

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 916*

Short Title: Create Civil No-Contact Protective Orders.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

April 3, 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 SEXUAL
4 ASSAULT.

5 The General Assembly of North Carolina enacts:

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

"Chapter 50C.

"Civil No-Contact Orders.

10 **"§ 50C-1. Short title.**

11 This Chapter may be cited as the 'Civil No-Contact Order Act'.

12 **"§ 50C-2. Purpose.**

13 Sexual assault is one of the most heinous crimes a person can commit against
14 another. Sexual assault inflicts humiliation, degradation, and terror on its victims.
15 According to the Federal Bureau of Investigation (FBI), a woman is raped every six
16 minutes in the United States. Rape is recognized as the most under-reported crime.
17 Estimates suggest that only one in seven rapes is reported to authorities and in many
18 instances where a rape is reported, the crime is never prosecuted. Victims who choose
19 not to report the crime still desire safety and protection from future interactions with the
20 offender, and it is the purpose of this Chapter that in these situations, the victim should
21 be able to seek a simple civil remedy requiring that the offender be prohibited from
22 having any contact with the victim.

23 **"§ 50C-3. Definitions.**

24 The following definitions apply in this Chapter:

- 25 (1) Abuse. – Any physical or mental maltreatment, harassment,
26 intimidation, or interference with the personal liberty of another.
27 (2) Civil no-contact order. – An emergency or plenary order granted under
28 this Chapter, which includes a remedy authorized by G.S. 50C-13.
29 (3) Nonconsensual. – A lack of freely given consent.

1 (4) Sexual conduct. – Any intentional or knowing touching or fondling by
2 a person, either directly or through clothing, of the sexual organs, anus,
3 or breast of another, whether an adult or a minor, for the purpose of
4 sexual gratification or arousal. For purposes of this subdivision, the
5 term shall include the transfer or transmission of semen.

6 (5) Sexual penetration. – Any contact, however slight, between the sexual
7 organ or anus of one person by an object, the sexual organ, mouth, or
8 anus of another person or any intrusion, however slight, of any part of
9 the body of one person or of any animal or object into the sexual organ
10 or anus of another person, including acts of cunnilingus, fellatio, or
11 anal penetration. Evidence of emission of semen is not required to
12 prove sexual penetration.

13 **"§ 50C-4. Civil no-contact orders; persons protected.**

14 A petition for a civil no-contact order may be filed in civil court by any of the
15 following:

16 (1) A person who is a victim of nonconsensual sexual conduct or
17 nonconsensual sexual penetration, including a single incident of
18 nonconsensual sexual conduct or nonconsensual sexual penetration.

19 (2) A person on behalf of a minor child or an adult who is a victim of
20 nonconsensual sexual conduct or nonconsensual sexual penetration,
21 but because of age, disability, health, or inaccessibility, cannot file the
22 petition.

23 **"§ 50C-5. Commencement of action; filing fees not permitted; assistance.**

24 (a) An action for a civil no-contact order is commenced by filing a petition for a
25 civil no-contact order in any civil court, unless specific courts are designated by local
26 rule or order.

27 (b) The court shall charge no fees for filing or certifying petitions for civil
28 no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a
29 petition, rule, motion, or order in an action commenced under this section.

30 (c) The court shall provide, through the office of the clerk of the court, simplified
31 forms and clerical assistance to any person not represented by counsel or in need of help
32 with the writing or filing of a petition under this section.

33 **"§ 50C-6. Pleadings; nondisclosure of address.**

34 (a) A petition for a civil no-contact order shall be in writing and verified or
35 accompanied by an affidavit and shall allege that the petitioner is or has been the victim
36 of nonconsensual sexual conduct or nonconsensual sexual penetration by the
37 respondent.

38 (b) If, in the petition, the victim states that disclosure of the victim's address
39 would place the victim or any member of the victim's family or household at risk for
40 further abuse, the victim's address may be omitted from all documents filed with the
41 court. If the victim has not disclosed an address under this subsection, the victim shall
42 designate an alternative address to receive notice of any motions or pleadings from the
43 opposing party.

