CHAPTER 4

Protection from Domestic Abuse

CROSS REFERENCES

Domestic violence, firearms and ammunition prohibitions, penalties, see Section 16‑25‑30.

ARTICLE 1

Protection From Domestic Abuse Act

**SECTION 20‑4‑10.** Short title.

 This chapter may be cited as the “Protection from Domestic Abuse Act”.

HISTORY: 1984 Act No. 484, Section 2.

Library References

Protection of Endangered Persons 31, 45.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18 to 20, 23, 28 to 38.

C.J.S. Domestic Abuse and Violence Sections 1, 3 to 10, 15 to 16, 18, 41, 43 to 44.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 1, Scope Note.

S.C. Jur. Divorce Section 70, Restraining Orders.

LAW REVIEW AND JOURNAL COMMENTARIES

Scherer, Tort remedies for victims of domestic abuse. 43 S.C. L. Rev. 543 (Spring 1992).

NOTES OF DECISIONS

In general 1

1. In general

Protection from Domestic Abuse Act does not create initial, express duty of protection, or intervention, in domestic abuse cases, but rather provides only that law enforcement officers take certain protective measures when responding to domestic abuse incident. Turner v. City of North Charleston, 1987, 675 F.Supp. 314.

**SECTION 20‑4‑20.** Definitions.

 As used in this chapter:

 (a) “Abuse” means:

 (1) physical harm, bodily injury, assault, or the threat of physical harm;

 (2) sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member.

For validity of (b), see Editors’ Notes below.

 (b) “Household member” means:

 (i) a spouse;

 (ii) a former spouse;

 (iii) persons who have a child in common;

 (iv) a male and female who are cohabiting or formerly have cohabited.

 (c) “Court” means the Family Court.

 (d) “Petitioner” means the person alleging abuse in a petition for an order of protection.

 (e) “Respondent” in a petition for an order of protection means the person alleged to have abused another or a person alleged to have aided and abetted such abuse.

 (f) “Order of protection” means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard.

HISTORY: 1984 Act No. 484, Section 2; 1994 Act No. 519, Sections 2, 3, eff September 23, 1994; 2003 Act No. 92, Section 11, eff January 1, 2004; 2005 Act No. 166, Section 7, eff January 1, 2006.

Validity

For validity of (b) of this section, see Jane Doe v. State of South Carolina, 2017 WL 5907363, \_ S.C. \_, \_ S.E.2d \_ (2017).

Library References

Protection of Endangered Persons 31, 45.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18 to 20, 23, 28 to 38.

C.J.S. Domestic Abuse and Violence Sections 1, 3 to 10, 15 to 16, 18, 41, 43 to 44.

RESEARCH REFERENCES

ALR Library

90 ALR 5th 273 , Liability of Municipality or Other Governmental Unit for Failure to Provide Police Protection from Crime.

Encyclopedias

149 Am. Jur. Proof of Facts 3d 119, Same Sex Orders of Protection.

S.C. Jur. Criminal Domestic Violence Section 2, Definitions.

S.C. Jur. Criminal Domestic Violence Section 15, Statutory Definition of Abuse.

S.C. Jur. Criminal Domestic Violence Section 16, Jurisdiction of Act.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

NOTES OF DECISIONS

Order for protection 1

Validity 1⁄2

1⁄2. Validity

Petition for original jurisdiction, which sought declaration that definitions of “household member” in Domestic Violence Reform Act and Protection from Domestic Abuse Act were unconstitutional, raised controversy over which Supreme Court could exercise original jurisdiction; even though parties agreed that alleged victim of assault by same‑sex ex‑fiancé should have been protected under Acts, legitimate constitutional issue was raised, and parties disagreed as to whether definition was constitutional and the appropriate remedy. Doe v. State (S.C. 2017) 2017 WL 5907363. Courts 209(1)

Definitions of “household member” in Domestic Violence Reform Act and Protection from Domestic Abuse Act did not overtly discriminate based on sexual orientation, and therefore statutes were facially valid and constitutional challenge was to definitions as‑applied to alleged victim of assault by same‑sex ex‑fiancé; victim merely sought to be included with those eligible to receive order of protection, and statutes were valid as to same‑sex married couples, opposite‑sex married couples, and unmarried opposite‑sex couples who lived together or had lived together. Doe v. State (S.C. 2017) 2017 WL 5907363. Protection of Endangered Persons 31; Protection of Endangered Persons 36

