

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**SENATE DRS65245-LU-63 (03/26)**

Short Title: Homicide Prevention Act/Domestic Violence. (Public)

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Sponsors: Senator Rand.

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Referred to:

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A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC VIOLENCE CASES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 50B of the General Statutes is amended by adding a new section to read:

**"§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

- (1) The use or threatened use of a deadly weapon by the defendant.
- (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
- (3) Threats to commit suicide by the defendant.
- (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

If the court does not find any of these factors, the court, in its discretion, may order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. For purposes of this section, the term 'firearm' is as defined in G.S. 14-409.39(2).

The court shall inquire of the plaintiff the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, at the ex parte or emergency hearing

1 and include, whenever possible, identifying information regarding the description,  
2 number, and location of firearms, ammunition, and permits in the order.

3 The court shall inquire of the defendant the presence of, ownership of, or otherwise  
4 access to firearms by the defendant, as well as ammunition, permits to purchase  
5 firearms, and permits to carry concealed firearms, at the 10 day hearing and include,  
6 whenever possible, identifying information regarding the description, number, and  
7 location of firearms, ammunition, and permits in the order.

8 Upon service of the orders, the defendant shall immediately surrender to the sheriff  
9 possession of all firearms, machine guns, ammunition, permits to purchase firearms, and  
10 permits to carry concealed firearms that are in the care, custody, possession, ownership,  
11 or control of the defendant. In the event that weapons cannot be surrendered at the time  
12 the order is served, the defendant shall surrender the firearms, ammunitions, and permits  
13 to the sheriff within 24 hours of service at a time and place specified by the sheriff. The  
14 sheriff shall store the firearms or contract with a licensed firearms dealer to provide  
15 storage.

16 If the court does not enter a protective order when the ex parte or emergency order  
17 expires, the defendant may retrieve any weapons surrendered to the sheriff unless the  
18 court determines that the defendant should not be allowed to retrieve the weapons.

19 If the court orders the defendant to surrender firearms, ammunition, and permits, the  
20 court shall inform the plaintiff and the defendant of the terms of the protective order and  
21 include these terms on the face of the order, including that the defendant is prohibited  
22 from owning, possessing, purchasing, or receiving or attempting to own, possess,  
23 purchase, or receive a firearm for so long as the protective order or any successive  
24 protective order is in effect. The terms shall also include the notice of the penalty for  
25 violation of G.S. 14-269.8.

26 The sheriff may charge the defendant a reasonable fee for the storage of any firearms  
27 and ammunition taken pursuant to a protective order. The fees are payable to the sheriff.  
28 The sheriff shall transmit the proceeds of these fees to the county finance officer. The  
29 fees shall be used by the sheriff to pay the costs of administering this section and for  
30 other law enforcement purposes. The county shall expend the restricted funds for these  
31 purposes only.

32 The sheriff shall not release firearms, ammunition, or permits without a court order  
33 granting the release. The defendant must remit all fees owed prior to the authorized  
34 return of any firearms, ammunition, or permits.

35 The defendant may request the return of any firearms, ammunition, or permits  
36 surrendered by filing a motion with the court at the expiration of the current order and  
37 not later than 90 days after the expiration of the current order. Upon receipt of the  
38 motion, the court shall schedule a hearing and provide written notice to the plaintiff who  
39 shall have the right to appear and be heard and to the sheriff who has control of the  
40 firearms, ammunition, or permits. The court shall determine whether the defendant is  
41 subject to any state or federal law or court order that precludes the defendant from  
42 owning or possessing a firearm. The inquiry shall include: (i) whether the protective  
43 order has been renewed; (ii) whether the defendant is subject to any other protective  
44 orders; or (iii) whether the defendant is disqualified from owning or possessing a

1 firearm pursuant to 18 U.S.C. § 922 or any State law. The court shall deny the return of  
2 firearms, ammunition, or permits if the court finds that the defendant is precluded from  
3 owning or possessing a firearm pursuant to State or federal laws.

4 The sheriff shall not incur any civil or criminal liability for alleged damage or  
5 deterioration due to storage or transportation of any firearms or ammunition held  
6 pursuant to this section.

7 (b) Disposal of Firearms. – If the defendant does not file a motion requesting the  
8 return of any firearms, ammunition, or permits surrendered within the time period  
9 prescribed by this section, if the court determines that the defendant is precluded from  
10 regaining possession of any firearms, ammunition, or permits surrendered, or if the  
11 defendant fails to remit all fees owed for the storage of the firearms or ammunition  
12 within 30 days of the entry of the order granting the return of the firearms, ammunition,  
13 or permits, the sheriff who has control of the firearms, ammunition, or permits shall  
14 give notice to the defendant and the defendant shall apply to the court for an order of  
15 disposition of the firearms, ammunition, or permits. The judge, after a hearing, may  
16 order the disposition of the firearms, ammunition, or permits in one or more of the ways  
17 authorized by subsection (4), (4a), (5), or (6) of G.S. 14-269.1.

18 (c) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person  
19 to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a  
20 firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to  
21 purchase or carry concealed firearms if ordered by the court for so long as that  
22 protective order or any successive protective order entered against that person pursuant  
23 to this Chapter is in effect.

24 It is unlawful for any person subject to a protective order prohibiting the possession  
25 or purchase of firearms to fail to surrender all firearms, ammunition, permits to  
26 purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by  
27 the court, fail to disclose all information pertaining to the possession of firearms,  
28 ammunition, and permits to purchase and permits to carry concealed firearms as  
29 requested by the court, or provide false information to the court pertaining to any of  
30 these items.

31 Any defendant violating the provisions of this section shall be guilty of a Class H  
32 felony.

33 (d) Official Use Exemption. – This section shall not prohibit law enforcement  
34 and military employees from possessing or using firearms for official use only."

35 **SECTION 2.** G.S. 14-269.8 reads as rewritten:

36 **"§ 14-269.8. Purchase of firearms by person subject to domestic violence order**  
37 **prohibited.**

38 (a) ~~It~~In accordance with G.S. 50B-3.1, it is unlawful for any person to purchase  
39 ~~or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in~~  
40 ~~force and effect a domestic violence order issued pursuant to Chapter 50B of the~~  
41 ~~General Statutes, prohibiting the person from purchasing a firearm. own, possess,~~  
42 ~~purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as~~  
43 ~~defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry~~  
44 ~~concealed firearms if ordered by the court for so long as that protective order or any~~

1 successive protective order entered against that person pursuant to Chapter 50B of the  
2 General Statutes is in effect.

3 (b) Any person violating the provisions of this section shall be guilty of a Class H  
4 felony."

5 **SECTION 3.** This act is effective when it becomes law.