

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 686

Short Title: Domestic Violence Changes.

(Public)

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Sponsors: Representatives Sharpe; Capps, Clary, Cocklereece, Cummings, Davis, Lemmond, McComas, McMahan, K. Miller, Pulley, Rayfield, Reynolds, and Snowden.

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Referred to: Judiciary II.

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March 30, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES PERTAINING TO DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

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

**"§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party ~~by a current or former spouse of the aggrieved party or by a person of the opposite sex with whom the aggrieved party lives or has lived as if married; by a person with whom the aggrieved party has or has had a familial relationship, but does not include acts of self-defense:~~

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily ~~injury by the threat of force;~~ injury; or
- (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

1 (b) ~~Notwithstanding the provisions of subsection (a) above, domestic violence also~~  
2 ~~means the commission of one or more of the following acts upon a minor residing with or~~  
3 ~~in the custody of the aggrieved party by a current or former spouse of the aggrieved party~~  
4 ~~or by a person of the opposite sex with whom the aggrieved party lives or has lived as if~~  
5 ~~married:~~

- 6 (1) ~~Attempting to cause bodily injury, or intentionally causing bodily~~  
7 ~~injury;~~  
8 (2) ~~Placing the minor in fear of imminent serious bodily injury by the threat~~  
9 ~~of force; or~~  
10 (3) ~~Committing any act defined in G.S. 14-27.2 through 14-27.7.~~

11 (b) For purposes of this section, the term 'familial relationship' means a  
12 relationship wherein the parties involved:

- 13 (1) Are current or former spouses;  
14 (2) Live together or have lived together;  
15 (3) Are dating or have dated;  
16 (4) Are engaged in or have engaged in a sexual relationship;  
17 (5) Are related by blood or adoption as first cousins or closer;  
18 (6) Are or have been related by marriage as first cousins or closer; or  
19 (7) Have a child in common."

20 Sec. 2. G.S. 50B-3 reads as rewritten:

21 "**§ 50B-3. Relief.**

22 (a) The court, including magistrates as authorized under G.S. 50B-2(c1), may  
23 grant any protective order or approve any consent agreement to bring about a cessation of  
24 acts of domestic violence. The orders or agreements may:

- 25 (1) Direct a party to refrain from such acts;  
26 (2) Grant to a spouse possession of the residence or household of the parties  
27 and exclude the other spouse from the residence or household;  
28 (3) Require a party to provide a spouse and his or her children suitable  
29 alternate housing;  
30 (4) Award temporary custody of minor children and establish temporary  
31 visitation rights;  
32 (5) Order the eviction of a party from the residence or household and  
33 assistance to the victim in returning to it;  
34 (6) Order either party to make payments for the support of a minor child as  
35 required by law;  
36 (7) Order either party to make payments for the support of a spouse as  
37 required by law;  
38 (8) Provide for possession of personal property of the parties;  
39 (9) Order a party to refrain from ~~harassing or interfering with the other; and~~  
40 doing any or all of the following:

41 a. Threatening, abusing, or following the other party,

42 b. Harassing the other party, including by telephone or other means,

43 or

1                   c.       Otherwise interfering with the other party; and

2                   (10) Award costs and attorney's fees to either party.

3           (b) Protective orders entered or consent orders approved pursuant to this Chapter  
4 shall be for a fixed period of time not to exceed one year. Upon application of the  
5 aggrieved party, a judge may renew the original or any succeeding order for up to one  
6 additional year. Protection orders entered or consent orders approved shall not be mutual  
7 in nature except where both parties file a claim and the court makes detailed findings of  
8 fact indicating that both parties acted as aggressors, that neither party acted primarily in  
9 self-defense, and that the right of each party to due process is preserved.

10           (c) A copy of any order entered and filed under this Article shall be issued to each  
11 party. In addition, a copy of the order shall be issued to and retained by the police  
12 department of the city of the victim's residence. If the victim does not reside in a city or  
13 resides in a city with no police department, copies shall be issued to and retained by the  
14 sheriff, and the county police department, if any, of the county in which the victim  
15 resides."

16                   Sec. 3. G.S. 50B-4 reads as rewritten:

17 **"§ 50B-4. Enforcement of orders.**

18           (a) A party may file a motion for contempt for violation of any order entered  
19 pursuant to this Chapter. Said party may file and proceed with such motion pro se, using  
20 forms provided by the Clerk of Superior Court or a magistrate authorized under G.S.  
21 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the  
22 clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of  
23 domestic violence against the aggrieved party or a minor child and the motion is made at  
24 a time when the clerk is not available, shall schedule and issue notice of a show cause  
25 hearing with the district court division of the General Court of Justice at the earliest  
26 possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice  
27 issued by the magistrate pursuant to this subsection, shall effect service of the motion,  
28 notice, and other papers through the appropriate law enforcement agency where the  
29 defendant is to be served, upon payment of the required service fees.

