

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

349D0613

SENATE ENGROSSED NO. **HB1194** - 2/16/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Wilson, Cutler, Duniphan, and Fischer-Clemens and Senators Daugaard and Flowers

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

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

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

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

10 22-19A-8. There exists an action known as a petition for a protection order in cases of
11 stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision
12 22-1-2(9). Procedures for the action are as follows:

13 (1) A petition under this section may be made against any person who violates
14 § 22-19A-1 or against any other person against whom stalking or physical injury is
15 alleged;

16 (2) A petition shall allege the existence of stalking or physical injury and shall be

1 accompanied by an affidavit made under oath stating the specific facts and
2 circumstances of the stalking or physical injury;

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

5 (4) If a petitioner files an affidavit with the petition stating that the petitioner does not
6 have the funds available to pay the cost of filing and service, the petition shall be filed
7 and served without payment of costs. If a petition is filed and served without payment
8 of costs, the court shall determine at the hearing described in § 22-19A-11 if the
9 petitioner is indigent. If the court finds that the petitioner is not indigent, the court
10 may order the petitioner to pay the costs of filing and service.

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

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

15 22-19A-11. Upon notice and a hearing, if the court finds by a preponderance of the evidence
16 that stalking has taken place, the court may provide relief as follows:

17 (1) Restrain any party from committing acts of stalking or physical injury as a result of
18 an assault or a crime of violence as defined in subdivision 22-1-2(9);

19 (2) Order other relief as the court deems necessary for the protection of the person
20 seeking the protection order, including orders or directives to law enforcement
21 officials.

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

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

25 22-19A-12. If an affidavit filed with an application under § 22-19A-8 alleges that immediate

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

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 140

3 1/20/00 Referred to Judiciary.

4 1/28/00 Scheduled for Committee hearing on this date.

5 1/28/00 Deferred by Chair.

6 1/31/00 Scheduled for Committee hearing on this date.

7 2/2/00 Judiciary Hog Housed.

8 2/2/00 Scheduled for Committee hearing on this date.

9 2/2/00 Judiciary Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 362

10 2/4/00 House of Representatives Deferred to another day. H.J. 433

11 2/7/00 House of Representatives Do Pass Amended, Passed, AYES 65, NAYS 1. H.J. 455

12 2/8/00 First read in Senate and referred to Taxation. S.J. 359

13 2/11/00 Scheduled for Committee hearing on this date.

14 2/11/00 Taxation Do Pass, Passed, AYES 9, NAYS 0. S.J. 434

15 2/14/00 Senate Deferred to another day. S.J. 467

16 2/15/00 Motion to Amend, Passed. S.J. 508

17 2/15/00 Senate Do Pass Amended, Passed, AYES 33, NAYS 1. S.J. 510