CHAPTER 14-07.1
DOMESTIC VIOLENCE

14-07.1-01. Definitions.

1. "Department" means the state department of health.
2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence sexual assault organization" means a private, nonprofit organization whose primary purpose is to provide emergency housing, twenty-four-hour crisis lines, advocacy, supportive peer counseling, community education, and referral services for victims of domestic violence and sexual assault.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Predominant aggressor" means an individual who is the most significant, not necessarily the first, aggressor.
8. "Willfully" means willfully as defined in section 12.1-02-02.

14-07.1-02. Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of domestic violence may be brought in district court by any family or household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.
2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service must be made upon the respondent at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
    a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
    b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.
    c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
    d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the

designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.

e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.

f. Awarding temporary use of personal property, including motor vehicles, to either party.

g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.

5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
7. No order or agreement under this section affects title to any real property in any matter.
8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
9. Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

14-07.1-02.1. Allegation of domestic violence - Effect.

If the court finds that a party's allegation of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding is false and not made in good faith, the court shall order the party making the false allegation to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

14-07.1-02.2. Foreign domestic violence protection orders - Full faith and credit recognition and enforcement.

Repealed by S.L. 2003, ch. 123, § 3.

14-07.1-03. Temporary protection order - Copy to law enforcement agency.

1. If an application under section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, based upon an allegation of a recent incident of

actual domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.

2. An ex parte temporary protection order may include:
   a. Restraining any party from having contact with or committing acts of domestic violence on another person.
   b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
   c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
   d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.
3. Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect until an order issued under section 14-07.1-02 is served.
4. A full hearing as provided by section 14-07.1-02 must be set for not later than fourteen days from the issuance of the temporary order. The respondent must be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.
6. Fees for filing and service of process may not be assessed to the petitioner for any proceeding seeking relief under chapter 14-07.1.

14-07.1-03.1. Notification of stalking law.

When an order is issued under section 14-07.1-02 or 14-07.1-03, the order must include or have attached to it a copy of section 12.1-17-07.1.

14-07.1-04. Assistance of law enforcement officer in service or execution.

When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to a domestic violence shelter care facility.

14-07.1-05. Right to apply for relief.

A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 is not affected if the person leaves the residence or dwelling to avoid domestic violence. The court may not require security or bond from any party unless the court deems it necessary in exceptional cases.

14-07.1-05.1. Appointment of guardian ad litem for minor.

The court, upon the request of either party or upon its own motion, may appoint a guardian ad litem in an action for a protection order to represent a minor concerning custody, support, or visitation if either party or the court has reason for special concern as to the immediate future of the minor. The guardian ad litem may be appointed at the time of a temporary protection order or at any time before the full hearing. The role of the guardian ad litem consists of investigation and making a recommendation and report to the court. At no time may the involvement of the guardian ad litem alter the requirements set forth in section 14-07.1-03. The appointment of the guardian ad litem expires immediately after the full hearing unless the court retains the right, upon specific finding of need, to continue the appointment of a guardian ad litem to participate in visitation. The guardian ad litem shall have access to records before the court except as otherwise provided by law. The court may direct either or both parties to pay the guardian ad litem fees established by the court. If neither party is able to pay the fees, the court, after notice to the state's attorney of the county of venue, may direct the fees to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for the payment.

14-07.1-06. Penalty for violation of a protection order.

Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or individual to be restrained has been served a copy of the order, the first violation of any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of any protection order is a class C felony. For purposes of this section, "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

14-07.1-07. Nonexclusive remedy.

Any proceeding under sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

14-07.1-08. Emergency relief.

When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from domestic violence. Immediate and present danger of domestic violence to the applicant or others constitutes good cause for purposes of this section. Any order issued under this section expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support of the order must be immediately certified to the court. The certification to the court has the effect of commencing proceedings under section 14-07.1-02.

14-07.1-09. Immunity from liability - Penalty for false reports.

Repealed by S.L. 1989, ch. 589, § 16.

14-07.1-10. Arrest procedures.

1. If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic violence, whether the offense is a felony or misdemeanor, and whether or not the crime was committed in the presence of the officer, the law enforcement officer shall presume that arresting the person is the appropriate response.
2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the

officer shall evaluate each complaint separately to determine if either party acted in self-defense as defined in section 12.1-05-03. If self-defense is not a factor, to determine whether to seek an arrest warrant or to pursue further investigation, the officer shall consider which party was the predominant aggressor by considering certain factors, including the comparative severity of injuries involved, any history of domestic violence, or any other violent acts that the officer can reasonably ascertain and the likelihood of future harm.

3. An individual arrested for a crime involving domestic violence may not be released on bail or on the individual's personal recognizance unless the individual has made a personal appearance before a magistrate pursuant to rule 5 of the North Dakota Rules of Criminal Procedure.

14-07.1-11. Arrest without warrant.

