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SESSION 2003

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HOUSE BILL 951
Committee Substitute Favorable 4/30/03
Senate Judiciary I Committee Substitute Adopted 7/6/04

Short Title: Create Civil No-Contact Protective Orders.

(Public)

Sponsors:

Referred to:

April 8, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE
3 PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL
4 CONDUCT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to
7 read:

8 **"Chapter 50C.**

9 **"Civil No-Contact Orders.**

10 **"§ 50C-1. Definitions.**

11 The following definitions apply in this Chapter:

- 12 (1) Abuse. – To physically or mentally harm, harass, intimidate, or
13 interfere with the personal liberty of another.
- 14 (2) Civil no-contact order. – An order granted under this Chapter, which
15 includes a remedy authorized by G.S. 50C-5.
- 16 (3) Nonconsensual. – A lack of freely given consent.
- 17 (4) Sexual conduct. – Any intentional or knowing touching, fondling, or
18 sexual penetration by a person, either directly or through clothing, of
19 the sexual organs, anus, or breast of another, whether an adult or a
20 minor, for the purpose of sexual gratification or arousal. For purposes
21 of this subdivision, the term shall include the transfer or transmission
22 of semen.
- 23 (5) Sexual penetration. – The penetration, however slight, by any object
24 into the genital or anal opening of another person's body. Evidence of
25 emission of semen is not required to prove sexual penetration.
- 26 (6) Stalking. – Following on more than one occasion or otherwise
27 harassing, as defined in G.S. 14-277.3(c), another person without legal
28 purpose with the intent to do any of the following:

- 1 a. Place the person in reasonable fear either for the person's safety
2 or the safety of the person's immediate family or close personal
3 associates.
4 b. Cause that person to suffer substantial emotional distress by
5 placing that person in fear of death, bodily injury, or continued
6 harassment and that in fact causes that person substantial
7 emotional distress.

8 (7) Unlawful conduct. – The commission of one or more of the following
9 acts upon a person, but does not include acts of self-defense or defense
10 of others:

- 11 a. Nonconsensual sexual conduct, including single incidences of
12 nonconsensual sexual conduct.
13 b. Stalking.

14 (8) Victim. – A person against whom an act of unlawful conduct has been
15 committed by another person not involved in a personal relationship
16 with the person as defined in G.S. 50B-1(b).

17 **"§ 50C-2. Commencement of action; filing fees not permitted; assistance.**

18 (a) An action is commenced under this Chapter by filing a verified complaint for
19 a civil no-contact order in district court or by filing a motion in any existing civil action,
20 by any of the following:

- 21 (1) A person who is a victim of unlawful conduct that occurs in this State.
22 (2) A competent adult who resides in this State on behalf of a minor child
23 or an incompetent adult who is a victim of unlawful conduct that
24 occurs in this State.

25 (b) No court costs shall be assessed for the filing or service of the complaint, or
26 the service of any orders.

27 (c) An action commenced under this Chapter may be filed in any county
28 permitted under G.S. 1-82 or where the unlawful conduct took place.

29 (d) If the victim states that disclosure of the victim's address would place the
30 victim or any member of the victim's family or household at risk for further unlawful
31 conduct, the victim's address may be omitted from all documents filed with the court. If
32 the victim has not disclosed an address under this subsection, the victim shall designate
33 an alternative address to receive notice of any motions or pleadings from the opposing
34 party.

35 **"§ 50C-3. Process for action for no-contact order.**

36 (a) Any action for a civil no-contact order requires that a separate summons be
37 issued and served. The summons issued pursuant to this Chapter shall require the
38 respondent to answer within 10 days of the date of service. Attachments to the summons
39 shall include the complaint for the civil no-contact order, and any temporary civil
40 no-contact order that has been issued and the notice of hearing on the temporary civil
41 no-contact order.

