

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

3

HOUSE BILL 1354
Committee Substitute Favorable 6/16/04
Committee Substitute #2 Favorable 6/17/04

Short Title: Strengthen Domestic Violence Laws.

(Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED
AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO
PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS,
AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE
SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

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

"§ 15A-1343. Conditions of probation.

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

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

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).
- (5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.
- (6) Pay a supervision fee as specified in subsection (c1).

- 1 (7) Remain gainfully and suitably employed or faithfully pursue a course
2 of study or of vocational training that will equip him for suitable
3 employment. A defendant pursuing a course of study or of vocational
4 training shall abide by all of the rules of the institution providing the
5 education or training, and the probation officer shall forward a copy of
6 the probation judgment to that institution and request to be notified of
7 any violations of institutional rules by the defendant.
- 8 (8) Notify the probation officer if he fails to obtain or retain satisfactory
9 employment.
- 10 (9) Pay the costs of court, any fine ordered by the court, and make
11 restitution or reparation as provided in subsection (d).
- 12 (10) Pay the State of North Carolina for the costs of appointed counsel,
13 public defender, or appellate defender to represent him in the case(s)
14 for which he was placed on probation.
- 15 (11) At a time to be designated by his probation officer, visit with his
16 probation officer a facility maintained by the Division of Prisons.
- 17 (12) Attend and complete an abuser treatment program if (i) the court finds
18 the defendant is responsible for acts of domestic violence and (ii) there
19 is a program, approved by the Domestic Violence Commission,
20 reasonably available to the defendant, unless the court finds that such
21 would not be in the best interests of justice.

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

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

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

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

- 40 (1) Undergo available medical or psychiatric treatment and remain in a
41 specified institution if required for that purpose.
- 42 (2) Attend or reside in a facility providing rehabilitation, counseling,
43 treatment, social skills, or employment training, instruction, recreation,
44 or residence for persons on probation.

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

1 would otherwise be unlawful. Whenever the warrantless search
2 consists of testing for the presence of illegal drugs, the probationer
3 may also be required to reimburse the Department of Correction for
4 the actual cost of drug screening and drug testing, if the results are
5 positive.

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

14 (8a) Purchase the least expensive annual statewide license or combination
15 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,
16 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to
17 engage lawfully in the specific activity or activities in which the
18 defendant was engaged and which constitute the basis of the offense or
19 offenses of which he was convicted.

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

24 ~~(9a) Attend and complete an abuser treatment program if (i) the court finds~~
25 ~~the defendant is responsible for acts of domestic violence and (ii) the~~
26 ~~program is approved by the Domestic Violence Commission.~~

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

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

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

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

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

41 (4) Not reside in a household with any minor child if the offense is one in
42 which there is evidence of sexual abuse of a minor.

43 (5) Not reside in a household with any minor child if the offense is one in
44 which there is evidence of physical or mental abuse of a minor, unless

1 the court expressly finds that it is unlikely that the defendant's harmful
2 or abusive conduct will recur and that it would be in the minor child's
3 best interest to allow the probationer to reside in the same household
4 with a minor child.

- 5 (6) Satisfy any other conditions determined by the court to be reasonably
6 related to his rehabilitation.

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

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

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

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

32 (d) Restitution as a Condition of Probation. – As a condition of probation, a
33 defendant may be required to make restitution or reparation to an aggrieved party or
34 parties who shall be named by the court for the damage or loss caused by the defendant
35 arising out of the offense or offenses committed by the defendant. When restitution or
36 reparation is a condition imposed, the court shall take into consideration the factors set
37 out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall
38 include but not be limited to the performing of community services, volunteer work, or
39 doing such other acts or things as shall aid the defendant in his rehabilitation. As used
40 herein "aggrieved party" includes individuals, firms, corporations, associations, other
41 organizations, and government agencies, whether federal, State or local, including the
42 Crime Victims Compensation Fund established by G.S. 15B-23. A government agency
43 may benefit by way of reparation even though the agency was not a party to the crime
44 provided that when reparation is ordered, community service work shall be rendered

1 only after approval has been granted by the owner or person in charge of the property or
2 premises where the work will be done.

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

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

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

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

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

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

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

35 **PART II. DOMESTIC VIOLENCE TRAINING FOR LAW ENFORCEMENT**

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

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

41 ...

42 (2) Establish minimum educational and training standards that must be
43 met in order to qualify for entry level employment and retention as a
44 criminal justice officer in temporary or probationary status or in a

1 permanent position. The standards for entry level employment shall
2 include education and training in response to, and investigation of,
3 domestic violence cases, as well as training in investigation for
4 evidence-based prosecutions."

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

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

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

16 ...

17 (14) Establish minimum standards for in-service training for criminal
18 justice officers. In-service training standards shall include training in
19 response to, and investigation of, domestic violence cases, as well as
20 training investigation for evidence-based prosecutions."

21 **SECTION 2.4.** The North Carolina Criminal Justice Education and Training
22 Standards Commission shall ensure that the domestic violence in-service training
23 required by Section 2.3 of this part is available no later than March 1, 2005.

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

26 "(15) Establish minimum standards and levels of training for certification of
27 instructors for the domestic violence training required by subdivisions
28 (2) and (14) of this subsection."

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

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

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

36 ...

