State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

463V0103

HOUSE JUDICIARY ENGROSSED NO. SB 7 - 03/03/2014

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

Introduced by: Senators Tieszen, Peters, and Soholt and Representatives Stevens, Bolin, Conzet, Gibson, Rozum, and Soli at the request of the Interim Domestic Abuse Study Committee

FOR AN ACT ENTITLED, An Act to modify the persons eligible for protection from domestic abuse and to revise certain terminology.

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

Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as follows:

Any person who is involved in one of the following relationships with another party:

(1) Spouse or former spouse;

(2) Is or has been in a significant romantic relationship;

(3) Has a child or is expecting a child with the abusing party;

(4) Parent and child, including a relationship by adoption, guardianship, or marriage; or

(5) Siblings, whether of the whole or half blood, including a relationship through adoption or marriage;

is entitled to apply for a protection order or a temporary protection order pursuant to the

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

provisions of this chapter.

Section 2. That § 25-10-1 be amended to read as follows:

25-10-1. Terms used in this chapter mean:

(1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury ~~between family or household members~~ when occurring between persons in a relationship described in section 1 of this Act. Any violation of § 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between ~~family or household members~~ persons in such a relationship;

(2) ~~"Family or household members," spouses, former spouses, or persons related by consanguinity, adoption, or law, persons living in the same household, persons who have lived together, or persons who have had a child together;~~

~~(3)~~ "Protection order," an order restraining any ~~family or household member~~ person in a relationship described in section 1 of this Act from committing any act of domestic abuse or an order excluding any ~~family or household member~~ person in a relationship described in section 1 of this Act from the dwelling or residence of another ~~family or household member~~ person in such a relationship, whether or not the dwelling or residence is shared. A protection order has a duration of five years or less; and

~~(4)~~(3) "Temporary protection order," an order restraining any ~~family or household member~~ person in a relationship described in section 1 of this Act from committing any act of domestic abuse or an order excluding any ~~family or household member~~ person in a relationship described in section 1 of this Act from the dwelling or residence of another ~~family or household member~~ person in such a relationship, whether or not

the dwelling or residence is shared. A temporary protection order has a duration of thirty days except as provided in § 25-10-7.1.

Section 3. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of chapter 25-10, when determining whether a relationship is a significant romantic relationship, the court shall consider the following factors:

(1) The length of time of the relationship;

(2) The frequency of interaction between the parties;

(3) The characteristics and the type of the relationship; and

(4) If the relationship has terminated, the length of time since the termination.

Section 4. That § 25-10-3 be amended to read as follows:

25-10-3. There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows:

(1) A petition under this section may be made by any ~~family or household member~~ person in a relationship described in section 1 of this Act against any other ~~family or household member.~~ person in such a relationship;

(2) A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse~~.~~;

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

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

Section 5. That § 25-10-5 be amended to read as follows:

25-10-5. Upon notice and a hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief as follows:

(1) Restrain any party from committing acts of domestic abuse;

(2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;

(3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;

(4) Establish temporary support for minor children of the parties or a spouse;

(5) Order that the abusing party obtain counseling;

(6) Order other relief as the court deems necessary for the protection of ~~a family or household member~~ the person to whom relief is being granted, including orders or directives to a sheriff or constable.

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

If any minor child resides with either party, the court shall order that the ~~abusing party~~ restrained person receive instruction on parenting approved or provided by the Department of Social Services as part of any relief granted.

Section 6. That § 25-10-6 be amended to read as follows:

25-10-6. ~~When~~ If an affidavit filed with an application under this chapter alleges that immediate and irreparable injury, loss, or damage will result before an adverse party or his or her 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:

(1) Restraining any ~~family or household member~~ person in a relationship described in

section 1 of this Act from committing acts of domestic abuse;

(2) Excluding any ~~family or household member~~ person in a relationship described in section 1 of this Act from the dwelling or the residence of the petitioner.

Section 7. That § 25-10-36 be amended to read as follows:

25-10-36. If any law enforcement officer who is responding to a domestic abuse call has probable cause to believe that a crime has been committed, the law enforcement officer shall arrest the person who is suspected of committing the crime and make a complete report of any action taken. The officer shall indicate on the arrest report and the fingerprint document if the arrest is for a crime against a ~~family or household member as defined in § 25-10-1~~ person in a relationship described in section 1 of this Act.

Section 8. That § 25-10-40 be amended to read as follows:

25-10-40. No police officer or sheriff may release a person charged with assaulting a ~~family or household member, as defined in subdivision 25-10-1(2)~~ person in a relationship described in section 1 of this Act, or violating a protection order, as provided for in this chapter, without providing notice to a committing magistrate judge or circuit court. A committing magistrate judge or circuit court shall determine if bond or other conditions of release are necessary for the protection of the alleged victim.

Section 9. That § 25-10-41 be amended to read as follows:

25-10-41. In determining the conditions of release under § 25-10-40, the court shall consider the following conditions and may impose any condition it considers reasonably necessary to protect the alleged victim of domestic abuse, including ordering the defendant:

(1) Not to subject the victim to further domestic abuse;

(2) To vacate the home of the victim;

(3) Not to contact the victim other than through counsel;

(4) To engage in counseling;

(5) To refrain from the consumption of alcohol or the use of drugs;

(6) To post bond pursuant to § 25-10-23.

As used in this section, the term ~~"~~, domestic abuse~~"~~, means a violation of § 22-18-1 or 22-18-1.1 if the victim is a ~~family or household member~~ person in a relationship described in section 1 of this Act.

Section 10. That § 23A-28C-4 be amended to read as follows:

23A-28C-4. For the purposes of this chapter, the term, victim, means any person being the direct subject of an alleged act, which would constitute a crime of violence as defined by subdivision 22-1-2(9), simple assault between ~~family or household members as defined in subdivision 25-10-1(2)~~ persons in a relationship described in section 1 of this Act, stalking as defined in chapter 22-19A, a violation of chapter 22-22, or a driving under the influence vehicle accident, under the laws of South Dakota or the laws of the United States. If the victim does not survive such act or is unable to comment, the term, victim, means the members of the immediate family of the primary victim.