

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**HOUSE BILL 1354**

Short Title: Strengthen Domestic Violence Laws. (Public)

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Sponsors: Representatives McLawhorn, Sherrill (Primary Sponsors); Adams, Alexander, L. Allen, Bordsen, Bowie, Carney, Coates, Crawford, Cunningham, Dickson, Farmer-Butterfield, Fisher, Frye, Gibson, Glazier, Goforth, Howard, Insko, Jeffus, Justice, Luebke, McAllister, Moore, Parmon, Pate, Rapp, Rayfield, Ross, Stam, Stiller, Wainwright, Warren, Weiss, and K. Williams.

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Referred to: Rules, Calendar, and Operations of the House.

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May 11, 2004

A BILL TO BE ENTITLED

1  
2 AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO  
3 PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS,  
4 AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE  
5 SELECT COMMITTEE ON DOMESTIC VIOLENCE.

6 The General Assembly of North Carolina enacts:

7 **PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT**

8 **SECTION 1.1.** G.S. 15A-1343 reads as rewritten:

9 **"§ 15A-1343. Conditions of probation.**

10 (a) In General. – The court may impose conditions of probation reasonably  
11 necessary to insure that the defendant will lead a law-abiding life or to assist him to do  
12 so.

13 (b) Regular Conditions. – As regular conditions of probation, a defendant must:

14 (1) Commit no criminal offense in any jurisdiction.

15 (2) Remain within the jurisdiction of the court unless granted written  
16 permission to leave by the court or his probation officer.

17 (3) Report as directed by the court or his probation officer to the officer at  
18 reasonable times and places and in a reasonable manner, permit the  
19 officer to visit him at reasonable times, answer all reasonable inquiries  
20 by the officer and obtain prior approval from the officer for, and notify  
21 the officer of, any change in address or employment.

22 (4) Satisfy child support and other family obligations as required by the  
23 court. If the court requires the payment of child support, the amount of  
24 the payments shall be determined as provided in G.S. 50-13.4(c).

- 1 (5) Possess no firearm, explosive device or other deadly weapon listed in  
2 G.S. 14-269 without the written permission of the court.
- 3 (6) Pay a supervision fee as specified in subsection (c1).
- 4 (7) Remain gainfully and suitably employed or faithfully pursue a course  
5 of study or of vocational training that will equip him for suitable  
6 employment. A defendant pursuing a course of study or of vocational  
7 training shall abide by all of the rules of the institution providing the  
8 education or training, and the probation officer shall forward a copy of  
9 the probation judgment to that institution and request to be notified of  
10 any violations of institutional rules by the defendant.
- 11 (8) Notify the probation officer if he fails to obtain or retain satisfactory  
12 employment.
- 13 (9) Pay the costs of court, any fine ordered by the court, and make  
14 restitution or reparation as provided in subsection (d).
- 15 (10) Pay the State of North Carolina for the costs of appointed counsel,  
16 public defender, or appellate defender to represent him in the case(s)  
17 for which he was placed on probation.
- 18 (11) At a time to be designated by his probation officer, visit with his  
19 probation officer a facility maintained by the Division of Prisons.
- 20 (12) Attend and complete an abuser treatment program if (i) the court finds  
21 the defendant is responsible for acts of domestic violence and (ii) there  
22 is a program, approved by the Domestic Violence Commission,  
23 reasonably available to the defendant, unless the court finds that such  
24 would not be in the best interests of justice.

25 In addition to these regular conditions of probation, a defendant required to serve an  
26 active term of imprisonment as a condition of special probation pursuant to  
27 G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of  
28 probation, obey the rules and regulations of the Department of Correction governing the  
29 conduct of inmates while imprisoned and report to a probation officer in the State of  
30 North Carolina within 72 hours of his discharge from the active term of imprisonment.

31 Regular conditions of probation apply to each defendant placed on supervised  
32 probation unless the presiding judge specifically exempts the defendant from one or  
33 more of the conditions in open court and in the judgment of the court. It is not necessary  
34 for the presiding judge to state each regular condition of probation in open court, but the  
35 conditions must be set forth in the judgment of the court.

36 Defendants placed on unsupervised probation are subject to the provisions of this  
37 subsection, except that defendants placed on unsupervised probation are not subject to  
38 the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

39 (b1) Special Conditions. – In addition to the regular conditions of probation  
40 specified in subsection (b), the court may, as a condition of probation, require that  
41 during the probation the defendant comply with one or more of the following special  
42 conditions:

- 43 (1) Undergo available medical or psychiatric treatment and remain in a  
44 specified institution if required for that purpose.

- 1           (2)    Attend or reside in a facility providing rehabilitation, counseling,  
2           treatment, social skills, or employment training, instruction, recreation,  
3           or residence for persons on probation.
- 4           (2a)   Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August  
5           15, 2002.
- 6           (2b)   Participate in and successfully complete a Drug Treatment Court  
7           Program pursuant to Article 62 of Chapter 7A of the General Statutes.
- 8           (3)    Submit to imprisonment required for special probation under  
9           G.S. 15A-1351(a) or G.S. 15A-1344(e).
- 10          (3a)   Repealed by Session Laws 1997-57, s. 3.
- 11          (3b)   Submit to supervision by officers assigned to the Intensive Supervision  
12          Program established pursuant to G.S. 143B-262(c), and abide by the  
13          rules adopted for that Program. Unless otherwise ordered by the court,  
14          intensive supervision also requires multiple contacts by a probation  
15          officer per week, a specific period each day during which the offender  
16          must be at his or her residence, and that the offender remain gainfully  
17          and suitably employed or faithfully pursue a course of study or of  
18          vocational training that will equip the offender for suitable  
19          employment.
- 20          (3c)   Remain at his or her residence unless the court or the probation officer  
21          authorizes the offender to leave for the purpose of employment,  
22          counseling, a course of study, or vocational training. The offender  
23          shall be required to wear a device which permits the supervising  
24          agency to monitor the offender's compliance with the condition  
25          electronically.
- 26          (4)    Surrender his or her driver's license to the clerk of superior court, and  
27          not operate a motor vehicle for a period specified by the court.
- 28          (5)    Compensate the Department of Environment and Natural Resources or  
29          the North Carolina Wildlife Resources Commission, as the case may  
30          be, for the replacement costs of any marine and estuarine resources or  
31          any wildlife resources which were taken, injured, removed, harmfully  
32          altered, damaged or destroyed as a result of a criminal offense of  
33          which the defendant was convicted. If any investigation is required by  
34          officers or agents of the Department of Environment and Natural  
35          Resources or the Wildlife Resources Commission in determining the  
36          extent of the destruction of resources involved, the court may include  
37          compensation of the agency for investigative costs as a condition of  
38          probation. This subdivision does not apply in any case governed by  
39          G.S. 143-215.3(a)(7).
- 40          (6)    Perform community or reparation service and pay any fee required by  
41          law or ordered by the court for participation in the community or  
42          reparation service program.
- 43          (7)    Submit at reasonable times to warrantless searches by a probation  
44          officer of his or her person and of his or her vehicle and premises

1 while the probationer is present, for purposes specified by the court  
2 and reasonably related to his or her probation supervision, but the  
3 probationer may not be required to submit to any other search that  
4 would otherwise be unlawful. Whenever the warrantless search  
5 consists of testing for the presence of illegal drugs, the probationer  
6 may also be required to reimburse the Department of Correction for  
7 the actual cost of drug screening and drug testing, if the results are  
8 positive.

9 (8) Not use, possess, or control any illegal drug or controlled substance  
10 unless it has been prescribed for him or her by a licensed physician and  
11 is in the original container with the prescription number affixed on it;  
12 not knowingly associate with any known or previously convicted  
13 users, possessors or sellers of any such illegal drugs or controlled  
14 substances; and not knowingly be present at or frequent any place  
15 where such illegal drugs or controlled substances are sold, kept, or  
16 used.

17 (8a) Purchase the least expensive annual statewide license or combination  
18 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,  
19 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to  
20 engage lawfully in the specific activity or activities in which the  
21 defendant was engaged and which constitute the basis of the offense or  
22 offenses of which he was convicted.

23 (9) If the offense is one in which there is evidence of physical, mental or  
24 sexual abuse of a minor, the court should encourage the minor and the  
25 minor's parents or custodians to participate in rehabilitative treatment  
26 and may order the defendant to pay the cost of such treatment.

27 ~~(9a) Attend and complete an abuser treatment program if (i) the court finds~~  
28 ~~the defendant is responsible for acts of domestic violence and (ii) the~~  
29 ~~program is approved by the Domestic Violence Commission.~~

30 (10) Satisfy any other conditions determined by the court to be reasonably  
31 related to his rehabilitation.

32 (b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of  
33 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special  
34 conditions of probation, a defendant who has been convicted of an offense which is a  
35 reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical,  
36 mental, or sexual abuse of a minor, must:

37 (1) Register as required by G.S. 14-208.7 if the offense is a reportable  
38 conviction as defined by G.S. 14-208.6(4).

39 (2) Participate in such evaluation and treatment as is necessary to  
40 complete a prescribed course of psychiatric, psychological, or other  
41 rehabilitative treatment as ordered by the court.

42 (3) Not communicate with, be in the presence of, or found in or on the  
43 premises of the victim of the offense.

- 1           (4) Not reside in a household with any minor child if the offense is one in  
2           which there is evidence of sexual abuse of a minor.
- 3           (5) Not reside in a household with any minor child if the offense is one in  
4           which there is evidence of physical or mental abuse of a minor, unless  
5           the court expressly finds that it is unlikely that the defendant's harmful  
6           or abusive conduct will recur and that it would be in the minor child's  
7           best interest to allow the probationer to reside in the same household  
8           with a minor child.
- 9           (6) Satisfy any other conditions determined by the court to be reasonably  
10          related to his rehabilitation.

11          Defendants subject to the provisions of this subsection shall not be placed on  
12          unsupervised probation.

13          (b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to  
14          submit to a period of residential treatment in the Drug Alcohol Recovery Treatment  
15          program (DART) operated by the Department of Correction must undergo a screening  
16          to determine chemical dependency. If the screening indicates the defendant is  
17          chemically dependent, the court shall order an assessment to determine the appropriate  
18          level of treatment. The assessment may be conducted either before or after the court  
19          imposes the condition, but participation in the program shall be based on the results of  
20          the assessment.