37 (2) Establish minimum educational and training standards that may be met
38 in order to qualify for entry level employment as an officer in
39 temporary or probationary status or in a permanent ~~position~~; position.
40 The standards for entry level employment of officers shall include
41 training in response to, and investigation of, domestic violence cases,
42 as well as training in investigation for evidence-based prosecutions.
43 For purposes of the domestic violence training requirement, the term
44 'officers' shall include justice officers as defined in G.S. 17E-2(3)a.,

1 except that the term shall not include 'special deputy sheriffs' as
2 defined in G.S. 17E-2(3)a.;"

3 **SECTION 2.8.** The North Carolina Sheriffs' Education and Training
4 Standards Commission shall ensure that the domestic violence education and training
5 required by Section 2.7 of this part is incorporated into all Basic Law Enforcement
6 Training (BLET) courses as soon as practicable. However, the domestic violence
7 education and training shall be part of the required BLET curriculum no later than
8 March 1, 2005.

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

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

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

14 "(11) Establish minimum standards for in-service training for justice
15 officers. In-service training standards shall include training in response
16 to, and investigation of, domestic violence cases, as well as training in
17 investigation for evidence-based prosecutions. For purposes of the
18 domestic violence training requirement, the term 'justice officer' shall
19 include those defined in G.S. 17E-2(3)a., except that the term shall not
20 include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;"

21 **SECTION 2.11.** The North Carolina Sheriffs' Education and Training
22 Standards Commission shall ensure that the domestic violence in-service training
23 required by Section 2.9 of this part is available no later than March 1, 2005.

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

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

29 **SECTION 2.13.** The North Carolina Sheriffs' Education and Training
30 Standards Commission shall ensure that the standards and training required for
31 certification under Section 2.11 of this part are implemented no later than March 1,
32 2005.

33 **SECTION 2.14.** The North Carolina Criminal Justice Education and
34 Training Standards Commission and the North Carolina Sheriffs' Education and
35 Training Standards Commission shall report to the General Assembly on or before
36 March 1, 2005, on the exact standards implemented and the dates they were
37 implemented.

38 **SECTION 2.15.** This part is effective when it becomes law.

39 **PART III. STUDY OF ANTI-VIOLENCE EDUCATION IN SCHOOLS AND** 40 **TRAINING FOR SCHOOL PERSONNEL**

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

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

19 In studying this issue, the Department shall examine some of the
20 anti-violence programs that are in use throughout the country. In addition to any other
21 specific programs examined, the Department shall review in detail the "Second Step"
22 program developed by the Committee for Children.

23 The Department shall make a preliminary report to the House Select
24 Committee on Domestic Violence and to the Joint Legislative Education Oversight
25 Committee no later than October 1, 2004, and a final report to the Joint Legislative
26 Education Oversight Committee and the General Assembly on or before January 15,
27 2005.

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

- 33 (1) What type of training is currently available and/or required for school
34 personnel.
- 35 (2) Should training be required for school personnel.
- 36 (3) If training should be required, which school personnel should be
37 required to receive the training.
- 38 (4) What type of training should be required.
- 39 (5) What is the fiscal impact of requiring school personnel to receive such
40 training.

41 The Department shall make a preliminary report to the House Select
42 Committee on Domestic Violence and to the Joint Legislative Education Oversight
43 Committee no later than October 1, 2004, and a final report to the Joint Legislative

1 Education Oversight Committee and the General Assembly on or before January 15,
2 2005.

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

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

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

7 "Article 37B.

8 "Domestic Violence Victim Assistance Act.

9 **"§ 7A-474.6. Legislative findings and purpose.**

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

15 **"§ 7A-474.7. Definitions.**

16 The following definitions shall apply throughout this Article, unless the context
17 otherwise requires:

18 (1) "Domestic violence victim" means a resident of North Carolina that
19 has been subjected to acts of domestic violence as defined in
20 G.S. 50B-1. A resident is not required to seek a protective order under
21 Chapter 50B of the General Statutes to qualify as a domestic violence
22 victim under this Article.

23 (2) "Legal assistance" means the provision of any legal services, as
24 defined by Chapter 84 of the General Statutes, consistent with this
25 Article. Provided, that all legal services provided hereunder shall be
26 performed consistently with the Rules of Professional Conduct
27 promulgated by the North Carolina State Bar. Provided, further, that
28 no funds appropriated under this Article shall be used for lobbying to
29 influence the passage or defeat of any legislation before any municipal,
30 county, state, or national legislative body.

31 (3) "Established legal services program" means the following
32 not-for-profit corporations using State funds to serve the counties
33 listed: Legal Aid Society of Northwest North Carolina, serving Davie,
34 Forsyth, Iredell, Stokes, Surry, and Yadkin Counties; Pisgah Legal
35 Services, serving Buncombe, Henderson, Madison, Polk, Rutherford,
36 and Transylvania Counties; and Legal Aid of North Carolina; or any
37 successor entity or entities of the named organizations, or, should any
38 of the named organizations dissolve, the entity or entities providing
39 substantially the same services in substantially the same service area.

