SUMMARY OF HOUSE BILL 1354
STRENGTHEN DOMESTIC VIOLENCE LAWS

This comprehensive legislation is a result of the work of the House Select Committee on Domestic Violence

Passed 7/15/04

Part I: Domestic Violence Offender Treatment

- moves offender treatment as a condition of probation from the permissive section of the statute to the mandatory section
- all defendants convicted of domestic violence and placed on probation must attend and complete an abuser treatment program approved by the Domestic Violence Commission
- Department of Corrections shall establish an abuser treatment program for domestic violence offenders
- *effective December 1, 2004*

Part II: Domestic Violence Training for Law Enforcement

- mandates that Basic Law Enforcement Training (BLET) include education and training in response to, and investigation of, domestic violence cases, as well as training on evidence-based prosecution
- mandates in-service training on domestic violence
- provides that instructors must be certified to teach domestic violence
- *NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission shall report to the General Assembly on or before March 1, 2005 on the standards implemented*

Part III: Study of Anti-Violence Education in Schools and Training for School Personnel

- NC Department of Public Instruction in collaboration with the State Board of Education to study the issue of anti-violence programs in schools, including looking at curriculums that address physical violence and mental or verbal abuse, and domestic and relationship violence
- agencies also to study training for school personnel, including who should be trained and what type of training they should receive
- *preliminary report is due by November 15, 2004, and a final report is due by January 15, 2005*

Part IV: Legal Services for Victims of Domestic Violence

- funding to be provided to established legal services programs to provide legal representation for victims of domestic violence in protective order proceedings, as well as custody proceedings and services which ensure the safety of the client and the client's children
- funds will be distributed as follows: 20% based on a fixed equal dollar amount for each county and 80% based on the rate of 50B actions filed in that county
- *effective when it becomes law*

Part V: Domestic Violence Advocates on Child Fatality Task Force

- two positions added to the Child Fatality Task Force, including a representative from NCCADV and a representative from the Council for Women/DV Commission
- *effective when it becomes law*

Part VI: Study of Mental Health Services for Domestic Violence Victims

- DHHS to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs, including service delivery to children
- *preliminary report is due by October 1, 2004, and a final report is due by January 15, 2005*

Part VII: Study of CLE Credit for Pro Bono Legal Representation

- NC State Bar in cooperation with the NC Bar Association to study the issue of providing CLE credit to active attorneys for providing pro bono legal representation
- *preliminary report is due by October 1, 2004, and a final report is due by January 15, 2005*

Part VIII: Domestic Relationship Aggravating Factor

- provide for an aggravating factor for felony sentencing if the defendant took advantage of a position of trust, including a domestic relationship
- *effective December 1, 2004*

Part IX: Create Strangulation Offense

- new crime of non-fatal strangulation created
- any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony
- *effective December 1, 2004*

Part X: Amend Habitual Misdemeanor Assault Statute

- felony crime of "habitual misdemeanor assault" changed to only require 2 or more prior convictions for either misdemeanor or felony assault (rather than requiring 5 prior convictions, 2 of which have to be assaults)
- the earlier of the two prior convictions must have occurred no more than 15 years prior to the date of the current assault
- triggering assault must cause physical injury
- *effective December 1, 2004*

Part XI: Domestic Violence Offense Tracking

- requires the court to determine if the parties have a personal relationship (as defined in 50B) for all offenses involving assault or communicating a threat and indicate that the case is domestic violence on the judgment
- allows the court to order electronic house arrest as part of a community punishment
- *effective December 1, 2004*

Part XII: Study of Misdemeanor Offense Classifications

- directive to the NC Sentencing and Policy Advisory Commission to study misdemeanor assault offenses and make recommendations for reclassifications
- *final report must be made to the General Assembly in the 2006 Session*

Part XIII: Warrantless Arrest for Violation of Pretrial Release Conditions

- violation of a pretrial release order entered under GS 15A-534.1 (domestic violence bond law) added to the list of offenses that allow for arrest without a warrant when the offense occurs out of the presence of the officer
- *effective December 1, 2004*

Part XIV: Conform State Firearms Law to Federal Law

- removes exception that allows felons to possess firearms within their own homes or places of business and conforms state firearms definition to the federal definition
- *effective December 1, 2004*

Part XV: Specifically Allow Cross-Warrants

- judicial official may not refuse to issue a warrant *solely* because a prior warrant was already issued against a person involved in the same incident
- purpose is to prevent policies that prohibit the issuance of a cross warrant in cases where the perpetrator gets to the magistrate's office first and obtains a warrant against the victim
- *effective when it becomes law*

Part XVI: Clarify Nurse's Privilege

- written or printed medical records that would otherwise be admissible in court are still admissible after a determination by the court that disclosure should be compelled
- *effective December 1, 2004*

Part XVII: Temporary Child Custody in Domestic Violence Hearings

- standard at ex parte stage of DVPO changed from "child exposed to a substantial risk of bodily injury or sexual abuse" to "child exposed to a substantial risk of physical or emotional injury or sexual abuse"
- court required to consider custody at ten-day hearing and must consider factors listed
- if court grants visitation, court must provide for the safety of the child and the aggrieved party and specify dates and times in the order
- custody order entered under 50B may not last for more than one year even if order is renewed
- court must follow provisions in 50B when determining general custody cases if the court finds that domestic violence has occurred
- *effective October 1, 2004*

Part XVIII: Prohibit Employment Discrimination Against Domestic Violence Victims

- employer may not discharge, demote, or deny a promotion or other benefit of employment to any employee for taking reasonable time off from work to obtain relief provided in Chapter 50B
- employee must follow the employer's usual time-off policy unless an emergency prevents the employee from doing so
- *effective October 1, 2004*

Part XIX: Privacy for 50B Intake

- clerk required to provide a private area for plaintiffs to fill out forms and make inquiries, whenever feasible
- *effective when it becomes law*

Part XX: Training for Judges and Court Personnel

- request to the NC Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases
- AOC to study the issue of training for court personnel in the area of domestic violence
- AOC must make a report to the 2005 General Assembly
- *effective when it becomes law*

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