

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS85191-LU-66 (3/10)

Short Title: Clarify/Enhance Domestic Vio. & Tenancy Laws. (Public)

Sponsors: Senator Cowell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC
VIOLENCE AND TO ENACT LAWS REGARDING DOMESTIC VIOLENCE
VICTIMS AND TENANCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3 reads as rewritten:

"§ 50B-3. Relief.

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1),
~~may grant any~~ finds that an act of domestic violence has occurred, the court shall grant a
protective order ~~to bring about a cessation of acts of domestic violence. The orders~~
~~may~~ restraining the defendant from further acts of domestic violence. A protective order
may also be entered by consent of the parties. Except as otherwise provided by
subsection (b) of this section, orders entered upon the consent of the parties are not
required to contain findings of fact that an act of violence occurred. A protective order
may include any of the following types of relief:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;

- 1 (6) Order either party to make payments for the support of a minor child
2 as required by law;
 - 3 (7) Order either party to make payments for the support of a spouse as
4 required by law;
 - 5 (8) Provide for possession of personal property of the parties;
 - 6 (9) Order a party to refrain from doing any or all of the following:
7 a. Threatening, abusing, or following the other party,
8 b. Harassing the other party, including by telephone, visiting the
9 home or workplace, or other means, or
10 c. Otherwise interfering with the other party;
 - 11 (10) Award attorney's fees to either party;
 - 12 (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
 - 13 (12) Order any party the court finds is responsible for acts of domestic
14 violence to attend and complete an abuser treatment program if the
15 program is approved by the Domestic Violence Commission; and
 - 16 (13) Include any additional prohibitions or requirements the court deems
17 necessary to protect any party or any minor child.
- 18 (a1) Upon the request of either party at a hearing after notice or service of process,
19 the court shall consider and may award temporary custody of minor children and
20 establish temporary visitation rights as follows:
- 21 (1) In awarding custody or visitation rights, the court shall base its
22 decision on the best interest of the minor child with particular
23 consideration given to the safety of the minor child.
 - 24 (2) For purposes of determining custody and visitation issues, the court
25 shall consider:
 - 26 a. Whether the minor child was exposed to a substantial risk of
27 physical or emotional injury or sexual abuse.
 - 28 b. Whether the minor child was present during acts of domestic
29 violence.
 - 30 c. Whether a weapon was used or threatened to be used during any
31 act of domestic violence.
 - 32 d. Whether a party caused or attempted to cause serious bodily
33 injury to the aggrieved party or the minor child.
 - 34 e. Whether a party placed the aggrieved party or the minor child in
35 reasonable fear of imminent serious bodily injury.
 - 36 f. Whether a party caused an aggrieved party to engage
37 involuntarily in sexual relations by force, threat, or duress.
 - 38 g. Whether there is a pattern of abuse against an aggrieved party
39 or the minor child.
 - 40 h. Whether a party has abused or endangered the minor child
41 during visitation.
 - 42 i. Whether a party has used visitation as an opportunity to abuse
43 or harass the aggrieved party.

1 j. Whether a party has improperly concealed or detained the
2 minor child.

3 k. Whether a party has otherwise acted in a manner that is not in
4 the best interest of the minor child.

5 (3) If the court awards custody, the court shall also consider whether
6 visitation is in the best interest of the minor child. If ordering
7 visitation, the court shall provide for the safety and well-being of the
8 minor child and the safety of the aggrieved party. The court may
9 consider any of the following:

10 a. Ordering an exchange of the minor child to occur in a protected
11 setting or in the presence of an appropriate third party.

12 b. Ordering visitation supervised by an appropriate third party, or
13 at a supervised visitation center or other approved agency.

14 c. Ordering the noncustodial parent to attend and complete, to the
15 satisfaction of the court, an abuser treatment program as a
16 condition of visitation.

17 d. Ordering either or both parents to abstain from possession or
18 consumption of alcohol or controlled substances during the
19 visitation or for 24 hours preceding an exchange of the minor
20 child.

21 e. Ordering the noncustodial parent to pay the costs of supervised
22 visitation.

23 f. Prohibiting overnight visitation.

24 g. Requiring a bond from the noncustodial parent for the return
25 and safety of the minor child.

26 h. Ordering an investigation or appointment of a guardian ad litem
27 or attorney for the minor child.

28 i. Imposing any other condition that is deemed necessary to
29 provide for the safety and well-being of the minor child and the
30 safety of the aggrieved party.

31 If the court grants visitation, the order shall specify dates and times for
32 the visitation to take place or other specific parameters or conditions
33 that are appropriate. A person, supervised visitation center, or other
34 agency may be approved to supervise visitation after appearing in
35 court or filing an affidavit accepting that responsibility and
36 acknowledging accountability to the court.