Defining “household member” in the Domestic Violence Reform Act and the Protection from Domestic Abuse Act to include “a male and female who are cohabiting or formerly have cohabited,” yet exclude a male and male and a female and female who are cohabiting or formerly have cohabited, violates the equal protection clauses of the federal and state constitutions as applied to unmarried same‑sex couples who lived together or had lived together. Doe v. State (S.C. 2017) 2017 WL 5907363. Constitutional Law 3441; Protection of Endangered Persons 31; Protection of Endangered Persons 36

Supreme Court would not amend or sever provisions of Domestic Violence Reform Act and Protection from Domestic Abuse Act that violated equal protection by precluding alleged victim of assault from obtaining order of protection against same‑sex ex‑fiancé; even though Acts had severability clauses, Court lacked authority to effectively amend plain language of Acts, definitions were not facially invalid, and severance would have eliminated protections for opposite‑sex couples who had cohabitated and would not have granted protections to victim. Doe v. State (S.C. 2017) 2017 WL 5907363. Statutes 1535(27)

Domestic Violence Reform Act and Protection from Criminal Domestic Violence Act, which excluded unmarried, cohabiting or formerly cohabiting, same‑sex couples from protection of domestic violence statutes, violated Equal Protection Clause; there was no reasonable basis for providing protection to unmarried, cohabiting or formerly cohabiting, opposite‑sex couples, while denying it to similarly situated same‑sex couples. (Per Pleicones, Acting Justice, with one justice concurring and one justice concurring separately). Doe v. State (S.C. 2017) 2017 WL 3165132. Constitutional Law 3441; Protection of Endangered Persons 31; Protection of Endangered Persons 45

Unconstitutional definition in Domestic Violence Reform Act and Protection from Criminal Domestic Violence Act, which excluded unmarried, cohabiting or formerly cohabiting, same‑sex couples from protection of domestic violence statutes, was severable from remainder of Acts, and thus remainder of Acts remained in effect; all provisions of Acts, save discriminatory definitions, were capable of being executed in accordance with legislative intent, it could be presumed that General Assembly would have passed each Act absent offending provision, and Acts contained severability clauses. (Per Pleicones, Acting Justice, with one justice concurring and one justice concurring separately). Doe v. State (S.C. 2017) 2017 WL 3165132. Statutes 1535(27)

1. Order for protection

For the purposes of the criminal domestic violence statute, an “order of protection” is one that is issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Protection Of Endangered Persons 73

Order for protection issued following emergency hearing conducted within 24 hours of petition was only temporary and, therefore, finding of physical abuse was not final determination on merits; rather, adjudicative hearing on merits of petition should have been conducted at later date to allow husband opportunity to obtain counsel and thoroughly participate in proceedings. Moore v. Moore (S.C. 2008) 376 S.C. 467, 657 S.E.2d 743. Protection Of Endangered Persons 50; Protection Of Endangered Persons 57

**SECTION 20‑4‑30.** Jurisdiction.

 (A) The family court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate. The magistrate may issue an order of protection granting only the relief provided by Section 20‑4‑60(a)(1).

 (B) Except as provided in subsection (C), actions for an order of protection must be filed in the county in which:

 (1) the alleged act of abuse occurred;

 (2) the petitioner resides or is sheltered, unless the petitioner is a nonresident of the State;

 (3) the respondent resides, unless the respondent is a nonresident of the State; or

 (4) the parties last resided together.

 (C)(1) If the action is filed in the county in which the petitioner resides or is sheltered and the respondent is a nonresident of that county, the petitioner must request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

 (2) If the petitioner is a nonresident of the State, the action must be filed in the county specified in item (1), (3), or (4) of subsection (B).

 (3) If the respondent is a nonresident of the State, the petitioner may request that the action be immediately transferred to another county in which venue is proper and must include a supplemental petition that designates the transfer county and that changes all specific references to the county of filing to the transfer county. The clerk of court must transfer and forward the supplemental petition to the transfer county.