44 **"§ 50C-7. Application of rules of civil procedure; rape crisis advocates.**

1 (a) Any proceeding to obtain, modify, re-open, or appeal a civil-no contact order
2 shall be governed by the Rules of Civil Procedure, Chapter 1A of the General Statutes.
3 The standard of proof in a civil no-contact order proceeding is proof by a preponderance
4 of the evidence.

5 (b) In a civil no-contact order proceeding, rape crisis advocates shall be allowed
6 to accompany and confer with the victim, unless otherwise directed by the court. Court
7 administrators shall allow rape crisis advocates to assist victims of nonconsensual
8 sexual conduct or nonconsensual sexual penetration in the preparation of petitions for
9 civil no-contact orders. Rape crisis advocates are not engaged in the unauthorized
10 practice of law when providing assistance pursuant to this subsection.

11 **"§ 50C-8. Venue.**

12 A petition for a civil no-contact order may be filed in any of the following:

13 (1) Where the petitioner resides.

14 (2) Where the respondent resides.

15 (3) Where the alleged nonconsensual sexual conduct or nonconsensual
16 sexual penetration occurred.

17 **"§ 50C-9. Process for action for no-contact order.**

18 (a) Any action for a civil no-contact order requires that a separate summons be
19 issued and served. The summons issued pursuant to this Chapter shall require the
20 respondent to answer or appear in court within seven days. Attachments to the summons
21 or notice shall include the petition for the civil no-contact order and supporting
22 affidavits, if any, or any emergency civil no-contact order that has been issued.

23 (b) The summons shall be served by the sheriff or other law enforcement officer
24 at the earliest time and shall take precedence over other summonses except those of a
25 similar emergency nature. Special process servers may be appointed at any time, and
26 their designation shall not affect the responsibilities and authority of the sheriff or other
27 official process servers.

28 (c) Service of process on a member of the respondent's household or by
29 publication shall be adequate if the following apply:

30 (1) The petitioner has made all reasonable efforts to accomplish actual
31 service of process personally upon the respondent, but the respondent
32 cannot be found to effect the service.

33 (2) The petitioner files an affidavit or presents sworn testimony as to those
34 efforts.

35 (d) The court may enter a plenary civil no-contact order by default for the remedy
36 sought in the petition, if the respondent has been served or given notice in accordance
37 with subsection (a) of this section and fails to appear as directed or fails to appear on
38 any subsequent appearance or hearing date agreed to by the parties or set by the court.

39 **"§ 50C-10. Hearings.**

40 A petition for a civil no-contact order shall be treated as an expedited proceeding,
41 and no court may transfer or otherwise decline to decide all or part of the petition.
42 Nothing in this section shall prevent the court from reserving issues if jurisdiction or
43 notice requirements are not met.

44 **"§ 50C-11. Continuance.**

1 (a) Petitions for emergency remedies shall be granted or denied in accordance
2 with the standards of G.S. 50C-14, regardless of the respondent's appearance or
3 presence in court.

4 (b) Any action for a civil no-contact order is an expedited proceeding.
5 Continuances shall be granted only for good cause shown and kept to the minimum
6 reasonable duration, taking into account the reasons for the continuance.

7 **"§ 50C-12. Hearsay exception.**

8 (a) In proceedings for a civil no-contact order or prosecutions for violating a civil
9 no-contact order, the prior sexual activity or the reputation of the petitioner is
10 inadmissible except under the following circumstances:

11 (1) As evidence concerning the past sexual conduct of the petitioner with
12 the respondent when this evidence is offered by the respondent
13 regarding the issue of whether the petitioner consented to the sexual
14 conduct as related to the offense being alleged.

15 (2) When constitutionally required to be admitted.