40 **"§ 7A-474.8. Eligible activities and limitations.**

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

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

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

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

5 (b) Eligible Cases. – The funds shall be prioritized by each legal services
6 program to serve the greatest number of eligible clients, with emphasis placed on
7 representation of clients needing legal assistance with proceedings pursuant to Chapter
8 50B of the General Statutes. Legal assistance shall be provided to eligible clients under
9 this Article only in the following types of cases:

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

12 (2) Child custody and visitation issues; and

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

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

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

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

21 **"§ 7A-474.9. Funds.**

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

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

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

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

37 **"§ 7A-474.10. Records and reports.**

38 The established legal services programs shall keep appropriate records and make
39 periodic reports, as requested, to the North Carolina State Bar. The North Carolina State
40 Bar shall report annually to the General Assembly on the amount of the funds disbursed
41 and the use of the funds by each legal services program receiving funds. The report to
42 the General Assembly shall be made by January 15 of each year beginning January 15,
43 2006."

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

1 **"§ 84-4.1. Limited practice of out-of-state attorneys.**

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

- 11 (1) The attorney's full name, post-office address, bar membership number,
12 and status as a practicing attorney in another state.
- 13 (2) A statement, signed by the client, setting forth the client's address and
14 declaring that the client has retained the attorney to represent the client
15 in the proceeding.
- 16 (3) A statement that unless permitted to withdraw sooner by order of the
17 court, the attorney will continue to represent the client in the
18 proceeding until the final determination thereof, and that with
19 reference to all matters incident to the proceeding, the attorney agrees
20 to be subject to the orders and amenable to the disciplinary action and
21 the civil jurisdiction of the General Court of Justice and the North
22 Carolina State Bar in all respects as if the attorney were a regularly
23 admitted and licensed member of the Bar of North Carolina in good
24 standing.
- 25 (4) A statement that the state in which the attorney is regularly admitted to
26 practice grants like privileges to members of the Bar of North Carolina
27 in good standing.
- 28 (5) A statement to the effect that the attorney has associated and is
29 personally appearing in the proceeding, with an attorney who is a
30 resident of this State and is duly and legally admitted to practice in the
31 General Court of Justice of North Carolina, upon whom service may
32 be had in all matters connected with the legal proceedings, or any
33 disciplinary matter, with the same effect as if personally made on the
34 foreign attorney within this State.
- 35 (6) A statement accurately disclosing a record of all that attorney's
36 disciplinary history. Discipline shall include (i) public discipline by
37 any court or lawyer regulatory organization, and (ii) revocation of any
38 pro hac vice admission.
- 39 (7) A fee in the amount of one hundred dollars (\$100.00).

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

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

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

4 **PART V. ADDITIONAL FUNDING FOR VICTIM SERVICES**

5 **SECTION 5.1.** There is appropriated from the General Fund to the
6 Department of Administration, to be credited to the Domestic Violence Center Fund
7 established under G.S. 50B-9, the sum of two million dollars (\$2,000,000) for the
8 2004-2005 fiscal year. It is the intent of the General Assembly that this become a
9 recurring appropriation.

10 **SECTION 5.2.** This part becomes effective July 1, 2004.

11 **PART VI. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY**
12 **TASK FORCE**

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

14 **"§ 7B-1402. Task Force – creation; membership; vacancies.**

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

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

- 24 (1) The Chief Medical Examiner;
- 25 (2) The Attorney General;
- 26 (3) The Director of the Division of Social Services;
- 27 (4) The Director of the State Bureau of Investigation;
- 28 (5) The Director of the Division of Maternal and Child Health of the
29 Department of Health and Human Services;
- 30 (6) The Director of the Governor's Youth Advocacy and Involvement
31 Office;
- 32 (7) The Superintendent of Public Instruction;
- 33 (8) The Chairman of the State Board of Education;
- 34 (9) The Director of the Division of Mental Health, Developmental
35 Disabilities, and Substance Abuse Services;
- 36 (10) The Secretary of the Department of Health and Human Services;
- 37 (11) The Director of the Administrative Office of the Courts;
- 38 (12) A director of a county department of social services, appointed by the
39 Governor upon recommendation of the President of the North Carolina
40 Association of County Directors of Social Services;
- 41 (13) A representative from a Sudden Infant Death Syndrome counseling
42 and education program, appointed by the Governor upon
43 recommendation of the Director of the Division of Maternal and Child
44 Health of the Department of Health and Human Services;