 (D) Hearings on the petition may be held in any county in the same judicial circuit as the county in which the action is filed or to which the action is transferred.

HISTORY: 1984 Act No. 484, Section 2; 2002 Act No. 329, Section 1, eff June 18, 2002.

Library References

Protection of Endangered Persons 55.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 16, Jurisdiction of Act.

S.C. Jur. Venue Section 10, Family Court.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

Ministerial magistrates are not authorized to hear civil proceedings pursuant to Sections 20‑4‑10, et seq. nor issue orders of protection pursuant to such provisions. 1984 Op Atty Gen, No. 84‑120, p. 273 (October 10, 1984) 1984 WL 159927.

**SECTION 20‑4‑40.** Petition for order of protection.

 There is created an action known as a “Petition for an Order of Protection” in cases of abuse to a household member.

 (a) A petition for relief under this section may be made by any household members in need of protection or by any household members on behalf of minor household members.

 (b) A petition for relief must allege the existence of abuse to a household member. It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought and must be verified.

 (c) The petition must inform the respondent of the right to retain counsel.

 (d) In a pending action for divorce or separate support and maintenance, the petition for relief shall be brought in the form of a motion for further relief and shall be served on counsel of record, if any. Where no action is pending, the petition shall be filed and served as an independent action. A pending motion or petition for relief shall not be dismissed solely because the underlying action is dismissed.

 (e) The clerk of court must provide simplified forms which will facilitate the preparation and filing of a petition under this section by any person not represented by counsel, including motions and affidavits to proceed in forma pauperis.

 (f) The clerk of court may not charge a fee for filing a petition for an order for protection from domestic abuse.

HISTORY: 1984 Act No. 484, Section 2; 1994 Act No. 519, Section 4, eff September 23, 1994; 1996 Act No. 396, Section 1, eff June 4, 1996; 2005 Act No. 166, Section 8, eff January 1, 2006.

Library References

Protection of Endangered Persons 52, 56.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 11, Separation.

S.C. Jur. Criminal Domestic Violence Section 17, Application for Relief.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

Discussion of whether South Carolina is in compliance with the Violence Against Women grant requirements as set forth in P.L. 103‑322 which is part of the Violent Crime Control Act of 1994. S.C. Op.Atty.Gen. (Aug. 8, 1995) 1995 WL 803725.

NOTES OF DECISIONS

In general 1

1. In general

The family court did not have jurisdiction to determine the custody of the plaintiff’s 18‑year‑old daughter or to issue a protective order at the plaintiff’s request. The family court’s jurisdiction to determine custody matters applies only to children, and “child” is statutorily defined as a person under 18 years of age. Similarly, the family court’s jurisdiction to issue a protective order at the request of a person other than the victim of the alleged abuse is limited to situations involving children. Furthermore, no statute applies to these causes of action which would extend jurisdiction beyond a child’s eighteenth birthday. Holcombe v. Kennison (S.C. 1990) 300 S.C. 479, 388 S.E.2d 807.

**SECTION 20‑4‑50.** Hearing on petition.

 (a) Within twenty‑four hours after service of a petition under this chapter upon the respondent, the court may, for good cause shown, hold an emergency hearing and issue an order of protection if the petitioner proves the allegation of abuse by a preponderance of the evidence. A prima facie showing of immediate and present danger of bodily injury, which may be verified by supporting affidavits, constitutes good cause for purposes of this section.

 (b) If the court denies the motion for a twenty‑four‑hour hearing or such a hearing is not requested, the petitioner may request and the court must grant a hearing within fifteen days of the filing of a petition. The court must cause a copy of the petition to be served upon the respondent at least five days prior to the hearing, except as provided in subsection (a), in the same manner required for service in the circuit courts. Where service is not accomplished five days prior to the hearing, the respondent, upon his motion, is entitled to a continuance until such time is necessary to provide for compliance with this section.

HISTORY: 1984 Act No. 484, Section 2; 2002 Act No. 329, Section 2, eff June 18, 2002.

Library References

Protection of Endangered Persons 57.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 18, Types of Relief Available.

