

IOWA CODE 236A

Petition for Relief from Sexual Abuse


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Resources

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Learning goals for today's presentation

- [Sexual Abuse Act](#) (Iowa Code 236A)
- Types of orders available
 - Emergency
 - Temporary
 - Permanent
- Survivors' rights
- Foreign orders
- Remedies when order is violated
 - Contempt
 - Prosecution

Iowa Code
236A

Sexual Abuse Act

Allows sexual assault
survivors to file a petition
with the court for Relief
From Sexual Abuse

Some
words
you
should
know ...

"Department"

means the Department of Justice.

"Plaintiff" (or "petitioner")

means the party filing the petition.

"Pro se"

means representing yourself without an attorney.

"Ex parte"

means only one party is present.

Some
words
you
should
know ...

"Prima facie"

means on its face, or first appearance. Means enough evidence exists at first glance to support a case.

"Unemancipated minor"

means a minor who is subject to the control, authority, and supervision of his or her parents or guardians, as determined under State law.

"Peace officer"

As defined in [Iowa Code 97A.1\(15\)](#). Includes State Patrol, narcotics enforcement, gaming enforcement officers, etc.

Who may file a petition?

- A survivor on their own behalf
- A parent/guardian on behalf of a minor
- A guardian on behalf of a ward (minor or adult under a guardianship)

What is district court?

- Each county is served by a courthouse, usually located in the county seat. The directory of courthouses can be found [here](#).

Where can a survivor file?

The petition may be filed in the county where the plaintiff or defendant lives.

The petition may be filed in person or [online](#).

- If filed online, plaintiff will need to print and sign the petition first.

The petitioner will need to provide:

- Name
- Mailing address
 - If unemancipated minor, name and address of parent or guardian filing on their behalf.
 - 236A.11 gives options for alternative addresses: 1) shelter or other agency; 2) public or private post office box; and 3) any other address with consent of resident.
- Name and address of defendant (perpetrator) *if known*

The petitioner will need to provide:

- Most recent nonconsensual sexual experience and/or threats.
 - Will need to provide how, when, and where it happened.
- Name and age of each child who may be affected by the controversy.
 - Any children shared by the parties. A Protected Information Form will need to be filled out and filed. In person, the clerk will provide. If you fill out online, the Protected Information Form is found [here](#) under the folder "Protecting Personal Information".

The petitioner will need to provide:

- Desired relief, including a request for a temporary order.
 - Firearms
- Petitioner will need to sign in front of a notary, which will require a photo ID.
 - Notaries can be found at banks, libraries, and courthouses. Some may charge a small fee.

Filing and service fees should be waived.

Filing the Petition

- Two options:
 - In person
 - Online
 - Can be filed online, but be sure to read what the Petition says about signing it. Petitioner must handwrite their name and have it notarized.
 - Scan and upload to the e-filing system.
 - [Will need a username and password for EDMS.](#)
 - Petitioner will be able to receive notifications about their case, which will be sent to the email they provide when signing up.

What must the survivor show?

The burden of proof is on the Petitioner.

The Petitioner must show a factual basis for the reported sexual abuse.

Temporary or emergency order:

- Prima facie

Contested or permanent order:

- Preponderance of the evidence

What is preponderance of the evidence?



- 50% and a feather
- More likely than not
- 50.1%
- Greater than 50% likelihood

Preponderance of the evidence is the level of proof the plaintiff must provide in order to establish wrongdoing.

Interpreter and other accessibility issues

- Interpreters can be requested by using the forms found on the Iowa Judicial Branch [website](#).
 - Forms and other information are found under the "Interpreter & Translator" folder.
- Contact the clerk of court for your county for the most updated information disability coordinators.

A quick review:



• Who may file?

A person, or parent or guardian of an unemancipated minor or ward, who seeks relief from sexual abuse.

• What is Iowa's standard of proof?

Temporary or emergency hearings: prima facie.
Contested or permanent: preponderance of the evidence.

• What are the costs and fees?

The filing fee and court costs for an order of protection or contempt action shall be waived.

What about juvenile perpetrators?



If the perpetrator is seventeen years old or younger, the district court may waive jurisdiction to juvenile court.

