

Guide to

PROTECTIVE ORDERS



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INTRODUCTION

The Community Violence Intervention Center (CVIC) provides assistance with a variety of protective orders available under North Dakota law. If you have experienced domestic violence, dating violence, sexual assault or stalking, CVIC is here to help you address safety concerns and determine if you want to proceed with applying for a protective order.

The following pages provide information about each type of order:

- Protection Order (domestic violence)
- Disorderly Conduct Restraining Order
- Sexual Assault Restraining Order

CVIC has state-certified advocates with training about the different kinds of orders who can help you identify which order you may be eligible for based on the type of crime, your relationship to the individual you are seeking an order against and other factors specific to your situation.

CVIC advocates and our staff attorney may assist you through the process in a number of ways including:

- Completing required forms and documentation
- Attending court with you
- Applying for extensions
- Preparing for court hearings
- Representing you at hearings (CVIC attorney)

All CVIC services are provided at no cost to you.

PROTECTION ORDER

Eligibility

In North Dakota, you may be eligible for a domestic violence protection order if you have recently been a victim of domestic violence. Domestic violence is physical harm, bodily injury, sexual activity by physical force, or assault. Acts of domestic violence include: pushing, shoving, grabbing, slapping, punching, choking, hair pulling, kicking, forcing sexual acts, threatening with a weapon, or threatening a person's life or safety. N.D.C.C. § 14-07.1-01.

The following individuals may request a protection order:

- A spouse or former spouse.
- A family member.
- A person who is currently residing with an abusive person regardless of whether they are or have been married.
- A person who is in a dating relationship with an abusive person regardless of whether they have lived together at any time.
- Any other person who the court determines a sufficient relationship has existed between the two parties, including previous dating relationships.

Temporary Protection Order

If you are a victim of domestic violence who seeks a protection order, the first step is to complete an application for a temporary protection order, which will provide immediate protection from the abusive person.

CVIC is here to assist you in completing the forms, which must include an affidavit or written description of the abusive behavior you have experienced. A CVIC state-certified domestic violence advocate will then accompany you to the court to see a judge.

A judge will review your application for the order and will make

an immediate determination. The judge may grant the temporary order without a hearing and without notice to the abusive person.

If the judge grants you the temporary order, a hearing will be scheduled within 14 days. The temporary order will stay in place until this hearing.

Extended Protection Order Hearing _____

The purpose of the hearing, which will be held within 14 days, is to determine whether the temporary order will be extended. Notice of the hearing will be given to the abusive person. At the hearing, the judge will determine if the order should be extended and the length of time for the extension. A protection order may be extended for up to two years.

It is in your best interest to arrange for legal representation, as the abusive person has a right to be present at the hearing and to be represented by an attorney. Court-appointed attorneys are not available for either party.

A CVIC attorney may be able to represent you at the hearing at no charge. If the attorney is not available, a CVIC advocate will accompany you (though cannot serve as an attorney). Please ask your advocate for more information regarding these options.

Relief Provided by a Protection Order _____

The relief provided to a victim by a protection order may include:

- Prohibiting the abusive person from committing acts of domestic violence against you or others listed on the order, including children.
- Excluding the abusive person from your home, place of employment, any adult shelter care facility, children's daycare or school, or other places the judge finds appropriate.
- Awarding custody and/or visitation rights with minor

child(ren) for the duration of the order. Visitation may be ordered to be supervised or unsupervised.

- Requiring the payment of child support, spousal support and/or payment of household bills.
- Requiring the abusive person to surrender firearms or other dangerous weapons to law enforcement if used to commit or threaten domestic violence.

Dismissing a Protection Order

After an order is issued, no contact is allowed between you and the abusive person. The order is not dismissed if you initiate or agree to contact with the abusive person. Contacting the abusive person puts you in an extremely vulnerable position and can make prosecution of any violations more difficult.

If you wish to have contact with the person you have an order against, it is important that you apply to have the protection order amended or dismissed. This can be done through CVIC or your private attorney.

RESTRAINING ORDERS

Disorderly Conduct

If you do not qualify for a protection order, you may still qualify for a disorderly conduct restraining order (DCRO).

In North Dakota, a victim may be eligible for a DCRO if there have been intrusive or unwanted acts, words or gestures that are intended to affect the safety, security or privacy of another person. N.D.C.C. §12.01-31.2-01.

The abusive person will be served with the temporary order, and a hearing will be scheduled. The court hearing process will mirror that of a protection order.

A DCRO may be granted for up to two years. Custody and visitation are generally not addressed through these orders.

