

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 919  
Judiciary I Committee Substitute Adopted 4/28/03  
House Committee Substitute Favorable 6/11/03

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 or a  
14 pattern of prior conduct involving the use or threatened use of violence  
15 with a firearm against persons.

16 (2) Threats to seriously injure or kill the aggrieved party or minor child by  
17 the defendant.

18 (3) Threats to commit suicide by the defendant.

19 (4) Serious injuries inflicted upon the aggrieved party or minor child by  
20 the defendant.

21 (b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at  
22 the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to  
23 firearms by the defendant, as well as ammunition, permits to purchase firearms, and  
24 permits to carry concealed firearms, and include, whenever possible, identifying  
25 information regarding the description, number, and location of firearms, ammunition,  
26 and permits in the order.

27 (c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the  
28 defendant the presence of, ownership of, or otherwise access to firearms by the

1 defendant, as well as ammunition, permits to purchase firearms, and permits to carry  
2 concealed firearms, and include, whenever possible, identifying information regarding  
3 the description, number, and location of firearms, ammunition, and permits in the order.

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

12 (1) If the court orders the defendant to surrender firearms, ammunition,  
13 and permits, the court shall inform the plaintiff and the defendant of  
14 the terms of the protective order and include these terms on the face of  
15 the order, including that the defendant is prohibited from owning,  
16 possessing, purchasing, or receiving or attempting to own, possess,  
17 purchase, or receive a firearm for so long as the protective order or any  
18 successive protective order is in effect. The terms of the order shall  
19 include instructions as to how the defendant may request retrieval of  
20 any firearms, ammunition, and permits surrendered to the sheriff when  
21 the protective order is no longer in effect. The terms shall also include  
22 notice of the penalty for violation of G.S. 14-269.8.

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

36 (e) Retrieval. – If the court does not enter a protective order when the ex parte or  
37 emergency order expires, the defendant may retrieve any weapons surrendered to the  
38 sheriff unless the court finds that the defendant is precluded from owning or possessing  
39 a firearm pursuant to State or federal law.

40 (f) Motion for Return. – The defendant may request the return of any firearms,  
41 ammunition, or permits surrendered by filing a motion with the court at the expiration  
42 of the current order and not later than 90 days after the expiration of the current order.  
43 Upon receipt of the motion, the court shall schedule a hearing and provide written  
44 notice to the plaintiff who shall have the right to appear and be heard and to the sheriff

1 who has control of the firearms, ammunition, or permits. The court shall determine  
2 whether the defendant is subject to any State or federal law or court order that precludes  
3 the defendant from owning or possessing a firearm. The inquiry shall include:

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

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

11 (g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,  
12 ammunition, or permits who is otherwise eligible to possess such items may file a  
13 motion requesting the return to said third party of any such items in the possession of  
14 the sheriff seized as a result of the entry of a domestic violence protective order. The  
15 motion must be filed not later than 30 days after the seizure of the items by the sheriff.  
16 Upon receipt of the third party's motion, the court shall schedule a hearing and provide  
17 written notice to all parties and the sheriff. The court shall order return of the items to  
18 the third party unless the court determines that the third party is disqualified from  
19 owning or possessing said items pursuant to State or federal law. If the court denies the  
20 return of said items to the third party, the items shall be disposed of by the sheriff as  
21 provided in subsection (h) of this section.

22 (h) Disposal of Firearms. – If the defendant does not file a motion requesting the  
23 return of any firearms, ammunition, or permits surrendered within the time period  
24 prescribed by this section, if the court determines that the defendant is precluded from  
25 regaining possession of any firearms, ammunition, or permits surrendered, or if the  
26 defendant or third-party owner fails to remit all fees owed for the storage of the firearms  
27 or ammunition within 30 days of the entry of the order granting the return of the  
28 firearms, ammunition, or permits, the sheriff who has control of the firearms,  
29 ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to  
30 the court for an order of disposition of the firearms, ammunition, or permits. The judge,  
31 after a hearing, may order the disposition of the firearms, ammunition, or permits in one  
32 or more of the ways authorized by subdivision (4), (4a), (5), or (6) of G.S. 14-269.1. If a  
33 sale by the sheriff does occur, any proceeds from the sale after deducting any costs  
34 associated with the sale, and in accordance with all applicable State and federal law,  
35 shall be provided to the defendant, if requested by the defendant by motion made before  
36 the hearing or at the hearing and if ordered by the judge.

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

- 39 (1) Fail to surrender all firearms, ammunition, permits to purchase  
40 firearms, and permits to carry concealed firearms to the sheriff as  
41 ordered by the court;
- 42 (2) Fail to disclose all information pertaining to the possession of firearms,  
43 ammunition, and permits to purchase and permits to carry concealed  
44 firearms as requested by the court; or

1           (3) Provide false information to the court pertaining to any of these items.  
2       (j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person  
3 to own, possess, purchase, or receive or attempt to own, possess, purchase, or receive a  
4 firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to  
5 purchase or carry concealed firearms if ordered by the court for so long as that  
6 protective order or any successive protective order entered against that person pursuant  
7 to this Chapter is in effect. Any defendant violating the provisions of this section shall  
8 be guilty of a Class H felony.

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

12       (l) Nothing in this section is intended to limit the discretion of the court in  
13 granting additional relief as provided in other sections of this Chapter."

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

15       "**§ 14-269.8. Purchase or possession of firearms by person subject to domestic**  
16 **violence order prohibited.**

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

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

28       **SECTION 3.** This act becomes effective December 1, 2003, and applies to  
29 offenses committed on or after that date.