

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 919
Judiciary I Committee Substitute Adopted 4/28/03

Short Title: Homicide Prevention Act/Domestic Violence.

(Public)

Sponsors:

Referred to:

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) Required Surrender of Firearms. – Upon issuance of an emergency or ex
9 parte order pursuant to this Chapter, the court shall order the defendant to surrender to
10 the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and
11 permits to carry concealed firearms that are in the care, custody, possession, ownership,
12 or control of the 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 (b) Court Discretion. – If the court does not find any of the factors in subsection
20 (a) of this section, the court, in its discretion, may order the defendant to surrender to
21 the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and
22 permits to carry concealed firearms that are in the care, custody, possession, ownership,
23 or control of the defendant. For purposes of this section, the term 'firearm' is as defined
24 in G.S. 14-409.39(2).

25 (c) Ex parte or Emergency Hearing. – The court shall inquire of the plaintiff, at
26 the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to
27 firearms by the defendant, as well as ammunition, permits to purchase firearms, and
28 permits to carry concealed firearms, and include, whenever possible, identifying

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

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

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

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

24 (2) The sheriff may charge the defendant a reasonable fee for the storage
25 of any firearms and ammunition taken pursuant to a protective order.
26 The fees are payable to the sheriff. The sheriff shall transmit the
27 proceeds of these fees to the county finance officer. The fees shall be
28 used by the sheriff to pay the costs of administering this section and
29 for other law enforcement purposes. The county shall expend the
30 restricted funds for these purposes only. The sheriff shall not release
31 firearms, ammunition, or permits without a court order granting the
32 release. The defendant must remit all fees owed prior to the authorized
33 return of any firearms, ammunition, or permits. The sheriff shall not
34 incur any civil or criminal liability for alleged damage or deterioration
35 due to storage or transportation of any firearms or ammunition held
36 pursuant to this section.

37 (f) Retrieval. – If the court does not enter a protective order when the ex parte or
38 emergency order expires, the defendant may retrieve any weapons surrendered to the
39 sheriff unless the court determines that the defendant should not be allowed to retrieve
40 the weapons.

41 (g) Motion for Return. – The defendant may request the return of any firearms,
42 ammunition, or permits surrendered by filing a motion with the court at the expiration
43 of the current order and not later than 90 days after the expiration of the current order.
44 Upon receipt of the motion, the court shall schedule a hearing and provide written

1 notice to the plaintiff who shall have the right to appear and be heard and to the sheriff
2 who has control of the firearms, ammunition, or permits. The court shall determine
3 whether the defendant is subject to any State or federal law or court order that precludes
4 the defendant from owning or possessing a firearm. The inquiry shall include:

- 5 (1) Whether the protective order has been renewed;
- 6 (2) Whether the defendant is subject to any other protective orders; or
- 7 (3) Whether the defendant is disqualified from owning or possessing a
8 firearm pursuant to 18 U.S.C. § 922 or any State law.

9 The court shall deny the return of firearms, ammunition, or permits if the court finds
10 that the defendant is precluded from owning or possessing a firearm pursuant to State or
11 federal laws.

12 (h) Disposal of Firearms. – If the defendant does not file a motion requesting the
13 return of any firearms, ammunition, or permits surrendered within the time period
14 prescribed by this section, if the court determines that the defendant is precluded from
15 regaining possession of any firearms, ammunition, or permits surrendered, or if the
16 defendant fails to remit all fees owed for the storage of the firearms or ammunition
17 within 30 days of the entry of the order granting the return of the firearms, ammunition,
18 or permits, the sheriff who has control of the firearms, ammunition, or permits shall
19 give notice to the defendant and the sheriff shall apply to the court for an order of
20 disposition of the firearms, ammunition, or permits. The judge, after a hearing, may
21 order the disposition of the firearms, ammunition, or permits in one or more of the ways
22 authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff
23 does occur, any proceeds from the sale after deducting any costs associated with sale,
24 and in accordance with all applicable State and Federal law, shall be provided to the
25 defendant.

26 (i) It is unlawful for any person subject to a protective order prohibiting the
27 possession or purchase of firearms to:

- 28 (1) Fail to surrender all firearms, ammunition, permits to purchase
29 firearms, and permits to carry concealed firearms to the sheriff as
30 ordered by the court,
- 31 (2) Fail to disclose all information pertaining to the possession of firearms,
32 ammunition, and permits to purchase and permits to carry concealed
33 firearms as requested by the court, or
- 34 (3) Provide false information to the court pertaining to any of these items.

35 (j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person
36 to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a
37 firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to
38 purchase or carry concealed firearms if ordered by the court for so long as that
39 protective order or any successive protective order entered against that person pursuant
40 to this Chapter is in effect. Any defendant violating the provisions of this section shall
41 be guilty of a Class H felony.

42 (k) Official Use Exemption. – This section shall not prohibit law enforcement
43 and members of any branch of the United States armed forces, not otherwise prohibited
44 under federal law, from possessing or using firearms for official use only."

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

2 "**§ 14-269.8. Purchase of firearms by person subject to domestic violence order**
3 **prohibited.**

4 (a) ~~It~~In accordance with G.S. 50B-3.1, it is unlawful for any person to purchase
5 ~~or attempt to purchase any gun, rifle, pistol, or other firearm while there remains in~~
6 ~~force and effect a domestic violence order issued pursuant to Chapter 50B of the~~
7 ~~General Statutes, prohibiting the person from purchasing a firearm.~~ own, possess,
8 purchase, or receive or attempt to own, possess, purchase, or receive a firearm, as
9 defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry
10 concealed firearms if ordered by the court for so long as that protective order or any
11 successive protective order entered against that person pursuant to Chapter 50B of the
12 General Statutes is in effect.

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

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