21          (c) Statement of Conditions. – A defendant released on supervised probation  
22          must be given a written statement explicitly setting forth the conditions on which he is  
23          being released. If any modification of the terms of that probation is subsequently made,  
24          he must be given a written statement setting forth the modifications.

25          (c1) Supervision Fee. – Any person placed on supervised probation pursuant to  
26          subsection (a) of this section shall pay a supervision fee of thirty dollars (\$30.00) per  
27          month, unless exempted by the court. The court may exempt a person from paying the  
28          fee only for good cause and upon written motion of the person placed on supervised  
29          probation. No person shall be required to pay more than one supervision fee per month.  
30          The court may require that the fee be paid in advance or in a lump sum or sums, and a  
31          probation officer may require payment by such methods if he is authorized by  
32          subsection (g) to determine the payment schedule. Supervision fees must be paid to the  
33          clerk of court for the county in which the judgment was entered or the deferred  
34          prosecution agreement was filed. Fees collected under this subsection shall be  
35          transmitted to the State for deposit into the State's General Fund.

36          (d) Restitution as a Condition of Probation. – As a condition of probation, a  
37          defendant may be required to make restitution or reparation to an aggrieved party or  
38          parties who shall be named by the court for the damage or loss caused by the defendant  
39          arising out of the offense or offenses committed by the defendant. When restitution or  
40          reparation is a condition imposed, the court shall take into consideration the factors set  
41          out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall  
42          include but not be limited to the performing of community services, volunteer work, or  
43          doing such other acts or things as shall aid the defendant in his rehabilitation. As used  
44          herein "aggrieved party" includes individuals, firms, corporations, associations, other

1 organizations, and government agencies, whether federal, State or local, including the  
2 Crime Victims Compensation Fund established by G.S. 15B-23. A government agency  
3 may benefit by way of reparation even though the agency was not a party to the crime  
4 provided that when reparation is ordered, community service work shall be rendered  
5 only after approval has been granted by the owner or person in charge of the property or  
6 premises where the work will be done.

7 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are  
8 extenuating circumstances, any person placed upon supervised or unsupervised  
9 probation under the terms set forth by the court shall, as a condition of probation, be  
10 required to pay all court costs and costs for appointed counsel or public defender in the  
11 case in which he was convicted. The cost of appointed counsel or public defender  
12 services shall be determined in accordance with rules adopted by the Office of Indigent  
13 Defense Services. The court shall determine the amount of those costs to be repaid and  
14 the method of payment.

15 (f) Repealed by Session Laws 1983, c. 561, s. 5.

16 (g) Probation Officer May Determine Payment Schedules. – If a person placed on  
17 supervised probation is required as a condition of that probation to pay any moneys to  
18 the clerk of superior court, the court may delegate to a probation officer the  
19 responsibility to determine the payment schedule. The court may also authorize the  
20 probation officer to transfer the person to unsupervised probation after all the moneys  
21 are paid to the clerk. If the probation officer transfers a person to unsupervised  
22 probation, he must notify the clerk of that action."

23 **SECTION 1.2.** G.S. 143B-262 is amended by adding a new subsection to  
24 read:

25 "(e) The Department, in consultation with the Domestic Violence Commission,  
26 and in accordance with established best practices, shall establish a domestic violence  
27 treatment program for offenders sentenced to a term of imprisonment in the custody of  
28 the Department and whose official record includes a finding by the court that the  
29 offender committed acts of domestic violence.

30 The Department shall ensure that inmates, whose record includes a finding by the  
31 court that the offender committed acts of domestic violence, complete the domestic  
32 violence treatment program prior to the completion of the period of incarceration, unless  
33 other requirements, deemed critical by the Department, prevent program completion. In  
34 the event an inmate does not complete the program during the period of incarceration,  
35 the Department shall document, in the inmate's official record, specific reasons why that  
36 particular inmate did not or was not able to complete the program."

37 **SECTION 1.3.** This part becomes effective December 1, 2004, and applies  
38 to offenses committed on or after that date.

## 39 **PART II. DOMESTIC VIOLENCE TRAINING FOR LAW ENFORCEMENT**

40 **SECTION 2.1.** G.S. 17C-6(a)(2) reads as rewritten:

41 "(a) In addition to powers conferred upon the Commission elsewhere in this  
42 Chapter, the Commission shall have the following powers, which shall be enforceable  
43 through its rules and regulations, certification procedures, or the provisions of  
44 G.S. 17C-10:

1 ...

- 2 (2) Establish minimum educational and training standards that must be  
3 met in order to qualify for entry level employment and retention as a  
4 criminal justice officer in temporary or probationary status or in a  
5 permanent position. The standards for entry level employment shall  
6 include at least 16 hours of education and training in response to, and  
7 investigation of, domestic violence cases. The training shall include  
8 investigation for evidence based prosecutions."

9 **SECTION 2.2.** The North Carolina Criminal Justice Education and Training  
10 Standards Commission shall ensure that the domestic violence education and training  
11 required by Section 2.1 of this part is incorporated into all Basic Law Enforcement  
12 Training (BLET) courses as soon as practicable. However, the domestic violence  
13 education and training shall be part of the required BLET curriculum no later than  
14 January 1, 2005.

15 **SECTION 2.3.** G.S. 17C-6(a)(14) reads as rewritten:

16 "(a) In addition to powers conferred upon the Commission elsewhere in this  
17 Chapter, the Commission shall have the following powers, which shall be enforceable  
18 through its rules and regulations, certification procedures, or the provisions of  
19 G.S. 17C-10:

20 ...

- 21 (14) Establish minimum standards for in-service training for criminal  
22 justice officers. In-service training standards shall include a minimum  
23 of two hours, every two years, of training in response to, and  
24 investigation of, domestic violence cases. The training shall include  
25 investigation for-evidence based prosecutions."

26 **SECTION 2.4.** The North Carolina Criminal Justice Education and Training  
27 Standards Commission shall ensure that the domestic violence in-service training  
28 required by Section 2.3 of this part is available no later than January 1, 2005. Criminal  
29 Justice Officers already certified prior to January 1, 2005, shall have until December 31,  
30 2006, to complete the initial requirement for domestic violence in-service training  
31 required by Section 2.3 of this part.

32 **SECTION 2.5.** G.S. 17C-6(a) is amended by adding a new subdivision to  
33 read:

- 34 "(15) Establish minimum standards and levels of training for certification of  
35 instructors for the domestic violence training required by subdivisions  
36 (2) and (14) of this subsection."

37 **SECTION 2.6.** The North Carolina Criminal Justice Education and Training  
38 Standards Commission shall ensure that the standards and training required for  
39 certification under Section 2.5 of this part are implemented no later than January 1,  
40 2005.

41 **SECTION 2.7.** G.S. 17E-4(a)(2) reads as rewritten:

42 "(a) The Commission shall have the following powers, duties, and responsibilities,  
43 which are enforceable through its rules and regulations, certification procedures, or the  
44 provisions of G.S. 17E-8 and G.S. 17E-9:

1 ...  
2 (2) Establish minimum educational and training standards that may be met  
3 in order to qualify for entry level employment as an officer in  
4 temporary or probationary status or in a permanent ~~position~~; position.  
5 The standards for entry level employment of officers shall include at  
6 least 16 hours of training in response to, and investigation of, domestic  
7 violence cases. The training shall include investigation for evidence  
8 based prosecutions. For purposes of the domestic violence training  
9 requirement, the term 'officers' shall include justice officers as defined  
10 in G.S. 17E-2(3)a., except that the term shall not include 'special  
11 deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

12 **SECTION 2.8.** The North Carolina Sheriffs' Education and Training  
13 Standards Commission shall ensure that the domestic violence education and training  
14 required by Section 2.7 of this part is incorporated into all Basic Law Enforcement  
15 Training (BLET) courses as soon as practicable. However, the domestic violence  
16 education and training shall be part of the required BLET curriculum no later than  
17 January 1, 2005.

18 **SECTION 2.9.** G.S. 17E-4(a)(10) reads as rewritten:

19 "(10) Enter into contracts incident to the administration of its authority  
20 pursuant to this ~~Chapter~~.Chapter;".

21 **SECTION 2.10.** G.S. 17E-4(a) is amended by adding a new subdivision to  
22 read:

23 "(11) Establish minimum standards for in-service training for justice  
24 officers. In-service training standards shall include a minimum of two  
25 hours, every two years, of training in response to, and investigation of,  
26 domestic violence cases. The training shall include investigation for  
27 evidence based prosecutions. For purposes of the domestic violence  
28 training requirement, the term 'justice officer' shall include those  
29 defined in G.S. 17E-2(3)a., except that the term shall not include  
30 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

31 **SECTION 2.11.** The North Carolina Sheriffs' Education and Training  
32 Standards Commission shall ensure that the domestic violence in-service training  
33 required by Section 2.9 of this part is available no later than January 1, 2005. Justice  
34 Officers already certified prior to January 1, 2005, shall have until December 31, 2006  
35 to complete the initial requirement for domestic violence in-service training required by  
36 Section 2.9 of this part.

37 **SECTION 2.12.** G.S. 17E-4(a) is amended by adding a new subdivision to  
38 read:

39 "(12) Establish minimum standards and levels of training for certification of  
40 instructors for the domestic violence training required by subdivisions  
41 (2) and (11) of this subsection."

42 **SECTION 2.13.** The North Carolina Sheriffs' Education and Training  
43 Standards Commission shall ensure that the standards and training required for



1 certification under Section 2.11 of this part are implemented no later than January 1,  
2 2005.

3 **SECTION 2.14.** This part is effective when it becomes law.

4 **PART III. STUDY OF ANTI-VIOLENCE EDUCATION IN SCHOOLS AND**  
5 **TRAINING FOR SCHOOL PERSONNEL**

6 **SECTION 3.1.** The North Carolina Department of Public Instruction, in  
7 collaboration with the State Board of Education, shall study the issue of anti-violence  
8 programs in the schools. In studying this issue, the Department shall answer the  
9 following:

- 10 (1) How are schools currently addressing anti-violence in their  
11 curriculum;
- 12 (2) How do current curriculums vary at each grade level, K-12;
- 13 (3) Do currently used curriculums address physical violence and mental or  
14 verbal abuse, particularly instances of domestic and relationship  
15 violence;
- 16 (4) Should the State require every public school to have an anti-violence  
17 program of instruction incorporated into the curriculum;
- 18 (5) Should an anti-violence program be required at every grade level;
- 19 (6) What would be an appropriate curriculum for each grade level;
- 20 (7) What minimum requirements should be present in an appropriate  
21 curriculum to ensure that the curriculum addresses physical violence,  
22 mental or verbal abuse, and domestic and relationship violence;
- 23 (8) Should the State implement a particular anti-violence curriculum or  
24 allow individual schools to choose an appropriate curriculum from an  
25 approved list;
- 26 (9) What is the fiscal impact of implementing an anti-violence program  
27 for all schools, including additional staffing needs, if any.

