

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-423
SENATE BILL 1029

AN ACT TO CLARIFY AND ENHANCE THE LAWS RELATING TO DOMESTIC VIOLENCE, TO ENACT LAWS REGARDING DOMESTIC VIOLENCE VICTIMS AND TENANCY, TO CLARIFY THAT THE FAILURE TO FILE A COUNTERCLAIM IN A SMALL CLAIMS ACTION DOES NOT BAR THE CLAIM IN A SEPARATE ACTION AND TO MAKE CHANGES TO LANDLORD TENANT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3 reads as rewritten:

"§ 50B-3. Relief.

(a) ~~The~~ If the court, including magistrates as authorized under G.S. 50B-2(c1), ~~may grant any~~ finds that an act of domestic violence has occurred, the court shall grant a protective order to bring about a cessation of acts of domestic violence. The orders may ~~restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:~~

- (1) Direct a party to refrain from such ~~acts;~~ acts.
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or ~~household;~~ household.
- (3) Require a party to provide a spouse and his or her children suitable alternate ~~housing;~~ housing.
- (4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of ~~process;~~ process.
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to ~~it;~~ it.
- (6) Order either party to make payments for the support of a minor child as required by ~~law;~~ law.
- (7) Order either party to make payments for the support of a spouse as required by ~~law;~~ law.
- (8) Provide for possession of personal property of the ~~parties;~~ parties.
- (9) Order a party to refrain from doing any or all of the following:
 - a. Threatening, abusing, or following the other ~~party;~~ party.
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other ~~means,~~ means.

- c. Otherwise interfering with the other ~~party;~~party.
 - (10) Award attorney's fees to either ~~party;~~party.
 - (11) Prohibit a party from purchasing a firearm for a time fixed in the ~~order;~~order.
 - (12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence ~~Commission;~~ and Commission.
 - (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.
- (a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:
- (1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.
 - (2) For purposes of determining custody and visitation issues, the court shall consider:
 - a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
 - b. Whether the minor child was present during acts of domestic violence.
 - c. Whether a weapon was used or threatened to be used during any act of domestic violence.
 - d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.
 - e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.
 - f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
 - g. Whether there is a pattern of abuse against an aggrieved party or the minor child.
 - h. Whether a party has abused or endangered the minor child during visitation.
 - i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
 - j. Whether a party has improperly concealed or detained the minor child.
 - k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.
 - (3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the

minor child and the safety of the aggrieved party. The court may consider any of the following:

- a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
- b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
- c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
- d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
- e. Ordering the noncustodial parent to pay the costs of supervised visitation.
- f. Prohibiting overnight visitation.
- g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
- h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
- i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

- (4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed ~~one year~~, two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the

current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(c) A copy of any order entered and filed under this Article shall be issued to each party. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

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

SECTION 2. G.S. 50B-3.1(e) reads as rewritten:

"(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law, law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order."

SECTION 3. G.S. 50B-3.1(f) reads as rewritten:

"(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current ~~order~~ order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

- (1) Whether the protective order has been ~~renewed~~ renewed.
- (2) Whether the defendant is subject to any other protective ~~orders~~ orders.
- (3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.

- (4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law-law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges."

SECTION 4. G.S. 50-13.1(c) reads as rewritten:

"(c) For good cause, on the motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or ~~spouse abuse~~domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause."

SECTION 5. G.S. 42-40 reads as rewritten:

"§ 42-40. Definitions.

For the purpose of this Article, the following definitions shall apply:

...

- (4) "Protected tenant" means a tenant or household member who is a victim of domestic violence under Chapter 50B of the General Statutes or sexual assault or stalking under Chapter 14 of the General Statutes."

SECTION 6. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new sections to read:

"§ 42-42.1. Victim protection – nondiscrimination.

A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a rental agreement under G.S. 42-45.1. Evidence provided to the landlord of domestic violence, sexual assault, or stalking 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.
- (3) Documentation from a religious, medical, or other professional.

"§ 42-42.2. Victim protection – change locks.

(a) If the perpetrator of domestic violence, sexual assault, or stalking is not a tenant in the same dwelling unit as the protected tenant, a tenant of a dwelling may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. A protected tenant is not required to provide documentation of the domestic

violence, sexual assault, or stalking to initiate the changing of the locks, pursuant to this subsection. A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 48 hours.

(b) If the perpetrator of the domestic violence, sexual assault, or stalking is a tenant in the same dwelling unit as the victim, any tenant or protected tenant of a dwelling unit may give oral or written notice to the landlord that a protected tenant is a victim of domestic violence, sexual assault, or stalking and may request that the locks to the dwelling unit be changed. In these circumstances, the following shall apply:

- (1) Before the landlord or tenant changes the locks under this subsection, the tenant must provide the landlord with a copy of an order issued by a court that orders the perpetrator to stay away from the dwelling unit.
- (2) Unless a court order allows the perpetrator to return to the dwelling to retrieve personal belongings, the landlord has no duty under the rental agreement or by law to allow the perpetrator access to the dwelling unit, to provide keys to the perpetrator, or to provide the perpetrator access to the perpetrator's personal property within the dwelling unit once the landlord has been provided with a court order requiring the perpetrator to stay away from the dwelling. If a landlord complies with this section, the landlord is not liable for civil damages, to a perpetrator excluded from the dwelling unit, for loss of use of the dwelling unit or loss of use or damage to the perpetrator's personal property.
- (3) The perpetrator who has been excluded from the dwelling unit under this subsection remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

A landlord who receives a request under this subsection shall change the locks to the protected tenant's dwelling unit or give the protected tenant permission to change the locks within 72 hours.