- 1 (14) A representative from the North Carolina Child Advocacy Institute,
2 appointed by the Governor upon recommendation of the President of
3 the Institute;
- 4 (15) A director of a local department of health, appointed by the Governor
5 upon the recommendation of the President of the North Carolina
6 Association of Local Health Directors;
- 7 (16) A representative from a private group, other than the North Carolina
8 Child Advocacy Institute, that advocates for children, appointed by the
9 Speaker of the House of Representatives upon recommendation of
10 private child advocacy organizations;
- 11 (17) A pediatrician, licensed to practice medicine in North Carolina,
12 appointed by the Speaker of the House of Representatives upon
13 recommendation of the North Carolina Pediatric Society;
- 14 (18) A representative from the North Carolina League of Municipalities,
15 appointed by the Speaker of the House of Representatives upon
16 recommendation of the League;
- 17 (18a) A representative from the North Carolina Domestic Violence
18 Commission, appointed by the Speaker of the House of
19 Representatives upon recommendation of the Director of the
20 Commission;
- 21 (19) ~~Two public members,~~ One public member, appointed by the Speaker of
22 the House of Representatives;
- 23 (20) A county or municipal law enforcement officer, appointed by the
24 President Pro Tempore of the Senate upon recommendation of
25 organizations that represent local law enforcement officers;
- 26 (21) A district attorney, appointed by the President Pro Tempore of the
27 Senate upon recommendation of the President of the North Carolina
28 Conference of District Attorneys;
- 29 (22) A representative from the North Carolina Association of County
30 Commissioners, appointed by the President Pro Tempore of the Senate
31 upon recommendation of the Association;
- 32 (22a) A representative from the North Carolina Coalition Against Domestic
33 Violence, appointed by the President Pro Tempore of the Senate upon
34 recommendation of the Executive Director of the Coalition;
- 35 (23) ~~Two public members,~~ One public member, appointed by the President
36 Pro Tempore of the Senate; and
- 37 (24) Five members of the Senate, appointed by the President Pro Tempore
38 of the Senate, and five members of the House of Representatives,
39 appointed by the Speaker of the House of Representatives.
- 40 (c) All members of the Task Force are voting members. Vacancies in the
41 appointed membership shall be filled by the appointing officer who made the initial
42 appointment. Terms shall be two years. The members shall elect a chair who shall
43 preside for the duration of the chair's term as member. In the event a vacancy occurs in

1 the chair before the expiration of the chair's term, the members shall elect an acting
2 chair to serve for the remainder of the unexpired term."

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

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

8 **PART VII. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC**
9 **VIOLENCE VICTIMS**

10 **SECTION 7.1.** The Department of Health and Human Services shall study
11 and develop a plan for serving clients of domestic violence programs with mental health
12 and substance abuse service needs. The plan will address providing diagnostic and
13 referral services for any client suspected of having a mental illness or a substance abuse
14 problem. The plan will also address the delivery of appropriate services to clients
15 meeting the target population criteria, as defined in the State Plan developed pursuant to
16 G.S. 122C-102. Services must be best practices, as determined by the Department. The
17 Department will consult various stakeholders in the domestic violence network of
18 organizations. The Department will also consider the delivery of services to children
19 identified through domestic violence programs. The Department shall also consider the
20 fiscal impact, if any, of implementing the plan developed pursuant to this study.

21 The Department shall make a preliminary report to the House Select
22 Committee on Domestic Violence and the Joint Legislative Oversight Committee on
23 Mental Health, Developmental Disabilities and Substance Abuse Services no later than
24 October 1, 2004, and a final report to the Joint Legislative Oversight Committee on
25 Mental Health, Developmental Disabilities and Substance Abuse Services and the
26 General Assembly on or before January 15, 2005.

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

28 **PART VIII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL**
29 **REPRESENTATION**

30 **SECTION 8.1.** The North Carolina State Bar, in cooperation with the North
31 Carolina Bar Association, shall study the issue of providing Continuing Legal Education
32 (CLE) credit to active attorneys for providing pro bono legal representation. The Bar
33 shall consider what types of pro bono legal representation, if any, should qualify for
34 CLE credit and what administrative requirements would be necessary to provide such
35 credit. The Bar shall specifically look at the possible benefits of providing CLE credit
36 for pro bono legal representation to domestic violence victims. The Bar shall also
37 consider the fiscal impact, if any, of providing the credit.

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

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

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

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

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

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

- 1 (15) The defendant took advantage of a position of trust or ~~confidence~~
 2 confidence, including a domestic relationship, to commit the offense.
- 3 (16) The offense involved the sale or delivery of a controlled substance to a
 4 minor.
- 5 (17) The offense for which the defendant stands convicted was committed
 6 against a victim because of the victim's race, color, religion,
 7 nationality, or country of origin.
- 8 (18) The defendant does not support the defendant's family.
- 9 (18a) The defendant has previously been adjudicated delinquent for an
 10 offense that would be a Class A, B1, B2, C, D, or E felony if
 11 committed by an adult.
- 12 (19) The serious injury inflicted upon the victim is permanent and
 13 debilitating.
- 14 (20) Any other aggravating factor reasonably related to the purposes of
 15 sentencing.

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

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

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

25 **PART X. CREATE STRANGULATION OFFENSE**

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

27 "**§ 14-32.4. Assault inflicting serious bodily ~~injury~~-injury; strangulation; penalties.**

28 (a) Unless the conduct is covered under some other provision of law providing
 29 greater punishment, any person who assaults another person and inflicts serious bodily
 30 injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury
 31 that creates a substantial risk of death, or that causes serious permanent disfigurement,
 32 coma, a permanent or protracted condition that causes extreme pain, or permanent or
 33 protracted loss or impairment of the function of any bodily member or organ, or that
 34 results in prolonged hospitalization.

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

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

40 **PART XI. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE**

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

42 "**§ 14-33.2. Habitual misdemeanor assault.**

43 A person commits the offense of habitual misdemeanor assault if that person violates
 44 any of the provisions of ~~G.S. 14-33(e) or G.S. 14-34~~G.S. 14-33 and causes physical

1 injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or
2 felony assault. been convicted of five or more prior misdemeanor convictions, two of
3 which were assaults. A conviction under this section shall not be used as a prior
4 conviction for any other habitual offense statute. A person convicted of violating this
5 section is guilty of a Class H felony."

