

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 919

Short Title: Homicide Prevention Act/Domestic Violence.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 3, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE SAFETY OF VICTIMS IN SERIOUS DOMESTIC
3 VIOLENCE CASES.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

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

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

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

24 The court shall inquire of the plaintiff the presence of, ownership of, or otherwise
25 access to firearms by the defendant, as well as ammunition, permits to purchase
26 firearms, and permits to carry concealed firearms, at the ex parte or emergency hearing
27 and include, whenever possible, identifying information regarding the description,
28 number, and location of firearms, ammunition, and permits in the order.

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

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

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

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

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

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

33 The defendant may request the return of any firearms, ammunition, or permits
34 surrendered by filing a motion with the court at the expiration of the current order and
35 not later than 90 days after the expiration of the current order. Upon receipt of the
36 motion, the court shall schedule a hearing and provide written notice to the plaintiff who
37 shall have the right to appear and be heard and to the sheriff who has control of the
38 firearms, ammunition, or permits. The court shall determine whether the defendant is
39 subject to any state or federal law or court order that precludes the defendant from
40 owning or possessing a firearm. The inquiry shall include: (i) whether the protective
41 order has been renewed; (ii) whether the defendant is subject to any other protective
42 orders; or (iii) whether the defendant is disqualified from owning or possessing a
43 firearm pursuant to 18 U.S.C. § 922 or any State law. The court shall deny the return of

1 firearms, ammunition, or permits if the court finds that the defendant is precluded from
2 owning or possessing a firearm pursuant to State or federal laws.

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

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

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

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

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

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

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

35 **"§ 14-269.8. Purchase of firearms by person subject to domestic violence order**
36 **prohibited.**

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