

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH30174-LU-64 (03/27)

Short Title: Clarify Definition of Protective Order.

(Public)

Sponsors: Representative Alexander.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEFINITION OF A PROTECTIVE ORDER UNDER
THE LAWS RELATING 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 person with whom the aggrieved party has or has had a personal 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 or continued harassment, as defined in G.S. 14-277.3, that rises to such a level as to inflict substantial emotional distress; or
- (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;

1 (6) Are persons of the opposite sex who are in a dating relationship or
2 have been in a dating relationship. For purposes of this subdivision, a
3 dating relationship is one wherein the parties are romantically involved
4 over time and on a continuous basis during the course of the
5 relationship. A casual acquaintance or ordinary fraternization between
6 persons in a business or social context is not a dating relationship.

7 (c) As used in this Chapter, the term 'protective order' includes any order entered
8 pursuant to this Chapter upon hearing by the court or consent of the parties."

9 **SECTION 2.** G.S. 50B-3 reads as rewritten:

10 **"§ 50B-3. Relief.**

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

- 14 (1) Direct a party to refrain from such acts;
- 15 (2) Grant to a party possession of the residence or household of the parties
16 and exclude the other party from the residence or household;
- 17 (3) Require a party to provide a spouse and his or her children suitable
18 alternate housing;
- 19 (4) Award temporary custody of minor children and establish temporary
20 visitation rights;
- 21 (5) Order the eviction of a party from the residence or household and
22 assistance to the victim in returning to it;
- 23 (6) Order either party to make payments for the support of a minor child
24 as required by law;
- 25 (7) Order either party to make payments for the support of a spouse as
26 required by law;
- 27 (8) Provide for possession of personal property of the parties;
- 28 (9) Order a party to refrain from doing any or all of the following:
 - 29 a. Threatening, abusing, or following the other party;
 - 30 b. Harassing the other party, including by telephone, visiting the
31 home or workplace, or other means; or
 - 32 c. Otherwise interfering with the other party;
- 33 (10) Award attorney's fees to either party;
- 34 (11) Prohibit a party from purchasing a firearm for a time fixed in the order;
- 35 (12) Order any party the court finds is responsible for acts of domestic
36 violence to attend and complete an abuser treatment program if the
37 program is approved by the Domestic Violence Commission; and
- 38 (13) Include any additional prohibitions or requirements the court deems
39 necessary to protect any party or any minor child.

40 (b) Protective orders entered ~~or consent orders approved~~ pursuant to this Chapter
41 shall be for a fixed period of time not to exceed one year. ~~Upon application of the~~
42 ~~aggrieved party, a judge may renew the original or any succeeding order for up to one~~
43 ~~additional year.~~ The court may renew a protective order, including an order that
44 previously has been renewed, upon a motion by the aggrieved party filed before the

1 expiration of the current order. The court may renew a protective order for good cause.
2 The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the
3 current order is not required for an order to be renewed. Protective orders ~~entered or~~
4 ~~consent orders approved~~ entered, including consent orders, shall not be mutual in nature
5 except where both parties file a claim and the court makes detailed findings of fact
6 indicating that both parties acted as aggressors, that neither party acted primarily in
7 self-defense, and that the right of each party to due process is preserved.

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

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

19 **SECTION 3.** G.S. 50B-4(c) reads as rewritten:

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

23 **SECTION 4.** G.S. 50B-8 reads as rewritten:

24 "**§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against**
25 **public morals.**

26 The granting of a protective order, ~~approval of a consent agreement,~~ prosecution for
27 violation of this Chapter, or the granting of any other relief or the institution of any
28 other enforcement proceedings under this Chapter shall not be construed to afford a
29 defense to any person or persons charged with fornication and adultery under G.S.
30 14-184 or charged with any other offense against the public morals; and prosecution,
31 conviction, or prosecution and conviction for violation of any provision of this Chapter
32 shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute
33 defining an offense or offenses against the public morals."

34 **SECTION 5.** This act is effective when it becomes law.