28 In studying this issue, the Department shall examine some of the  
29 anti-violence programs that are in use through out the country. In addition to any other  
30 specific programs examined, the Department shall review in detail the "Second Step"  
31 program developed by the Committee for Children.

32 The Department shall make a preliminary report to the House Select  
33 Committee on Domestic Violence and to the Joint Legislative Education Oversight  
34 Committee no later than October 1, 2004, and a final report to the General Assembly on  
35 or before January 15, 2005.

36 **SECTION 3.2.** The North Carolina Department of Public Instruction, in  
37 collaboration with the State Board of Education, shall study training for school  
38 personnel dealing with students who are victims of physical violence and mental or  
39 verbal abuse, particularly instances of domestic violence and relationship violence. In  
40 studying this issue, the Department shall answer the following:

- 41 (1) What type of training is currently available and/or required for school  
42 personnel.
- 43 (2) Should training be required for school personnel.

- 1 (3) If training should be required, which school personnel should be  
2 required to receive the training.  
3 (4) What type of training should be required.  
4 (5) What is the fiscal impact of requiring school personnel to receive such  
5 training.

6 The Department shall make a preliminary report to the House Select  
7 Committee on Domestic Violence and to the Joint Legislative Education Oversight  
8 Committee no later than October 1, 2004, and a final report to the General Assembly on  
9 or before January 15, 2005.

10 **SECTION 3.3.** This part is effective when it becomes law.

11 **PART IV. LEGAL SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE**

12 **SECTION 4.1.** Chapter 7A of the General Statutes is amended by adding a  
13 new Article to read:

14 "Article 37B.

15 "Domestic Violence Victim Assistance Act.

16 **"§ 7A-474.6. Legislative findings and purpose.**

17 The General Assembly of North Carolina declares it to be its purpose to provide  
18 access to legal representation for domestic violence victims in certain kinds of civil  
19 matters. The General Assembly finds that such representation can best be provided in an  
20 efficient, effective, and economic manner through established legal services programs in  
21 this State.

22 **"§ 7A-474.7. Definitions.**

23 The following definitions shall apply throughout this Article, unless the context  
24 otherwise requires:

- 25 (1) "Domestic violence victim" means a resident of North Carolina that  
26 has been subjected to acts of domestic violence as defined in  
27 G.S. 50B-1. A resident is not required to seek a protective order under  
28 Chapter 50B of the General Statutes to qualify as a domestic violence  
29 victim under this Article.
- 30 (2) "Legal assistance" means the provision of any legal services, as  
31 defined by Chapter 84 of the General Statutes, consistent with this  
32 Article. Provided, that all legal services provided hereunder shall be  
33 performed consistently with the Rules of Professional Conduct  
34 promulgated by the North Carolina State Bar. Provided, further, that  
35 no funds appropriated under this Article shall be used for lobbying to  
36 influence the passage or defeat of any legislation before any municipal,  
37 county, state, or national legislative body.
- 38 (3) "Established legal services program" means the following  
39 not-for-profit corporations using State funds to serve the counties  
40 listed: Legal Aid Society of Northwest North Carolina, serving Davie,  
41 Forsyth, Iredell, Stokes, Surry, and Yadkin Counties; Pisgah Legal  
42 Services, serving Buncombe, Henderson, Madison, Polk, Rutherford,  
43 and Transylvania Counties; and Legal Aid of North Carolina; or any  
44 successor entity or entities of the named organizations, or, should any

1                   of the named organizations dissolve, the entity or entities providing  
2                   substantially the same services in substantially the same service area.

3 **"§ 7A-474.8. Eligible activities and limitations.**

4       (a) Eligible Activities. – Funds appropriated under this Article shall be used only  
5 for the following purposes:

6           (1) To provide legal assistance to domestic violence victims;

7           (2) To provide education to domestic violence victims regarding their  
8 rights and duties under the law;

9           (3) To involve the private bar in the representation of domestic violence  
10 victims pursuant to this Article.

11       (b) Eligible Cases. – The funds shall be prioritized by each legal services  
12 program to serve the greatest number of eligible clients, with emphasis placed on  
13 representation of clients needing legal assistance with proceedings pursuant to Chapter  
14 50B of the General Statutes. Legal assistance shall be provided to eligible clients under  
15 this Article only in the following types of cases:

16           (1) Actions for protective orders issued pursuant to Chapter 50B of the  
17 General Statutes;

18           (2) Child custody and visitation issues; and

19           (3) Legal services which ensure the safety of the client and the client's  
20 children.

21       (c) Limitations. – No funds appropriated under this Article shall be used for any  
22 of the following purposes:

23           (1) To provide legal assistance with respect to any criminal proceeding; or

24           (2) To provide legal assistance to any prisoner within the North Carolina  
25 Department of Correction with regard to the terms of that person's  
26 incarceration.

27 **"§ 7A-474.9. Funds.**

28       Funds to provide representation pursuant to this Article shall be provided to the  
29 North Carolina State Bar for provision of direct services by and support of the  
30 established legal services programs. The North Carolina State Bar shall allocate these  
31 funds directly to each of the established legal services programs with Pisgah Legal  
32 Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford,  
33 and Transylvania Counties, and Legal Aid Society of Northwest North Carolina  
34 receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties.  
35 Funds shall be allocated to each program based on the counties served by that program  
36 using the following formula:

37           (1) Twenty percent (20%) based on a fixed equal dollar amount for each  
38 county;

39           (2) Eighty percent (80%) based on the rate of civil actions filed pursuant  
40 to Chapter 50B of the General Statutes in that county.

41 The North Carolina State Bar shall not use any of these funds for its administrative  
42 costs.

43 **"§ 7A-474.10. Records and reports.**

1        The established legal services programs shall keep appropriate records and make  
2 periodic reports, as requested, to the North Carolina State Bar. The North Carolina State  
3 Bar shall report annually to the General Assembly on the amount of the funds disbursed  
4 and the use of the funds by each legal services program receiving funds. The report to  
5 the General Assembly shall be made by January 15 of each year beginning January 15,  
6 2006."

7            **SECTION 4.2.** G.S. 84-4.1 reads as rewritten:

8        **"§ 84-4.1. Limited practice of out-of-state attorneys.**

9        (a) Any attorney domiciled in another state, and regularly admitted to practice in  
10 the courts of record of that state and in good standing therein, having been retained as  
11 attorney for a party to any civil or criminal legal proceeding pending in the General  
12 Court of Justice of North Carolina, the North Carolina Utilities Commission, the North  
13 Carolina Industrial Commission, the Office of Administrative Hearings of North  
14 Carolina, or any administrative agency, may, on motion, be admitted to practice in that  
15 forum for the sole purpose of appearing for a client in the litigation. The motion  
16 required under this section shall be signed by the attorney and shall contain or be  
17 accompanied by:

- 18            (1) The attorney's full name, post-office address, bar membership number,  
19            and status as a practicing attorney in another state.
- 20            (2) A statement, signed by the client, setting forth the client's address and  
21            declaring that the client has retained the attorney to represent the client  
22            in the proceeding.
- 23            (3) A statement that unless permitted to withdraw sooner by order of the  
24            court, the attorney will continue to represent the client in the  
25            proceeding until the final determination thereof, and that with  
26            reference to all matters incident to the proceeding, the attorney agrees  
27            to be subject to the orders and amenable to the disciplinary action and  
28            the civil jurisdiction of the General Court of Justice and the North  
29            Carolina State Bar in all respects as if the attorney were a regularly  
30            admitted and licensed member of the Bar of North Carolina in good  
31            standing.
- 32            (4) A statement that the state in which the attorney is regularly admitted to  
33            practice grants like privileges to members of the Bar of North Carolina  
34            in good standing.
- 35            (5) A statement to the effect that the attorney has associated and is  
36            personally appearing in the proceeding, with an attorney who is a  
37            resident of this State and is duly and legally admitted to practice in the  
38            General Court of Justice of North Carolina, upon whom service may  
39            be had in all matters connected with the legal proceedings, or any  
40            disciplinary matter, with the same effect as if personally made on the  
41            foreign attorney within this State.
- 42            (6) A statement accurately disclosing a record of all that attorney's  
43            disciplinary history. Discipline shall include (i) public discipline by

1 any court or lawyer regulatory organization, and (ii) revocation of any  
2 pro hac vice admission.

3 (7) A fee in the amount of one hundred dollars (\$100.00).

4 Compliance with the foregoing requirements does not deprive the court of the  
5 discretionary power to allow or reject the application.

6 (b) Fees collected under this section shall be remitted to the North Carolina State  
7 Bar for the provision of services described in G.S. 7A-474.9."

8 **SECTION 4.3.** Section 4.1 of this part is effective when it becomes law.  
9 Section 4.2 of this part becomes effective July 1, 2004, and applies to all motions filed  
10 on or after that date. The remainder of this part is effective when it becomes law.

## 11 **PART V. DOMESTIC VIOLENCE OFFENDER FEE AND ADDITIONAL** 12 **FUNDING FOR VICTIM SERVICES**

13 **SECTION 5.1.** G.S. 50B-3 is amended by adding a new subsection to read:

14 "(a1) If, upon completion of the 10-day hearing, the court issues a protective order,  
15 the court shall require the defendant to pay a fee in the amount of one hundred dollars  
16 (\$100.00). This fee shall be assessed only upon the initial issuance of the order, and not  
17 upon any renewal of the same order."

18 **SECTION 5.2.** There is appropriated from the General Fund to the  
19 Department of Administration, to be credited to the Domestic Violence Center Fund  
20 established under G.S. 50B-9, the sum of two million dollars (\$2,000,000) for the  
21 2004-2005 fiscal year. It is the intent of the General Assembly that this become a  
22 recurring appropriation.