1. A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer.
2. A law enforcement officer may arrest a person without a warrant if the arrest is made within twelve hours from the time the officer determines there is probable cause to arrest for an assault of a family or household member as defined in section 14-07.1-01, whether or not the assault took place in the presence of the officer. After twelve hours has elapsed, the officer must secure an arrest warrant before making an arrest. A law enforcement officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

14-07.1-12. Reports.

A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. If an officer determines through the course of an investigation that one of the individuals was the predominant aggressor, the report must include the name of that individual and a description of the evidence that supports the findings. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

14-07.1-13. Order prohibiting contact - Penalty.

Repealed by S.L. 2009, ch. 134, § 3.

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.
2. The peace officer standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

14-07.1-15. Domestic violence and sexual assault prevention fund established.

The domestic violence and sexual assault prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

14-07.1-16. Grants - Eligibility - Conditions - Limitation.

The department shall administer moneys in the domestic violence and sexual assault prevention fund for grants to domestic violence sexual assault organizations as defined in section 14-07.1-01. Up to ten percent of the fund may be allocated to the state domestic violence sexual assault coalition, as recognized by the state department of health. A direct service provider agency that is an eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section.

14-07.1-17. Duties of health officer.

The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.
2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.
3. Distribute grants to eligible applicants in accordance with the purposes of sections 14-07.1-15 through 14-07.1-18.

14-07.1-18. Domestic violence or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence or sexual assault program shall maintain the confidentiality of the:
   a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
   b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence or sexual assault program; and
   c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence or sexual assault program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
   a. A client consents to the release of information that relates only to that client or the client's dependents;
   b. The agent, employee, or volunteer operating a domestic violence or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
   c. A court of competent jurisdiction orders the disclosure after an in camera review and a written finding by the court that the information directly and specifically relates to a determination of child abuse and neglect under chapter 50-25.1 or termination of parental rights under sections 14-15-19, 27-20-44, 27-20-45, 27-20-46, 27-20-47, and 27-20-48; or

d. An agent, employee, or volunteer working with a domestic violence or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.

3. Any person who violates this section is guilty of an infraction.

14-07.1-19. Release conditions.

If an individual charged with or arrested for a crime involving domestic violence, including a violation of a domestic violence protection order under section 14-07.1-03 or an order prohibiting contact under section 14-07.1-13, is released from custody, a district or municipal court may require that electronic home detention or global positioning system monitoring be used for the individual as a condition of release.

14-07.1-20. Domestic violence fatality review commission.

1. The attorney general's office may establish a domestic violence fatality review commission to review domestic violence deaths that have occurred in the state. The domestic violence fatality review commission may review incidents in which the investigation of fatal incidents of domestic violence has been completed or adjudicated by law enforcement for the purpose of:
   a. Recommending policies and protocols to prevent the incidence of domestic violence and resulting fatalities; and
   b. Providing consultation and coordination for agencies involved in the prevention and investigation of domestic violence.
2. The attorney general shall appoint the membership of the domestic violence fatality review commission, as appropriate, and may include representatives from:
   a. Law enforcement agencies within the state;
   b. County or city attorneys and public defenders, and the judiciary;
   c. The medical examiner;
   d. The department of corrections and rehabilitation;
   e. Physicians and mental health professionals;
   f. Employees of the state department of health and county social services;
   g. Local civic agencies and organizations involved with crime victims and domestic violence protection, reporting, counseling, and assistance;
   h. Other organizations, departments, and agencies determined to be appropriate; and
   i. Other individuals serving on an ad hoc basis in association with a particular review.
3. The commission may investigate and review the facts and circumstances of all deaths that occur in the state as a result of domestic violence.
   a. The review may include necessary and appropriate information, including current laws and policies, actions taken by agencies and persons related to or involved with the incident, criminal justice data collection and analysis, and other information the commission determines to be relevant to the review.
   b. The confidential and other appropriate records of a department or agency of the state, county, or municipality relating to the domestic violence incident may be examined by the commission. Upon request or investigative demand from a representative of the commission, any hospital, physician, medical professional, medical facility, mental health professional, or mental health facility shall disclose all records of that person with respect to any death that has occurred as a result of domestic violence, as determined by the commission. The domestic violence fatality review commission and each member of the commission shall preserve the confidentiality of any records examined.
4. The domestic violence fatality review commission shall report its findings and recommendations from the previous calendar year to the attorney general before March thirty-first of each year.
5. Meetings of the domestic violence fatality review commission are closed to the public and are not subject to section 44-04-19.

6. The determinations, conclusions, and recommendations of the domestic violence fatality review commission are not admissible in a civil or criminal proceeding.
7. Except for a public report issued by the attorney general's office, any information, records, or data collected by the commission are an exempt record. The commission may not use the information, records, or data for purposes other than those designated by this section.
8. Whenever funding is available from grants, a member of the domestic violence fatality review commission who is not a permanent full-time state employee is entitled to compensation at a rate of seventy-five dollars per day and mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expense reimbursement as provided for in sections 44-08-04 and 54-06-09, to be paid by the employing agency.