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

11 **PART XII. DOMESTIC VIOLENCE OFFENSE TRACKING**

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

14 **"§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

15 (a) When a defendant is found guilty of an offense involving assault, or
16 communicating a threat, the presiding judge shall determine whether the defendant and
17 victim had a personal relationship. If the judge determines that there was a personal
18 relationship between the defendant and the victim, then the judge shall indicate on the
19 form reflecting the judgment that the case involved domestic violence. The clerk of
20 court shall insure that the official record of the defendant's conviction includes the
21 court's determination, so that any inquiry into the defendant's criminal record will reflect
22 that the offense involved domestic violence.

23 (b) If the presiding judge determines that there was a personal relationship
24 between the defendant and the victim, and a sentence to community punishment is
25 imposed, the judge shall determine whether the defendant shall comply with one or
26 more of the special conditions of probation set forth at G.S. 15A-1343(b1), in addition
27 to any other authorized punishment. Notwithstanding the provisions of
28 G.S. 15A-1340.11(6)c., the court may require the defendant to comply with the
29 provisions of G.S. 15A-1343(b1)(3c).

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

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

32 (2) "An offense involving assault" includes any offense where an assault
33 occurred, whether or not the conviction is for an offense under Article
34 8 of Chapter 14 of the General Statutes.

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

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

40 **PART XIII. AMEND PROBATION RULES**

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

42 **"§ 15A-1343.2. Special probation rules for persons sentenced under Article 81B.**

43 (a) Applicability. – This section applies only to persons sentenced under Article
44 81B of this Chapter.

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

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

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

- 17 (1) For misdemeanants sentenced to community punishment, not less than
18 six nor more than 18 months;
- 19 (2) For misdemeanants sentenced to intermediate punishment, not less
20 than 12 nor more than 24 months;
- 21 (3) For felons sentenced to community punishment, not less than 12 nor
22 more than 30 months; and
- 23 (4) For felons sentenced to intermediate punishment, not less than 18 nor
24 more than 36 months.

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

28 Extension. – The court may with the consent of the offender extend the original
29 period of the probation if necessary to complete a program of restitution or to complete
30 medical or psychiatric treatment ordered as a condition of probation. This extension
31 may be for no more than three years, and may only be ordered in the last six months of
32 the original period of probation.

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

- 37 (1) Perform up to 20 hours of community service, and pay the fee
38 prescribed by law for this ~~supervision~~; supervision.
- 39 (2) Report to the offender's probation officer on a frequency to be
40 determined by the ~~officer~~; officer.
- 41 (3) Submit to substance abuse assessment, monitoring or treatment.
- 42 (4) Submit to a curfew that requires the offender to remain in a specified
43 place for a specified period each day and wear a device that permits

1 the offender's compliance with the condition to be monitored
2 electronically.

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

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

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

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

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

21 (3) Submit to substance abuse assessment, monitoring or ~~treatment~~;
22 ~~or~~ treatment.

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

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

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

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

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

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

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

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

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

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

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

6 In contrast to the felony classification criteria, the Commission did not create
7 classification criteria for misdemeanors. However, the current misdemeanor sentencing
8 laws include an assault offense that has serious injury as an element – even though
9 "serious injury to a person" is a category of harm for felony offense classification. The
10 General Assembly finds that the classification of assault offenses that involve serious
11 injury as misdemeanors is inconsistent with the Sentencing Commission's classification
12 of felonies based on harm.

13 The North Carolina Sentencing and Policy Advisory Commission, pursuant to
14 its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall
15 study the classification of misdemeanor offenses. In particular, the Commission shall
16 examine the classification of assault offenses in relation to property offenses, crimes
17 against society, and felony assault offenses. The Commission shall develop a system for
18 classifying misdemeanor offenses on the basis of their severity. The Commission may
19 consider reclassifying existing offenses and creating new offenses in order to insure
20 proportionality and consistency. The Commission shall report its findings and
21 recommendations to the 2005 General Assembly, 2005 Regular Session. The report
22 shall describe the status of the Commission's work, and shall include any completed
23 policy recommendations and proposed legislation. The Commission shall make a final
24 report to the 2005 General Assembly, 2006 Regular Session.

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

26 **PART XV. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL**
27 **RELEASE CONDITIONS**

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

29 **"§ 15A-401. Arrest by law-enforcement officer.**

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

31 (1) Warrant in Possession of Officer. – An officer having a warrant for
32 arrest in his possession may arrest the person named or described
33 therein at any time and at any place within the officer's territorial
34 jurisdiction.

35 (2) Warrant Not in Possession of Officer. – An officer who has knowledge
36 that a warrant for arrest has been issued and has not been executed, but
37 who does not have the warrant in his possession, may arrest the person
38 named therein at any time. The officer must inform the person arrested
39 that the warrant has been issued and serve the warrant upon him as
40 soon as possible. This subdivision applies even though the arrest
41 process has been returned to the clerk under G.S. 15A-301.

