



NORTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE

2015-6 LEGISLATIVE UPDATE

Budget

No Cuts to Domestic Violence Programs. The budget did not cut funding through the Council for Women for the Domestic Violence Center Fund to be distributed to domestic violence programs. The budget also did not include any transfer of the Domestic Violence Commission or Council for Women to the Governor's Office nor transfer the administration of DV funds to any other department- both of which had been proposed in recent budgets/sessions. NCCADV had raised concerns about the potential for funding delays as a result and the transfers did not happen. The budget also provides \$17 million in funding for both years to of the budget to the Workforce Housing Investment Program (a \$7 million increase) which was supported by NCCADV.

Criminal-Related DV Provisions

- **Expansion of Pretrial Release Conditions for DV Crimes**
NCCADV worked with legislators to pass legislation to expand N.C. General Statute §15A-534.1, Pretrial Release for Crimes of Domestic Violence. This statute helps protect victims of domestic violence by providing that a defendant charged with certain offenses (such as assaults, stalking, and felonies) be held for *up to* 48 hours without a bond so that a judge can set the defendant's conditions of release. Before the expansion this session, this special "hold" only applied to defendants who had committed crimes against their spouse, former spouse, or persons with whom they lived or had lived with "as if married." NCCADV worked this session to expand this protection to victims of dating violence. Now defendants who are charged with these same crimes against anyone whom they are or have been in a dating relationship with, regardless of the sexual orientation of the parties, will be subject to the Pretrial Release Conditions for DV Crimes and the "hold" requirement. This expansion was passed as part of H465 and became effective on December 1, 2015.
- **Creation of a Statutory Aggravating Factor**
NCCADV, as recommended by the Mecklenburg County DV Fatality Review Team, worked with legislators to create a new statutory aggravating factor which recognizes the harm witnessing domestic violence causes to children. This session, legislators

created a new aggravating factor which allows a judge to punish a defendant more severely if the defendant committed a felony in the presence (defined as sight or hearing) of a minor child. This legislation also amended the definition of “presence” for the misdemeanor crime for “Assault in the Presence of a Minor Child” (N.C.G.S. §14-33(d)) to mean “sight or hearing.” This legislation was passed as part of H465 and became effective on December 1, 2015.

- Creation of a New Crime: Disclosure of Private Images

NCCADV worked with primary sponsor Rep. Bryan and other legislators on the passage of legislation which, for the first time in North Carolina, criminalizes the dissemination of explicit images distributed without the consent of the pictured individual. The law applies when a person discloses an image of a person they had a “personal relationship” with (according to N.C.G.S. §50B), that person is “identifiable” by the image, and the person depicted gave the offending person the image consensually during the relationship and expected the image to remain private. A violation of the law for all offenders 18 years and older is a class H felony. It is a misdemeanor for first-time offenders under the age of 18, and a felony for subsequent offenses. Commonly referred to as a “Revenge Porn” law, the “Disclosure of Private Images” legislation was passed as H792 and became effective on December 1, 2015.

- Expansion of Cyberstalking Law to Criminalize Use of GPS Devices

NCCADV worked with legislators on expanding our current cyberstalking law to further protect stalking victims. This session, legislators amended N.C.G.S. §14-196.3, to explicitly prohibit the use of an electronic tracking device (GPS) on vehicles. NCCADV worked with legislators to ensure that the exceptions to the law for when persons could use a GPS device legally did not include loopholes for DV abusers to track their victims. A violation of the law is a class 2 misdemeanor. The legislation was passed as S238 and became effective on December 1, 2015.

- Amendment of 50B-4.1(d) in Response to NC Court of Appeals Decision

NCCADV worked with legislators to respond quickly to the NC Court of Appeals decision, *State v. Jacobs*, issued Feb. 17, 2015. The *Jacobs* decision reversed sentencing enhancements for a domestic violence abuser due to the way N.C.G.S. §50B-4.1(d), a sentencing enhancement statute, was drafted. NCCADV proposed new language for N.C.G.S. §50B-4.1(d) which clarified that enhancements refer to *convictions* of the detailed offenses and not to the person charged or convicted. This legislation was passed as part of S60 and became effective on December 1, 2015.

