

SENATE BILL 1029

CLARIFY / ENHANCE DOMESTIC VIOLENCE & TENANCY LAWS

Effective Date: October 1, 2005

Who Should Have Copies: please distribute copies of the bill in your community

- ✓ Court Advocates
- ✓ Legal Aid Attorneys
- ✓ Magistrates
- ✓ Law Enforcement
- ✓ Judges
- ✓ District Attorneys
- ✓ Victim/Witness Coordinators
- ✓ Victims
- ✓ Mediators
- ✓ Landlords
- ✓ Housing Authorities
- ✓ Leasing Agencies
- ✓ Realtors

Amendments to Chapter 50B/Chapter 50

1. Changes to Judicial Standard for Entry of DVPO: [GS 50B-3(a)]

Old law: The court had discretion whether or not to grant an order when domestic violence had occurred, and some courts required the Plaintiff to show that granting an order would "bring about a cessation of acts of domestic violence."

New law: The court *must* grant a protective order if the court finds that an act of domestic violence has occurred and the language "to bring about a cessation of acts of domestic violence" has been removed.

Impact: This change primarily addresses the legal standard for granting a protective order which will benefit victims.

2. Changes to Renewal Provisions: [GS 50B-3(b)]

Old law: Orders may be renewed for up to one year at a time.

New law: Orders that are entered **on or after October 1, 2005**, may be renewed for up to 2 years at a time. Existing orders will still be under the one year renewal.

Impact: Victims will not have to return to court every year to apply for a renewal which will minimize potential contact with the abuser.

3. Notification to Schools: [50B-3(c)]

Old law: No statutory requirement to notify schools of the existence of a protective order.

New law: If the defendant is ordered to stay away from the school, the sheriff must serve a copy of the order to the school's principal or designee of each school named in the order.

Impact: Schools will now be notified of the existence of a protective order that orders the perpetrator to stay away from the school which will increase safety for the child, the school, and the victim.

Advocacy Tip: Please ask the court to include the name of the school in the order until the 50B forms are revised to include this information. It also needs to be clear that the defendant is ordered to stay away from any school that the child is attending, not just the school named in the order in case the child changes schools.

4. Changes to NCIC Registry: [50B-3(d)]

Old law: Provided that modifications, terminations, and dismissals be entered promptly into the NCIC registry by the sheriff.

New law: Adds renewals to the types of orders that must be entered into the NCIC registry.

Impact: The NCIC registry will be more accurate and include all DVPOs which will increase safety for victims.

Advocacy Tip: Be sure to inform the sheriff's office that is responsible for entering protective orders into the NCIC registry to ensure that renewal orders are being entered.

5. Changes to Firearms Provisions: [50B-3.1(f)]

Old law: The perpetrator could file a motion for return of firearms even if there were pending criminal charges against the perpetrator with the same victim as the DVPO.

New law: The perpetrator must wait until any pending criminal charges with the victim are resolved before filing a motion for return of any firearms. In addition, the court must deny the return of firearms if there are pending criminal charges against the defendant with the same victim.

Impact: This loophole is now closed so victims will be safer and firearms will not be returned to perpetrators who may be precluded from possessing firearms if convicted of certain domestic violence crimes.

6. Clarification of the Waiver Provision for Mediation: [50-13.1(c)]

Old law: Allowed the court to waive mandatory mediation in custody cases for good cause, including spouse abuse.

New law: Clarifies that mandatory custody mediation can be waived for any case of domestic violence between the parents in common, not just spouses.

Impact: Any victim of domestic violence can make a motion to waive mandatory mediation in custody cases whether or not the parents were married.

Advocacy Tip: Be sure to inform judges, mediators, and attorneys of this clarification.

New Landlord/Tenant Laws

The following provisions apply to leases entered into or renewed on or after 10/1/2005.

1. Landlords are prohibited from discriminating against victims of domestic violence, sexual assault, and stalking: [GS 42-42.2]

a. Discrimination includes termination of a tenancy, failing to renew a tenancy, refusing to enter into a rental agreement, or otherwise retaliating in the rental of a dwelling based substantially on:

- 1) the tenant or household member's status as a victim of domestic violence, sexual assault, or stalking; OR
- 2) termination of a lease pursuant to this new law (see section 3 below).

b. Evidence provided to the landlord may include any of the following:

- 1) law enforcement, court, or federal agency records or files;
- 2) documentation from a domestic violence or sexual assault program; or
- 3) documentation from a religious, medical, or other professional.

2. Victims may change locks on their dwellings: [GS 42-42.3]

a. The tenant/victim is responsible for the expense of changing the locks.

b. Procedure if the perpetrator is **not** a tenant in the same dwelling:

- 1) Tenant may give oral or written notice to the landlord that the tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks be changed. The victim is not required to provide documentation to the landlord.
- 2) The landlord must change the locks or give the tenant permission to change the locks within 48 hours of receiving the request from the victim.

c. Procedure if the perpetrator is a tenant in the same dwelling:

- 1) In addition to the oral or written notice required above, the victim must provide the landlord with a copy of an order that orders the perpetrator to stay away from the dwelling unit. The order can be a protective order, a criminal judgment, a pre-trial release order, or any other order.
- 2) The perpetrator remains liable under the lease with any other tenant of the unit for rent or damages to the dwelling unit.
- 3) The landlord must change the locks or give the tenant permission to change the locks within 72 hours.

d. If a landlord fails to act within the required time, the tenant/victim may change the locks without the landlord's permission.

e. If the tenant/victim changes the locks, a key to the new locks must be given to the landlord within 48 hours of the locks being changed.

3. Victims of domestic violence, sexual assault, or stalking may terminate their leases early in certain situations: [GS 42-45.1]

- a. The tenant must provide the landlord with written notice of termination with an effective termination date that is at least 30 days after the landlord receives the notice.
 - b. The tenant must provide one of the following with the notice to terminate:
 - 1) a "permanent" protective order issued pursuant to 50B or 50C; or
 - 2) a criminal order that restrains a person from contact with the tenant; or
 - 3) a valid Address Confidentiality Program card.
 - c. A victim of domestic violence or sexual assault must also submit a copy of a safety plan with the notice to terminate that meets the following criteria:
 - 1) the safety plan must be provided by a domestic violence or sexual assault program that is recognized by the Council for Women;
 - 2) the safety plan must be dated during the term of the tenancy to be terminated; and
 - 3) the safety plan must recommend relocation of the tenant.
 - d. The rent due from the tenant/victim is prorated to the date of the termination and payable at the time required under the terms of the lease. If a tenant/victim terminates a lease 14 days or more before moving in, the tenant does not owe any rent or penalties.
 - e. The tenancy will continue for any remaining tenants residing in the unit. A perpetrator who has been excluded from the dwelling under court order remains liable under the lease with any other tenant for rent or damages to the unit.
4. Change to the administration of waiting lists by the housing authority: [GS 157-29B)]

- a. In the administration of waiting lists, housing authorities must give a preference to households with incomes of less than 30% of the area median income.
- b. Housing authorities must also take applications on a continuous basis from people meeting this preference and not close the application process.
- c. Any other local preferences cannot take priority over this preference.

Advocacy Tips: Be sure to inform the landlords, leasing agencies, housing authorities, realtors, and legal aid attorneys in your area about the new tenancy laws. Victims and survivors also need to be informed of their rights under these laws. Find out what the local preferences are for the housing authority in your area. Many domestic violence victims will qualify for the housing preference based on low income.

Prepared by the North Carolina Coalition Against Domestic Violence

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