23 **SECTION 5.3.** This part becomes effective July 1, 2004. Section 5.1 of this  
24 part applies to all orders issued on or after that date.

## 25 **PART VI. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY** 26 **TASK FORCE**

27 **SECTION 6.1.** G.S. 7B-1402 reads as rewritten:

28 **"§ 7B-1402. Task Force – creation; membership; vacancies.**

29 (a) There is created the North Carolina Child Fatality Task Force within the  
30 Department of Health and Human Services for budgetary purposes only.

31 (b) The Task Force shall be composed of 35 members, 11 of whom shall be ex  
32 officio members, four of whom shall be appointed by the Governor, 10 of whom shall  
33 be appointed by the Speaker of the House of Representatives, and 10 of whom shall be  
34 appointed by the President Pro Tempore of the Senate. The ex officio members other  
35 than the Chief Medical Examiner shall be nonvoting members and may designate  
36 representatives from their particular departments, divisions, or offices to represent them  
37 on the Task Force. The members shall be as follows:

38 (1) The Chief Medical Examiner;

39 (2) The Attorney General;

40 (3) The Director of the Division of Social Services;

41 (4) The Director of the State Bureau of Investigation;

42 (5) The Director of the Division of Maternal and Child Health of the  
43 Department of Health and Human Services;

- 1 (6) The Director of the Governor's Youth Advocacy and Involvement  
2 Office;
- 3 (7) The Superintendent of Public Instruction;
- 4 (8) The Chairman of the State Board of Education;
- 5 (9) The Director of the Division of Mental Health, Developmental  
6 Disabilities, and Substance Abuse Services;
- 7 (10) The Secretary of the Department of Health and Human Services;
- 8 (11) The Director of the Administrative Office of the Courts;
- 9 (12) A director of a county department of social services, appointed by the  
10 Governor upon recommendation of the President of the North Carolina  
11 Association of County Directors of Social Services;
- 12 (13) A representative from a Sudden Infant Death Syndrome counseling  
13 and education program, appointed by the Governor upon  
14 recommendation of the Director of the Division of Maternal and Child  
15 Health of the Department of Health and Human Services;
- 16 (14) A representative from the North Carolina Child Advocacy Institute,  
17 appointed by the Governor upon recommendation of the President of  
18 the Institute;
- 19 (15) A director of a local department of health, appointed by the Governor  
20 upon the recommendation of the President of the North Carolina  
21 Association of Local Health Directors;
- 22 (16) A representative from a private group, other than the North Carolina  
23 Child Advocacy Institute, that advocates for children, appointed by the  
24 Speaker of the House of Representatives upon recommendation of  
25 private child advocacy organizations;
- 26 (17) A pediatrician, licensed to practice medicine in North Carolina,  
27 appointed by the Speaker of the House of Representatives upon  
28 recommendation of the North Carolina Pediatric Society;
- 29 (18) A representative from the North Carolina League of Municipalities,  
30 appointed by the Speaker of the House of Representatives upon  
31 recommendation of the League;
- 32 (18a) A representative from the North Carolina Domestic Violence  
33 Commission, appointed by the Speaker of the House of  
34 Representatives upon recommendation of the Director of the  
35 Commission;
- 36 (19) ~~Two public members,~~ One public member, appointed by the Speaker of  
37 the House of Representatives;
- 38 (20) A county or municipal law enforcement officer, appointed by the  
39 President Pro Tempore of the Senate upon recommendation of  
40 organizations that represent local law enforcement officers;
- 41 (21) A district attorney, appointed by the President Pro Tempore of the  
42 Senate upon recommendation of the President of the North Carolina  
43 Conference of District Attorneys;

1 (22) A representative from the North Carolina Association of County  
2 Commissioners, appointed by the President Pro Tempore of the Senate  
3 upon recommendation of the Association;

4 (22a) A representative from the North Carolina Coalition Against Domestic  
5 Violence, appointed by the President Pro Tempore of the Senate upon  
6 recommendation of the Executive Director of the Coalition;

7 (23) ~~Two public members,~~One public member, appointed by the President  
8 Pro Tempore of the Senate; and

9 (24) Five members of the Senate, appointed by the President Pro Tempore  
10 of the Senate, and five members of the House of Representatives,  
11 appointed by the Speaker of the House of Representatives.

12 (c) All members of the Task Force are voting members. Vacancies in the  
13 appointed membership shall be filled by the appointing officer who made the initial  
14 appointment. Terms shall be two years. The members shall elect a chair who shall  
15 preside for the duration of the chair's term as member. In the event a vacancy occurs in  
16 the chair before the expiration of the chair's term, the members shall elect an acting  
17 chair to serve for the remainder of the unexpired term."

18 **SECTION 6.2.** The public members serving on the Child Fatality Task  
19 Force on the effective date of this act shall complete their current terms. The new  
20 appointments contained in Section 1 of this act shall take effect at the end of those  
21 terms.

22 **SECTION 6.3.** This part is effective when it becomes law.

23 **PART VII. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC**  
24 **VIOLENCE VICTIMS**

25 **SECTION 7.1.** The Department of Health and Human Services shall study  
26 and develop a plan for serving clients of domestic violence programs with mental health  
27 and substance abuse service needs. The plan will address providing diagnostic and  
28 referral services for any client suspected of having a mental illness or a substance abuse  
29 problem. The plan will also address the delivery of appropriate services to clients  
30 meeting the target population criteria, as defined in the State Plan developed pursuant to  
31 G.S. 122C-102. Services must be best practices, as determined by the Department. The  
32 Department will consult various stakeholders in the domestic violence network of  
33 organizations. The Department will also consider the delivery of services to children  
34 identified through domestic violence programs. The Department shall also consider the  
35 fiscal impact, if any, of implementing the plan developed pursuant to this study.

36 The Department shall make a preliminary report to the House Select  
37 Committee on Domestic Violence no later than October 1, 2004, and a final report to  
38 the General Assembly on or before January 15, 2005.

39 **SECTION 7.2.** This part is effective when it becomes law.

40 **PART VIII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL**  
41 **REPRESENTATION**

42 **SECTION 8.1.** The North Carolina State Bar, in cooperation with the North  
43 Carolina Bar Association, shall study the issue of providing Continuing Legal Education  
44 (CLE) credit to active attorneys for providing pro bono legal representation. The Bar

1 shall consider what types of pro bono legal representation, if any, should qualify for  
2 CLE credit and what administrative requirements would be necessary to provide such  
3 credit. The Bar shall specifically look at the possible benefits of providing CLE credit  
4 for pro bono legal representation to domestic violence victims. The Bar shall also  
5 consider the fiscal impact, if any, of providing the credit.

6 The Bar shall make a preliminary report to the House Select Committee on  
7 Domestic Violence no later than October 1, 2004, and a final report to the General  
8 Assembly on or before January 15, 2005.

9 **SECTION 8.2.** This part is effective when it becomes law.

10 **PART IX. DOMESTIC RELATIONSHIP AGGRAVATING FACTOR**

11 **SECTION 9.1.** G.S. 15A-1340.16(d) reads as rewritten:

12 "(d) Aggravating Factors. – The following are aggravating factors:

- 13 (1) The defendant induced others to participate in the commission of the  
14 offense or occupied a position of leadership or dominance of other  
15 participants.
- 16 (2) The defendant joined with more than one other person in committing  
17 the offense and was not charged with committing a conspiracy.
- 18 (2a) The offense was committed for the benefit of, or at the direction of,  
19 any criminal street gang, with the specific intent to promote, further, or  
20 assist in any criminal conduct by gang members, and the defendant  
21 was not charged with committing a conspiracy. A "criminal street  
22 gang" means any ongoing organization, association, or group of three  
23 or more persons, whether formal or informal, having as one of its  
24 primary activities the commission of felony or violent misdemeanor  
25 offenses, or delinquent acts that would be felonies or violent  
26 misdemeanors if committed by an adult, and having a common name  
27 or common identifying sign, colors, or symbols.
- 28 (3) The offense was committed for the purpose of avoiding or preventing a  
29 lawful arrest or effecting an escape from custody.
- 30 (4) The defendant was hired or paid to commit the offense.
- 31 (5) The offense was committed to disrupt or hinder the lawful exercise of  
32 any governmental function or the enforcement of laws.
- 33 (6) The offense was committed against or proximately caused serious  
34 injury to a present or former law enforcement officer, employee of the  
35 Department of Correction, jailer, fireman, emergency medical  
36 technician, ambulance attendant, justice or judge, clerk or assistant or  
37 deputy clerk of court, magistrate, prosecutor, juror, or witness against  
38 the defendant, while engaged in the performance of that person's  
39 official duties or because of the exercise of that person's official duties.
- 40 (7) The offense was especially heinous, atrocious, or cruel.
- 41 (8) The defendant knowingly created a great risk of death to more than  
42 one person by means of a weapon or device which would normally be  
43 hazardous to the lives of more than one person.



- 1 (9) The defendant held public office at the time of the offense and the  
2 offense related to the conduct of the office.
- 3 (10) The defendant was armed with or used a deadly weapon at the time of  
4 the crime.
- 5 (11) The victim was very young, or very old, or mentally or physically  
6 infirm, or handicapped.
- 7 (12) The defendant committed the offense while on pretrial release on  
8 another charge.
- 9 (13) The defendant involved a person under the age of 16 in the  
10 commission of the crime.
- 11 (14) The offense involved an attempted or actual taking of property of great  
12 monetary value or damage causing great monetary loss, or the offense  
13 involved an unusually large quantity of contraband.
- 14 (15) The defendant took advantage of a position of trust or ~~confidence~~  
15 confidence, including a domestic relationship, to commit the offense.
- 16 (16) The offense involved the sale or delivery of a controlled substance to a  
17 minor.
- 18 (17) The offense for which the defendant stands convicted was committed  
19 against a victim because of the victim's race, color, religion,  
20 nationality, or country of origin.
- 21 (18) The defendant does not support the defendant's family.
- 22 (18a) The defendant has previously been adjudicated delinquent for an  
23 offense that would be a Class A, B1, B2, C, D, or E felony if  
24 committed by an adult.
- 25 (19) The serious injury inflicted upon the victim is permanent and  
26 debilitating.
- 27 (20) Any other aggravating factor reasonably related to the purposes of  
28 sentencing.