Civil-Related DV Provisions

- **Revision of Civil Hearing Recording Statute in Response to NC Court of Appeals Decision**
NCCADV partnered with the NC Administrative Office of the Courts to respond swiftly to the NC Court of Appeals *Stancill v. Stancill* decision which jeopardized the safety of domestic violence victims. After the Court of Appeals ruled in *Stancill* on June 16, 2015, that pursuant to N.C.G.S. §7A-198 all ex parte hearings for domestic violence protective orders must be recorded, domestic violence victims faced barriers to obtaining ex parte orders all across the state. Not all district courtrooms have recording equipment and even after a courtroom is secured, a court clerk and deputy are needed to operate the courtroom. These additional requirements often caused delays, some that lasted several hours, thus lessening the effect of emergency protection. NCCADV and allies worked with legislators to develop a statutory clarification to N.C.G.S. §7A-198 so that ex parte hearings would not have to be recorded, eliminating these dangerous roadblocks to lifesaving protective orders. This legislation passed as part of H59 and became effective July 31, 2015, just a little over a month after the *Stancill* decision.
- **Authorization for E-filing Statewide**
NCCADV provided assistance to the NC Administrative Office of the Courts in their pursuit of legislation to authorize electronic filing statewide for domestic violence protective orders (50B orders) and civil no-contact orders (50C orders). The authorization is codified in N.C.G.S. §7A-343.6. This legislation was passed as part of H465. The authorization became effective immediately and the revisions to the relevant portions of N.C.G.S. §§50B and 50C became effective December 1, 2015.
- **Authorization to Electronically Transmit/Fax DVPOs Across Counties to Facilitate Service**
Legislators passed a bill which helps protect domestic violence victims by allowing for domestic violence protective orders (50B orders) and civil no-contact orders (50C orders) to be transmitted electronically or by fax from clerks of court to law enforcement agencies in other counties for the purpose of serving the defendant. Often times an enormous barrier for victim safety is just getting the defendant served with a copy of the protective order. This legislation should help facilitate faster service on defendants who live in a county other than one in which the order was filed. This legislation was passed as SB192 and became effective August 5, 2015.
- **Amend Child Custody Laws/Presumed Shared Parenting**
NCCADV spoke out against this legislation which in its original version sought to eliminate the “best interest of the child” legal standard for determining the award of child custody and replace it with a presumption of “shared parenting,” eliminating the requirement of the court to consider all relevant factors including acts of domestic

violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party. Legislators responded to the concerns of NCCADV and other stakeholders and preserved the “best interest of the child” as the **legal standard**. The legislation which passed moved the “shared parenting” considerations to a “policy” position but did not substantively change the legal standards by which custody is considered by a judge or awarded to parents. This legislation was passed as S519 and became effective on October 20, 2015.

Other DV-Related Bills

- **Firearms Bill**

Comprehensive firearm legislation was introduced this session which included several provisions directly dangerous to domestic violence victims. The current law includes a lifetime prohibition for applicants who have convictions for certain violent misdemeanors from obtaining a concealed carry permit. The legislation as introduced proposed to change the lifetime ban to just a 3-year ban. NCCADV worked with Rep. Rena Turner to run an amendment to the bill to maintain a lifetime ban for persons convicted of violent misdemeanors such as simple assault, assault inflicting serious injury, assault with a deadly weapon, assault on a female, assault on a child under 12 years old, assault in the presence of a minor, stalking, child abuse, violation of a domestic violence protective order, and domestic criminal trespass. In addition, NCCADV worked with the Sheriffs Association and other allies to work with legislators to ensure that Sheriffs maintain the ability to issue pistol permits after a background check. This legislation passed as HB562 and included various effective dates.

- **Revising Statutory Scheme for Sex Offenses**

Legislation was passed this session which reorganizes, renames, and renumbers various sexual offenses (including forcible rape, statutory rape, forcible sexual offense, and statutory sexual offense) to make them more easily distinguishable from each other. These changes were made pursuant to a recommendation of the NC Court of Appeals as part of its decision in *State of North Carolina v. Slade Weston Hicks Jr.* This reorganization will affect the Administrative Office of the Court forms for filing a domestic violence protective order (DVPO) since a basis for obtaining a DVPO is that the defendant committed “any act defined in G.S. §14-27.2 through G.S. 14-27.7,” the former N.C. statutes for sex offenses. This legislation was passed as HB383 and became effective December 1, 2015 and applies to offenses committed on or after that date.

- Elimination of Certain Forms of ID and Elimination of Sanctuary Counties/Cities
Legislation was passed during the last week of the session which NCCADV is concerned will further endanger immigrant victims of domestic violence. Legislators passed a law which prohibits any government official, including law enforcement, judges, and magistrates, from accepting a matricula consular or other similar document (other than a valid passport) or any identity document not expressly authorized for that purpose by the General Assembly for purposes of establishing identity or residency. In addition, the legislation prohibits cities and counties from establishing policies which restrict the collecting of citizenship and immigration status information or sharing of that information with federal authorities. NCCADV knows that fear of deportation is an enormous barrier for immigrant survivors in seeking safety and assistance from law enforcement. In addition, NCCADV is concerned that immigrant survivors may now not be able to show proof of identity and residency to law enforcement to obtain the assistance they need when having suffered physical and sexual violence at the hands of an intimate partner. NCCADV will be working with our DV Service Programs and advocates across the state to gather information about the potential harmful impact of this legislation. This legislation was passed in HB318 and became effective October 1, 2015.