

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1029
Judiciary I Committee Substitute Adopted 5/31/05

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

(Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY AND TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION.

The General Assembly of North Carolina enacts:

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

"§ 50B-3. Relief.

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1), may grant any ~~finds that an act of domestic violence has occurred, the court shall grant a protective order to bring about a cessation of acts of domestic violence. The orders may restrain~~ the defendant from further acts of domestic violence. A protective order may also be entered by consent of the parties. A protective order may include any of the following types of relief:

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

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

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

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

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

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

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

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

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

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

23 f. Prohibiting overnight visitation.

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

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

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

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

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

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

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

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

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

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

- 38 (1) Whether the protective order has been ~~renewed~~; renewed.
39 (2) Whether the defendant is subject to any other protective ~~orders~~;
40 orders.
41 (3) Whether the defendant is disqualified from owning or possessing a
42 firearm pursuant to 18 U.S.C. § 922 or any State law.

1 (4) Whether the defendant has any pending criminal charges, in either
2 State or federal court, committed against a person with whom the
3 defendant has a personal relationship as defined in G.S. 50B-1(b).

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

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

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

24 **SECTION 4.** G.S. 50-13.1(c) reads as rewritten:

25 "(c) For good cause, on the motion of either party or on the court's own motion,
26 the court may waive the mandatory setting under Article 39A of Chapter 7A of the
27 General Statutes of a contested custody or visitation matter for mediation. Good cause
28 may ~~include, but is not limited to,~~ include the following: a showing of undue hardship to
29 a party; an agreement between the parties for voluntary mediation, subject to court
30 approval; allegations of abuse or neglect of the minor child; allegations of alcoholism,
31 drug abuse, or ~~spouse abuse;~~ domestic violence between the parents in common; or
32 allegations of severe psychological, psychiatric, or emotional problems. A showing by
33 either party that the party resides more than fifty miles from the court shall be
34 considered good cause."

35 **SECTION 5.** G.S. 42-40 reads as rewritten:

36 "**§ 42-40. Definitions.**

37 For the purpose of this Article, the following definitions shall apply:

38 ...
39 (4) "Protected tenant" means a tenant or household member who is a
40 victim of domestic violence under Chapter 50B of the General
41 Statutes, or sexual assault or stalking under Chapter 14 of the General
42 Statutes."

43 **SECTION 6.** Article 5 of Chapter 42 of the General Statutes is amended by
44 adding the following new sections to read:

1 **"§ 42-42.1. Victim protection – nondiscrimination.**

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

- 8 (1) Law enforcement, court, or federal agency records or files.
9 (2) Documentation from a domestic violence or sexual assault program.
10 (3) Documentation from a religious, medical, or other professional.

11 **"§ 42-42.2. Victim protection – change locks.**

12 (a) If the perpetrator of domestic violence, sexual assault, or stalking is not a
13 tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give
14 actual or written notice to the landlord that a protected tenant is a victim of domestic
15 violence, sexual assault, or stalking and may request that the locks to the dwelling unit
16 be changed. A protected tenant is not required to provide verification of the domestic
17 violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this
18 subsection.

19 (b) If the perpetrator of the domestic violence, sexual assault, or stalking is a
20 tenant in the same dwelling unit as the victim, any tenant or protected tenant of a
21 dwelling unit may give actual or written notice to the landlord that a protected tenant is
22 a victim of domestic violence, sexual assault, or stalking and may request that the locks
23 to the dwelling unit be changed. In these circumstances, the following shall apply:

- 24 (1) Before the landlord or tenant changes the locks under this subsection,
25 after service upon the perpetrator, the tenant must provide the landlord
26 with a copy of an order issued by a court that orders the perpetrator to
27 stay away from the dwelling unit.
28 (2) Unless a court order allows the perpetrator to return to the dwelling to
29 retrieve personal belongings, the landlord has no duty under the rental
30 agreement or by law to allow the perpetrator access to the dwelling
31 unit, to provide keys to the perpetrator, or to provide the perpetrator
32 access to the perpetrator's personal property within the dwelling unit
33 once the landlord has been provided with a court order requiring the
34 perpetrator to stay away from the dwelling. If a landlord complies with
35 this section, the landlord is not liable to a perpetrator excluded from
36 the dwelling unit.
37 (3) The perpetrator who has been excluded from the dwelling unit under
38 this subsection remains liable under the lease with any other tenant of
39 the dwelling unit for rent or damages to the dwelling unit.

