

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

742A0077

SENATE JUDICIARY COMMITTEE ENGROSSED

NO. **SB106** - 1/31/97

Introduced by: Senators Lawler, Dennert, Ham, Hunhoff, Hutmacher, Reedy, Shoener, Symens, and Whiting and Representatives Cutler, Duniphan, Schaunaman, Sperry, and Waltman

1 FOR AN ACT ENTITLED, An Act to provide for protection orders in cases of stalking.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
4 as follows:

5 There exists an action known as a petition for a protection order in cases of stalking.

6 Procedures for the action are as follows:

7 (1) A petition under this section may be made against any person who violates § 22-19A-
8 1 or against any other person against whom stalking is alleged;

9 (2) A petition shall allege the existence of stalking and shall be accompanied by an
10 affidavit made under oath stating the specific facts and circumstances of the stalking;

11 (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint,
12 petition, or other action between the parties;

13 (4) If a petitioner files an affidavit with the petition stating that the petitioner does not
14 have the funds available to pay the cost of filing and service, the petition shall be filed

1 and served without payment of costs. If a petition is filed and served without payment
2 of costs, the court shall determine at the hearing described in section 4 of this Act if
3 the petitioner is indigent. If the court finds that the petitioner is not indigent, the court
4 may order the petitioner to pay the costs of filing and service.

5 The clerk of the circuit court shall make available standard petition forms with instructions
6 for completion to be used by a petitioner. The attorney general shall prepare the standard petition
7 form.

8 Section 2. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
9 as follows:

10 A petition for relief under this Act may be filed in circuit court. Venue lies where any party
11 to the proceedings resides.

12 Section 3. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Upon receipt of the petition, the court shall order a hearing which shall be held not later than
15 thirty days from the date of the order. Personal service of the petition, affidavit, and notice for
16 hearing shall be made on the respondent not less than five days prior to the hearing.

17 Section 4. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Upon notice and a hearing, if the court finds by a preponderance of the evidence that stalking
20 has taken place, the court may provide relief as follows:

- 21 (1) Restrain any party from committing acts of stalking;
- 22 (2) Order other relief as the court deems necessary for the protection of the person
23 seeking the protection order, including orders or directives to law enforcement
24 officials.

25 Any relief granted by the order for protection shall be for a fixed period and may not exceed

1 three years.

2 Section 5. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
3 as follows:

4 If an affidavit filed with an application under this Act alleges that immediate and irreparable
5 injury, loss, or damage is likely to result before an adverse party or the party's attorney can be
6 heard in opposition, the court may grant an ex parte temporary protection order pending a full
7 hearing and granting relief as the court deems proper, including an order restraining any person
8 from committing acts of stalking. An ex parte temporary protection order is effective for a
9 period of thirty days. The respondent shall be personally served forthwith with a copy of the ex
10 parte order along with a copy of the petition, affidavit, and notice of the date set for the hearing.

11 Section 6. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The court may not require an undertaking or other security of any party to a petition for an
14 order of protection other than in exceptional circumstances.

15 Section 7. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Upon application, notice to all parties, and hearing, the court may modify the terms of an
18 existing order for protection.

19 Section 8. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
20 as follows:

21 The petitioner may deliver an order for protection granted pursuant to this Act within
22 twenty-four hours to the local law enforcement agency having jurisdiction over the residence of
23 the petitioner. Each appropriate law enforcement agency shall make available to other law
24 enforcement officers information as to the existence and status of any order for protection issued
25 pursuant to this Act.

1 Section 9. That chapter 22-19A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 If a temporary protection order or a protection order is granted pursuant to this Act, and the
4 respondent or person to be restrained knows of the order, violation of the order is a Class 1
5 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1.1, the
6 violation is a Class 6 felony. Any proceeding under this Act is in addition to other civil or
7 criminal remedies.

1 **BILL HISTORY**

2 January 22 - First read in Senate and referred to Judiciary. S.J. 84

3 January 29 - Scheduled for hearing.

4 January 29 - Passed as amended, AYES 6, NAYS 0. S.J. 234