S.C. Jur. Injunctions Section 10, Family Court.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

Ministerial magistrates are not authorized to hear civil proceedings pursuant to Sections 20‑4‑10, et seq. nor issue orders of protection pursuant to such provisions. 1984 Op Atty Gen, No. 84‑120, p. 273 (October 10, 1984) 1984 WL 159927.

Pleadings in orders of protection issued to provisions of Section 20‑4‑10 et seq. may be served on Sunday. 1984 Op Atty Gen, No. 84‑121, p. 274 (October 10, 1984) 1984 WL 186444.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The immediate protection of potential victims from domestic abuse is a legitimate government interest which requires a prompt hearing and issuance of a temporary order if the evidence necessitates. Moore v. Moore (S.C. 2008) 376 S.C. 467, 657 S.E.2d 743. Protection Of Endangered Persons 50

Order for protection issued following emergency hearing conducted within 24 hours of petition was only temporary and, therefore, finding of physical abuse was not final determination on merits; rather, adjudicative hearing on merits of petition should have been conducted at later date to allow husband opportunity to obtain counsel and thoroughly participate in proceedings. Moore v. Moore (S.C. 2008) 376 S.C. 467, 657 S.E.2d 743. Protection Of Endangered Persons 50; Protection Of Endangered Persons 57

2. Constitutional issues

Emergency hearing within 24 hours of petition for protection from abuse order did not violate procedural due process; husband was provided with notice of hearing and was given opportunity to actively participate in terms of questioning wife and answering trial court’s questions, and relief awarded following emergency hearing was temporary, allowing husband to obtain counsel and seek reconsideration or modification. Moore v. Moore (S.C. 2008) 376 S.C. 467, 657 S.E.2d 743. Constitutional Law 4488; Protection Of Endangered Persons 50

Denial of husband’s motion for continuance of emergency hearing on petition for protection against abuse order after trial court offered wife continuance did not violate equal protection; denial was not based on husband’s gender, but instead on respective posture of parties, i.e., wife having burden of proving need for order for protection. Moore v. Moore (S.C. 2008) 376 S.C. 467, 657 S.E.2d 743. Constitutional Law 3409; Protection Of Endangered Persons 50

**SECTION 20‑4‑60.** Order of protection; contents.

 (A) Any order of protection granted under this chapter shall be to protect the petitioner or the abused person or persons on whose behalf the petition was filed and may include:

 (1) temporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person or persons on whose behalf the petition was filed;

 (2) temporarily enjoining the respondent from communicating or attempting to communicate with the petitioner in any way which would violate the provisions of this chapter and temporarily enjoining the respondent from entering or attempting to enter the petitioner’s place of residence, employment, education, or other location as the court may order.

 (B) Every order of protection issued pursuant to this chapter shall conspicuously bear the following language:

 (1) “Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.” and

 (2) “Pursuant to Section 16‑25‑125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the domestic violence shelter’s administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”

 (C) When the court has, after a hearing for any order of protection, issued an order of protection, it may, in addition:

 (1) award temporary custody and temporary visitation rights with regard to minor children living in the home over whom the parties have custody;

 (2) direct the respondent to pay temporary financial support for the petitioner and minor child unless the respondent has no duty to support the petitioner or minor child;

 (3) when the respondent has a legal duty to support the petitioner or minor children living in the household and the household’s residence is jointly leased or owned by the parties or the respondent is the sole owner or lessee, grant temporary possession to the petitioner of the residence to the exclusion of the respondent;

 (4) prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business;

 (5) provide for temporary possession of the personal property, including pet animals, of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent’s eviction has not been ordered.

 (6) award costs and attorney’s fees to either party;

 (7) award any other relief authorized by Section 63‑3‑530; provided, however, the court must have due regard for any prior family court orders issued in an action between the parties.

 (8) prohibit harm or harassment, including a violation of Chapter 1, Title 47, against any pet animal owned, possessed, kept, or held by:

 (a) the petitioner;

 (b) any family or household member designated in the order;

 (c) the respondent if the petitioner has a demonstrated interest in the pet animal.

 (D) No protective order issued pursuant to this chapter may, in any manner, affect the title to real property.

 (E) No mutual order of protection may be granted unless the court sets forth findings of fact necessitating the mutual order or unless both parties consent to a mutual order.

