

SENATE FILE NO. SF0120

Sexual assault protection orders.

Sponsored by: Senator(s) Hastert and Craft and
Representative(s) Coleman, Davison,
Esquibel, K. and Throne

A BILL

for

1 AN ACT relating to public health and safety; creating the
2 Sexual Assault Protection Order Act; providing for
3 injunction protection for victims of sexual assault;
4 providing definitions; providing for petitions without
5 court costs to the petitioner; providing for ex parte
6 temporary and final orders; providing a criminal penalty
7 for violation of protection orders; and providing for an
8 effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 35-21-201 through 35-21-213 are
13 created to read:

14

15 CHAPTER 21

16 DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROTECTION

1

2

ARTICLE 2

3

SEXUAL ASSAULT PROTECTION ORDERS

4

5

35-21-201. Short title.

6

7 This act may be cited as the "Sexual Assault Protection
8 Order Act".

9

10 **35-21-202. Definitions.**

11

12 (a) The definitions provided in W.S. 6-2-301 shall
13 apply to this article except to the extent they are
14 specifically inconsistent with subsection (b) of this
15 section.

16

17 (b) As used in this act:

18

19 (i) "Nonphysical contact" includes, but is not
20 limited to, telephone calls, mail, e-mail, texting, fax or
21 any other form of written or electronic communication;

22

23 (ii) "Petitioner" means any named petitioner for
24 the sexual assault protection order or any named victim of

1 nonconsensual sexual assault on whose behalf the petition
2 is brought;

3

4 (iii) "Sexual assault" means any act made
5 criminal by W.S. 6-2-302 through 6-2-304, 6-4-201 and
6 6-2-314 through 6-2-318;

7

8 (iv) "Sexual assault protection order" means an
9 ex parte temporary order or a final order granted under
10 this article, which includes a remedy authorized by W.S.
11 35-21-207;

12

13 (v) "This act" means W.S. 35-21-201 through
14 35-21-212.

15

16 **35-21-203. Petition for a sexual assault protection**
17 **order; creation; contents; administration.**

18

19 (a) A victim of sexual assault may petition the court
20 under this act by filing a petition with the circuit court
21 clerk or the district court clerk.

22

23 (b) The petition shall be made under oath or be
24 accompanied by a sworn affidavit setting out specific facts

1 showing the alleged sexual assault and stating the specific
2 statements or actions made at the time of the sexual
3 assault or subsequently which give rise to a reasonable
4 fear of future dangerous acts. Petitioner and respondent
5 shall disclose the existence of any other litigation or any
6 other restraining or protection orders between the parties.

7
8 (c) No petitioner is required to file for annulment,
9 separation or divorce as a prerequisite to obtaining an
10 order of protection under this act nor is a person's right
11 to petition for relief affected by that person's leaving
12 the residence or household to avoid domestic abuse or
13 sexual assault.

14
15 (d) The remedies provided by this act are in addition
16 to any other civil or criminal remedy available to the
17 petitioner.

18
19 (e) No filing fee or other court costs or fees shall
20 be assessed or charged to a petitioner seeking an order of
21 protection under this act.

22
23 (f) The clerk of the court shall make available
24 standard petition forms with instructions for completion to

1 be used by a petitioner. Forms are to be prepared by the
2 victim services division within the office of the attorney
3 general. Upon receipt of the initial petition by the clerk
4 of the court, the clerk shall refer the matter to the
5 court. The court may appoint an attorney to assist and
6 advise the petitioner or the petitioner may hire an
7 attorney or file pro se. Any assistance or information
8 provided by clerks under this section does not constitute
9 the practice of law and clerks are not responsible for
10 incorrect information contained in a petition.

11

12 (g) The court shall not deny a petitioner relief
13 requested pursuant to this act solely because of a lapse of
14 time between an act of sexual assault and the filing of the
15 petition for an order of protection.

16

17 (h) It shall not be a bar to filing a petition or
18 receiving an order of protection under this act that:

19

20 (i) A criminal or civil order is entered in a
21 case pending against the respondent or between the
22 petitioner and respondent;

23

1 (ii) The petitioner has petitioned for or
2 received orders of protection in the past or that the
3 petitioner has withdrawn a petition or asked to have orders
4 rescinded; or

5

6 (iii) There is evidence of some domestic abuse
7 on the part of the petitioner.

8

9 (j) The court may require the respondent to pay costs
10 and fees incurred in bringing an action pursuant to this
11 act including reasonable attorney's fees whether the
12 attorney is court appointed or retained by petitioner.

13

14 (k) If the petition states that disclosure of the
15 petitioner's address would endanger the petitioner or any
16 member of the petitioner's family or household, that
17 address may be omitted from all documents filed with the
18 court. If the petitioner has not disclosed an address
19 under this subsection, the petitioner shall designate an
20 alternative address at which the respondent may serve
21 notice of any motions.