42 (b) Service of the summons and attachments shall be by the sheriff by personal
43 delivery in accordance with Rule 4 of the Rules of Civil Procedure, and if the
44 respondent cannot with due diligence be served by the sheriff by personal delivery, the

1 respondent may be served by publication by the complainant in accordance with Rule
2 4(j1) of the Rules of Civil Procedure.

3 (c) The court may enter a civil no-contact order by default for the remedy sought
4 in the complaint if the respondent has been served in accordance with this section and
5 fails to answer as directed, or fails to appear on any subsequent appearance or hearing
6 date agreed to by the parties or set by the court.

7 **"§ 50C-4. Hearsay exception.**

8 In proceedings for an order or prosecutions for violation of an order under this
9 Chapter, the prior sexual activity or the reputation of the victim is inadmissible except
10 when it would be admissible in a criminal prosecution under G.S. 8C, Rule 412.

11 **"§ 50C-5. Civil no-contact order; remedy.**

12 (a) Upon a finding that the victim has suffered unlawful conduct committed by
13 the respondent, the court may issue temporary or permanent civil no-contact orders as
14 authorized in this Chapter. In determining whether or not to issue a civil no-contact
15 order, the court shall not require physical injury to the victim.

16 (b) The court may grant one or more of the following forms of relief in its orders
17 under this Chapter:

18 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
19 with the victim.

20 (2) Order the respondent to cease stalking the victim, including at the
21 victim's workplace.

22 (3) Order the respondent to cease harassment of the victim.

23 (4) Order the respondent not to abuse or injure the victim.

24 (5) Order the respondent not to contact the victim by telephone, written
25 communication, or electronic means.

26 (6) Order the respondent to refrain from entering or remaining present at
27 the victim's residence, school, place of employment, or other specified
28 places at times when the victim is present.

29 (7) Order other relief deemed necessary and appropriate by the court.

30 (c) A civil no-contact order shall include the following notice, printed in
31 conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable
32 as contempt of court which may result in a fine or imprisonment.'

33 **"§ 50C-6. Temporary civil no-contact order; court holidays and evenings.**

34 (a) A temporary civil no-contact order may be granted ex parte, without evidence
35 of service of process or notice, only if both of the following are shown:

36 (1) It clearly appears from specific facts shown by a verified complaint or
37 affidavit that immediate injury, loss, or damage will result to the
38 victim before the respondent can be heard in opposition.

39 (2) Either one of the following:

40 a. The complainant certifies to the court in writing the efforts, if
41 any, that have been made to give the notice and the reasons
42 supporting the claim that notice should not be required.

43 b. The complainant certified to the court that there is good cause
44 to grant the remedy because the harm that the remedy is

1 intended to prevent would likely occur if the respondent were
2 given any prior notice of the complainant's efforts to obtain
3 judicial relief.

4 (b) Every temporary civil no-contact order granted without notice shall:

5 (1) Be endorsed with the date and hour of issuance.

6 (2) Be filed immediately in the clerk's office and entered of record.

7 (3) Define the injury, state why it is irreparable and why the order was
8 granted without notice.

9 (4) Expire by its terms within such time after entry, not to exceed 10 days.

10 (5) Give notice of the date of hearing on the temporary order as provided
11 in G.S. 50C-8(a).

12 (c) If the respondent appears in court for a hearing on a temporary order, the
13 respondent may elect to file a general appearance and testify. Any resulting order may
14 be a temporary order, governed by this section. Notwithstanding the requirements of
15 this section, if all requirements of G.S. 50C-7 have been met, the court may issue a
16 permanent order.

17 (d) When the court is not in session, the complainant may file for a temporary
18 order before any judge or magistrate designated to grant relief under this Chapter. If the
19 judge or magistrate finds that there is an immediate and present danger of harm to the
20 victim and that the requirements of subsection (a) of this section have been met, the
21 judge or magistrate may issue a temporary civil no-contact order. The chief district
22 court judge may designate for each county at least one judge or magistrate to be
23 reasonably available to issue temporary civil no-contact orders when the court is not in
24 session.

