

Date Issued: March 8, 1984 (AGO 84-15)

Requested by: Stark County State's Attorney Owen K. Mehrer

- QUESTION PRESENTED -

Whether the issuance of an adult abuse protection order as set out in section 14-07.1-02 of the North Dakota Century Code is a condition precedent to use of the warrantless arrest provisions of section 14-07.1-06, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the issuance of an adult abuse protection order as set out in section 14-07.1-02 of the North Dakota Century Code is not a condition precedent to use of the warrantless arrest provisions of section 14-07.1-06, N.D.C.C.

- ANALYSIS -

In 1979, chapter 14-07.1, N.D.C.C., entitled Abuse, was enacted into law. Included in this chapter was section 14-07.1-06, N.D.C.C., which allowed for the arrest of a person without a warrant if that person has committed the offense of violation of a protection order whether or not the violation was committed in the presence of a police officer.

In the 1983 Legislative Session, Senate Bill 2084 was enacted into law which added subsection 2 to section 14-07.1-06, N.D.C.C. This subsection allows a peace officer to arrest without a warrant any person who abused a family member although the officer did not observe the abuse. The legislative history behind this second subsection indicates that the Legislature believed abused spouses required more protection than that given under issuance of a protection order.

Section 14-07.1-06, N.D.C.C., prior to the enactment of the second subsection, already provided the means of arrest without a warrant for an assault in violation of a protection order. Thus, to restrict the arrest authority provided for in section 14-07.1-06(2), N.D.C.C., to only those situations where an adult abuse protection order is in place, renders the action taken by the Legislature redundant and for the most part meaningless.

The North Dakota Supreme Court has long maintained that the exact words of a statute cannot be followed where the result is unjust or absurd. In the Interest of B. L., 301 N.W.2d. 387 (N.D. 1981); State v. Mees, 272 N.W.2d. 61 (N.D. 1978). To interpret the statute enacted by the 1983 Legislative Session, as found in section 14-07.1-06(2), N.D.C.C., to apply only to situations where an adult abuse protection order is in place, would indeed lead to unjust and absurd results. Therefore, it is my opinion that the warrantless arrest authority found in section 14-07.1-06(2), N.D.C.C., applies in all domestic situations regardless of the existence of an adult abuse protection order.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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