Sexual Assault

In North Dakota, a victim may be eligible for a sexual assault restraining order if there has been nonconsensual sexual contact between adult parties or minors. N.D.C.C. § 12.01-31-01.2. While this includes sexual assault such as rape, it may also include any other non-consensual touching of a person's intimate parts, including breasts and buttocks, in an aggressive manner or for the purpose of satisfying sexual desires.

The application, temporary order and hearing process will mirror that of a protection order. The court may extend the temporary order for up to two years.

VIOLATION OF ORDERS

Once the abusive person has been served with any of these protective orders, any actual or attempted contact that he/she makes is a violation of the order. Attempted contact includes, but is not limited to:

- Phone calls to you at your home, work, cell, or any other place that the abusive person intends to reach you, regardless of whether or not you answer the call.
- Messages left for you by the abusive person on your voice mail.
- Emails, texts, messages on social media, or any other electronic communication directed to you from the abusive person.
- Calls and messages left for you on friends', co-workers', or family members' phones via text, voicemail, or on any social media.
- Letters, pictures, or other correspondence sent to you at your home or place of employment, or left on your vehicle or anywhere else. This also includes any correspondence left for you with friends, family members or co-workers.
- Coming within a certain distance (specified in the court order) of your home, place of employment, or any other locations that are listed in the order. These may include friend or family member's homes or your child(ren)'s daycare or school. Any attempt to contact you, regardless of whether you are at these locations, is a violation.
- For example, if your neighbor sees the abusive person driving in front of your home while you are at work, this is a violation.
- Any other message that the abusive person may attempt to send to you through a third party. This means that the abusive person cannot ask others to contact you or give you messages for him/her. For example, if the abusive person has his/her parent or friend call you to tell you that he/she is sorry and loves you, this is a violation. This also includes messages sent through your child(ren).
- Any other attempt to contact you by any other means even

Violation of Orders continued

if it is not direct contact will also be a violation. For example, if the abusive person is following you around town while you run errands, this could be a violation. If you run into the abusive person in a public place, such as a grocery store, and he/she makes a threatening gesture towards you, follows you, or talks to you at all, these are all violations.

If you believe you are in danger, call 911 immediately.

If a violation has occurred, but you don't believe you are in immediate danger, call law enforcement to report the violation. A CVIC advocate may assist you in reporting the violation to law enforcement, if you wish. Be sure to save any evidence of the violation, including text messages, voice mails, call logs, e-mails, photographs, etc. **Keeping a list or making police reports of every violation is important should you try to extend the order.**

PROPERTY EXCHANGE

If you and the abusive person have been sharing a residence, protective orders can exclude the abusive person from the shared residence.

The temporary protective orders will allow for limited property exchange at the time the order is served on the abusive person. He/she will be allowed to take personal care items, clothing, documents of identification, keys, medication, and other items necessary to accommodate his/her immediate needs. This exchange will be supervised by law enforcement and often occurs at the time the order is served.

Additional property items may be addressed at the time of the protective order hearing. The court will use its discretion as to which items will be addressed at the hearing. Any large divisions of property will likely need to be handled through a separate civil hearing, such as a divorce.

PREPARE FOR COURT

- Review your affidavit and be familiar with all the details. You can bring your affidavit with you on the stand, but it is best to have most of the details fresh in your mind.
- Arrive at the courthouse no later than 15 minutes prior to your hearing unless otherwise arranged with your advocate or attorney.
- This is a formal hearing, so dress as you would for a job interview. Ask your advocate if you are unsure.
- Avoid discussing your case in the hallways or restrooms of the courthouse to prevent the other party, counsel, and/or witnesses from hearing you. There is an assigned waiting area that can be used to prepare for court. The respondent (the person the order is against) is not allowed to utilize this waiting area.
- Refer to the judge as “your honor” and be respectful when addressed by any person in the courtroom. Do not interrupt anyone during the hearing. If something needs to be clarified, wait until it is your turn to speak or ask to make a clarification at the end of the hearing. Both parties will have the opportunity to testify to the allegations.
- When testifying, answer the questions directly, take your time when answering, and only answer the question asked of you.
- If you do not understand a question, ask that the question be restated or explained. If you do not remember, simply say that you don’t remember; don’t feel forced to come up with an answer.
- Be brief and concise in your answers. If you are asked to speak, discuss only the events that took place and that were stated in your affidavit. Do not speak about what you think happened or what you heard someone else say.
- If you cannot remember exact dates, times or places, make sure that the judge or attorney understands that you are only estimating.