22

23 (m) The court may appoint counsel to represent the
24 petitioner if the respondent is represented by counsel.

1

2 (n) In proceedings for a sexual assault protection
3 order and prosecutions for violating a sexual assault
4 protection order, the prior sexual activity or the
5 reputation of the petitioner is inadmissible except as
6 provided in W.S. 6-2-312.

7

8 (o) Any ex parte temporary or final sexual assault
9 protection order issued under this act may be extended one
10 (1) or more times, as required. The petitioner may apply
11 for extension of the order by filing a petition for
12 extension at any time within the three (3) months before
13 the order expires. If the motion for extension is
14 uncontested and the petitioner seeks no modification of the
15 order, the order may be extended on the basis of the
16 petitioner's motion or affidavit stating that there has
17 been no material change in relevant circumstances since
18 entry of the order and stating the reason for the requested
19 extension. Extensions may be granted by the court, with
20 opportunity for hearing granted to the respondent within
21 ten (10) days of the extension being granted by the court.

22

23 **35-21-204. Petition; who may file; venue.**

24

1 (a) A petition for a protection order under this act
2 may be filed by a person:

3

4 (i) Who does not qualify for a domestic violence
5 protection order and who is a victim of sexual assault,
6 including a single incident of nonconsensual sexual
7 assault; or

8

9 (ii) On behalf of any of the following persons
10 who is a victim of sexual assault and who does not qualify
11 for a domestic violence protection order:

12

13 (A) A minor child;

14

15 (B) A vulnerable adult as defined in W.S.
16 35-20-102(a)(xviii);

17

18 (C) Any other adult who, because of age,
19 disability, health or inaccessibility, cannot file the
20 petition.

21

22 (b) An action under this act shall be filed in the
23 county where the petitioner resides.

24

1 **35-21-205. Petition; hearings prior to issuance of**
2 **protection order.**

3

4 Upon receipt of the petition, the court shall order a
5 hearing which shall be held not later than fourteen (14)
6 days from the date of the order. The court may schedule a
7 hearing by telephone pursuant to local court rule, to
8 reasonably accommodate a disability or in exceptional
9 circumstances to protect a petitioner from further
10 nonconsensual sexual assault. The court shall require
11 assurances of the petitioner's identity before conducting a
12 telephonic hearing. Except as provided in W.S. 35-21-208,
13 personal service shall be made upon the respondent not less
14 than seven (7) days prior to the hearing. If timely
15 personal service cannot be made, the court shall set a new
16 hearing date and shall require additional attempts at
17 obtaining personal service. The court may issue an ex
18 parte temporary sexual assault order pending the hearing as
19 provided in W.S. 35-21-208.

20

21 **35-21-206. Sexual assault advocates.**

22

23 Sexual assault advocates, as defined in W.S. 1-12-116,
24 shall be allowed to accompany the victim and confer with

1 the victim, unless otherwise directed by the court. Court
2 administrators shall allow sexual assault advocates to
3 assist victims of nonconsensual sexual assault in the
4 preparation of petitions for sexual assault protection
5 orders. Sexual assault advocates are not engaged in the
6 unauthorized practice of law when providing assistance of
7 the types specified in this section. Communications
8 between the petitioner and a sexual assault advocate are
9 protected as provided by W.S. 1-12-116.

10
11 **35-21-207. Burden of proof; issuance of protection**
12 **order; remedies; violations.**

13
14 (a) If the court finds by a preponderance of the
15 evidence that the petitioner has been a victim of
16 nonconsensual sexual assault by the respondent, the court
17 shall issue a sexual assault protection order, provided
18 that the petitioner must also satisfy the requirements of
19 W.S. 35-21-208 for ex parte temporary orders.

20
21 (b) The petitioner shall not be denied a sexual
22 assault protection order because the petitioner or the
23 respondent is a minor or because the petitioner did not
24 report the assault to law enforcement. The court, when

1 determining whether or not to issue a sexual assault
2 protection order, may not require proof of physical injury
3 on the person of the victim or proof that the petitioner
4 has reported the sexual assault to law enforcement.
5 Modification and extension of prior sexual assault
6 protection orders shall be in accordance with this act.

7

8 (c) In issuing a sexual assault protection order, the
9 court may include any one (1) or more of the following
10 provisions:

11

12 (i) Restraining the respondent from having any
13 contact, including nonphysical contact, with the petitioner
14 directly, indirectly or through third parties regardless of
15 whether those third parties know of the order;

16

17 (ii) Excluding the respondent from the
18 petitioner's residence, workplace or school or from the day
19 care or school of a child, if the victim is a child;

20

21 (iii) Prohibiting the respondent from knowingly
22 coming within or knowingly remaining within, a specified
23 distance from a specified location;

24

1 (iv) Ordering any other injunctive relief as
2 necessary or appropriate for the protection of the
3 petitioner.

