

AN ACT

ENTITLED, An Act to provide for the issuance of a protection order in the case of certain crimes of violence or assaults.

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

Section 1. Any person who has suffered physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9) may petition the court for a protection order. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the injury and the acts which caused the injury. The petition shall be governed by the procedures and penalties described in §§ 22-19A-8 to 22-19A-16, inclusive.

Section 2. That § 22-19A-8 be amended to read as follows:

22-19A-8. There exists an action known as a petition for a protection order in cases of stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9).

Procedures for the action are as follows:

- (1) A petition under this section may be made against any person who violates § 22-19A-1 or against any other person against whom stalking or physical injury is alleged;
- (2) A petition shall allege the existence of stalking or physical injury and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the stalking or physical injury;
- (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties;
- (4) If a petitioner files an affidavit with the petition stating that the petitioner does not have the funds available to pay the cost of filing and service, the petition shall be filed and served without payment of costs. If a petition is filed and served without payment of costs, the court shall determine at the hearing described in § 22-19A-11 if the petitioner is indigent. If the court finds that the petitioner is not indigent, the court may order the

petitioner to pay the costs of filing and service.

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

Section 3. That § 22-19A-11 be amended to read as follows:

22-19A-11. Upon notice and a hearing, if the court finds by a preponderance of the evidence that stalking has taken place, the court may provide relief as follows:

- (1) Restrain any party from committing acts of stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9);
- (2) Order other relief as the court deems necessary for the protection of the person seeking the protection order, including orders or directives to law enforcement officials.

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

Section 4. That § 22-19A-12 be amended to read as follows:

22-19A-12. If an affidavit filed with an application under § 22-19A-8 alleges that immediate and irreparable injury, loss, or damage is likely to result before an adverse party or the party's attorney can be heard in opposition, the court may grant an ex parte temporary protection order pending a full hearing and granting relief as the court deems proper, including an order restraining any person from committing acts of stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9). An ex parte temporary protection order is effective for a period of thirty days. The respondent shall be personally served forthwith with a copy of the ex parte order along with a copy of the petition, affidavit, and notice of the date set for the hearing.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1194

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1194
File No. _____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State