 (F) If mutual orders of protection have been entered that do not comply with the provisions of this section a petitioner may request the order be vacated and all records of the order be destroyed.

HISTORY: 1984 Act No. 484, Section 2; 1996 Act No. 396, Section 2, eff June 4, 1996; 2008 Act No. 319, Section 5, eff June 11, 2008; 2013 Act No. 99, Section 5, eff June 20, 2013; 2014 Act No. 251 (H.3361), Sections 1, 2, eff June 6, 2014.

Effect of Amendment

The 2013 amendment added subsection (F).

2014 Act No. 251, Section 1, added subsection (C)(8).

2014 Act No. 251, Section 2, in subsection (C)(5), inserted “, including pet animals,”.

CROSS REFERENCES

Authority of a magistrate to grant relief provided by Section 20‑4‑60(a)(1), see Section 20‑4‑30.

Duration of an order of protection issued under subsection (a) or provisions of such an order granting relief under subsection (c), see Section 20‑4‑70.

Library References

Protection of Endangered Persons 70, 72.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2 to 4, 7 to 34, 36 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 43, Order of Protection from Domestic Abuse.

S.C. Jur. Criminal Domestic Violence Section 11, Separation.

S.C. Jur. Criminal Domestic Violence Section 14, History and Background.

S.C. Jur. Criminal Domestic Violence Section 16, Jurisdiction of Act.

S.C. Jur. Criminal Domestic Violence Section 18, Types of Relief Available.

S.C. Jur. Injunctions Section 8, Family Court.

LAW REVIEW AND JOURNAL COMMENTARIES

Scherer, Tort remedies for victims of domestic abuse. 43 S.C. L. Rev. 543 (Spring 1992).

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

A defendant may be prosecuted for criminal domestic violence, second offense, in magistrate’s court and simultaneously charged with a violation of an order of protection in family court with reference to the same incident. In my opinion, there is no double jeopardy violation in such circumstances. S.C. Op.Atty.Gen. (Aug. 31, 2005) 2005 WL 2250206.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the non‑custodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op Atty Gen, No. 88‑83, p. 236 (October 31, 1988) 1988 WL 383566.

A magistrate or municipal judge, as a condition of bond in a criminal domestic violence case, can provide that a defendant (1) be restrained or enjoined from entering the domestic dwelling; (2) be restrained from the use of specified bank accounts; or (3) be restrained from leaving the State of South Carolina. 1988 Op Atty Gen, No. 88‑74, p. 213 (September 29, 1988) 1988 WL 383557.

Ministerial magistrates are not authorized to hear civil proceedings pursuant to Sections 20‑4‑10, et seq. nor issue orders of protection pursuant to such provisions. 1984 Op Atty Gen, No. 84‑120, p. 273 (October 10, 1984) 1984 WL 159927.

Criminal process may be served on Sunday where there is violation of provision of order of protection which enjoins respondent from abusing, threatening to abuse, or molesting petitioner. Whether service of criminal process on Sunday is authorized for violations of any other provision of such order is questionable. 1984 Op Atty Gen, No. 84‑122, p. 276 (October 10, 1984) 1984 WL 159928.

**SECTION 20‑4‑65.** Order of protection from domestic abuse; filing fee.

 A person seeking an order of protection from domestic abuse pursuant to the provisions of this chapter is not required to pay the filing fee as provided in Section 8‑21‑310(11)(a).

HISTORY: 2005 Act No. 166, Section 9, eff January 1, 2006.

Library References

Clerks of Courts 17.

Westlaw Topic No. 79.

**SECTION 20‑4‑70.** Duration of order of protection; modification of terms.

 (A) An order of protection issued under Section 20‑4‑60 must be for a fixed time not less than six months nor more than one year unless the parties have reconciled as evidenced by an order of dismissal and may be extended or terminated by order of the court upon motion by either party showing good cause with notice to the other party. A respondent has the right to a hearing on the extension of an order issued pursuant to this section within thirty days of the date upon which the order will expire. If the parties reconcile, the issuing court may grant an order of dismissal without a hearing if the petitioner receiving the order of protection to be dismissed appears personally at the offices of the issuing court, shows proper identification, and signs a written request to dismiss based on the reconciliation.