4
5 (d) In cases where the petitioner and the respondent
6 are under the age of eighteen (18) and attend the same
7 public or private elementary, middle or high school, the
8 court, when issuing a protection order and providing
9 relief, shall consider, among the other facts of the case,
10 the severity of the act, any continuing physical danger or
11 emotional distress to the petitioner and the expense,
12 difficulty and educational disruption that would be caused
13 by a transfer of the respondent to another school. The
14 court may order that the person restrained in the order not
15 attend the public or approved private elementary, middle or
16 high school attended by the person under the age of
17 eighteen (18) protected by the order. If the court orders
18 a transfer of the restrained person to another school, the
19 parents or legal guardians of the person restrained in the
20 order are responsible for transportation and other costs
21 associated with the change of school by the person
22 restrained in the order. The court shall send notice of
23 the restriction on attending the same school as the person
24 protected by the order to the public or approved private

1 school the person restrained by the order will attend and
2 to the school the person protected by the order attends.

3

4 (e) Denial of a remedy under this act may not be
5 based, in whole or in part, on evidence that:

6

7 (i) The respondent was voluntarily intoxicated
8 or under the influence of a controlled substance;

9

10 (ii) The petitioner was voluntarily intoxicated
11 or under the influence of a controlled substance; or

12

13 (iii) The petitioner engaged in limited
14 consensual sexual touching.

15

16 (f) Monetary damages are not recoverable as a remedy
17 under this act.

18

19 (g) Willful violation of an order of protection
20 issued under this act is a crime as defined by W.S.
21 6-4-404.

22

23 35-21-208. Ex parte temporary sexual assault
24 protection orders; issuance.

1

2 (a) An ex parte temporary sexual assault protection
3 order shall issue if the petitioner satisfies the
4 requirements of this subsection by a preponderance of the
5 evidence that:

6

7 (i) The petitioner has been a victim of
8 nonconsensual sexual assault by the respondent; and

9

10 (ii) There is good cause to grant the remedy,
11 regardless of the lack of prior service of process or of
12 notice upon the respondent, because the harm which that
13 remedy is intended to prevent would be likely to occur if
14 the respondent were given any prior notice or greater
15 notice than was actually given, of the petitioner's efforts
16 to obtain judicial relief.

17

18 (b) If the court declines to issue an ex parte
19 temporary sexual assault protection order, the court shall
20 state on the record the particular reasons for the court's
21 denial and include those reasons in a written order denying
22 the ex parte relief.

23

1 (c) An ex parte temporary sexual assault protection
2 order shall be effective for a fixed period not to exceed
3 fourteen (14) days. A full hearing, as provided in this
4 act, shall be set for not later than fourteen (14) days
5 from the issuance of the temporary order. Except as
6 provided in W.S. 35-21-205, the respondent shall be
7 personally served with a copy of the ex parte temporary
8 sexual assault protection order along with a copy of the
9 petition and notice of the date set for the hearing.

10

11 (d) Any ex parte temporary order issued under this
12 section shall contain the date and time of issuance and the
13 expiration date, shall be filed with the clerk of court and
14 a copy shall be sent by the clerk to the county sheriff who
15 shall, after service, notify the local law enforcement
16 agency within the county in which the petitioner resides.
17 The order shall be personally served upon the respondent,
18 unless he or his attorney was present at the time the order
19 was issued.

20

21 **35-21-209. Sexual assault protection orders;**
22 **contents.**

23

24 (a) A sexual assault protection order shall include:

1

2 (i) The name of the petitioner that the court
3 finds was the victim of nonconsensual sexual assault by the
4 respondent;

5

6 (ii) The date and time the sexual assault
7 protection order was issued, whether it is an ex parte
8 temporary or final order and the duration of the order;

9

10 (iii) The date, time and place for any scheduled
11 hearing for extension of that sexual assault protection
12 order or for another order of greater duration or scope;

13

14 (iv) For each remedy in an ex parte temporary
15 sexual assault protection order, the reason for entering
16 that remedy without prior notice to the respondent or
17 greater notice than was actually given;

18

19 (v) The identity of each law enforcement agency
20 to which a copy of the sexual assault protection order
21 shall be delivered;

22

23 (vi) For ex parte temporary sexual assault
24 protection orders, that the respondent may petition the

1 court to reopen the order if he or she did not receive
2 actual prior notice of the hearing and if the respondent
3 alleges that he or she had a meritorious defense to the
4 order or that the order or its remedy is not authorized by
5 this act.

