

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 197
RATIFIED BILL

AN ACT TO MODIFY THE GENERAL STATUTES TO IMPLEMENT CERTAIN
RECOMMENDATIONS OF THE GOVERNOR'S TASK FORCE ON DOMESTIC
VIOLENCE.

The General Assembly of North Carolina enacts:

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

"§ 50B-3. Relief.

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

- (1) Direct a party to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide a spouse and his or her children suitable alternate housing;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order a party to refrain from doing any or all of the following:
 - a. Threatening, abusing, or following the other party,
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means, or
 - c. Otherwise interfering with the other party;
- (10) Award costs and attorney's fees to either party;
- (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- (12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

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

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by

the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides.

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

Section 2. G.S. 50B-4 reads as rewritten:

"§ 50B-4. Enforcement of orders.

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

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

~~(c) Valid A valid protective orders order entered pursuant to this section shall be enforced by all North Carolina law enforcement law enforcement agencies without further order of the court.~~

~~(d) Valid A valid protective orders order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law enforcement law enforcement agencies of North Carolina. Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county. Unless the issuing state~~

has already entered the order, the sheriff shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d).

(e) Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect."

Section 2.1. G.S. 50B-4 reads as rewritten:

"§ 50B-4. Enforcement of orders.

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

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

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

~~(d) Valid A valid protective orders-order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law enforcement-law enforcement agencies of North Carolina. Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall forward a copy to the sheriff of that county for entry into the Division of Criminal Information Network pursuant to G.S. 50B-3(d).~~

(e) Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect."

Section 3. G.S. 1C-1702 reads as rewritten:

"§ 1C-1702. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) " Foreign Judgment" means any judgment, decree, or order of a court of the United States or a court of any other state which is entitled to full faith and credit in this State, except a ~~"support-~~child support order," as defined in ~~G.S. 52A-3(14) (The Uniform Reciprocal Enforcement of Support Act) or G.S. 52C-1-101 (The Uniform Interstate Family Support Act),~~ a "custody decree," as defined in G.S. 50A-2(4) (The Uniform Child Custody Jurisdiction Act), ~~Act),~~ or a domestic violence protective order as provided in G.S. 50B-4(d).
- (2) " Judgment Debtor" means the party against whom a foreign judgment has been rendered.
- (3) " Judgment Creditor" means the party in whose favor a foreign judgment has been rendered."

Section 4. G.S. 50B-4.1 reads as rewritten:

"§ 50B-4.1. Violation of valid protective order a misdemeanor.

(a) A person who knowingly violates a valid protective order entered pursuant to this Chapter ~~or by the courts of another state or the courts of an Indian tribe~~ shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs."

Section 5. Chapter 50B of the General Statutes is amended by adding a new section to read:

"§ 50B-4.2. False statement regarding protective order a misdemeanor.

A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe remains in effect shall be guilty of a Class 2 misdemeanor."

Section 6. G.S. 50B-5(a) reads as rewritten:

"(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local ~~law enforcement~~ law enforcement agency. The local ~~law enforcement~~ law enforcement agency shall respond to the request for assistance as soon as practicable; ~~provided, however, a local law enforcement agency shall not be required to respond in instances of multiple complaints from the same complainant if the multiple complaints are made within a 48-hour period and the local law enforcement agency has reasonable cause to believe that immediate assistance is not needed.~~ practicable. The local ~~law enforcement~~ law enforcement officer responding to the request for assistance ~~is authorized to~~ may take whatever steps are reasonably necessary to protect the complainant from harm and ~~is authorized to~~ may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the ~~law enforcement~~ law enforcement officer ~~is authorized to~~ may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings."

Section 7. G.S. 15A-401(b) reads as rewritten:

- "(b) Arrest by Officer Without a Warrant. –
- (1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.
 - (2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:
 - a. Has committed a felony; or
 - b. Has committed a misdemeanor, and:
 - 1. Will not be apprehended unless immediately arrested, or
 - 2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
 - c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or
 - d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), ~~or 14-33(c)(2)~~ 14-33(c)(2), or 14-34 when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married, with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or
 - e. Has committed a misdemeanor under G.S. 50B-4.1(a).
 - (3) Repealed by Session Laws 1991, c. 150."

Section 8. Sections 1 and 2 of this act become effective February 1, 2000, only if funds are received by federal grant to implement those sections. Section 2.1 of this act becomes effective February 1, 2000, only if funds are not received by federal grant to implement Sections 1 and 2 of this act. The remainder of this act becomes effective December 1, 1999.

In the General Assembly read three times and ratified this the 7th day of April, 1999.

 Dennis A. Wicker
 President of the Senate

 James B. Black
 Speaker of the House of Representatives

 James B. Hunt, Jr.
 Governor

Approved _____ .m. this _____ day of _____ , 19