29 Evidence necessary to prove an element of the offense shall not be used to prove any  
30 factor in aggravation, and the same item of evidence shall not be used to prove more  
31 than one factor in aggravation. Evidence necessary to establish that an enhanced  
32 sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in  
33 aggravation.

34 The judge shall not consider as an aggravating factor the fact that the defendant  
35 exercised the right to a jury trial."

36 **SECTION 9.2.** This part is effective December 1, 2004, and applies to  
37 offenses committed on or after that date.

38 **PART X. CREATE STRANGULATION OFFENSE**

39 **SECTION 10.1.** G.S. 14-32.4 reads as rewritten:

40 "**§ 14-32.4. Assault inflicting serious bodily ~~injury~~injury; strangulation; penalties.**

41 (a) Unless the conduct is covered under some other provision of law providing  
42 greater punishment, any person who assaults another person and inflicts serious bodily  
43 injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury  
44 that creates a substantial risk of death, or that causes serious permanent disfigurement,

1 coma, a permanent or protracted condition that causes extreme pain, or permanent or  
2 protracted loss or impairment of the function of any bodily member or organ, or that  
3 results in prolonged hospitalization.

4 (b) Unless the conduct is covered under some other provision of law providing  
5 greater punishment, any person who assaults another person and inflicts physical injury  
6 by strangulation is guilty of a Class H felony."

7 **SECTION 10.2.** This part becomes effective December 1, 2004, and applies  
8 to offenses committed on or after that date.

## 9 **PART XI. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE**

10 **SECTION 11.1.** G.S. 14-33.2 reads as rewritten:

11 "**§ 14-33.2. Habitual misdemeanor assault.**

12 A person commits the offense of habitual misdemeanor assault if that person violates  
13 any of the provisions of G.S. 14-33(e) and causes physical injury, or ~~G.S. 14-34~~  
14 G.S. 14-34, and has two or more prior convictions for either misdemeanor or felony  
15 assault. ~~been convicted of five or more prior misdemeanor convictions, two of which~~  
16 were assaults. A conviction under this section shall not be used as a prior conviction for  
17 any other habitual offense statute. A person convicted of violating this section is guilty  
18 of a Class H felony."

19 **SECTION 11.2.** This part is effective December 1, 2004, and applies to  
20 offenses committed on or after that date. Prosecutions for offenses committed before  
21 the effective date of this part are not abated or affected by this part, and the statutory  
22 provisions that would be applicable but for this part remain applicable to those  
23 prosecutions.

## 24 **PART XII. DOMESTIC VIOLENCE OFFENSE TRACKING**

25 **SECTION 12.1.** Article 86 of Chapter 15A of the General Statutes is  
26 amended by adding a new section to read:

27 "**§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

28 (a) When a defendant is found guilty of an offense involving assault, or  
29 communicating a threat, the presiding judge shall determine whether the defendant and  
30 victim had a personal relationship. If the presiding judge determines that there was a  
31 personal relationship between the defendant and the victim, then the judge shall indicate  
32 on the form reflecting the judgment that the case involved domestic violence. The Clerk  
33 of Court shall insure that the official record of the defendant's conviction includes the  
34 court's determination, so that any inquiry into the defendant's criminal record will reflect  
35 that the offense involved domestic violence.

36 (b) If the court determines that there was a personal relationship between the  
37 defendant and the victim, and a sentence to community punishment is imposed, the  
38 court shall determine whether the defendant shall comply with one or more of the  
39 special conditions of probation set forth at G.S. 15A-1343(b1), in addition to any other  
40 authorized punishment. Notwithstanding the provisions of G.S. 15A-1340.11(6)c., the  
41 court is authorized to require the defendant to comply with the provisions of  
42 G.S. 15A-1343(b1)(3c).

43 (c) The following definitions apply to this section:

44 (1) "Personal relationship" is as defined in G.S. 50B-1(b).

1           (2) "An offense involving assault" includes any offense where an assault  
2           occurred, whether or not the conviction is for an offense under Article  
3           8 of Chapter 14 of the General Statutes.

4           (3) "Inquiry" shall include any lawful review of the criminal records of  
5           persons convicted of an offense in this State, whether by law  
6           enforcement personnel or by private individuals."

7           **SECTION 12.2.** This part is effective December 1, 2004, and applies to  
8 offenses committed on or after that date.

9 **PART XIII. AMEND PROBATION RULES**

10           **SECTION 13.1.** G.S. 15A-1343.2 reads as rewritten:

11 **"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

12           (a) Applicability. – This section applies only to persons sentenced under Article  
13 81B of this Chapter.

14           (b) Purposes of Probation for Community and Intermediate Punishments. – The  
15 Department of Correction shall develop a plan to handle offenders sentenced to  
16 community and intermediate punishments. The probation program designed to handle  
17 these offenders shall have the following principal purposes: to hold offenders  
18 accountable for making restitution, to ensure compliance with the court's judgment, to  
19 effectively rehabilitate offenders by directing them to specialized treatment or education  
20 programs, and to protect the public safety.

21           (c) Probation Caseload Goals. – It is the goal of the General Assembly that,  
22 subject to the availability of funds, caseloads for probation officers supervising persons  
23 sentenced to community punishment should not exceed an average of 90 offenders per  
24 officer, and caseloads for offenders sentenced to intermediate punishments should not  
25 exceed an average of 60 offenders per officer by July 1, 1998.

26           (d) Lengths of Probation Terms Under Structured Sentencing. – Unless the court  
27 makes specific findings that longer or shorter periods of probation are necessary, the  
28 length of the original period of probation for offenders sentenced under Article 81B  
29 shall be as follows:

- 30           (1) For misdemeanants sentenced to community punishment, not less than  
31 six nor more than 18 months;
- 32           (2) For misdemeanants sentenced to intermediate punishment, not less  
33 than 12 nor more than 24 months;
- 34           (3) For felons sentenced to community punishment, not less than 12 nor  
35 more than 30 months; and
- 36           (4) For felons sentenced to intermediate punishment, not less than 18 nor  
37 more than 36 months.

38           If the court finds at the time of sentencing that a longer period of probation is  
39 necessary, that period may not exceed a maximum of five years, as specified in  
40 G.S. 15A-1342 and G.S. 15A-1351.

41           Extension. – The court may with the consent of the offender extend the original  
42 period of the probation if necessary to complete a program of restitution or to complete  
43 medical or psychiatric treatment ordered as a condition of probation. This extension

1 may be for no more than three years, and may only be ordered in the last six months of  
2 the original period of probation.

3 (e) Delegation to Probation Officer in Community Punishment. – Unless the  
4 presiding judge specifically finds in the judgment of the court that delegation is not  
5 appropriate, the Division of Community Corrections in the Department of Correction  
6 may require an offender sentenced to community punishment to any of the following:

7 (1) Perform up to 20 hours of community service, and pay the fee  
8 prescribed by law for this ~~supervision~~; supervision.

9 (2) Report to the offender's probation officer on a frequency to be  
10 determined by the ~~officer~~; officer.

11 (3) Submit to substance abuse assessment, monitoring or treatment.

12 (4) Submit to a curfew which requires the offender to remain in a  
13 specified place for a specified period each day and wear a device that  
14 permits the offender's compliance with the condition to be monitored  
15 electronically.

16 If the Division imposes any of the above requirements, then it may subsequently reduce  
17 or remove those same requirements.

18 If the probation officer exercises authority delegated by the court pursuant to this  
19 subsection, the offender may file a motion with the court to review the action taken by  
20 the probation officer. The offender shall be given notice of the right to seek such a court  
21 review. The Division may exercise any authority delegated to it under this subsection  
22 only if it first determines that the offender has failed to comply with one or more of the  
23 conditions of probation imposed by the court.

24 (f) Delegation to Probation Officer in Intermediate Punishments. – Unless the  
25 presiding judge specifically finds in the judgment of the court that delegation is not  
26 appropriate, the Division of Community Corrections in the Department of Correction  
27 may require an offender sentenced to intermediate punishment to any of the following:

28 (1) Perform up to 50 hours of community service, and pay the fee  
29 prescribed by law for this ~~supervision~~; supervision.

30 (2) Submit to a curfew which requires the offender to remain in a  
31 specified place for a specified period each day and wear a device that  
32 permits the offender's compliance with the condition to be monitored  
33 ~~electronically~~; electronically.

34 (3) Submit to substance abuse assessment, monitoring or ~~treatment~~;  
35 or treatment.

36 (4) Participate in an educational or vocational skills development program.

37 If the Division imposes any of the above requirements, then it may subsequently reduce  
38 or remove those same requirements.

39 If the probation officer exercises authority delegated to him or her by the court  
40 pursuant to this subsection, the offender may file a motion with the court to review the  
41 action taken by the probation officer. The offender shall be given notice of the right to  
42 seek such a court review. The Division may exercise any authority delegated to it under  
43 this subsection only if it first determines that the offender has failed to comply with one  
44 or more of the conditions of probation imposed by the court.

1 (g) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 19, s. 3.

2 (h) Definitions. – For purposes of this section, the definitions in  
3 G.S. 15A-1340.11 apply."

4 **SECTION 13.2.** This part becomes effective December 1, 2004, and applies  
5 to offenses committed on or after that date.

6 **PART XIV. STUDY OF MISDEMEANOR OFFENSE CLASSIFICATIONS**

7 **SECTION 14.1.** The General Assembly finds that the North Carolina  
8 Sentencing and Policy Advisory Commission has adopted formal criteria for classifying  
9 felony offenses. The Sentencing Commission has identified three general types of  
10 harms: harms to persons (including both physical and mental injury); harms to  
11 property; and (3) harms to society. The degrees of harm are divided into three levels:

12 (1) Injury to person, property, or society;

13 (2) Significant injury to person, property, or society, and

14 (3) Serious injury to person, property, or society. The stated purpose of  
15 establishing the criteria was "to create a rational and consistent  
16 philosophical basis for classifying offenses; to assure proportionality  
17 in severity; and to provide a guidepost for classifying new crimes in  
18 the future."

19 In contrast to the felony classification criteria, the Commission did not create  
20 classification criteria for misdemeanors. However, the current misdemeanor sentencing  
21 laws include an assault offense that has serious injury as an element – even though  
22 "serious injury to a person" is a category of harm for felony offense classification. The  
23 General Assembly finds that the classification of assault offenses that involve serious  
24 injury as misdemeanors is inconsistent with the Sentencing Commission's classification  
25 of felonies based on harm.

