

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 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 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 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 persons in such a relationship;
- (2) "Protection order," an order restraining any person in a relationship described in section

1 of this Act from committing any act of domestic abuse or an order excluding any person in a relationship described in section 1 of this Act from the dwelling or residence of another 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

- (3) "Temporary protection order," an order restraining any person in a relationship described in section 1 of this Act from committing any act of domestic abuse or an order excluding any person in a relationship described in section 1 of this Act from the dwelling or residence of another 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, among others, 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.

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 person in a relationship described in section 1 of this Act against any other 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.

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 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 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. 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 person in a relationship described in section 1 of this Act from committing acts of domestic abuse;
- (2) Excluding any 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 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 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 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 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.

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I certify that the attached Act originated in the

SENATE as Bill No. 7

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 7
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State