40 (c) A landlord who receives a request under subsection (a) or (b) of this section
41 shall change the locks within 48 hours to the protected tenant's dwelling unit at the
42 protected tenant's expense or give the protected tenant permission to change the locks. If
43 a landlord fails to act within 48 hours, the protected tenant may change the locks

1 without the landlord's permission. If the protected tenant changes the locks, the
2 protected tenant shall give a key to the new locks to the landlord within 48 hours."

3 **SECTION 7.** Article 5 of Chapter 42 of the General Statutes is amended by
4 adding the following new section to read:

5 **"§ 42-45.1. Early termination of rental agreement by victims of domestic violence,**
6 **sexual assault, or stalking.**

7 (a) Any protected tenant may terminate his or her rental agreement for a dwelling
8 unit by providing the landlord with a written notice of termination to be effective on a
9 date stated in the notice that is at least 30 days after the landlord's receipt of the notice.
10 The notice to the landlord shall be accompanied by a safety plan and either a copy of a
11 valid permanent order of protection issued by a court pursuant to G.S. 50B-3 or a
12 criminal order that restrains a person from contact with a protected tenant, or a valid
13 Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a
14 minor member of the tenant's household. The safety plan, dated during the term of the
15 tenancy to be terminated, must be provided by a domestic violence program which
16 complies with the requirements set forth in G.S. 50B-9 and must recommend relocation
17 of the protected tenant.

18 (b) Upon termination of a rental agreement under this section, the tenant who is
19 released from the rental agreement pursuant to subsection (a) of this section is liable for
20 the rent due under the rental agreement prorated to the effective date of the termination
21 and payable at the time that would have been required by the terms of the rental
22 agreement. The tenant is not liable for any other rent or fees due only to the early
23 termination of the tenancy. If, pursuant to this section, a tenant terminates the rental
24 agreement 14 days or more before occupancy, the tenant is not subject to any damages
25 or penalties.

26 (c) Notwithstanding the release of a tenant from a rental agreement under
27 subsection (a) of this section, or the exclusion of a perpetrator of domestic violence,
28 sexual assault, or stalking by court order, if there are any remaining tenants residing in
29 the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has
30 been excluded from the dwelling unit under court order remains liable under the lease
31 with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

32 (d) The provisions of this section may not be waived or modified by agreement
33 of the parties."

34 **SECTION 8.** G.S. 157-29(b) reads as rewritten:

35 "(b) In the operation or management of housing projects, ~~or~~ portions of projects,
36 or other housing assistance programs for persons of low income, an authority shall at all
37 times observe the following duties with respect to rentals and tenant selection:

38 ...

39 (3) In the administration of its waiting lists, it shall adopt a preference for
40 households with incomes of less than thirty percent (30%) of the area
41 medium income.

42 (4) An authority shall take applications on a continuous basis from
43 persons meeting the preference listed in this section and shall not close

1 the application process to these persons. Any additional local
2 preferences shall not take priority over the preference in this section."

3 **SECTION 9.** G.S. 78A-219 reads as rewritten:

4 "**§ 7A-219. Certain counterclaims; cross claims; third-party claims not**
5 **permissible.**

6 No counterclaim, cross claim or third-party claim which would make the amount in
7 controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is
8 permissible in a small claim action assigned to a magistrate. No determination of fact or
9 law in an assigned small claim action estops a party thereto in any subsequent action
10 which, except for this section, might have been asserted under the Code of Civil
11 Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule
12 13, failure by a defendant to file a counterclaim in a small claims action assigned to a
13 magistrate, or failure by a defendant to appeal a judgment in a small claims action to
14 district court, shall not bar such claims in a separate action."

15 **SECTION 10.** This act becomes effective October 1, 2005.