Prepare for Court continued

- Answer all the questions asked verbally. Speak slowly and clearly so the court reporter can record the hearing accurately.
- When a judge interrupts or an attorney objects, you should stop talking until the judge tells you that you may continue.
- If you attend the hearing without legal representation and at any point during the hearing you decide that you need legal representation, you may ask the judge for a continuance to find an attorney. If granted, this will allow you time to find an attorney. There is no guarantee that a judge will grant a continuance, but it is your right to request this.
- It is not a good idea to bring children to court with you. Please make arrangements for childcare prior to the hearing. If you are unable to make childcare arrangements, contact CVIC for assistance.
- Contact all your witnesses and gather your evidence prior to the hearing. The two-week period between the issuance of the temporary order and the hearing on the permanent order gives you time to gather this information. The judge will not allow any affidavits or written statements from witnesses. The witnesses need to be present in court to testify or the information will not be allowed.
- These hearings may be restricted from the public. You have the right to ask the judge to make any person who is not a party to the case leave the courtroom, excluding attorneys and advocates. Persons who are not a party to the case could include the abusive person's family or friends, or any friends or family members that you asked to attend. It will be at the judge's discretion to grant your request.
- You also have the right to ask that any witnesses present wait outside the courtroom so they do not hear the other testimony.
- It is very important to present yourself in the best possible light while in court. Swearing is never okay unless you are restating a direct quote from your affidavit.

GUN LAWS

Federal Law

It is a federal crime for an abusive person who has a domestic violence protection order against him/her to transport, receive, or possess any firearm or ammunition. The Violence Against Women Act, 18 U.S.C. § 922(g)(8).

The firearm prohibition lasts as long as the protection order lasts, regardless of whether the abusive person is told about the prohibition and whether it is written into the court's order.

There are exceptions to the Federal Firearm Prohibition. On-duty law enforcement officials are exempt from this prohibition only for department-issued firearms, which must be kept at the police department while off duty. Such a law enforcement official could not possess other (personal) guns under this prohibition.

Law enforcement and prosecutors have discretion about whether to arrest or charge someone for a violation of this federal law.

North Dakota

In North Dakota, your order may include a provision that prohibits the abusive person from having a firearm or dangerous weapon.

MORE TO KNOW

If You Move

A protective order issued to a victim of domestic violence, sexual assault, dating violence, or stalking will be enforced throughout the country no matter where the victim is located. The order is valid in the community where it was received and will be recognized in:

- All 50 states and commonwealth,
- Indian tribal lands or territories,
- District of Columbia
- U.S. Virgin Islands, Puerto Rico, American
- Samoa, the Northern Mariana Islands, and Guam.

[The Violence Against Women Act, 18 U.S.C.A. § 2265 - 2266.]

If you have any questions about the enforceability of your order, contact a CVIC advocate.

Stalking

In North Dakota, any person who is using his/her behavior to frighten, intimidate, harass, or cause fear to another person may be engaging in stalking. Stalking behaviors may include: standing outside of a person's home, monitoring a person's mail, email or phone calls, or giving unwanted notes or gifts. N.D.C.C. § 12.1-17-07.1

Stalking behaviors combined with current or past abuse may be a sign of heightened danger, and victims of any previous abusive relationships who are being stalked are at greater risk for serious harm. If you are being stalked, you may be eligible for a DCRO (page 5). Stalking may also be charged as a criminal offense. If you believe you are in immediate danger, please call 911.

It is important to document and report the stalking behavior, and CVIC may help you with this. Please contact an advocate for questions or concerns regarding stalking, and to discuss safety planning.

Order Prohibiting Contact _____

An order prohibiting contact is ordered as part of criminal charges related to domestic violence and other crimes. This type of order is different from a protective order because it is requested by a prosecutor and not a victim. An order prohibiting contact will generally stay in effect only as long as the case is pending.

In many instances, you may want to consider applying for a protective order in addition to the order prohibiting contact. If you have any questions about your order prohibiting contact, contact one of CVIC's crime victim witness specialists.

**PREVENTING VIOLENCE.
PROMOTING SAFETY. BUILDING HOPE.**

Contact Us



211 S. 4th St.
Grand Forks, ND 58201

24x7 crisis line

701-746-8900 | 866-746-8900 (toll-free)



Main Office (M-F, 8:30 a.m. - 5 p.m.)

701-746-0405

TTY Line: 800-366-6888

Kids First child visitation/exchange

701-787-5806



cviconline.org



Important Phone Numbers

Grand Forks County State’s Attorneys Office	701-780-8281
GrandForksCountySheriff’sDepartment.....	701-780-8280
City of Grand Forks PoliceDepartment	701-787-8000
ND Lawyer Referral & Information Service	866-450-9579
Legal Services of North Dakota	800-634-5263
SBAND Pro Bono/Reduced Fee Referrals.....	800-634-5263

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