

WHAT CAN LAW ENFORCEMENT DO?

Probable Cause Arrest

According to **NDCC 14-07.1-10** and **NDCC 14-07.1-11** the officer need not witness the assault or protection order violation to make an arrest and may arrest up to 12 hours after establishing probable cause.

The officer shall arrest the abuser if there is probable cause that the abuser has violated a protection order.

Either the victim or the officer may file a complaint against the abuser. Before arresting both parties, the officer must consider:

- “The comparative severity of injuries”;
- Whether injuries were inflicted in self-defense;
- And which party was the predominant aggressor, by considering comparative severity of the injuries, any history of domestic violence or other violent acts and the likelihood of future harm.

Criminal Arrest

Though the protection order is a civil remedy, a violation is a criminal offense.

- The first violation is a Class A Misdemeanor with a maximum penalty of one year in jail, a \$3,000 fine, or both.
- Any subsequent violation is a Class C Felony with a maximum penalty of five years in jail, a \$10,000 fine, or both. This penalty applies to any offense against any subsequent victim under any protection order.

Stalking is a violation of a protection order constituting a Class C Felony.

PARENTAL RIGHTS, RESPONSIBILITIES AND PARENTING TIME

Under Full Faith & Credit (*see What Do Applicants Need to Know*), courts must also honor parental rights and responsibilities provisions of any protection order.

According to **NDCC 14-9-06.2 (j)**, it is not in the best interest of the child to be placed with a parent who has a history of violence. If the court determines otherwise, it must document those findings.

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ARE THERE OTHER TYPES OF ORDERS?

A disorderly conduct restraining order is not a protection order. It orders the respondent to cease, or avoid the conduct, or have no contact with the applicant.

A no contact order, or order prohibiting contact, prohibits the abuser from having contact with the victim. It may be issued if the abuser is charged with a crime involving domestic violence and is released from jail on bond before arraignment or trial.

The no contact order is not a protection order. In cases of domestic violence, however, law enforcement may make a probable cause arrest if a no contact order is violated by the abuser.

An interim order is a civil remedy covering the period between filing for divorce and final decree. It addresses custody, support and property. It should include protection order provisions if violence has been present. It may include no contact language.

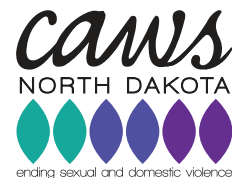
RESOURCES

The Model Law Enforcement Domestic Violence Policy is available at www.cawsnorthdakota.org

SAVIN, the Statewide Automated Victim Information Notification system can provide electronic notifications by email, text message or phone calls and can include the following:

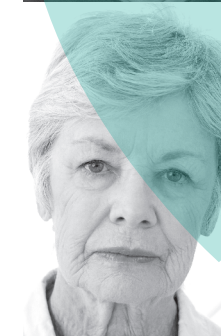
- Protection order service, hearing and order information
- An offender’s court hearings, parole reviews, change of address, change of status of the offender’s probation or parole status or status report of an offender in custody.

For offender notifications go to www.vinlink.com and for protection order notifications go to www.registerpo.com.



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North Dakota's Domestic Violence Protection Orders



DOMESTIC VIOLENCE DEFINED

As defined by **North Dakota Century Code (NDCC) 14.07.1.01** domestic violence can involve any of the following:

- Physical harm;
- Bodily injury;
- Sexual activity compelled by physical force;
- Assault;
- Or the “imminent threat” of any the above listed actions.

The violence is committed against a current or former partner; current or former spouse; family member; household member; or anyone with whom the abuser has or has had a relationship.

WHAT IS A PROTECTION ORDER?

According to **NDCC 14-07.1.02** a protection order restrains one person from:

- Threatening;
- Molesting;
- Injuring;
- Harassing;
- Or having any contact with another person.

A protection order is issued by a court. According to North Dakota Supreme Court Administrative Rule 34, Certified Domestic Violence Advocates may assist people in completing the necessary forms and may appear with them at protection order hearings.

Temporary Protection Order

A temporary protection order is granted when a victim alleges an immediate and present danger of abuse based on a recent incident or threat. It gives immediate relief until a domestic violence protection order is served following a hearing.

Relief may include:

- Restraining the abuser from threatening, molesting, injuring, harassing or having contact with the victim;
- Excluding the abuser from the victim and abuser's dwelling, another person's residence or a domestic violence shelter;
- Awarding temporary custody or temporary visitation rights for minor children.

Applying for a Temporary Protection Order

The individual obtains an application for an order of protection from:

- The local domestic violence sexual assault organization;
- Victim/witness coordinator;
- County clerk of courts;
- Legal services/attorney's office;
- Online at www.ndcourts.gov/ndlshc/DCRO/DCRO.aspx

On the application, the individual identifies:

- The relationship between the parties;
- Describes the most recent, specific incident that caused them to seek a protection order;
- And outlines the history of abuse.

The application can be presented to district court by the individual, an attorney or with an advocate's help. The order can be granted ex parte, or based on one parties account, without a hearing. A hearing is scheduled to take place within 14 days or at a later date if good cause is shown. The court hears accounts from each party to determine whether to issue a domestic violence protection order.

Domestic Violence Protection Order

A domestic violence protection order is issued after a full hearing if the court determines actual or imminent domestic violence. It is implemented in the same manner as the temporary order.

It may include all the relief in the temporary order plus it may also order:

- Counseling for the parties;
- Temporary use of personal property;
- Support for a party and minor children;
- And the offender being required to surrender any firearm or other specified dangerous weapon.

An ex parte temporary protection order remains in effect until an order issued is served.

Emergency Protection Order

According to **NDCC 14-07.1-08** emergency relief can be granted for 72 hours by a magistrate. This protection order is rarely applied for, due to special circumstances that must be present.

WHAT DO APPLICANTS NEED TO KNOW

Fees must be waived for filing and serving domestic violence protection orders.

A protection order is valid and enforceable as soon as it is signed. When it is served (delivered to the abuser), violations are criminal acts.

The court may not issue a mutual protection order—unless both parties have filed separate applications.

A married person does not need to file for divorce or separation in order to receive a protection order.

A petitioner must file a request with the court in order to have a protection order dismissed.

Under federal and state Full Faith & Credit laws—state and tribal courts must honor any protection order issued by any state or tribal court.

Although not required for enforcement, petitioners have the option to register any foreign protection order with the district court.

If an individual charged with or arrested for a domestic violence crime, including a protection order violation or violation of a no contact order, is released the individual can be required to use an electronic home detention or GPS system as a condition of release.

The petitioner can register with SAVIN to track protection order and various updates pertaining to the offender's status. *(See back panel for more SAVIN info)*

WHAT SPECIFIC ASSISTANCE CAN LAW ENFORCEMENT PROVIDE?

In the **absence** of a protection order, law enforcement can provide transportation and assistance to a medical facility; provide transportation and referral to a domestic violence sexual assault organization; help the victim remove belongings if the victim chooses to leave the home; and make “probable cause arrest” of an abuser.

In the **presence** of a protection order, law enforcement can provide the previously mentioned assistance; remove the abuser and personal belongings from the home; remove the abuser's firearms and other specified dangerous weapons (if ordered by the court); and help the victim take possession of the residence.

Law Enforcement Agency Priorities

According to **NDCC 14-07.1-10-14**, law enforcement agencies must: consider arrest of the abuser as the preferred response to domestic violence; have a departmental policy regarding response to domestic violence; make a written report of the investigation of any allegations of domestic violence regardless of whether an arrest was made or not.