30           (b) A law-enforcement officer shall arrest and take a person into custody without a  
31 warrant or other process if the officer has probable cause to believe that the person has  
32 violated a court order excluding the person from the residence or household occupied by  
33 a victim of domestic violence or directing the person to refrain from ~~harassing or~~  
34 ~~interfering with the victim, doing any or all of the acts specified in G.S. 50B-3(a)(9),~~ and if  
35 the victim, or someone acting on the victim's behalf, presents the law-enforcement officer  
36 with a copy of the order or the officer determines that such an order exists, and can  
37 ascertain the contents thereof, through phone, radio or other communication with  
38 appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer  
39 from securing a warrant for the arrest of a person who is subject to warrantless arrest.  
40 The person arrested shall be brought before the appropriate district court judge at the  
41 earliest time possible to show cause why he or she should not be held in civil or criminal  
42 contempt for violation of the order. The person arrested shall be entitled to be released  
43 under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

1 (c) Valid protection orders entered pursuant to this section shall be enforced by all  
2 North Carolina law-enforcement agencies without further order of the court.

3 (d) Valid protection orders entered by the courts of another state or Indian tribe  
4 shall be accorded full faith and credit by the courts of North Carolina and shall be  
5 enforced by the law-enforcement agencies of North Carolina."

6 Sec. 4. G.S. 1-110 reads as rewritten:

7 **"§ 1-110. Suit as an indigent; counsel.**

8 Any superior or district court judge or clerk of the superior court may authorize a  
9 person to sue as an indigent in their respective courts when the person makes affidavit  
10 that he or she is unable to advance the required court costs. The clerk of superior court  
11 shall authorize a person to sue as an indigent if the person makes the required affidavit  
12 and meets one or more of the following criteria:

13 (1) Receives food stamps.

14 (2) Receives Aid to Families with Dependent Children (AFDC).

15 (3) Receives Supplemental Security Income (SSI).

16 (4) Is represented by a legal services organization that has as its primary  
17 purpose the furnishing of legal services to indigent persons.

18 (5) Is represented by private counsel working on the behalf of or under the  
19 auspices of a legal services organization under subdivision (4) of this  
20 section.

21 (6) Is seeking to obtain a domestic violence protection order pursuant to  
22 G.S. 50B-2.

23 A superior or district court judge or clerk of superior court may authorize a person  
24 who does not meet one or more of these criteria to sue as an indigent if the person is  
25 unable to advance the required court costs. The court to which the summons is returnable  
26 may dismiss the case and charge the court costs to the person suing as an indigent if the  
27 allegations contained in the affidavit are determined to be untrue or if the court is  
28 satisfied that the action is frivolous or malicious."

29 Sec. 5. G.S. 50-13.2 reads as rewritten:

30 **"§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of**  
31 **grandparents; taking child out of State.**

32 (a) An order for custody of a minor child entered pursuant to this section shall  
33 award the custody of such child to such person, agency, organization or institution as will  
34 best promote the interest and welfare of the child. In making the determination, the court  
35 shall consider all relevant factors including the history of domestic violence between the  
36 parents, the safety of the child, and the safety of either parent from physical abuse by the  
37 other parent and shall make findings accordingly. An order for custody must include  
38 findings of fact which support the determination of what is in the best interest of the  
39 child. Between the mother and father, whether natural or adoptive, no presumption shall  
40 apply as to who will better promote the interest and welfare of the ~~child~~-child; provided,  
41 however, where the court finds by clear and convincing evidence that one parent has  
42 committed acts of domestic violence as defined under G.S. 50B-1 against the other parent  
43 or a minor child, there shall be a rebuttable presumption that it is not in the best interests

1 of the child for the parent who has committed the acts to be awarded sole or joint legal or  
2 physical custody. Joint custody to the parents shall be considered upon the request of  
3 either parent.

4 (b) An order for custody of a minor child may grant joint custody to the parents,  
5 exclusive custody to one person, agency, organization, or institution, or grant custody to  
6 two or more persons, agencies, organizations, or institutions. Any order for custody  
7 shall include such terms, including visitation, as will best promote the interest and  
8 welfare of the child. If the court finds credible evidence that domestic violence has  
9 occurred, the court shall grant rights of visitation in such a manner that best protects the  
10 children and parent who were the victims of domestic violence from further harm.  
11 Orders for visitation may include a designation of time and place for the exchange of  
12 children away from the abused parent, the participation of a third party, or supervised  
13 visitation. If a parent is absent or relocates with or without the children because of an act  
14 of domestic violence, the absence or relocation shall not be a factor that weighs against  
15 the parent in determining custody or visitation. Absent an order of the court to the  
16 contrary, each parent shall have equal access to the records of the minor child involving  
17 the health, education, and welfare of the child.

18 (b1) An order for custody of a minor child may provide visitation rights for any  
19 grandparent of the child as the court, in its discretion, deems appropriate. As used in this  
20 subsection, 'grandparent' includes a biological grandparent of a child adopted by a  
21 stepparent or a relative of the child where a substantial relationship exists between the  
22 grandparent and the child. Under no circumstances shall a biological grandparent of a  
23 child adopted by adoptive parents, neither of whom is related to the child and where  
24 parental rights of both biological parents have been terminated, be entitled to visitation  
25 rights.

26 (c) An order for custody of a minor child may provide for such child to be taken  
27 outside of the State, but if the order contemplates the return of the child to this State, the  
28 judge may require the person, agency, organization or institution having custody out of  
29 this State to give bond or other security conditioned upon the return of the child to this  
30 State in accordance with the order of the court.

31 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to  
32 Chapter 48 of the General Statutes or parental rights have not been terminated, the  
33 consent of the other consenting parent shall not be effective in an action for custody of  
34 the child."

35 Sec. 6. This act becomes effective October 1, 1995.