

Civil and Criminal Law in North Carolina Related to Domestic Violence

CIVIL PROCESS

Victims of domestic violence can use civil law for protection from some forms of abuse. In North Carolina, civil domestic violence laws are under Chapter 50B of our general statutes. Chapter 50B allows a victim of domestic violence to seek relief from domestic violence by filing for a Domestic Violence Protective Order. It is also referred to as a Restraining Order, 50B Order, or a DVPO. A protective order is a civil court order signed by a judge that offers protection to victims of domestic violence. Victims can get the paperwork from the clerk of court's office or from a domestic violence program where someone will assist them with completing the paperwork. The paperwork is filed with the clerk of court. There is no filing fee for a domestic violence protective order and victims do not need an attorney when they go to court.

According to North Carolina law, the following people are eligible for a protective order:

- ✓ Current or former spouses
- ✓ Persons of opposite sex who live together or have lived together
- ✓ Persons related as parents and children or grandparents and grandchildren
- ✓ Persons who have a child in common
- ✓ Current or former household members (includes same-sex relationships if parties live or have lived together)
- ✓ Persons of opposite sex who are in a dating relationship

According to Chapter 50B, the following acts are considered domestic violence:

- Attempting to or intentionally causing bodily injury
- Placing someone or a member of someone's family or household in fear of imminent serious bodily injury
- Committing any act defined in GS 14-27.2 through 14-27.7 (rape & sexual offenses)
- Placing someone in fear of continued harassment that rises to level as to inflict substantial emotional distress. Harassment is defined the same as in stalking law, i.e.
 - Conduct that torments, terrorizes, or terrifies a person
 - Includes all types of communication, i.e. written, telephone, fax, e-mail, voice mail

Victims of domestic violence can request the following relief in a restraining order:

- ✓ Direct batterer to refrain from threatening, abusing, following, harassing, or otherwise interfering with the victim
- ✓ Grant victim possession of the residence and exclude the batterer
- ✓ Order eviction of batterer from residence and assist victim in returning to it
- ✓ Temporary custody of minor children and establishment of visitation rights
- ✓ Order spousal support and/or child support
- ✓ Provide for possession of personal property
- ✓ Prohibit batterer from purchasing a firearm (see summary of SB 919)
- ✓ Order completion of abuser treatment program
- ✓ Any additional prohibitions or requirements deemed necessary to protect victim

DVPOs can be entered for up to one year and can be renewed multiple times for "good cause." Orders that are entered on or after 10/1/05 may be renewed for up to 2 years rather than one year.

CRIMINAL PROCESS

North Carolina's criminal code covers many acts of violence that commonly occur in abusive relationships; however, most of the laws are not based on whether or not people are in a relationship. These laws would apply equally to strangers except domestic criminal trespass and violation of a domestic violence protective order. This is part of what makes it hard to track domestic violence crimes in North Carolina (as of 12/1/04, judges are required to indicate on the judgment if a case is domestic violence for all assaults and communicating threats cases).

The following are common crimes that abusers commit against their intimate partners. They are all misdemeanor crimes. The maximum punishment is 150 days in jail with the highest record level. Stalking and violation of a DVPO can be elevated to felonies if certain criteria are met.

- Assault on a Female
- Communicating Threats
- Assault by Pointing a Gun
- Domestic Criminal Trespass
- Harassing Phone Calls
- Injury to Pregnant Woman
- Injury to Personal Property
- Assault Inflicting Serious Injury
- Assault with a Deadly Weapon
- Stalking
- Interference with Emergency Communication
- Violation of a Protective Order
- Assault in the Presence of a Child
- Sexual Battery

Other common crimes committed by abusers:

- Rape
- Sexual Offenses
- Non-fatal Strangulation

These offenses are felony crimes. The felony strangulation law went into effect December 1, 2004.

Misdemeanor criminal offenses are heard in district court in front of a judge. There is no jury. The defendant is entitled to an attorney. An assistant district attorney represents the state. Only the state can dismiss the charges. A victim of domestic violence cannot dismiss charges. A defendant can appeal if found guilty and the case will go before a jury in superior court. Felony criminal offenses are heard in superior court in front of a jury.

Victims in felony level crimes and certain misdemeanor crimes including domestic violence are entitled to certain rights pursuant to the Crime Victims' Rights Act. Victims may also be eligible to apply for compensation through the Crime Victims Compensation Commission.

Prepared by the North Carolina Coalition Against Domestic Violence

HOMICIDE PREVENTION ACT
Senate Bill 919, SL 2003-410
Effective Date: December 1, 2003

***Purpose:* Enhance victim safety by prohibiting the purchase and possession of firearms by persons subject to domestic violence protective orders in high-risk cases.**

Summary

What are high-risk cases?

When any of the following lethality factors are found by the court:

- The use or threatened use of a deadly weapon against the plaintiff or minor child or a pattern of prior conduct involving the use of a firearm against any persons; or
- Threats to seriously injure or kill the plaintiff or minor child; or
- Threats to commit suicide by the defendant; or
- Serious injuries inflicted upon the plaintiff or minor child.

How will this provision work?

- The court must inquire about the presence of firearms at the ex parte and ten day hearings.
- The defendant will have to surrender all firearms, ammunition, and permits to purchase and permits to carry concealed to the local sheriff when the ex parte domestic violence protective order is served.
- The sheriff will store the firearms and other items or contract with a licensed dealer for this service.
- The sheriff can charge a reasonable storage fee.

What happens when the DVPO expires?

- The defendant must file a motion with the court within 90 days after the expiration of the current order.
- The court will conduct a hearing to determine if the defendant is eligible for the firearms to be returned.
- The court must deny the return of the firearms if the court determines that the defendant is subject to any state or federal law or court order that precludes the defendant from owning or possessing a firearm, including:
 - whether the DVPO has been renewed or there is another DVPO in effect;
 - whether the defendant is a convicted felon;
 - whether the defendant has been convicted of a misdemeanor crime of domestic violence.
- If the defendant does not file a motion within the time allowed, or is not eligible for the return of the firearms, or does not pay the storage fees, then the sheriff may apply to the court to dispose of the firearms.

What is the penalty for violation of this provision?

- It is a Class H felony to violate any of these provisions, including:
 - failing to surrender the firearms as ordered;
 - failing to disclose all information pertaining to the possession of firearms, ammunition, and permits;
 - providing false information to the court pertaining to any of these items.
- In addition, it may be a violation of federal law for the defendant to purchase or possess a firearm when subject to a protective order.

Does this provision apply to law enforcement and military personnel?

- No, there is an official use exemption, whereby this section will not prohibit law enforcement or military personnel from possessing or using firearms *for official use only*.

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