26 The General Assembly directs the North Carolina Sentencing and Policy  
27 Advisory Commission, pursuant to its statutory responsibilities under Article 4 of  
28 Chapter 164 of the General Statutes, to study the classification of misdemeanor  
29 offenses. In particular, the Commission shall examine the classification of assault  
30 offenses in relation to property offenses, crimes against society, and felony assault  
31 offenses. The Commission shall develop a system for classifying misdemeanor offenses  
32 on the basis of their severity. The Commission may consider reclassifying existing  
33 offenses and creating new offenses in order to insure proportionality and consistency.  
34 The Commission shall report its findings and recommendations to the 2005 General  
35 Assembly, 2005 Regular Session. The report shall describe the status of the  
36 Commission's work, and shall include any completed policy recommendations and  
37 proposed legislation. The Commission shall make a final report to the 2005 General  
38 Assembly, 2006 Regular Session.

39 **SECTION 14.2.** This part is effective when it becomes law.

40 **PART XV. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL**  
41 **RELEASE CONDITIONS**

42 **SECTION 15.1.** G.S. 15A-401 reads as rewritten:

43 "**§ 15A-401. Arrest by law-enforcement officer.**

44 (a) Arrest by Officer Pursuant to a Warrant. –

- 1 (1) Warrant in Possession of Officer. – An officer having a warrant for  
2 arrest in his possession may arrest the person named or described  
3 therein at any time and at any place within the officer's territorial  
4 jurisdiction.
- 5 (2) Warrant Not in Possession of Officer. – An officer who has knowledge  
6 that a warrant for arrest has been issued and has not been executed, but  
7 who does not have the warrant in his possession, may arrest the person  
8 named therein at any time. The officer must inform the person arrested  
9 that the warrant has been issued and serve the warrant upon him as  
10 soon as possible. This subdivision applies even though the arrest  
11 process has been returned to the clerk under G.S. 15A-301.
- 12 (b) Arrest by Officer Without a Warrant. –
- 13 (1) Offense in Presence of Officer. – An officer may arrest without a  
14 warrant any person who the officer has probable cause to believe has  
15 committed a criminal offense in the officer's presence.
- 16 (2) Offense Out of Presence of Officer. – An officer may arrest without a  
17 warrant any person who the officer has probable cause to believe:
- 18 a. Has committed a felony; or
- 19 b. Has committed a misdemeanor, and:
- 20 1. Will not be apprehended unless immediately arrested, or
- 21 2. May cause physical injury to himself or others, or  
22 damage to property unless immediately arrested; or
- 23 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,  
24 20-138.1, or 20-138.2; or
- 25 d. Has committed a misdemeanor under G.S. 14-33(a),  
26 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was  
27 committed by a person with whom the alleged victim has a  
28 personal relationship as defined in G.S. 50B-1; or
- 29 e. Has committed a misdemeanor under ~~G.S. 50B-4.1(a)~~G.S.  
30 50B-4.1(a); or
- 31 f. Has violated a pretrial release order entered under  
32 G.S. 15A-534.1(2).
- 33 (3) Repealed by Session Laws 1991, c. 150.
- 34 (4) A law enforcement officer may detain an individual arrested for  
35 violation of an order limiting freedom of movement or access issued  
36 pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by  
37 the State Health Director or local health director pursuant to such  
38 order. The person may be detained in such area until the initial  
39 appearance before a judicial official pursuant to G.S. 15A-511 and  
40 G.S. 15A-534.5.
- 41 (c) How Arrest Made. –
- 42 (1) An arrest is complete when:
- 43 a. The person submits to the control of the arresting officer who  
44 has indicated his intention to arrest, or

- 1                   b.     The arresting officer, with intent to make an arrest, takes a  
2                   person into custody by the use of physical force.
- 3           (2)     Upon making an arrest, a law-enforcement officer must:
- 4                   a.     Identify himself as a law-enforcement officer unless his identity  
5                   is otherwise apparent,  
6                   b.     Inform the arrested person that he is under arrest, and  
7                   c.     As promptly as is reasonable under the circumstances, inform  
8                   the arrested person of the cause of the arrest, unless the cause  
9                   appears to be evident.
- 10    (d)     Use of Force in Arrest. –
- 11           (1)     Subject to the provisions of subdivision (2), a law-enforcement officer  
12           is justified in using force upon another person when and to the extent  
13           that he reasonably believes it necessary:
- 14                   a.     To prevent the escape from custody or to effect an arrest of a  
15                   person who he reasonably believes has committed a criminal  
16                   offense, unless he knows that the arrest is unauthorized; or  
17                   b.     To defend himself or a third person from what he reasonably  
18                   believes to be the use or imminent use of physical force while  
19                   effecting or attempting to effect an arrest or while preventing or  
20                   attempting to prevent an escape.
- 21           (2)     A law-enforcement officer is justified in using deadly physical force  
22           upon another person for a purpose specified in subdivision (1) of this  
23           subsection only when it is or appears to be reasonably necessary  
24           thereby:
- 25                   a.     To defend himself or a third person from what he reasonably  
26                   believes to be the use or imminent use of deadly physical force;  
27                   b.     To effect an arrest or to prevent the escape from custody of a  
28                   person who he reasonably believes is attempting to escape by  
29                   means of a deadly weapon, or who by his conduct or any other  
30                   means indicates that he presents an imminent threat of death or  
31                   serious physical injury to others unless apprehended without  
32                   delay; or  
33                   c.     To prevent the escape of a person from custody imposed upon  
34                   him as a result of conviction for a felony.
- 35           Nothing in this subdivision constitutes justification for willful,  
36           malicious or criminally negligent conduct by any person which injures  
37           or endangers any person or property, nor shall it be construed to  
38           excuse or justify the use of unreasonable or excessive force.
- 39    (e)     Entry on Private Premises or Vehicle; Use of Force. –
- 40           (1)     A law-enforcement officer may enter private premises or a vehicle to  
41           effect an arrest when:
- 42                   a.     The officer has in his possession a warrant or order or a copy of  
43                   the warrant or order for the arrest of a person, provided that an  
44                   officer may utilize a copy of a warrant or order only if the

- 1 original warrant or order is in the possession of a member of a  
2 law enforcement agency located in the county where the officer  
3 is employed and the officer verifies with the agency that the  
4 warrant is current and valid; or the officer is authorized to arrest  
5 a person without a warrant or order having been issued,  
6 b. The officer has reasonable cause to believe the person to be  
7 arrested is present, and  
8 c. The officer has given, or made reasonable effort to give, notice  
9 of his authority and purpose to an occupant thereof, unless there  
10 is reasonable cause to believe that the giving of such notice  
11 would present a clear danger to human life.
- 12 (2) The law-enforcement officer may use force to enter the premises or  
13 vehicle if he reasonably believes that admittance is being denied or  
14 unreasonably delayed, or if he is authorized under subsection (e)(1)c to  
15 enter without giving notice of his authority and purpose.
- 16 (f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –
- 17 (1) A person is not justified in using a deadly weapon or deadly force to  
18 resist an arrest by a law-enforcement officer using reasonable force,  
19 when the person knows or has reason to know that the officer is a  
20 law-enforcement officer and that the officer is effecting or attempting  
21 to effect an arrest.
- 22 (2) The fact that the arrest was not authorized under this section is no  
23 defense to an otherwise valid criminal charge arising out of the use of  
24 such deadly weapon or deadly force.
- 25 (3) Nothing contained in this subsection (f) shall be construed to excuse or  
26 justify the unreasonable or excessive force by an officer in effecting an  
27 arrest. Nothing contained in this subsection (f) shall be construed to  
28 bar or limit any civil action arising out of an arrest not authorized by  
29 this Article."

30 **SECTION 15.2.** This part becomes effective December 1, 2004, and applies  
31 to offenses committed on or after that date.

32 **PART XVI. CONFORM STATE FIREARMS LAW TO FEDERAL LAW**

33 **SECTION 16.1.** G.S. 14-415.1 reads as rewritten:

34 **"§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

35 (a) It shall be unlawful for any person who has been convicted of a felony to  
36 purchase, own, possess, or have in his custody, care, or control any ~~handgun or other~~  
37 ~~firearm~~ ~~firearm~~ ~~with a barrel length of less than 18 inches or an overall length of less~~  
38 ~~than 26 inches~~, or any weapon of mass death and destruction as defined in  
39 G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including  
40 a starter gun, which will or is designed to or may readily be converted to expel a  
41 projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm  
42 muffler or firearm silencer.

43 Every person violating the provisions of this section shall be punished as a Class G  
44 felon.



1        ~~Nothing in this subsection would prohibit the right of any person to have possession~~  
2 ~~of a firearm within his own home or on his lawful place of business.~~

3        (b) Prior convictions which cause disenfranchisement under this section shall only  
4 include:

- 5            (1) Felony convictions in North Carolina that occur before, on, or after  
6            December 1, 1995; and
- 7            (2) Repealed by Session Laws 1995, c. 487, s. 3.
- 8            (3) Violations of criminal laws of other states or of the United States that  
9            occur before, on, or after December 1, 1995, and that are substantially  
10           similar to the crimes covered in subdivision (1) which are punishable  
11           where committed by imprisonment for a term exceeding one year.

12 When a person is charged under this section, records of prior convictions of any offense,  
13 whether in the courts of this State, or in the courts of any other state or of the United  
14 States, shall be admissible in evidence for the purpose of proving a violation of this  
15 section. The term "conviction" is defined as a final judgment in any case in which  
16 felony punishment, or imprisonment for a term exceeding one year, as the case may be,  
17 is permissible, without regard to the plea entered or to the sentence imposed. A  
18 judgment of a conviction of the defendant or a plea of guilty by the defendant to such an  
19 offense certified to a superior court of this State from the custodian of records of any  
20 state or federal court shall be prima facie evidence of the facts so certified.

21        (c) The indictment charging the defendant under the terms of this section shall be  
22 separate from any indictment charging him with other offenses related to or giving rise  
23 to a charge under this section. An indictment which charges the person with violation of  
24 this section must set forth the date that the prior offense was committed, the type of  
25 offense and the penalty therefore, and the date that the defendant was convicted or plead  
26 guilty to such offense, the identity of the court in which the conviction or plea of guilty  
27 took place and the verdict and judgment rendered therein."