FORMS AND ASSISTANCE



- The Clerk of District Court shall provide standard protective order forms.
- All forms can be accessed on the Iowa Judicial Branch [website](#). Documents can be found in the "Sexual Abuse" folder.
- The county attorney's office *may* provide assistance to the party seeking an order of protection.

- If the petitioner does not have sufficient funds to pay for legal assistance.
- If the assistance does not create a conflict of interest for the county attorney's office.
- If the county attorney's office has capacity.
- Assistance can be requested and provided at any point of a proceeding.
- County attorney can NOT refer or order parties to attend mediation.

[illegible]

- *obtaining or completing forms*
- *filing a petition*
- *presenting evidence to the court*
- *enforcing the orders of the court*



You can get three kinds of orders:

Emergency order: Obtained outside of normal court hours. Hearing is done ex parte. Only good for up to 72 hours.

Short-term or temporary order: Hearing is done ex parte. Plaintiff must show a prima facie case for granting the order. Lasts until a hearing is held on permanent order.

Long-term or permanent order: Lasts up to one year. Issued only after a full hearing where the defendant *may* appear and raise a defense.

The Court may also issue a **consent agreement**.

Emergency orders (Iowa Code 236A.8)



- Granted outside of normal court hours.
 - Do NOT file online. Law enforcement can facilitate access to the area's on-call judge. Filing a police report should not be required.
- Done ex parte.
- Standard of proof: prima facie.
- Only good for a maximum of 72 hours.
- Should trigger a temporary hearing. (See Iowa Code [236A.8\(3\)](#))

Temporary orders (Iowa Code 236A.6)

- Granted when it is necessary to protect the survivor from *present* danger of sexual abuse.
- Ex parte hearing.
- Held between 5 and 15 days after Petition is filed and defendant receives notice.
- Petitioner may request subpoenas be issued.
- Standard of proof: preponderance of the evidence.

Permanent orders (Iowa Code 236A.7)

- Defendant is entitled to notice of the hearing and the opportunity to raise a defense.
- Hearing shall be held.
- Standard of proof: preponderance of the evidence.
- Order is good for up to one year from date final order is entered.

What is a consent agreement?

- An agreement that the survivor and defendant enter into, where they both agree to stay away from each other.
- In a consent agreement, there is ***no finding by the judge that sexual abuse has occurred.***

What does the protective order or consent agreement say?

- That the defendant cease sexual abuse of the plaintiff.
- That the defendant stay away from the plaintiff's residence, school, or place of employment.
- Not contacting the survivor personally or through other parties.

What else could the order say?



- Whether the defendant will be arrested for violations.
- Defendant may be ordered to pay the survivor's attorney fees and court costs.
- Title to real property is not affected by a protective order or consent agreement.

Hearing procedures



- Hearings shall be recorded
- The court shall advise defendant that they have a right to attorney of their choosing
- The court may grant a continuance to either party in order to hire an attorney
- If a hearing is continued, *the court may make or extend any temporary order*

The burden of proof is on the Petitioner.

At the end of the hearing...

- If the judge finds that the defendant has engaged in sexual abuse, the judge may grant a protective order.
 - NOT the same as defendant being found guilty of a criminal charge.
- The judge may also approve a consent agreement.

How does the court determine whether to extend the order?

- A hearing at which the defendant has the opportunity to be heard
- The court finds that the defendant continues to pose a threat to the safety of the survivor (people residing with the plaintiff or members of the plaintiff's immediate family)
- There is no limit to the number of extensions that can be granted BUT petitioner must establish each time that there is a present threat of SA.

Who gets a copy of the order?

- Survivor
- Defendant
- The county sheriff in which the order is entered
- The 24-hour dispatcher for the county sheriff

Any amendments or revocations of the order or consent agreement shall be forwarded to all of the above listed persons by the clerk.



It is strongly suggested that a protected party keep a copy of the order with them.



So, I have an order, now what?

- The clerk will notify the sheriff and dispatcher in writing within six hours of the order, revocation, or amendment being filed.
- The dispatcher will then notify all law enforcement agencies having jurisdiction.