6
7 (b) A sexual assault protection order shall include
8 the following notice, printed in conspicuous type:

9
10 "A willful violation of this sexual assault protection
11 order is a criminal offense under W.S. 6-4-404 and will
12 subject a violator to arrest. You can be arrested even if
13 any person protected by the order invites or allows you to
14 violate the order's prohibitions. You have the sole
15 responsibility to avoid or refrain from violating the
16 order's provisions. Only the court can change the order."

17
18 **35-21-210. Court initiated issuance of sexual assault**
19 **protection orders.**

20
21 (a) When any person who is charged with or arrested
22 for a sexual assault made criminal pursuant to W.S. 6-2-302
23 through 6-2-319, or an attempt or conspiracy to commit a
24 criminal sexual assault, is released from custody before

1 arraignment or trial on bail or personal recognizance, the
2 court authorizing the release may prohibit that person from
3 having any contact with the alleged victim. The court
4 authorizing the release shall determine whether that person
5 should be prohibited from having any contact with the
6 alleged victim. If there is no outstanding restraining or
7 protective order prohibiting that person from having
8 contact with the alleged victim, the court authorizing
9 release may issue, by telephone, a sexual assault
10 protection order prohibiting the person charged or arrested
11 from having contact with the victim or from knowingly
12 coming within or knowingly remaining within a specified
13 distance of a location.

14

15 (b) A written order prohibiting contact as provided
16 in subsection (a) of this section shall contain the court's
17 directives and shall include the following notice, printed
18 in conspicuous type:

19

20 "Violation of this order is a criminal offense under
21 W.S. 35-21-207 and will subject a violator to arrest. You
22 can be arrested even if any person protected by the order
23 invites or allows you to violate the order's prohibitions.
24 You have the sole responsibility to avoid or refrain from

1 violating the order's provisions. Only the court can
2 change the order."

3
4 (c) When a defendant is found guilty of a sexual
5 assault pursuant to W.S. 6-2-302 through 6-2-319, or an
6 attempt or conspiracy to commit a criminal sexual assault,
7 and a condition of the sentence restricts the defendant's
8 ability to have contact with the victim, the condition
9 shall be recorded as a sexual assault protection order as
10 provided in W.S. 35-21-209.

11
12 **35-21-211. Modification or termination of protection**
13 **orders.**

14
15 Upon application with notice to all parties and after a
16 hearing, the court may modify the terms of an existing
17 sexual assault protection order. In any situation where an
18 order is terminated or modified before its expiration date,
19 the clerk of the court shall forward on or before the next
20 judicial day a true copy of the modified order or the
21 termination order to the appropriate law enforcement agency
22 specified in the modified or termination order.

1 **35-21-212. Admissibility of ex parte temporary orders**
2 **in civil actions.**

3

4 An ex parte temporary order issued under this act shall not
5 be admissible as evidence in any subsequent civil action
6 for damages arising from the conduct alleged in the
7 petition or the order.

8

9 **35-21-213. Evidence.**
10

11 (a) In proceedings for a sexual assault protection
12 order and prosecutions for violating a sexual assault
13 protection order, the prior sexual activity or the
14 reputation of the petitioner is inadmissible except:

15

16 (i) As evidence concerning the past sexual
17 conduct of the petitioner with the respondent when this
18 evidence is offered by the respondent upon the issue of
19 whether the petitioner consented to the sexual conduct with
20 respect to which the offense is alleged; or

21

22 (ii) When constitutionally required to be
23 admitted.

24

1 (b) No evidence admissible under this section may be
2 introduced unless ruled admissible by the court after an
3 offer of proof has been made at a hearing held in camera to
4 determine whether the respondent has evidence to impeach
5 the witness in the event that prior sexual activity with
6 the respondent is denied. The offer of proof shall include
7 reasonably specific information as to the date, time and
8 place of the past sexual conduct between the petitioner and
9 the respondent. Unless the court finds that reasonably
10 specific information as to date, time or place, or some
11 combination thereof, has been offered as to prior sexual
12 activity with the respondent, counsel for the respondent
13 shall be ordered to refrain from inquiring into prior
14 sexual activity between the petitioner and the respondent.
15 The court may not admit evidence under this section unless
16 it determines at the hearing that the evidence is relevant
17 and the probative value of the evidence outweighs the
18 danger of unfair prejudice. The evidence shall be
19 admissible at trial to the extent an order made by the
20 court specifies the evidence that may be admitted and areas
21 with respect to which the petitioner may be examined or
22 cross examined.

23

24 **Section 2.** W.S. 6-4-404(b) is amended to read:

1

2 6-4-404. Violation of order of protection; penalty.

3

(b) For purposes of subsection (a) of this section, "protection order" means an order of protection issued pursuant to W.S. 35-21-104, ~~or 35-21-105,~~ 35-21-207 or 35-21-208 or any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts, other than support or child custody orders, whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

17

18 **Section 3.** This act is effective July 1, 2013.

19

20 (END)