28        **SECTION 16.2.** This part becomes effective December 1, 2004, and applies  
29 to offenses committed on or after that date. Prosecutions for offenses committed before  
30 the effective date of this act are not abated or affected by this act, and the statutory  
31 provisions that would be applicable but for this act remain applicable to those  
32 prosecutions.

### 33 **PART XVII. SPECIFICALLY ALLOW CROSS WARRANTS**

34        **SECTION 17.1.** G.S. 15A-304 reads as rewritten:

35        "**§ 15A-304. Warrant for arrest.**

36        (a) Definition. – A warrant for arrest consists of a statement of the crime of  
37 which the person to be arrested is accused, and an order directing that the person so  
38 accused be arrested and held to answer to the charges made against him. It is based  
39 upon a showing of probable cause supported by oath or affirmation.

40        (b) When Issued. – A warrant for arrest may be issued, instead of or subsequent  
41 to a criminal summons, when it appears to the judicial official that the person named  
42 should be taken into custody. Circumstances to be considered in determining whether  
43 the person should be taken into custody may include, but are not limited to, failure to  
44 appear when previously summoned, facts making it apparent that a person summoned

1 will fail to appear, danger that the person accused will escape, danger that there may be  
2 injury to person or property, or the seriousness of the offense.

3 (c) Statement of the Crime. – The warrant must contain a statement of the crime  
4 of which the person to be arrested is accused. No warrant for arrest, nor any arrest made  
5 pursuant thereto, is invalid because of any technicality of pleading if the statement is  
6 sufficient to identify the crime.

7 (d) Showing of Probable Cause. – A judicial official may issue a warrant for  
8 arrest only when he is supplied with sufficient information, supported by oath or  
9 affirmation, to make an independent judgment that there is probable cause to believe  
10 that a crime has been committed and that the person to be arrested committed it. The  
11 information must be shown by one or more of the following:

12 (1) Affidavit;

13 (2) Oral testimony under oath or affirmation before the issuing official; or

14 (3) Oral testimony under oath or affirmation presented by a sworn law  
15 enforcement officer to the issuing official by means of an audio and  
16 video transmission in which both parties can see and hear each other.  
17 Prior to the use of audio and video transmission pursuant to this  
18 subdivision, the procedures and type of equipment for audio and video  
19 transmission shall be submitted to the Administrative Office of the  
20 Courts by the senior regular resident superior court judge and the chief  
21 district court judge for a judicial district or set of districts and  
22 approved by the Administrative Office of the Courts.

23 If the information is insufficient to show probable cause, the warrant may not be  
24 issued. A judicial official shall not refuse to issue a warrant for the arrest of a person  
25 solely because a prior warrant has been issued for the arrest of another person involved  
26 in the same matter.

27 (e) Order for Arrest. – The order for arrest must direct that a law-enforcement  
28 officer take the defendant into custody and bring him without unnecessary delay before  
29 a judicial official to answer to the charges made against him.

30 (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be  
31 issued by:

32 (1) A Justice of the Supreme Court.

33 (2) A judge of the Court of Appeals.

34 (3) A judge of the superior court.

35 (4) A judge of the district court, as provided in G.S. 7A-291.

36 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.

37 (6) A magistrate, as provided in G.S. 7A-273."

38 **SECTION 17.2.** This part is effective when it becomes law.

39 **PART XVIII. CLARIFY NURSE'S PRIVILEGE**

40 **SECTION 18.1.** G.S. 8-53.13 reads as rewritten:

41 **"§ 8-53.13. Nurse privilege.**

42 No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes  
43 shall be required to disclose any information that may have been acquired in rendering  
44 professional nursing services, and which information was necessary to enable that

1 person to render professional nursing services, except that the presiding judge of a  
2 superior or district court may compel disclosure if, in the court's opinion, disclosure is  
3 necessary to a proper administration of justice and disclosure is not prohibited by other  
4 statute or rule. Nothing in this section shall preclude the admission of otherwise  
5 admissible written or printed medical records in any judicial proceeding."

6 **SECTION 18.2.** G.S. 8-53.1 reads as rewritten:

7 "**§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

8 Notwithstanding the provisions of G.S. ~~8-53, 8-53~~ and 8-53.13, the physician-patient  
9 or nurse privilege shall not be a ground for excluding evidence regarding the abuse or  
10 neglect of a child under the age of 16 years or regarding an illness of or injuries to such  
11 child or the cause thereof in any judicial proceeding related to a report pursuant to the  
12 North Carolina Juvenile Code, Chapter 7B of the General Statutes of North Carolina."

13 **SECTION 18.3.** This part becomes effective December 1, 2004.

14 **PART XIX. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE**  
15 **HEARINGS**

16 **SECTION 19.1.** G.S. 50-13.2(b) reads as rewritten:

17 "(b) An order for custody of a minor child may grant joint custody to the parents,  
18 exclusive custody to one person, agency, organization, or institution, or grant custody to  
19 two or more persons, agencies, organizations, or institutions. Any order for custody  
20 shall include such terms, including visitation, as will best promote the interest and  
21 welfare of the child. If the court finds that domestic violence has occurred, the court  
22 shall enter such orders that best protect the children and party who were the victims of  
23 ~~domestic violence.~~ violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2)  
24 and (3). ~~Such orders may include a designation of time and place for the exchange of~~  
25 ~~children away from the abused party, the participation of a third party, or supervised~~  
26 ~~visitation.~~ If a party is absent or relocates with or without the children because of an act  
27 of domestic violence, the absence or relocation shall not be a factor that weighs against  
28 the party in determining custody or visitation. Absent an order of the court to the  
29 contrary, each parent shall have equal access to the records of the minor child involving  
30 the health, education, and welfare of the child."

31 **SECTION 19.2.** G.S. 50B-2 reads as rewritten:

32 "**§ 50B-2. Institution of civil action; motion for emergency relief; temporary**  
33 **orders. orders; temporary custody.**

34 (a) Any person residing in this State may seek relief under this Chapter by filing  
35 a civil action or by filing a motion in any existing action filed under Chapter 50 of the  
36 General Statutes alleging acts of domestic violence against himself or herself or a minor  
37 child who resides with or is in the custody of such person. Any aggrieved party entitled  
38 to relief under this Chapter may file a civil action and proceed pro se, without the  
39 assistance of legal counsel. The district court division of the General Court of Justice  
40 shall have original jurisdiction over actions instituted under this Chapter. No court costs  
41 shall be assessed for the filing, issuance, registration, or service of a protective order or  
42 petition for a protective order or witness subpoena in compliance with the Violence  
43 Against Women Act, 42 U.S.C. § 3796gg-5.

1 (b) Emergency Relief. – A party may move the court for emergency relief if he  
2 or she believes there is a danger of serious and immediate injury to himself or herself or  
3 a minor child. A hearing on a motion for emergency relief, where no ex parte order is  
4 entered, shall be held after five days' notice of the hearing to the other party or after five  
5 days from the date of service of process on the other party, whichever occurs first,  
6 provided, however, that no hearing shall be required if the service of process is not  
7 completed on the other party. If the party is proceeding pro se and does not request an  
8 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing  
9 within the time periods provided in this subsection, and shall effect service of the  
10 summons, complaint, notice, and other papers through the appropriate law enforcement  
11 agency where the defendant is to be served.

12 (c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from  
13 specific facts shown, that there is a danger of acts of domestic violence against the  
14 aggrieved party or a minor child, the court may enter ~~such~~ orders as it deems necessary  
15 to protect the aggrieved party or minor children from ~~such~~ those acts provided,  
16 however, that a temporary order for custody ex parte and prior to service of process and  
17 notice shall not be entered unless the court finds that the child is exposed to a substantial  
18 risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the court finds that the  
19 child is exposed to a substantial risk of physical or emotional injury or sexual abuse,  
20 upon request of the aggrieved party, the court shall consider and may order the other  
21 party to stay away from a minor child, or to return a minor child to, or not remove a  
22 minor child from, the physical care of a parent or person in loco parentis, if the court  
23 finds that the order is necessary for the safety of the minor child. If the court determines  
24 that the other party may have contact with the minor child or children, the court shall  
25 issue an order designed to protect the safety and well-being of the minor child and the  
26 aggrieved party. The order shall specify the terms of contact between the other party  
27 and the minor child and may include a specific schedule of time and location of  
28 exchange of the minor child, supervision by a third party or supervised visitation center,  
29 and any other conditions that will ensure both the well-being of the minor child and the  
30 aggrieved party. Upon the issuance of an ex parte order under this subsection, a hearing  
31 shall be held within 10 days from the date of issuance of the order or within seven days  
32 from the date of service of process on the other party, whichever occurs later. If an  
33 aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall  
34 schedule an ex parte hearing with the district court division of the General Court of  
35 Justice within 72 hours of the filing for said relief, or by the end of the next day on  
36 which the district court is in session in the county in which the action was filed,  
37 whichever shall first occur. If the district court is not in session in said county, the  
38 aggrieved party may contact the clerk of superior court in any other county within the  
39 same judicial district who shall schedule an ex parte hearing with the district court  
40 division of the General Court of Justice by the end of the next day on which said court  
41 division is in session in that county. Upon the issuance of an ex parte order under this  
42 subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and  
43 issue a notice of hearing within the time periods provided in this subsection, and shall

1 effect service of the summons, complaint, notice, order and other papers through the  
2 appropriate law enforcement agency where the defendant is to be served.

3 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge  
4 may authorize a magistrate or magistrates to hear any motions for emergency relief ex  
5 parte. Prior to the hearing, if the magistrate determines that at the time the party is  
6 seeking emergency relief ex parte the district court is not in session and a district court  
7 judge is not and will not be available to hear the motion for a period of four or more  
8 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate  
9 from specific facts shown that there is a danger of acts of domestic violence against the  
10 aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems  
11 necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except  
12 that a temporary order for custody ex parte and prior to service of process and notice  
13 shall not be entered unless the magistrate finds that the child is exposed to a substantial  
14 risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that  
15 the child is exposed to a substantial risk of physical or emotional injury or sexual abuse,  
16 upon request of the aggrieved party, the magistrate shall consider and may order the  
17 other party to stay away from a minor child, or to return a minor child to, or not remove  
18 a minor child from, the physical care of a parent or person in loco parentis, if the  
19 magistrate finds that the order is necessary for the safety of the minor child. If the  
20 magistrate determines that the other party may have contact with the minor child or  
21 children, the magistrate shall issue an order designed to protect the safety and  
22 well-being of the minor child and the aggrieved party. The order shall specify the terms  
23 of contact between the other party and the minor child and may include a specific  
24 schedule of time and location of exchange of the minor child, supervision by a third  
25 party or supervised visitation center, and any other conditions that will ensure both the  
26 well-being of the minor child and the aggrieved party. An ex parte order entered under  
27 this subsection shall expire and the magistrate shall schedule an ex parte hearing before  
28 a district court judge by the end of the next day on which the district court is in session  
29 in the county in which the action was filed. Ex parte orders entered by the district court  
30 judge pursuant to this subsection shall be entered and scheduled in accordance with  
31 subsection (c) of this section.