37 (4) A temporary custody order entered pursuant to this Chapter shall be
38 without prejudice and shall be for a fixed period of time not to exceed
39 one year. Nothing in this section shall be construed to affect the right
40 of the parties to a de novo hearing under Chapter 50 of the General
41 Statutes. Any subsequent custody order entered under Chapter 50 of
42 the General Statutes supersedes a temporary order issued pursuant to
43 this Chapter.

1 (b) Protective orders entered pursuant to this Chapter shall be for a fixed period
2 of time not to exceed one year. The court may renew a protective order for a fixed
3 period of time not to exceed ~~one year~~, two years, including an order that previously has
4 been renewed, upon a motion by the aggrieved party filed before the expiration of the
5 current order; provided, however, that a temporary award of custody entered as part of a
6 protective order may not be renewed to extend a temporary award of custody beyond
7 the maximum one-year period. The court may renew a protective order for good cause.
8 The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the
9 current order is not required for an order to be renewed. Protective orders entered,
10 including consent orders, shall not be mutual in nature except where both parties file a
11 claim and the court makes detailed findings of fact indicating that both parties acted as
12 aggressors, that neither party acted primarily in self-defense, and that the right of each
13 party to due process is preserved.

14 (c) A copy of any order entered and filed under this Article shall be issued to
15 each party. In addition, a copy of the order shall be issued promptly to and retained by
16 the police department of the city of the victim's residence. If the victim does not reside
17 in a city or resides in a city with no police department, copies shall be issued promptly
18 to and retained by the sheriff, and the county police department, if any, of the county in
19 which the victim resides. If the defendant is ordered to stay away from the child's
20 school, a copy of the order shall be issued promptly to each school named in the order.

21 (d) The sheriff of the county where a domestic violence order is entered shall
22 provide for prompt entry of the order into the National Crime Information Center
23 registry and shall provide for access of such orders to magistrates on a 24-hour-a-day
24 basis. Modifications, terminations, renewals, and dismissals of the order shall also be
25 promptly entered."

26 **SECTION 2.** G.S. 50B-3.1(f) reads as rewritten:

27 "(f) Motion for Return. – The defendant may request the return of any firearms,
28 ammunition, or permits surrendered by filing a motion with the court at the expiration
29 of the current order or final disposition of any pending criminal charges and not later
30 than 90 days after the expiration of the current ~~order~~ order or final disposition of any
31 pending criminal charges. Upon receipt of the motion, the court shall schedule a hearing
32 and provide written notice to the plaintiff who shall have the right to appear and be
33 heard and to the sheriff who has control of the firearms, ammunition, or permits. The
34 court shall determine whether the defendant is subject to any State or federal law or
35 court order that precludes the defendant from owning or possessing a firearm. The
36 inquiry shall include:

- 37 (1) Whether the protective order has been ~~renewed~~; renewed.
- 38 (2) Whether the defendant is subject to any other protective ~~orders~~;
39 orders.
- 40 (3) Whether the defendant is disqualified from owning or possessing a
41 firearm pursuant to 18 U.S.C. § 922 or any State law.
- 42 (4) Whether the defendant has any pending criminal charges, in either
43 State or federal court, committed against a person with whom the
44 defendant has a personal relationship as defined in G.S. 50B-1(b).

1 The court shall deny the return of firearms, ammunition, or permits if the court finds
2 that the defendant is precluded from owning or possessing a firearm pursuant to State or
3 federal ~~law-law~~ or if the defendant has any pending criminal charges, in either State or
4 federal court, committed against a person with whom the defendant has a personal
5 relationship as defined in G.S. 50B-1(b) until the final disposition of those charges."

6 **SECTION 3.** G.S. 50B-3.1(g) reads as rewritten:

7 "(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,
8 ammunition, or permits who is otherwise eligible to possess such items may file a
9 motion requesting the return to said third party of any such items in the possession of
10 the sheriff seized as a result of the entry of a domestic violence protective order. The
11 motion must be filed not later than 30 days after the seizure of the items by the sheriff.
12 Upon receipt of the third party's motion, the court shall schedule a hearing and provide
13 written notice to all parties and the sheriff. The court shall order return of the items to
14 the third party unless the court determines that the third party is disqualified from
15 owning or possessing said items pursuant to State or federal ~~law-law~~ or the third party
16 has pending criminal charges, in either State or federal court, committed against a
17 person with whom the third party has a personal relationship as defined in
18 G.S. 50B-1(b). No firearms shall be returned while the criminal charges are pending. If
19 the court denies the return of said items to the third party, the items shall be disposed of
20 by the sheriff as provided in subsection (h) of this section."