42 (b) Arrest by Officer Without a Warrant. –

- 1 (1) Offense in Presence of Officer. – An officer may arrest without a
2 warrant any person who the officer has probable cause to believe has
3 committed a criminal offense in the officer's presence.
- 4 (2) Offense Out of Presence of Officer. – An officer may arrest without a
5 warrant any person who the officer has probable cause to believe:
6 a. Has committed a felony; or
7 b. Has committed a misdemeanor, and:
8 1. Will not be apprehended unless immediately arrested, or
9 2. May cause physical injury to himself or others, or
10 damage to property unless immediately arrested; or
11 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
12 20-138.1, or 20-138.2; or
13 d. Has committed a misdemeanor under G.S. 14-33(a),
14 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was
15 committed by a person with whom the alleged victim has a
16 personal relationship as defined in G.S. 50B-1; ~~or~~
17 e. Has committed a misdemeanor under ~~G.S. 50B-4.1(a)~~G.S.
18 50B-4.1(a); or
19 f. Has violated a pretrial release order entered under
20 G.S. 15A-534.1(a)(2).
- 21 (3) Repealed by Session Laws 1991, c. 150.
- 22 (4) A law enforcement officer may detain an individual arrested for
23 violation of an order limiting freedom of movement or access issued
24 pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by
25 the State Health Director or local health director pursuant to such
26 order. The person may be detained in such area until the initial
27 appearance before a judicial official pursuant to G.S. 15A-511 and
28 G.S. 15A-534.5.
- 29 (c) How Arrest Made. –
30 (1) An arrest is complete when:
31 a. The person submits to the control of the arresting officer who
32 has indicated his intention to arrest, or
33 b. The arresting officer, with intent to make an arrest, takes a
34 person into custody by the use of physical force.
- 35 (2) Upon making an arrest, a law-enforcement officer must:
36 a. Identify himself as a law-enforcement officer unless his identity
37 is otherwise apparent,
38 b. Inform the arrested person that he is under arrest, and
39 c. As promptly as is reasonable under the circumstances, inform
40 the arrested person of the cause of the arrest, unless the cause
41 appears to be evident.
- 42 (d) Use of Force in Arrest. –

- 1 (1) Subject to the provisions of subdivision (2), a law-enforcement officer
2 is justified in using force upon another person when and to the extent
3 that he reasonably believes it necessary:
4 a. To prevent the escape from custody or to effect an arrest of a
5 person who he reasonably believes has committed a criminal
6 offense, unless he knows that the arrest is unauthorized; or
7 b. To defend himself or a third person from what he reasonably
8 believes to be the use or imminent use of physical force while
9 effecting or attempting to effect an arrest or while preventing or
10 attempting to prevent an escape.
- 11 (2) A law-enforcement officer is justified in using deadly physical force
12 upon another person for a purpose specified in subdivision (1) of this
13 subsection only when it is or appears to be reasonably necessary
14 thereby:
15 a. To defend himself or a third person from what he reasonably
16 believes to be the use or imminent use of deadly physical force;
17 b. To effect an arrest or to prevent the escape from custody of a
18 person who he reasonably believes is attempting to escape by
19 means of a deadly weapon, or who by his conduct or any other
20 means indicates that he presents an imminent threat of death or
21 serious physical injury to others unless apprehended without
22 delay; or
23 c. To prevent the escape of a person from custody imposed upon
24 him as a result of conviction for a felony.
- 25 Nothing in this subdivision constitutes justification for willful,
26 malicious or criminally negligent conduct by any person which injures
27 or endangers any person or property, nor shall it be construed to
28 excuse or justify the use of unreasonable or excessive force.
- 29 (e) Entry on Private Premises or Vehicle; Use of Force. –
30 (1) A law-enforcement officer may enter private premises or a vehicle to
31 effect an arrest when:
32 a. The officer has in his possession a warrant or order or a copy of
33 the warrant or order for the arrest of a person, provided that an
34 officer may utilize a copy of a warrant or order only if the
35 original warrant or order is in the possession of a member of a
36 law enforcement agency located in the county where the officer
37 is employed and the officer verifies with the agency that the
38 warrant is current and valid; or the officer is authorized to arrest
39 a person without a warrant or order having been issued,
40 b. The officer has reasonable cause to believe the person to be
41 arrested is present, and
42 c. The officer has given, or made reasonable effort to give, notice
43 of his authority and purpose to an occupant thereof, unless there

1 is reasonable cause to believe that the giving of such notice
2 would present a clear danger to human life.

3 (2) The law-enforcement officer may use force to enter the premises or
4 vehicle if he reasonably believes that admittance is being denied or
5 unreasonably delayed, or if he is authorized under subsection (e)(1)c to
6 enter without giving notice of his authority and purpose.

7 (f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –

8 (1) A person is not justified in using a deadly weapon or deadly force to
9 resist an arrest by a law-enforcement officer using reasonable force,
10 when the person knows or has reason to know that the officer is a
11 law-enforcement officer and that the officer is effecting or attempting
12 to effect an arrest.

13 (2) The fact that the arrest was not authorized under this section is no
14 defense to an otherwise valid criminal charge arising out of the use of
15 such deadly weapon or deadly force.

16 (3) Nothing contained in this subsection (f) shall be construed to excuse or
17 justify the unreasonable or excessive force by an officer in effecting an
18 arrest. Nothing contained in this subsection (f) shall be construed to
19 bar or limit any civil action arising out of an arrest not authorized by
20 this Article."

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

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

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

25 **"§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

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

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

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

38 (b) Prior convictions which cause disenfranchisement under this section shall only
39 include:

40 (1) Felony convictions in North Carolina that occur before, on, or after
41 December 1, 1995; and

42 (2) Repealed by Session Laws 1995, c. 487, s. 3.