 (B) Provisions included in an order of protection granting relief pursuant to Section 20‑4‑60(C) must be enforced until further order of the court following the issuance of the order unless before the expiration of the period the court has scheduled a hearing pursuant to the filing of an action for divorce or separate support and maintenance to determine the temporary rights and obligations of the parties with respect to support of a spouse or children, custody and visitation, or the distribution of personal property. If the hearing has been scheduled, relief granted under Section 20‑4‑60(C) remains in effect until an order pursuant to the hearing is issued by the court.

 (C) The family court may modify the terms of any order issued under this section.

 (D) An order of protection issued by a magistrate expires as provided under the terms of the order or upon the issuance of a subsequent order by the family court, whichever occurs first.

HISTORY: 1984 Act No. 484, Section 2; 1995 Act No. 138, Section 3, eff June 28, 1995; 1998 Act No. 270, Section 1, eff April 7, 1998.

Library References

Protection of Endangered Persons 79.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Section 18.

C.J.S. Domestic Abuse and Violence Sections 3 to 4, 7 to 11, 15 to 19, 21 to 22, 37 to 38.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 18, Types of Relief Available.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

**SECTION 20‑4‑80.** Mailing or service of order.

 A certified copy of an order of protection must be mailed to or served upon the petitioner, the respondent, and local law enforcement agencies having jurisdiction in the area where the petitioner resides. No charge may be made to the petitioner for such action.

HISTORY: 1984 Act No. 484, Section 2; 2005 Act No. 166, Section 10, eff January 1, 2006.

Library References

Protection of Endangered Persons 56.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑90.** Sheriff’s department to assist in execution of order.

 When any order is issued pursuant to this chapter, upon request of the petitioner, the court may, as part of the order, require the sheriff’s department or the police department pursuant to duties described under Section 20‑4‑100 to accompany the petitioner and assist in placing the petitioner in the possession of the dwelling or residence or otherwise assist in execution of service of the order.

HISTORY: 1984 Act No. 484, Section 2.

Library References

Sheriffs and Constables 87.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 77 to 83.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

**SECTION 20‑4‑100.** Responsibilities of law enforcement officer.

 The primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws allegedly violated and to protect the abused person if facts are found which substantiate the complaint. In such incidents, the law enforcement officer must take the following protective measures:

 (a) Notify the abused person of the right to initiate criminal proceedings and to seek an order of protection under this chapter.

 (b) Advise the parties of the importance of preserving evidence. To provide protection to the petitioner and any minor children, the officer may offer or arrange to provide transportation of the abused person to a hospital for treatment of injuries or to a place of shelter or safety and to accompany the abused person to his or her residence to allow for the removal of clothing, medication, and such personal property as is reasonably necessary.

HISTORY: 1984 Act No. 484, Section 2.

CROSS REFERENCES

Authority of court, as part of order of protection, to require police or sheriff’s department to assist in placing petitioner in possession of the dwelling or residence or otherwise assist in execution of service of the order, see Section 20‑4‑90.

Library References

Protection of Endangered Persons 34.

Westlaw Topic No. 315P.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

Attorney General’s Opinions

The law in this instance makes it mandatory upon the officer to assess the situation and determine if transportation or accompaniment is needed, but gives the officer the discretion to use his judgment depending upon the actual factual situation. S.C. Op.Atty.Gen. (Sept. 25, 1996) 1996 WL 599447.

NOTES OF DECISIONS

In general 1

1. In general

Statute is addressed to follow‑up procedures rather than to any affirmative duty to protect person prior to domestic abuse incident, where statute provides that law enforcement officer must notify abused person of right to initiate criminal proceedings and seek order of protection, and officer must advise parties of importance of preserving evidence. Turner v. City of North Charleston, 1987, 675 F.Supp. 314.

**SECTION 20‑4‑110.** Immunity from civil or criminal liability.

 Any person who makes a report pursuant to this chapter or who participates in judicial proceedings resulting therefrom, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of such actions. In all such civil or criminal proceedings good faith is rebuttably presumed.

HISTORY: 1984 Act No. 484, Section 2.

Library References

Protection of Endangered Persons 9.

Westlaw Topic No. 315P.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 19, Immunity from Civil or Criminal Liability.