(c) The protected tenant shall bear the expense of changing the locks. If a landlord fails to act within the required time, the protected tenant may change the locks without the landlord's permission. If the protected tenant changes the locks, the protected tenant shall give a key to the new locks to the landlord within 48 hours of the locks being changed."

SECTION 7. Article 5 of Chapter 42 of the General Statutes is amended by adding the following new section to read:

"§ 42-45.1. Early termination of rental agreement by victims of domestic violence, sexual assault, or stalking.

(a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord shall be accompanied by either: (i) a copy of a valid order of protection issued by a court pursuant to Chapter 50B or 50C of the General Statutes, other than an ex parte order, (ii) a criminal order that restrains a person from contact

with a protected tenant, or (iii) a valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a minor member of the tenant's household. A victim of domestic violence or sexual assault must submit a copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the tenancy to be terminated, must be provided by a domestic violence or sexual assault program which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend relocation of the protected tenant.

(b) Upon termination of a rental agreement under this section, the tenant who is released from the rental agreement pursuant to subsection (a) of this section is liable for the rent due under the rental agreement prorated to the effective date of the termination and payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or fees due only to the early termination of the tenancy. If, pursuant to this section, a tenant terminates the rental agreement 14 days or more before occupancy, the tenant is not subject to any damages or penalties.

(c) Notwithstanding the release of a protected tenant from a rental agreement under subsection (a) of this section, or the exclusion of a perpetrator of domestic violence, sexual assault, or stalking by court order, if there are any remaining tenants residing in the dwelling unit, the tenancy shall continue for those tenants. The perpetrator who has been excluded from the dwelling unit under court order remains liable under the lease with any other tenant of the dwelling unit for rent or damages to the dwelling unit.

(d) The provisions of this section may not be waived or modified by agreement of the parties."

SECTION 8. G.S. 157-29(b) reads as rewritten:

"(b) In the operation or management of housing projects, ~~or~~ portions of projects, or other housing assistance programs for persons of low income, an authority shall at all times observe the following duties with respect to rentals and tenant selection:

...

(3) In the administration of its waiting lists, it shall adopt a preference for households with incomes of less than thirty percent (30%) of the area median income.

(4) An authority shall take applications on a continuous basis from persons meeting the preference listed in this section and shall not close the application process to these persons. Any additional local preferences shall not take priority over the preference in this section."

SECTION 9. G.S. 7A-219 reads as rewritten:

"§ 7A-219. Certain counterclaims; cross claims; third-party claims not permissible.

No counterclaim, cross claim or third-party claim which would make the amount in controversy exceed the jurisdictional amount established by G.S. 7A-210(1) is permissible in a small claim action assigned to a magistrate. No determination of fact or law in an assigned small claim action estops a party thereto in any subsequent action which, except for this section, might have been asserted under the Code of Civil

Procedure as a counterclaim in the small claim action. Notwithstanding G.S. 1A-1, Rule 13, failure by a defendant to file a counterclaim in a small claims action assigned to a magistrate, or failure by a defendant to appeal a judgment in a small claims action to district court, shall not bar such claims in a separate action."

SECTION 10. G.S. 42-30 reads as rewritten:

"§ 42-30. Judgment by ~~confession~~ confession, where plaintiff has proved ease, case, or failure to appear.

The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if (i) the plaintiff proves his case by a preponderance of the evidence, ~~or (ii) the defendant admits the allegations of the complaint, or (iii) the defendant fails to appear on the day of court, and the plaintiff requests in open court a judgment for possession based solely on the filed pleadings where the pleadings allege defendant's failure to pay rent as a breach of the lease for which reentry is allowed and the defendant has not filed a responsive pleading,~~ the magistrate shall give judgment that the defendant be removed from, and the plaintiff be put in possession of, the demised premises; and if any rent or damages for the occupation of the premises after the cessation of the estate of the lessee, not exceeding the jurisdictional amount established by G.S. 7A-210(1), be claimed in the oath of the plaintiff as due and unpaid, the magistrate shall inquire thereof, and if supported by a preponderance of the evidence, give judgment as he may find the fact to be."

SECTION 11. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's

paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate."

SECTION 12. Section 1 of this act becomes effective October 1, 2005, and applies to orders entered on or after that date. Sections 5, 6, and 7 of this act become effective October 1, 2005, and apply to leases entered into or renewed on or after that date. The remainder of this act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 24th day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 1:57 p.m. this 22nd day of September, 2005