

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 402

Judiciary I/Constitution Committee Substitute Adopted 5/9/95

Third Edition Engrossed 5/10/95

House Committee Substitute Favorable 6/14/95

House Committee Substitute #2 Favorable 7/20/95

Short Title: No Firearm/Domestic Violence Order.

(Public)

Sponsors:

Referred to:

March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE DOMESTIC VIOLENCE LAWS.

The General Assembly of North Carolina enacts:

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

"§ 50B-3. Relief.

(a) The court may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse 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;
- (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 as
2 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 harassing or interfering with the other; ~~and~~
- 7 (10) Award costs and attorney's fees to either ~~party-party~~;
- 8 (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- 9 (12) Order any party the court finds is responsible for acts of domestic
10 violence to attend and complete an abuser treatment program if the
11 program is available within a reasonable distance of that party's
12 residence and is approved by the Department of Administration; and
- 13 (13) Include any additional prohibitions or requirements the court deems
14 necessary to protect any party or any minor child.

15 (b) Protective orders entered or consent orders approved pursuant to this Chapter
16 shall be for a fixed period of time not to exceed one year.

17 (c) A copy of any order entered and filed under this Article shall be issued to each
18 party. In addition, a copy of the order shall be issued to and retained by the police
19 department of the city of the victim's residence. If the victim does not reside in a city or
20 resides in a city with no police department, copies shall be issued to and retained by the
21 sheriff, and the county police department, if any, of the county in which the victim
22 resides.

23 (d) The sheriff of the county where a domestic violence order is entered shall
24 provide for immediate entry of the order onto the Division of Criminal Information
25 Network and shall provide for access of such orders to magistrates on a 24-hour-a-day
26 basis. Modifications of the order shall also be entered."

27 Sec. 2. Article 35 of Chapter 14 of the General Statutes is amended by adding
28 a new section to read:

29 **"§ 14-269.8. Purchase of firearms by person subject to domestic violence order**
30 **prohibited.**

31 (a) It is unlawful for any person to purchase or attempt to purchase any gun, rifle,
32 pistol, or other firearm while there remains in force and effect a domestic violence order
33 issued pursuant to Chapter 50B of the General Statutes, prohibiting the person from
34 purchasing a firearm.

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

37 Sec. 3. G.S. 15A-534.1 reads as rewritten:

38 **"§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

39 (a) In all cases in which the defendant is charged with assault on or
40 communicating a threat to a spouse or former spouse or a person with whom the
41 defendant lives or has lived as if married, with domestic criminal trespass, or with
42 violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General
43 Statutes, the judicial official who determines the conditions of pretrial release shall be a

1 judge, and the following provisions shall apply in addition to the provisions of G.S. 15A-
2 534:

3 (1) Upon a determination by the ~~judicial official~~ judge that the immediate
4 release of the defendant will pose a danger of injury to the alleged
5 victim or to any other person or is likely to result in intimidation of the
6 alleged victim and upon a determination that the execution of an
7 appearance bond as required by G.S. 15A-534 will not reasonably
8 assure that such injury or intimidation will not occur, a ~~judicial official~~
9 judge may retain the defendant in custody for a reasonable period of
10 time while determining the conditions of pretrial release.

11 (2) A ~~judicial official~~ judge may impose the following conditions on pretrial
12 release:

- 13 a. That the defendant stay away from the home, school, business or
14 place of employment of the alleged victim;
15 b. That the defendant refrain from assaulting, beating, molesting, or
16 wounding the alleged victim;
17 c. That the defendant refrain from removing, damaging or injuring
18 specifically identified property;
19 d. That the defendant may visit his or her child or children at times
20 and places provided by the terms of any existing order entered by
21 a judge.

22 The conditions set forth above may be imposed in addition to requiring
23 that the defendant execute a secured appearance bond.

24 (3) Should the defendant be mentally ill and dangerous to himself or others
25 or a substance abuser and dangerous to himself or others, the provisions
26 of Article 5 of Chapter 122C of the General Statutes shall apply.

27 (b) A defendant may be retained in custody not more than 48 hours from the time
28 of arrest without a determination being made under this section by a judge. If a judge has
29 not acted pursuant to this section within 48 hours of arrest, the magistrate shall act under
30 the provisions of this section."

31 Sec. 4. The provisions of G.S. 50B-3(a)(12) as established in this act become
32 effective October 1, 1996. Section 6 of this act is effective upon ratification. The
33 remainder of this act becomes effective October 1, 1995, and applies to offenses
34 committed on or after that date.