**SECTION 20‑4‑120.** Actions not affecting right to relief.

 The petitioner’s right to relief under this chapter is not affected by leaving the residence or household to avoid further abuse.

 The petitioner’s right to relief under this chapter is not affected by the use of such physical force against the respondent as is reasonably believed by the petitioner to be necessary to defend the petitioner or others from imminent physical injury or abuse.

HISTORY: 1984 Act No. 484, Section 2.

Library References

Protection of Endangered Persons 36, 54.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 21, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 7 to 14, 16 to 17, 19 to 34, 36 to 45.

LAW REVIEW AND JOURNAL COMMENTARIES

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

**SECTION 20‑4‑130.** Applicability of other remedies.

 Any proceeding under this chapter is in addition to other civil and criminal remedies.

HISTORY: 1984 Act No. 484, Section 2.

Library References

Protection of Endangered Persons 52.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 1, Scope Note.

S.C. Jur. Divorce Section 70, Restraining Orders.

LAW REVIEW AND JOURNAL COMMENTARIES

Scherer, Tort remedies for victims of domestic abuse. 43 S.C. L. Rev. 543 (Spring 1992).

Sloan, Standing up to stalkers: South Carolina’s antistalking law is a good first step. 45 S.C. L. Rev. 383 (Winter 1994).

**SECTION 20‑4‑160.** Domestic Violence Fund.

 (A) There is established the Domestic Violence Fund, a fund separate and distinct from the general fund, in the State Treasury. The fund must be administered by the Department of Social Services and revenues of the fund must be used solely to award grants to domestic violence centers and programs in the State.

 (B) In order for a domestic violence center or program to be eligible to receive funds, it must be a nonprofit corporation and must:

 (1) have been in operation on the preceding July 1 and continue to be in operation; and

 (2) offer the following services:

 (a) a twenty‑four hour hotline;

 (b) transportation services;

 (c) community education programs;

 (d) daytime services, including counseling; and

 (e) other criteria as may be established by the department.

 (C) The Domestic Violence Fund must receive its revenue from that portion of marriage license fees provided for in Section 20‑1‑375 and donations, contributions, bequests, or other gifts made to the fund. Contributions to the fund must not be used to supplant existing funds appropriated to the department for domestic violence programs and grants. Monies in the fund may be carried forward from one fiscal year to the next, and interest earned on monies in the fund must be retained by the fund.

HISTORY: 2001 Act No. 91, Section 1, eff August 22, 2001.

Library References

Marriage 25(2).

States 122, 123, 127.

Westlaw Topic Nos. 253, 360.

C.J.S. States Sections 373, 377 to 380, 386 to 387.

ARTICLE 3

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

CROSS REFERENCES

Emergency restraining orders, procedure, see Section 16‑3‑1920.

Permanent restraining orders, procedure, see Section 16‑3‑1910.

**SECTION 20‑4‑310.** Citation of article.

 This article may be cited as the “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act”.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑320.** Definitions.

 For purposes of this article:

 (1) “Foreign protection order” means a protection order issued by a tribunal of another state.

 (2) “Issuing state” means the state whose tribunal issues a protection order.

 (3) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

 (4) “Protected individual” means an individual protected by a protection order.

 (5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or anti‑stalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

 (6) “Respondent” means the individual against whom enforcement of a protection order is sought.

 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

 (8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

CROSS REFERENCES

Emergency restraining orders, procedure, see Section 16‑3‑1920.

Permanent restraining orders, procedure, see Section 16‑3‑1910.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑330.** Judicial enforcement of foreign protection order; determining validity of order.

 (A) A person authorized by the law of this State to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this State. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this State would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this State for the enforcement of protection orders.

 (B) A tribunal of this State may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

 (C) A tribunal of this State shall enforce the provisions of a valid foreign protection order, which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

 (D) A foreign protection order is valid if it:

 (1) identifies the protected individual and the respondent;

 (2) is currently in effect;

 (3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

 (4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

 (E) A foreign protection order valid on its face is prima facie evidence of its validity.

 (F) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action‑seeking enforcement of the order.