32 (c2) The authority granted to authorized magistrates to award temporary child  
33 custody ~~to~~ pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is  
34 granted subject to custody rules to be established by the supervising chief district judge  
35 of each judicial district.

36 (d) Pro Se Forms. – The clerk of superior court of each county shall provide to  
37 pro se complainants all forms which are necessary or appropriate to enable them to  
38 proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms  
39 to authorized magistrates who shall make the forms available to complainants seeking  
40 relief under subsection (c1) of this section."

41 **SECTION 19.3.** G.S. 50B-3(a)(4) reads as rewritten:  
42 **"§ 50B-3. Relief.**

1 (a) The court, including magistrates as authorized under G.S. 50B-2(c1), may  
 2 grant any protective order to bring about a cessation of acts of domestic violence. The  
 3 orders may:

- 4 ...  
 5 (4) Award temporary custody of minor children and establish temporary  
 6 visitation ~~rights;~~rights pursuant to G.S. 50B-2 if the order is granted ex  
 7 parte, and pursuant to subsection (a1) of this section if the order is  
 8 granted after notice or service of process;"

9 ..."

10 **SECTION 19.4.** G.S. 50B-3 is amended by adding the following new  
 11 subsection to read:

12 "(a1) Upon the request of either party at a hearing after notice or service of process,  
 13 the court shall consider and may award temporary custody of minor children and  
 14 establish temporary visitation rights as follows:

- 15 (1) In awarding custody or visitation rights, the court shall give primary  
 16 consideration to the safety of the minor child.  
 17 (2) For purposes of determining custody and visitation issues, the court  
 18 shall consider:  
 19 a. Whether the minor child was exposed to a substantial risk of  
 20 physical or emotional injury or sexual abuse.  
 21 b. Whether the minor child was present during acts of domestic  
 22 violence.  
 23 c. Whether a weapon was used or threatened to be used during any  
 24 act of domestic violence.  
 25 d. Whether a party caused or attempted to cause serious bodily  
 26 injury to the aggrieved party or the minor child.  
 27 e. Whether a party placed the aggrieved party or the minor child in  
 28 reasonable fear of imminent serious bodily injury.  
 29 f. Whether a party caused an aggrieved party to engage  
 30 involuntarily in sexual relations by force, threat, or duress.  
 31 g. Whether there is a pattern of abuse against an aggrieved party  
 32 or the minor child.  
 33 h. Whether a party has abused or endangered the minor child  
 34 during visitation.  
 35 i. Whether a party has used visitation as an opportunity to abuse  
 36 or harass the aggrieved party.  
 37 j. Whether a party has improperly concealed or detained the  
 38 minor child.  
 39 k. Whether a party has otherwise acted in a manner that is not in  
 40 the best interest of the minor child.

- 41 (3) If the court awards custody, the court shall also consider visitation. If  
 42 ordering visitation, the court shall provide for the safety and  
 43 well-being of the minor child and the safety of the aggrieved party.  
 44 The court may consider any of the following:

- 1           a.     Ordering an exchange of the minor child to occur in a protected  
2                 setting or in the presence of an appropriate third party.  
3           b.     Ordering visitation supervised by an appropriate third party, or  
4                 at a supervised visitation center or other approved agency.  
5           c.     Ordering the noncustodial parent to attend and complete, to the  
6                 satisfaction of the court, an abuser treatment program as a  
7                 condition of visitation.  
8           d.     Ordering either or both parents to abstain from possession or  
9                 consumption of alcohol or controlled substances during the  
10                visitation or for 24 hours preceding an exchange of the minor  
11                child.  
12           e.     Ordering the noncustodial parent to pay the costs of supervised  
13                 visitation.  
14           f.     Prohibiting overnight visitation.  
15           g.     Requiring a bond from the noncustodial parent for the return  
16                 and safety of the minor child.  
17           h.     Ordering an investigation or appointment of a guardian ad litem  
18                 or attorney for the minor child.  
19           i.     Imposing any other condition that is deemed necessary to  
20                 provide for the safety and well-being of the minor child and the  
21                 safety of the aggrieved party.

22           If the court grants visitation, the order shall specify dates and times for  
23           the visitation to take place or other specific parameters or conditions  
24           that are appropriate. A person, supervised visitation center, or other  
25           agency may be approved to supervise visitation after appearing in  
26           court or filing an affidavit accepting that responsibility and  
27           acknowledging accountability to the court.

- 28           (4)    A temporary custody order entered pursuant to this Chapter shall be  
29                 without prejudice and shall be for a fixed period of time not to exceed  
30                 one year. Nothing in this section shall be construed to affect the right  
31                 of the parties to a de novo hearing under Chapter 50 of the General  
32                 Statutes. Any subsequent custody order entered under Chapter 50 of  
33                 the General Statutes supersedes a temporary order issued pursuant to  
34                 this Chapter."

35           **SECTION 19.5.** G.S. 50B-3(b) reads as rewritten:

36           "(b)   Protective orders entered pursuant to this Chapter shall be for a fixed period  
37 of time not to exceed one year. The court may renew a protective order for a fixed  
38 period of time not to exceed one year, including an order that previously has been  
39 renewed, upon a motion by the aggrieved party filed before the expiration of the current  
40 ~~order~~ order; provided, however, that a temporary award of custody entered as part of a  
41 protective order may not be renewed to extend a temporary award of custody beyond  
42 the maximum one-year period. The court may renew a protective order for good cause.  
43 The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the  
44 current order is not required for an order to be renewed. Protective orders entered,

1 including consent orders, shall not be mutual in nature except where both parties file a  
2 claim and the court makes detailed findings of fact indicating that both parties acted as  
3 aggressors, that neither party acted primarily in self-defense, and that the right of each  
4 party to due process is preserved."

5 **SECTION 19.6.** This part becomes effective October 1, 2004, and applies to  
6 actions filed on or after that date.

7 **PART XX. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST**  
8 **DOMESTIC VIOLENCE VICTIMS**

9 **SECTION 20.1.** Chapter 50B of the General Statutes is amended by adding  
10 a new section to read:

11 **"§ 50B-5.5. Employment discrimination unlawful.**

12 No employer may discharge, demote, or deny a promotion or other benefit of  
13 employment to any employee for taking time off from work to obtain or attempt to  
14 obtain any relief provided by this Chapter. The employee shall notify the employer of  
15 the reason for taking time off at the time the request is made. If requested by the  
16 employer, the employee shall also provide documentation to the employer of the reason  
17 for taking time off. Documentation may include a copy of a protective order or other  
18 evidence that the employee has appeared in court. The Commissioner of Labor shall  
19 enforce the provisions of this section according to Article 21 of Chapter 95 of the  
20 General Statutes, including the rules and regulations issued pursuant to that Article."

21 **SECTION 20.2.** G.S. 95-241(a) reads as rewritten:

22 "(a) No person shall discriminate or take any retaliatory action against an  
23 employee because the employee in good faith does or threatens to do any of the  
24 following:

- 25 (1) File a claim or complaint, initiate any inquiry, investigation,  
26 inspection, proceeding or other action, or testify or provide  
27 information to any person with respect to any of the following:  
28 a. Chapter 97 of the General Statutes.  
29 b. Article 2A or Article 16 of this Chapter.  
30 c. Article 2A of Chapter 74 of the General Statutes.  
31 d. G.S. 95-28.1.  
32 e. Article 16 of Chapter 127A of the General Statutes.  
33 f. G.S. 95-28.1A.
- 34 (2) Cause any of the activities listed in subdivision (1) of this subsection  
35 to be initiated on an employee's behalf.
- 36 (3) Exercise any right on behalf of the employee or any other employee  
37 afforded by Article 2A or Article 16 of this Chapter or by Article 2A  
38 of Chapter 74 of the General Statutes.
- 39 (4) Comply with the provisions of Article 27 of Chapter 7B of the General  
40 Statutes.
- 41 (5) Seek relief under Chapter 50B of the General Statutes."

42 **SECTION 20.3.** This part becomes effective October 1, 2004, and applies to  
43 actions filed on or after that date.

44 **PART XXI. PRIVACY FOR 50B INTAKE**



1           **SECTION 21.1.** G.S. 50B-2(d) reads as rewritten:

2           "(d) Pro Se Forms. – The clerk of superior court of each county shall provide to  
3 pro se complainants all forms which are necessary or appropriate to enable them to  
4 proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a  
5 private area for complainants to fill out forms and make inquiries. ~~The Clerk-clerk~~ shall  
6 provide a supply of pro se forms to authorized magistrates who shall make the forms  
7 available to complainants seeking relief under subsection (c1) of this section."

8           **SECTION 21.2.** This part is effective when it becomes law.

9           **PART XXII. TRAINING FOR JUDGES AND COURT PERSONNEL**

10           **SECTION 22.1.** The North Carolina Supreme Court is respectfully  
11 requested to adopt rules establishing minimum standards of education and training for  
12 district court judges in handling civil and criminal domestic violence cases.

13           **SECTION 22.2.** The Administrative Office of the Courts shall study the  
14 issue of training for court personnel in the area of domestic violence. The study shall  
15 examine the following:

- 16           (1) The extent to which training is currently being done.  
17           (2) The need for additional training.  
18           (3) The amount and types of training that would be most appropriate.  
19           (4) The potential costs and sources of funding for any additional training.

20           The Administrative Office of the Courts shall report its findings and  
21 recommendations to the 2005 Regular Session of the 2005 General Assembly.

22           **SECTION 22.3.** This part is effective when it becomes law.

23           **PART XXIII. EFFECTIVE DATE**

24           **SECTION 23.1.** This act is effective when it becomes law.