A quick review:



- [Forms](#) and assistance

- Hearings

- After the hearing

Change in address (Iowa Code 236A.11)

A plaintiff shall report any change of address to the clerk of court no more than five days after the previous address on record becomes invalid.

The entire file or a portion of the file in a sexual abuse case shall be sealed by the clerk of court.

What is public record?



- Court orders and support payment records shall remain public records, although the court may order that address and location information be redacted from the public records.

- Survivor may want to include a request to seal the record in the original Petition. Definitely bring it up at hearing.

236A.13 Prevention of further abuse

- Options for peace officers:
 - If requested, they can remain on the scene so long as there is a danger or they can assist the survivor in leaving the property.
 - Assist the survivor in receiving medical treatment, including transportation to the nearest ER.
 - Provide survivor written notice of their rights.

The Code makes it clear this is not an exhaustive list of options.



Notification of the person's rights

- Must be in writing
- English and Spanish
- Includes the following:
 - Telephone number of shelters, support groups, and crisis lines
 - Statement of rights
- Peace officer is to ask the survivor to read the document and then ask if they understand their rights.



The survivor's rights

Survivors have the right to ask the court for help doing any of the following on a temporary basis:

- Keep attacker away from "you, your home, and your place of work."
- Remain at home "without interference from your attacker."

The survivor's rights include:



- the right to seek help from the court to seek a protective order with or without the assistance of legal representation.
- the right to seek help from the courts without the payment of court costs if they do not have sufficient funds to pay the costs.

The survivor's rights include:



- the right to file criminal complaints for threats, assaults, or other related crimes.
- the right to seek restitution against their attacker for harm to self or property.
- the right to request that the officer present assist in obtaining transportation to the nearest hospital.

REMINDER:



If the survivor believes they are in danger, they have the right to request the officer present remain at the scene until they, and other affected persons, can leave or until safety is otherwise ensured.

Please note:



236A.13

2. A peace officer is not civilly or criminally liable for actions pursuant to this section taken reasonably and in good faith.

Foreign protective orders



Foreign Protective Orders

(Iowa Code 236A.19(1))



A protective order entered by a court order of another state, Indian tribe, or U.S. territory that would be an order or court-approved consent agreement entered under 236A, an order that establishes conditions of release, or a protective order or sentencing order in a criminal proceeding arising from a sexual abuse if it had been entered in Iowa.

Foreign protective orders

There are no filing or service costs for the survivor when they register a foreign protective order

A valid foreign protective order has the same effect and shall be enforced in the same manner as a protective order issued in this state . . .

Validity of foreign protective orders

1. States the name of the protected person and the person against whom enforcement is sought
2. The order has not expired
3. The order was issued by a court or tribunal that had jurisdiction over the parties and subject matter jurisdiction under the law of the foreign jurisdiction
4. The order was issued in accordance with the respondent's due process rights

Enforcement

A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within the state.

The foreign order does NOT need to be filed with the clerk or court in order to be enforced.

Violation of a protective order

(Iowa Code 86-4A.1)

- Contempt
- Simple misdemeanor

Contempt



Hearing held 5-15 days after issue of rule to show cause.

Minimum 7 day jail sentence which must be served on consecutive days.

Court cannot impose a fine in lieu of the minimum mandatory jail time.
May issue fine in addition to mandatory minimum.

Protected party can initiate contempt proceedings.

Contempt



Forms can be found [here](#) and are filed the same as the initial petition.
Protected party will need to sign and have the affidavit notarized.

Burden is on the protected party to show the defendant willfully violated the protective order.

Protected party can bring witnesses, pictures, medical records, etc. to provide to the judge.

Simple Misdemeanor

Under Iowa Code 903.1, a simple misdemeanor is punishable by one or both of the following:

- Fine: \$65.00 - \$624
- Jail time: Less than 30 days

Criminal matter, handled by the county attorney's office.

Other considerations:

- Mutual protective orders are prohibited unless both parties file a petition. (Iowa Code 236A.20)
- If criminal charges are filed in relation to a SAPO, the county attorney cannot refer parties to mediation or "other nonjudicial procedures" before the criminal case is resolved. (Iowa Code 236A.14)

Questions?