25 **"§ 50C-7. Permanent civil no-contact order.**

26 Upon a finding that the victim has suffered unlawful conduct committed by the
27 respondent, a permanent civil no-contact order may issue if the court additionally finds
28 that process was properly served on the respondent, the respondent has answered the
29 complaint and notice of hearing was given, or the respondent is in default. No
30 permanent civil no-contact order shall be issued without notice to the respondent.

31 **"§ 50C-8. Duration; extension of orders.**

32 (a) A temporary civil no-contact order shall be effective for not more than 10
33 days as the court fixes, unless within the time so fixed the temporary civil no-contact
34 order, for good cause shown, is extended for a like period or a longer period if the
35 respondent consents. The reasons for the extension shall be stated in the temporary
36 order. In case a temporary civil no-contact order is granted without notice and a motion
37 for a permanent civil no-contact order is made, it shall be set down for hearing at the
38 earliest possible time and takes precedence over all matters except older matters of the
39 same character. When the motion for a permanent civil no-contact order comes on for
40 hearing, the complainant may proceed with a motion for a permanent civil no-contact
41 order, and, if the complainant fails to do so, the judge shall dissolve the temporary civil
42 no-contact order. On two days' notice to the complainant or on such shorter notice to
43 that party as the judge may prescribe, the respondent may appear and move its

1 dissolution or modification. In that event the judge shall proceed to hear and determine
2 such motion as expeditiously as the ends of justice require.

3 (b) A permanent civil no-contact order shall be effective for a fixed period of
4 time not to exceed one year.

5 (c) Any order may be extended one or more times, as required, provided that the
6 requirements of G.S. 50C-6 or G.S. 50C-7, as appropriate, are satisfied. The court may
7 renew an order, including an order that previously has been renewed, upon a motion by
8 the complainant filed before the expiration of the current order. The court may renew
9 the order for good cause. The commission of an act of unlawful conduct by the
10 respondent after entry of the current order is not required for an order to be renewed. If
11 the motion for extension is uncontested and the complainant seeks no modification of
12 the order, the order may be extended if the complainant's motion or affidavit states that
13 there has been no material change in relevant circumstances since entry of the order and
14 states the reason for the requested extension. Extensions may be granted only in open
15 court and not under the provisions of G.S. 50D-6(c).

16 (d) Any civil no-contact order expiring on a day the court is not open for business
17 shall expire at the close of the next court business day.

18 **"§ 50C-9. Notice of orders.**

19 (a) The clerk of court shall deliver on the same day that a civil no-contact order
20 is issued, a certified copy of that order to the sheriff.

21 (b) Unless the respondent was present in court when the order was issued, the
22 sheriff shall serve the order on the respondent and file proof of service in the manner
23 provided for service of process in civil proceedings. If the summons has not yet been
24 served upon the respondent, it shall be served with the order.

25 (c) A copy of the order shall be issued promptly to and retained by the police
26 department of the municipality of the victim's residence. If the victim's residence is not
27 located in a municipality or in a municipality with no police department, copies shall be
28 issued promptly to and retained by the sheriff and the county police department, if any,
29 of the county in which the victim's residence is located.

30 (d) Any order extending, modifying, or revoking any civil no-contact order shall
31 be promptly delivered to the sheriff by the clerk and served by the sheriff in accordance
32 with the provisions of this section.

33 **"§ 50C-10. Violation.**

34 A knowing violation of an order entered pursuant to this Chapter is punishable as
35 contempt of court.

36 **"§ 50C-11. Remedies not exclusive.**

37 The remedies provided by this Chapter are not exclusive but are additional to other
38 remedies provided under law."

39 **SECTION 2.** This act becomes effective December 1, 2004, and applies to
40 actions that give rise to civil no-contact orders issued under this act on or after that date.