16 (b) No evidence admissible under this section may be introduced unless ruled
17 admissible by the trial judge after an offer of proof has been made at a hearing held in
18 camera. At this hearing, the court shall determine whether the respondent has evidence
19 to impeach the witness in the event that prior sexual activity with the respondent is
20 denied. The offer of proof shall include reasonably specific information as to the date,
21 time, and place of the past sexual conduct between the petitioner and the respondent.
22 Unless the court finds that reasonably specific information as to date, time, or place or
23 some combination thereof, has been offered as to prior sexual activity with the
24 respondent, counsel for the respondent shall be ordered to refrain from inquiring into
25 prior sexual activity between the petitioner and the respondent. The court shall not
26 admit evidence under this section unless it determines at the hearing that the evidence is
27 relevant and the probative value of the evidence outweighs the danger of unfair
28 prejudice. The evidence is admissible at trial to the extent the court specifies the
29 evidence that may be admitted and the areas in which the petitioner may be examined or
30 cross-examined.

31 **"§ 50C-13. Civil no-contact order; remedy.**

32 (a) If the court finds that the petitioner is a victim of nonconsensual sexual
33 conduct or nonconsensual sexual penetration, a civil no-contact order shall issue.
34 However, the petitioner must satisfy the requirements of G.S. 50C-14 for emergency
35 orders or G.S. 50C-15 for plenary orders. The petitioner shall not be denied a civil
36 no-contact order because the petitioner or the respondent is a minor. In determining
37 whether or not to issue a civil no-contact order, the court shall not require physical
38 injury on the person of the victim. Modification or extension of prior civil no-contact
39 orders shall be in accordance with this Chapter.

40 (b) A civil no-contact order shall order the respondent to stay away from the
41 petitioner or any other person protected by the civil no-contact order, or prohibit the
42 respondent from entering or remaining present at the petitioner's school, place of
43 employment, or other specified places at times when the petitioner is present, or both, if
44 reasonable. Hardships or inconvenience to the respondent need not be balanced for the

1 court to enter a civil no-contact order or prohibit the respondent from entering premises
2 where the respondent has no right of entry.

3 (c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

4 (1) The respondent had cause for use of force, unless the use of force was
5 justified as determined by the court.

6 (2) The respondent was voluntarily intoxicated.

7 (3) The petitioner acted in self-defense or defense of another.

8 (4) The petitioner did not act in self-defense or defense of another.

9 (5) The petitioner left the residence or household to avoid further
10 nonconsensual sexual conduct or nonconsensual sexual penetration by
11 the respondent.

12 (6) The petitioner did not leave the residence or household to avoid further
13 nonconsensual sexual conduct or nonconsensual sexual penetration by
14 the respondent.

15 (d) Monetary damages are not recoverable as a remedy.

16 **"§ 50C-14. Emergency civil no-contact order; court holidays and evenings.**

17 (a) A court may issue an emergency civil no-contact order if the petitioner
18 satisfies the following requirements:

19 (1) The petitioner has met the requirements of G.S. 50C-13.

20 (2) There is good cause to grant the remedy, regardless of prior service of
21 process or of notice upon the respondent, because the harm that the
22 remedy is intended to prevent would likely occur if the respondent
23 were given any prior notice or greater notice than was actually given
24 of the petitioner's efforts to obtain judicial relief.

25 (b) If the respondent appears in court for this hearing for an emergency order, the
26 respondent may elect to file a general appearance and testify. Any resulting order may
27 be an emergency order, governed by this section. Notwithstanding the requirements of
28 this section, if all requirements of G.S. 50C-15 have been met, the court may issue a
29 plenary order.

30 (c) When the court is unavailable at the close of business, the petitioner may file
31 a petition for a 21-day emergency order before any available judge or magistrate who
32 may grant relief under this Chapter. If the judge or magistrate finds that there is an
33 immediate and present danger of abuse against the petitioner and that the petitioner has
34 satisfied the prerequisites set forth in subsection (a) of this section, the judge or
35 magistrate may issue an emergency civil no-contact order.

36 (d) The chief district court judge may designate for each county at least one
37 judge or magistrate to be reasonably available to issue orally, by telephone, by
38 facsimile, or otherwise, an emergency civil no-contact order at all times, whether or not
39 the court is in session.