21 **SECTION 4.** Article 5 of Chapter 42 of the General Statutes is amended by
22 adding the following new section to read:

23 "**§ 42-45.1. Early termination of rental agreement by victims of domestic violence,**
24 **sexual assault, or stalking.**

25 (a) Any tenant who is or has a household member who is a victim of domestic
26 violence, sexual assault, or stalking may terminate his or her rental agreement for a
27 dwelling unit by providing the landlord with a written notice of termination to be
28 effective on a date stated in the notice that is at least 14 days after the landlord's receipt
29 of the notice. The notice to the landlord shall be accompanied by either a copy of a valid
30 order of protection issued by a court pursuant to G.S. 50B-3 or any other court order
31 that restrains a person from contact with the tenant or a member of the tenant's
32 household or a copy of a police report regarding an act of domestic violence, sexual
33 assault, or stalking against the tenant or a minor member of the tenant's household.

34 Upon termination of a rental agreement under this section, the tenant is liable for the
35 rent due under the rental agreement prorated to the effective date of the termination and
36 payable at the time that would have been required by the terms of the rental agreement.
37 The tenant is not liable for any other rent or fees due to the early termination of the
38 tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or
39 more before occupancy, the tenant is not subject to any damages or penalties.

40 (b) The provisions of this section may not be waived or modified by agreement
41 of the parties."

42 **SECTION 5.** Article 5 of Chapter 42 of the General Statutes is amended by
43 adding the following new section to read:

44 "**§ 42-47. Victim protection.**

1 (a) A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to
2 enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based on:
3 (i) the tenant, applicant, or a household member's status as a victim of domestic
4 violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a
5 rental agreement under G.S. 42-45.1. Evidence of domestic violence, sexual assault, or
6 stalking may include any of the following:

7 (1) Law enforcement, court, or federal agency records or files.

8 (2) Documentation from a domestic violence or sexual assault program.

9 (3) Documentation from a religious, medical, or other professional.

10 (b) A tenant may give actual or written notice to the landlord that the tenant or a
11 member of the tenant's household is a victim of domestic violence, sexual assault, or
12 stalking and may request that the locks to the dwelling unit be changed. A tenant is not
13 required to provide verification of the domestic violence, sexual assault, or stalking to
14 initiate the changing of the locks.

15 (c) A landlord who receives a request under subsection (b) of this section shall
16 promptly change the locks to the tenant's dwelling unit at the tenant's expense or give
17 the tenant permission to change the locks. If a landlord fails to promptly act, the tenant
18 may change the locks without the landlord's permission. If the tenant changes the locks,
19 the tenant shall give a key to the new locks to the landlord.

20 (d) If the perpetrator of the domestic violence, sexual assault, or stalking is a
21 tenant in the same dwelling unit as the victim, the following shall apply:

22 (1) Before the landlord or tenant changes the locks under this section, the
23 tenant must provide the landlord with a copy of an order issued by a
24 court pursuant to G.S. 50B-3 that orders the perpetrator to move out of
25 the dwelling.

26 (2) The landlord has no duty under the rental agreement or by law to allow
27 the perpetrator access to the dwelling unit, to provide keys to the
28 perpetrator during the time the court order is in effect or after
29 expiration of the court order, or to provide the perpetrator access to the
30 perpetrator's personal property within the dwelling unit. If a landlord
31 complies with this section completely and in good faith, the landlord is
32 not liable to a perpetrator excluded from the dwelling unit.

33 (3) The perpetrator is jointly liable with any other tenant of the dwelling
34 unit for rent or damages to the dwelling unit incurred before the date
35 the perpetrator was excluded from the dwelling unit. Nothing in this
36 subdivision is intended to limit the perpetrator's liability for damages
37 the perpetrator causes after the perpetrator is excluded from the
38 dwelling unit.

39 (4) Except as provided in subsection (c) of this section, the landlord shall
40 not require the tenant to pay rent above the agreed upon rent or an
41 additional deposit or fee as a result of the perpetrator's exclusion from
42 the dwelling unit."

43 **SECTION 6.** G.S. 157-29(b) is amended by adding the following new
44 subdivision to read:

1 "(b) In the operation or management of housing projects, or portions of projects,
2 for persons of low income, an authority shall at all times observe the following duties
3 with respect to rentals and tenant selection:

4 ...
5 (3) In the administration of its waiting lists, it shall adopt a preference for
6 applicants who are homeless or who have been or will be involuntarily
7 displaced because the applicant is a victim of domestic violence,
8 sexual assault, stalking, a natural disaster, or government action.
9 Evidence of domestic violence, sexual assault, or stalking shall
10 include: (i) law enforcement, court, or federal agency records or files;
11 (ii) documentation from a domestic violence or sexual assault
12 program; or (iii) documentation from a religious, medical, or other
13 professional. An authority shall take applications on a continuous basis
14 from persons meeting a preference and shall not close the application
15 process to these persons. This subdivision shall in no way limit an
16 authority from adopting additional local preferences."

17 **SECTION 7.** This act is effective when it becomes law.