

SENATE FILE NO. SF0063

Sexual assault protection orders.

Sponsored by: Senator(s) Hastert, Cooper and Craft and
Representative(s) Berger, Burkhart, Coleman,
Connolly, 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 protection orders; providing a criminal
7 penalty for violation of protection orders; and providing
8 for an 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 act 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

1 (ii) "Petitioner" means any named petitioner for
2 the sexual assault protection order or any named victim of
3 sexual assault on whose behalf the petition is brought;

4
5 (iii) "Sexual assault" means any act made
6 criminal by W.S. 6-2-302 through 6-2-304 and 6-2-314
7 through 6-2-318 or an attempt or conspiracy to commit any
8 of those crimes;

9
10 (iv) "Sexual assault protection order" means an
11 ex parte temporary order or a final order granted under
12 this act and includes a remedy authorized by W.S.
13 35-21-207;

14
15 (v) "This act" means W.S. 35-21-201 through
16 35-21-213.

17
18 **35-21-203. Petition for a sexual assault protection**
19 **order; creation; contents; administration.**

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

24

1 (b) The petition shall be made under oath or be
2 accompanied by a sworn affidavit setting out specific facts
3 showing the alleged sexual assault and stating the specific
4 statements or actions made before, during or after the
5 sexual assault which give rise to a reasonable fear of
6 future dangerous acts. The petitioner shall disclose the
7 existence of any other litigation or any other restraining
8 or protection orders between the parties.

9
10 (c) No filing fee or other court costs or fees shall
11 be assessed or charged to a petitioner seeking an order of
12 protection under this act.

13
14 (d) The clerk of the court shall make available
15 standard petition forms with instructions for completion to
16 be used by a petitioner. The forms shall be prepared by
17 the victim services division within the office of the
18 attorney general and shall be distributed to the courts by
19 the supreme court. Upon receipt of the initial petition by
20 the clerk of the court, the clerk shall refer the matter to
21 the court. The petitioner may retain counsel or file pro
22 se or the court may appoint an attorney to assist and
23 advise the petitioner if the respondent is represented by
24 counsel. Any assistance or information provided by clerks

1 under this section shall not constitute the practice of law
2 and clerks are not responsible for incorrect information
3 contained in a petition.

4

5 (e) It shall not be a bar to filing a petition or
6 receiving an order of protection under this act that:

7

8 (i) A criminal or civil order is entered in a
9 case pending against the respondent or between the
10 petitioner and respondent; or

11

12 (ii) The petitioner has petitioned for or
13 received orders of protection in the past or that the
14 petitioner has withdrawn a petition or asked to have orders
15 rescinded.

16

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

1

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

16

17 (h) The remedies provided by this act are in addition
18 to any other civil or criminal remedy available to the
19 petitioner.

20

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

22

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

1

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

5

6 (ii) On behalf of any one (1) of the following
7 who is a victim of sexual assault and who does not qualify
8 for a domestic violence protection order:

9

10 (A) A minor child;

11

12 (B) A vulnerable adult as defined in W.S.
13 35-20-102(a)(xviii);

14

15 (C) Any other adult who, because of age,
16 disability, health or inaccessibility, cannot file the
17 petition.

18

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

21

22 **35-21-205. Petition; hearings prior to issuance of**
23 **protection order.**

24

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

17

18 **35-21-206. Sexual assault advocates.**

19

20 Sexual assault advocates, as defined in W.S. 1-12-116,
21 shall be allowed to accompany the victim and confer with
22 the victim, unless otherwise directed by the court. Court
23 administrators shall allow sexual assault advocates to
24 assist victims of sexual assault in the preparation of

1 petitions for sexual assault protection orders. Sexual
2 assault advocates shall not be deemed to be engaged in the
3 unauthorized practice of law when providing assistance of
4 the types specified in this section. Communications between
5 the petitioner and a sexual assault advocate are protected
6 as provided by W.S. 1-12-116.

7

8 **35-21-207. Burden of proof; issuance of protection**
9 **order; remedies; violations.**

10

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

17

18 (b) The petitioner shall not be denied a sexual
19 assault protection order because the petitioner or the
20 respondent is a minor or because the petitioner did not
21 report the assault to law enforcement. The court, when
22 determining whether or not to issue a sexual assault
23 protection order, may not require proof of physical injury
24 on the person of the victim or proof that the petitioner

1 has reported the sexual assault to law enforcement.
2 Modification and extension of prior sexual assault
3 protection orders shall be in accordance with this act.
4

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

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

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

18 (iii) Prohibiting the respondent from knowingly
19 coming within, or knowingly remaining within, a specified
20 distance from a specified location;
21

22 (iv) Ordering any other injunctive relief as
23 necessary or appropriate for the protection of the
24 petitioner.

1

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

22

23 (e) Denial of relief requested under this act may not
24 be based, in whole or in part, on evidence that:

1

2 (i) There has been a lapse of time between an
3 act of sexual assault and the filing of the petition for an
4 order of protection;

5

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

8

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

11

12 (iv) The petitioner engaged in limited
13 consensual sexual touching.

