

# State of South Dakota

SEVENTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 1997

742A0077

## SENATE BILL NO. 106

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;

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  
15 and served without payment of costs. If a petition is filed and served without payment

1 of costs, the court shall determine at the hearing described in section 4 of this Act if  
2 the petitioner is indigent. If the court finds that the petitioner is not indigent, the court  
3 may order the petitioner to pay the costs of filing and service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25       Section 9. That chapter 22-19A be amended by adding thereto a NEW SECTION to read

1 as follows:

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