40 (e) Any order issued under this section and any documentation in support of the
41 order shall be certified on the next court day to the appropriate court. The clerk of that
42 court shall immediately assign a case number and file the petition, order, and any other
43 documents with the court, enter the order of record, and file it with the sheriff for
44 service in accordance with G.S. 50C-9. Filing the petition shall commence proceedings

1 for further relief under G.S. 50C-5. Failure to comply with the requirements of this
2 subsection does not affect the validity of the order.

3 **"§ 50C-15. Plenary civil no-contact order.**

4 A plenary civil no-contact order shall issue if the petitioner has served notice of the
5 hearing for the plenary civil no-contact order on the respondent in accordance with G.S.
6 50C-9 and satisfied the following requirements:

7 (1) The petitioner has met the requirements of G.S. 50C-13.

8 (2) A general appearance was made or filed by or for the respondent or
9 process was served on the respondent in the manner required by G.S.
10 50C-9.

11 (3) The respondent has answered or is in default.

12 **"§ 50C-16. Duration; extension of orders.**

13 (a) Unless reopened or extended or voided by entry of an order of greater
14 duration, an emergency civil no-contact order shall be effective for not less than 14 days
15 or greater than 21 days.

16 (b) Except as otherwise provided in this section, a plenary civil no-contact order
17 shall be effective for a fixed period of time, not to exceed two years. A plenary civil
18 no-contact order entered in conjunction with another civil proceeding shall remain in
19 effect as follows:

20 (1) If entered as preliminary relief in the other civil proceeding, until entry
21 of final judgment in the other civil proceeding.

22 (2) If incorporated into the final judgment in the other civil proceeding,
23 until the civil no-contact order is vacated or modified.

24 (3) If incorporated in an order for involuntary commitment, until
25 termination of both the involuntary commitment and any voluntary
26 commitment, or for a fixed period of time not exceeding two years.

27 (c) Any emergency or plenary order may be extended one or more times, as
28 required, provided that the requirements of G.S. 50C-14 or G.S. 50C-15, as appropriate,
29 are satisfied. If the motion for extension is uncontested and the petitioner seeks no
30 modification of the order, the order may be extended if the petitioner's motion or
31 affidavit states that there has been no material change in relevant circumstances since
32 entry of the order and states the reason for the requested extension. Extensions may be
33 granted only in open court and not under the provisions of subsection (c) of G.S.
34 50C-14, which applies only when the court is unavailable at the close of business or on
35 a court holiday.

36 (d) Any civil no-contact order expiring on a court holiday shall expire at the
37 close of the next court business day.

38 (e) Nothing in this Chapter shall be construed to encourage the practice of
39 dismissing or suspending a criminal prosecution in exchange for the issuance of a civil
40 no-contact order.

41 **"§ 50C-17. Contents of orders.**

42 (a) All civil no-contact orders shall describe each remedy granted by the court, in
43 reasonable detail and not by reference to any other document, so that the respondent
44 may clearly understand what he or she must do or refrain from doing.

1 (b) A civil no-contact order shall further state the following:

- 2 (1) The name of each petitioner that the court finds was the victim of
3 nonconsensual sexual conduct or nonconsensual sexual penetration by
4 the respondent and the name of any other person protected by the
5 order. The order shall further state that any person named in the order
6 is protected by this Chapter.
- 7 (2) The date and time the civil no-contact order was issued, whether it is
8 an emergency or plenary order, and the duration of the order.
- 9 (3) The date, time, and place for any scheduled hearing for extension of
10 the civil no-contact order or for any other order of greater duration or
11 scope.
- 12 (4) For each remedy in an emergency civil no-contact order, the reason for
13 entering that remedy without prior notice to the respondent or greater
14 notice than was actually given.

15 (c) A civil no-contact order shall include the following notice, printed in
16 conspicuous type: 'A knowing violation of a civil no-contact order is a Class A1
17 misdemeanor. Any second or subsequent violation is a Class H felony'.