43 (3) Violations of criminal laws of other states or of the United States that
44 occur before, on, or after December 1, 1995, and that are substantially

1 similar to the crimes covered in subdivision (1) which are punishable
2 where committed by imprisonment for a term exceeding one year.

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

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

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

24 **PART XVII. SPECIFICALLY ALLOW CROSS WARRANTS**

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

26 **"§ 15A-304. Warrant for arrest.**

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

31 (b) When Issued. – A warrant for arrest may be issued, instead of or subsequent
32 to a criminal summons, when it appears to the judicial official that the person named
33 should be taken into custody. Circumstances to be considered in determining whether
34 the person should be taken into custody may include, but are not limited to, failure to
35 appear when previously summoned, facts making it apparent that a person summoned
36 will fail to appear, danger that the person accused will escape, danger that there may be
37 injury to person or property, or the seriousness of the offense.

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

42 (d) Showing of Probable Cause. – A judicial official may issue a warrant for
43 arrest only when he is supplied with sufficient information, supported by oath or
44 affirmation, to make an independent judgment that there is probable cause to believe

1 that a crime has been committed and that the person to be arrested committed it. The
2 information must be shown by one or more of the following:

- 3 (1) Affidavit;
- 4 (2) Oral testimony under oath or affirmation before the issuing official; or
- 5 (3) Oral testimony under oath or affirmation presented by a sworn law
6 enforcement officer to the issuing official by means of an audio and
7 video transmission in which both parties can see and hear each other.
8 Prior to the use of audio and video transmission pursuant to this
9 subdivision, the procedures and type of equipment for audio and video
10 transmission shall be submitted to the Administrative Office of the
11 Courts by the senior regular resident superior court judge and the chief
12 district court judge for a judicial district or set of districts and
13 approved by the Administrative Office of the Courts.

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

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

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

- 23 (1) A Justice of the Supreme Court.
- 24 (2) A judge of the Court of Appeals.
- 25 (3) A judge of the superior court.
- 26 (4) A judge of the district court, as provided in G.S. 7A-291.
- 27 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.
- 28 (6) A magistrate, as provided in G.S. 7A-273."

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

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

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

32 **"§ 8-53.13. Nurse privilege.**

33 No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes
34 shall be required to disclose any information that may have been acquired in rendering
35 professional nursing services, and which information was necessary to enable that
36 person to render professional nursing services, except that the presiding judge of a
37 superior or district court may compel disclosure if, in the court's opinion, disclosure is
38 necessary to a proper administration of justice and disclosure is not prohibited by other
39 statute or rule. Nothing in this section shall preclude the admission of otherwise
40 admissible written or printed medical records in any judicial proceeding."

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

42 **"§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

43 Notwithstanding the provisions of G.S. ~~8-53~~, ~~8-53~~ and G.S. 8-53.13, the
44 physician-patient_ or nurse privilege shall not be a ground for excluding evidence

1 regarding the abuse or neglect of a child under the age of 16 years or regarding an
2 illness of or injuries to such child or the cause thereof in any judicial proceeding related
3 to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General
4 Statutes of North Carolina."

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

6 **PART XIX. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE**
7 **HEARINGS**

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

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

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

24 "**§ 50B-2. Institution of civil action; motion for emergency relief; temporary**
25 **orders. orders; temporary custody.**

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

36 (b) Emergency Relief. – A party may move the court for emergency relief if he
37 or she believes there is a danger of serious and immediate injury to himself or herself or
38 a minor child. A hearing on a motion for emergency relief, where no ex parte order is
39 entered, shall be held after five days' notice of the hearing to the other party or after five
40 days from the date of service of process on the other party, whichever occurs first,
41 provided, however, that no hearing shall be required if the service of process is not
42 completed on the other party. If the party is proceeding pro se and does not request an
43 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing
44 within the time periods provided in this subsection, and shall effect service of the

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

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

38 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge
39 may authorize a magistrate or magistrates to hear any motions for emergency relief ex
40 parte. Prior to the hearing, if the magistrate determines that at the time the party is
41 seeking emergency relief ex parte the district court is not in session and a district court
42 judge is not and will not be available to hear the motion for a period of four or more
43 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
44 from specific facts shown that there is a danger of acts of domestic violence against the

1 aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems
2 necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except
3 that a temporary order for custody ex parte and prior to service of process and notice
4 shall not be entered unless the magistrate finds that the child is exposed to a substantial
5 risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that
6 the child is exposed to a substantial risk of physical or emotional injury or sexual abuse,
7 upon request of the aggrieved party, the magistrate shall consider and may order the
8 other party to stay away from a minor child, or to return a minor child to, or not remove
9 a minor child from, the physical care of a parent or person in loco parentis, if the
10 magistrate finds that the order is in the best interest of the minor child and is necessary
11 for the safety of the minor child. If the magistrate determines that it is in the best interest
12 of the minor child for the other party to have contact with the minor child or children,
13 the magistrate shall issue an order designed to protect the safety and well-being of the
14 minor child and the aggrieved party. The order shall specify the terms of contact
15 between the other party and the minor child and may include a specific schedule of time
16 and location of exchange of the minor child, supervision by a third party or supervised
17 visitation center, and any other conditions that will ensure both the well-being of the
18 minor child and the aggrieved party. An ex parte order entered under this subsection
19 shall expire and the magistrate shall schedule an ex parte hearing before a district court
20 judge by the end of the next day on which the district court is in session in the county in
21 which the action was filed. Ex parte orders entered by the district court judge pursuant
22 to this subsection shall be entered and scheduled in accordance with subsection (c) of
23 this section.