 (G) A tribunal of this State may enforce provisions of a mutual foreign protection order which favor a respondent only if:

 (1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

 (2) the tribunal of the issuing state made specific findings in favor of the respondent.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑340.** Enforcement by law enforcement officer; service of order on respondent.

 (A) A law enforcement officer of this State, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this State. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

 (B) If a foreign protection order is not presented, a law enforcement officer of this State may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

 (C) If a law enforcement officer of this State determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

 (D) Registration or filing of an order in this State is not required for the enforcement of a valid foreign protection order pursuant to this article.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑350.** Registration; presentation to family court; affidavit of currency; entry in state or federal registry; fee.

 (A) Any individual may register a foreign protection order in this State. To register a foreign protection order, an individual shall present a certified copy of the order to the family court.

 (B) Upon receipt of a foreign protection order, the family court shall register the order in accordance with this section. After the order is registered, the family court shall furnish to the individual registering the order a certified copy of the registered order.

 (C) The family court shall register an order upon presentation of a copy of a protection order, which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this State.

 (D) An individual registering a foreign protection order shall file an affidavit by the protected individual in the family court stating that, to the best of the protected individual’s knowledge, the order is currently in effect.

 (E) A foreign protection order registered under this article may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

 (F) A fee may not be charged for the registration of a foreign protection order.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑360.** Immunity.

 This State or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this article.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Clerks of Courts 72.

District and Prosecuting Attorneys 10.

Protection of Endangered Persons 110.

Sheriffs and Constables 97.

Westlaw Topic Nos. 79, 131, 315P, 353.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Courts Sections 344 to 346.

C.J.S. District and Prosecuting Attorneys Sections 56 to 61.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

C.J.S. Sheriffs and Constables Sections 100 to 117, 131 to 135.

**SECTION 20‑4‑370.** Remedies available to protected individual.

 A protected individual who pursues remedies under this article is not precluded from pursuing other legal or equitable remedies against the respondent.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑375.** Filing false protection order; criminal penalty; civil liability.

 (A) A person who knowingly or wilfully makes, presents, files, or attempts to file a false, fictitious, or fraudulent foreign protection order is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both, in the discretion of the court.

 (B) If a family court determines that a person has knowingly or wilfully made, presented, filed, or attempted to file a false, fictitious, or fraudulent foreign protection order, the respondent is entitled to recover from the person who made, presented, filed, or attempted to file the report such relief as may be appropriate, including:

 (1) actual damages;

 (2) punitive damages; and

 (3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Fraud 68.10.

Protection of Endangered Persons 30, 110.

Westlaw Topic Nos. 184, 315P.

C.J.S. Breach of the Peace Sections 18, 24 to 28, 32 to 38.

C.J.S. Domestic Abuse and Violence Sections 2, 4, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

C.J.S. Fraud Sections 125 to 132.

**SECTION 20‑4‑380.** Construction of act.

 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 31, 110.

Statutes 1225.

Westlaw Topic Nos. 315P, 361.

C.J.S. Breach of the Peace Sections 18 to 19, 23 to 38.

C.J.S. Domestic Abuse and Violence Sections 1 to 4, 6, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

**SECTION 20‑4‑390.** Severability.

 If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this article, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 31, 110.

Statutes 1535(1).

Westlaw Topic Nos. 315P, 361.

C.J.S. Breach of the Peace Sections 18 to 19, 23 to 38.

C.J.S. Domestic Abuse and Violence Sections 1 to 4, 6, 11 to 14, 16 to 17, 19 to 34, 36 to 45.

C.J.S. Statutes Sections 118, 120 to 121, 125 to 128, 130, 134 to 136, 141.

**SECTION 20‑4‑395.** Applicability.

 This article applies to protection orders issued before July 1, 2007, and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2007. A request for enforcement of a foreign protection order made after June 30, 2007, for violations of a foreign protection order occurring before July 1, 2007, is governed by this article.

HISTORY: 2007 Act No. 61, Section 1, eff June 8, 2007.

Library References

Protection of Endangered Persons 31, 110.

Westlaw Topic No. 315P.

C.J.S. Breach of the Peace Sections 18 to 19, 23 to 38.

C.J.S. Domestic Abuse and Violence Sections 1 to 4, 6, 11 to 14, 16 to 17, 19 to 34, 36 to 45.