

SCAN ME!



For specific questions about how to use this guide, or if you have any other questions, VRLC is here to help!

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