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

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

33 **SECTION 19.3.** G.S. 50B-3(a)(4) reads as rewritten:

34 "**§ 50B-3. Relief.**

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

38 ...

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

43 ..."

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

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

6 (1) In awarding custody or visitation rights, the court shall base its
7 decision on the best interest of the minor child with particular
8 consideration given to the safety of the minor child.

9 (2) For purposes of determining custody and visitation issues, the court
10 shall consider:

11 a. Whether the minor child was exposed to a substantial risk of
12 physical or emotional injury or sexual abuse.

13 b. Whether the minor child was present during acts of domestic
14 violence.

15 c. Whether a weapon was used or threatened to be used during any
16 act of domestic violence.

17 d. Whether a party caused or attempted to cause serious bodily
18 injury to the aggrieved party or the minor child.

19 e. Whether a party placed the aggrieved party or the minor child in
20 reasonable fear of imminent serious bodily injury.

21 f. Whether a party caused an aggrieved party to engage
22 involuntarily in sexual relations by force, threat, or duress.

23 g. Whether there is a pattern of abuse against an aggrieved party
24 or the minor child.

25 h. Whether a party has abused or endangered the minor child
26 during visitation.

27 i. Whether a party has used visitation as an opportunity to abuse
28 or harass the aggrieved party.

29 j. Whether a party has improperly concealed or detained the
30 minor child.

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

33 (3) If the court awards custody, the court shall also consider whether
34 visitation is in the best interest of the minor child. If ordering
35 visitation, the court shall provide for the safety and well-being of the
36 minor child and the safety of the aggrieved party. The court may
37 consider any of the following:

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

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

42 c. Ordering the noncustodial parent to attend and complete, to the
43 satisfaction of the court, an abuser treatment program as a
44 condition of visitation.

- 1 d. Ordering either or both parents to abstain from possession or
2 consumption of alcohol or controlled substances during the
3 visitation or for 24 hours preceding an exchange of the minor
4 child.
5 e. Ordering the noncustodial parent to pay the costs of supervised
6 visitation.
7 f. Prohibiting overnight visitation.
8 g. Requiring a bond from the noncustodial parent for the return
9 and safety of the minor child.
10 h. Ordering an investigation or appointment of a guardian ad litem
11 or attorney for the minor child.
12 i. Imposing any other condition that is deemed necessary to
13 provide for the safety and well-being of the minor child and the
14 safety of the aggrieved party.

15 If the court grants visitation, the order shall specify dates and times for
16 the visitation to take place or other specific parameters or conditions
17 that are appropriate. A person, supervised visitation center, or other
18 agency may be approved to supervise visitation after appearing in
19 court or filing an affidavit accepting that responsibility and
20 acknowledging accountability to the court.

- 21 (4) A temporary custody order entered pursuant to this Chapter shall be
22 without prejudice and shall be for a fixed period of time not to exceed
23 one year. Nothing in this section shall be construed to affect the right
24 of the parties to a de novo hearing under Chapter 50 of the General
25 Statutes. Any subsequent custody order entered under Chapter 50 of
26 the General Statutes supersedes a temporary order issued pursuant to
27 this Chapter."

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

29 "(b) Protective orders entered pursuant to this Chapter shall be for a fixed period
30 of time not to exceed one year. The court may renew a protective order for a fixed
31 period of time not to exceed one year, including an order that previously has been
32 renewed, upon a motion by the aggrieved party filed before the expiration of the current
33 ~~order~~order; provided, however, that a temporary award of custody entered as part of a
34 protective order may not be renewed to extend a temporary award of custody beyond
35 the maximum one-year period. The court may renew a protective order for good cause.
36 The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the
37 current order is not required for an order to be renewed. Protective orders entered,
38 including consent orders, shall not be mutual in nature except where both parties file a
39 claim and the court makes detailed findings of fact indicating that both parties acted as
40 aggressors, that neither party acted primarily in self-defense, and that the right of each
41 party to due process is preserved."

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

1 **PART XX. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST**
2 **DOMESTIC VIOLENCE VICTIMS**

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

5 **"§ 50B-5.5. Employment discrimination unlawful.**

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

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

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

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

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

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

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

41 "(d) Pro Se Forms. – The clerk of superior court of each county shall provide to
42 pro se complainants all forms ~~which~~that are necessary or appropriate to enable them to
43 proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a
44 private area for complainants to fill out forms and make inquiries. The ~~Clerk~~clerk shall

1 provide a supply of pro se forms to authorized magistrates who shall make the forms
2 available to complainants seeking relief under subsection (c1) of this section."

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

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

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

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

11 (1) The extent to which training is currently being done.

12 (2) The need for additional training.

13 (3) The amount and types of training that would be most appropriate.

14 (4) The potential costs and sources of funding for any additional training.

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

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

18 **PART XXIII. EFFECTIVE DATE**

19 **SECTION 23.1.** Except as otherwise provided in this act, this act is effective
20 when it becomes law.