18 **"§ 50C-18. Notice of orders.**

19 (a) Upon issuance of any civil no-contact order, the clerk of the court issuing the
20 order shall immediately, or on the next court day if an emergency order is issued in
21 accordance with subsection (c) of G.S. 50C-14, do the following:

- 22 (1) Enter the order on the record and file it in accordance with the district
23 court procedures.
- 24 (2) Provide a file stamped copy of the order to the respondent, if present,
25 and to the petitioner.

26 (b) The clerk of the issuing judge shall, or the petitioner may, on the same day
27 that a civil no-contact order is issued, file a certified copy of that order with the sheriff
28 or other law enforcement personnel charged with maintaining criminal records or
29 serving the order upon the respondent. If the order was issued in accordance with
30 subsection (c) of G.S. 50C-14, the clerk shall, on the next court day, file a certified copy
31 of the order with the sheriff or other law enforcement personnel charged with
32 maintaining criminal records.

33 (c) Unless the respondent was present in court when the order was issued, the
34 sheriff, other law enforcement personnel, or special process server shall promptly serve
35 that order upon the respondent and file proof of service in the manner provided for
36 service of process in civil proceedings. If process has not yet been served upon the
37 respondent, it shall be served with the order or short form notification.

38 (d) If the person against whom the civil no-contact order is issued is arrested and
39 the written order is issued in accordance with subsection (c) of G.S. 50C-14 and
40 received by the custodial law enforcement agency before the respondent or offender is
41 released from custody, the custodial law enforcement agent shall promptly serve the
42 order upon the respondent or offender before the respondent or offender is released
43 from custody. In no event shall detention of the respondent or offender be extended for

1 hearing on the petition for civil no-contact order or receipt of the order issued under
2 G.S. 50C-14.

3 (e) Any order extending, modifying, or revoking any civil no-contact order shall
4 be promptly recorded, issued, and served in accordance with the provisions of this
5 Chapter.

6 (f) Upon the request of the petitioner, within 24 hours of the issuance of a civil
7 no-contact order, the clerk of the issuing judge shall send written notice of the order
8 along with a certified copy of the order to any school, college, or university at which the
9 petitioner is enrolled.

10 **"§ 50C-19. Violation.**

11 A knowing violation of a civil no-contact order is a Class A1 misdemeanor. A
12 second or subsequent violation is a Class H felony.

13 **"§ 50C-20. Arrest without warrant.**

14 (a) Any law enforcement officer may make an arrest without a warrant if the
15 officer has probable cause to believe that a person has committed or is committing a
16 violation of a civil no-contact order.

17 (b) The law enforcement officer may verify the existence of a civil no-contact
18 order by telephone or radio communication with his or her law enforcement agency or
19 by referring to the copy of the order provided by the petitioner or the respondent.

20 **"§ 50C-21. Data maintenance by law enforcement agencies.**

21 (a) All local sheriff's departments shall furnish to the local police departments, on
22 the same day as received, in the form and detail the police department requires, copies
23 of any recorded emergency or plenary civil no-contact orders issued by the court and
24 transmitted to the sheriff by the clerk of the court in accordance with subsection (b) of
25 G.S. 50C-18. Each civil no-contact order shall be entered in the police department's data
26 system on the same day it is issued by the court. If an emergency civil no-contact order
27 was issued in accordance with subsection (c) of G.S. 50C-14, the order shall be entered
28 in the police department's data system as soon as possible after receipt from the clerk of
29 the court.

30 (b) Each local police department shall maintain a complete and systematic record
31 and index of all valid and recorded civil no-contact orders issued under this Chapter.
32 The recorded civil no-contact orders issued under this Chapter shall be used to inform
33 all dispatchers and law enforcement personnel at the scene of an alleged incident of
34 nonconsensual sexual conduct or nonconsensual sexual penetration of any violation of a
35 civil no-contact order, any recorded prior incident of nonconsensual sexual conduct or
36 nonconsensual sexual penetration involving the victim, and the effective dates and terms
37 of any recorded civil no-contact order."

38 **SECTION 2.** This act becomes effective December 1, 2003, and applies to
39 actions that give rise to civil no-contact orders issued under Chapter 50C of the General
40 Statutes, as enacted in Section 1 of this act, on or after that date.