14

15 (f) Monetary damages are not recoverable as a remedy
16 under this act, provided that the court may require the
17 respondent to pay costs and fees incurred in an action
18 pursuant to this act including reasonable attorney's fees
19 whether the attorney is court appointed or retained by
20 petitioner.

21

22 (g) Willful violation of an order of protection
23 issued under this act is a crime as defined by W.S.

24 6-4-404.

1

2 **35-21-208. Ex parte temporary sexual assault**
3 **protection orders; issuance.**

4

5 (a) An ex parte temporary sexual assault protection
6 order shall be issued if the petitioner satisfies the
7 requirements of this subsection by a preponderance of the
8 evidence that:

9

10 (i) The petitioner has been a victim of sexual
11 assault by the respondent; and

12

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

20

21 (b) An ex parte temporary sexual assault protection
22 order shall be effective for a fixed period not to exceed
23 fourteen (14) days. A full hearing, as provided in this
24 act, shall be set for not later than fourteen (14) days

1 from the issuance of the temporary order. Except as
2 provided in W.S. 35-21-205, the respondent shall be
3 personally served with a copy of the ex parte temporary
4 sexual assault protection order along with a copy of the
5 petition and notice of the date set for the hearing.

6
7 (c) Any ex parte temporary order issued under this
8 section shall contain the date and time of issuance and the
9 expiration date, shall be filed with the clerk of court and
10 a copy shall be sent by the clerk to the county sheriff who
11 shall, after service, notify the local law enforcement
12 agency within the county in which the petitioner resides.
13 The order shall be personally served upon the respondent,
14 unless he or his attorney was present at the time the order
15 was issued.

16

17 **35-21-209. Sexual assault protection orders;**
18 **contents.**

19

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

21

22 (i) The name of the petitioner that the court
23 finds was the victim of sexual assault by the respondent;

24

1 (ii) The date and time the sexual assault
2 protection order was issued, whether it is an ex parte
3 temporary or final order and a statement that the order
4 remains in effect for up to fourteen (14) days from the
5 date it was issued for a temporary order and for up to one
6 (1) year from the date it was issued for a final order;

7

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

11

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

16

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

20

21 (vi) For ex parte temporary sexual assault
22 protection orders, that the respondent may petition the
23 court to reopen the order if he did not receive actual
24 prior notice of the hearing and if the respondent alleges

1 that he had a meritorious defense to the order or that the
2 order or its remedy is not authorized by this act;

3

4 (vii) The following notice, printed in
5 conspicuous type:

6

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

14

15 **35-21-210. Court initiated issuance of sexual assault**
16 **protection orders.**

17

18 (a) When any person who is charged with or arrested
19 for a sexual assault made criminal pursuant to W.S. 6-2-302
20 through 6-2-319, or an attempt or conspiracy to commit a
21 criminal sexual assault, is released from custody before
22 arraignment or trial on bail or personal recognizance, the
23 court authorizing the release may prohibit that person from
24 having any contact with the alleged victim. The court

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

12

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

17

18 "Violation of this order is a criminal offense under
19 W.S. 6-4-404 and will subject a violator to arrest. You
20 can be arrested even if any person protected by the order
21 invites or allows you to violate the order's prohibitions.
22 You have the sole responsibility to avoid or refrain from
23 violating the order's provisions. Only the court can
24 change the order."

1

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

9

10 **35-21-211. Modification or termination of protection**
11 **orders.**

12

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

21

22 **35-21-212. Admissibility of ex parte temporary orders**
23 **in civil actions.**

24

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

5

6 **35-21-213. Evidence.**

7

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

12

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

18

19 (ii) When constitutionally required to be
20 admitted.

21

22 (b) No evidence admissible under this section may be
23 introduced unless ruled admissible by the court after an
24 offer of proof has been made at a hearing held in camera to

1 determine whether the respondent has evidence to impeach
2 the witness in the event that prior sexual activity with
3 the respondent is denied. The offer of proof shall include
4 reasonably specific information as to the date, time and
5 place of the past sexual conduct between the petitioner and
6 the respondent. Unless the court finds that reasonably
7 specific information as to date, time or place, or some
8 combination thereof, has been offered as to prior sexual
9 activity with the respondent, counsel for the respondent
10 shall be ordered to refrain from inquiring into prior
11 sexual activity between the petitioner and the respondent.
12 The court may not admit evidence under this section unless
13 it determines at the hearing that the evidence is relevant
14 and the probative value of the evidence outweighs the
15 danger of unfair prejudice. The evidence shall be
16 admissible at trial to the extent an order made by the
17 court specifies the evidence that may be admitted and areas
18 with respect to which the petitioner may be examined or
19 cross examined.

20

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

22

23 **6-4-404. Violation of order of protection; penalty.**

24

(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, 35-21-208 or 35-21-210 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.

14

15 **Section 3.** This act is effective July 1, 2014.

16

17 (END)