

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 57

Short Title: Dom. Viol./Emer. Relief.

(Public)

Sponsors: Representatives Spears; Gottovi, Hill, Kinney, McLawhorn, and Thompson.

Referred to: Courts and Justice.

February 9, 1994

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE, UNDER CERTAIN CONDITIONS, MAGISTRATES TO
ISSUE DOMESTIC VIOLENCE RESTRAINING ORDERS AND TO MAKE
CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-2 reads as rewritten:

"§ 50B-2. **Institution of civil action; motion for emergency relief; temporary orders.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed **pro se**, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter.

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no **ex parte** order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding **pro se** and does not request an **ex parte** hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the

1 summons, complaint, notice, and other papers through the appropriate law enforcement
2 agency where the defendant is to be served, upon payment of the required service fees.

3 (c) **Ex parte** Orders. – Prior to the hearing, if it clearly appears to the court from
4 specific facts shown, that there is a danger of acts of domestic violence against the
5 aggrieved party or a minor child, the court may enter such orders as it deems necessary
6 to protect the aggrieved party or minor children from such acts provided, however, that
7 a temporary order for custody **ex parte** and prior to service of process and notice shall
8 not be entered unless the court finds that the child is exposed to a substantial risk of
9 bodily injury or sexual abuse. Upon the issuance of an **ex parte** order under this
10 subsection, a hearing shall be held within 10 days from the date of issuance of the order
11 or within seven days from the date of service of process on the other party, whichever
12 occurs later. If an aggrieved party acting **pro se** requests **ex parte** relief, the Clerk of
13 Superior Court shall schedule an **ex parte** hearing with the district court division of the
14 General Court of Justice within 72 hours of the filing for said relief, or by the end of the
15 next day on which the district court is in session in the county in which the action was
16 filed, whichever shall first occur. If the district court is not in session in said county, the
17 aggrieved party may contact the Clerk of Superior Court in any other county within the
18 same judicial district who shall schedule an **ex parte** hearing with the district court
19 division of the General Court of Justice by the end of the next day on which said court
20 division is in session in that county. Upon the issuance of an **ex parte** order under this
21 subsection, if the party is proceeding **pro se**, the Clerk shall set a date for hearing and
22 issue a notice of hearing within the time periods provided in this subsection, and shall
23 effect service of the summons, complaint, notice, order and other papers through the
24 appropriate law enforcement agency where the defendant is to be served, upon payment
25 of the required service fees.

26 (c1) **Ex parte** Orders by Magistrate. – Prior to the hearing, if the magistrate
27 determines that at the time the party is seeking emergency relief **ex parte** the clerk of
28 superior court is not available, the district court is not in session, and a district court
29 judge is not and will not be available to hear the motion for a period of four or more
30 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
31 from specific facts shown that there is a danger of acts of domestic violence against the
32 aggrieved party or a minor child, the magistrate may enter such orders as it deems
33 necessary to protect the aggrieved party or minor children from such acts, except that a
34 temporary order for custody **ex parte** and prior to service of process and notice shall not
35 be entered unless the magistrate finds that the child is exposed to a substantial risk of
36 bodily injury or sexual abuse. An **ex parte** order entered under this subsection shall
37 expire and the magistrate shall schedule an **ex parte** hearing before a district court judge
38 within 72 hours of the filing for relief under this subsection, or by the end of the next
39 day on which the district court is in session in the county in which the action was filed,
40 whichever occurs first. A party who has paid court costs due for seeking an order from
41 the magistrate under this subsection shall not be liable for court costs for a hearing
42 before the district court judge scheduled and heard pursuant to an order entered by the
43 magistrate under this subsection. **Ex parte** orders entered by the district court judge

1 pursuant to this subsection shall be entered and scheduled in accordance with subsection
2 (c) of this section.

3 (c2) The authority granted to magistrates to award temporary child custody
4 pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted
5 subject to custody rules to be established by the supervising chief district judge of each
6 judicial district.

7 (d) **Pro Se** Forms. The Clerk of Superior Court of each county shall provide to
8 **pro se** complainants all forms which are necessary or appropriate to enable them to
9 proceed **pro se** pursuant to this section. The Clerk shall provide a supply of **pro se**
10 forms to magistrates who shall make the forms available to complainants seeking relief
11 under subsection (c1) of this section."

12 Sec. 2. G.S. 50B-3(a) reads as rewritten:

13 "(a) The ~~court~~-court, including magistrates as authorized under G.S. 50B-2(c1),
14 may grant any protective order or approve any consent agreement to bring about a
15 cessation of acts of domestic violence. The orders or agreements may:

- 16 (1) Direct a party to refrain from such acts;
- 17 (2) Grant to a spouse possession of the residence or household of the
18 parties and exclude the other spouse from the residence or household;
- 19 (3) Require a party to provide a spouse and his or her children suitable
20 alternate housing;
- 21 (4) Award temporary custody of minor children and establish temporary
22 visitation rights;
- 23 (5) Order the eviction of a party from the residence or household and
24 assistance to the victim in returning to it;
- 25 (6) Order either party to make payments for the support of a minor child
26 as required by law;
- 27 (7) Order either party to make payments for the support of a spouse as
28 required by law;
- 29 (8) Provide for possession of personal property of the parties;
- 30 (9) Order a party to refrain from harassing or interfering with the other;
31 and
- 32 (10) Award costs and attorney's fees to either party."

33 Sec. 3. G.S. 50B-4 reads as rewritten:

34 **"§ 50B-4. Enforcement of orders.**

35 (a) A party may file a motion for contempt for violation of any order entered
36 pursuant to this Chapter. Said party may file and proceed with such motion **pro se**,
37 using forms provided by the Clerk of Superior ~~Court~~-Court or the magistrate. Upon the
38 filing **pro se** of a motion for contempt under this subsection, the ~~clerk~~-clerk, or the
39 magistrate, if the facts show clearly that there is danger of acts of domestic violence
40 against the aggrieved party or a minor child and the motion is made at a time when the
41 clerk is not available, shall schedule and issue notice of a show cause hearing with the
42 district court division of the General Court of Justice at the earliest possible date
43 pursuant to G.S. 5A-23. The ~~Clerk~~-Clerk, or the magistrate in the case of notice issued
44 by the magistrate pursuant to this subsection, shall effect service of the motion, notice,

1 and other papers through the appropriate law enforcement agency where the defendant
2 is to be served, upon payment of the required service fees.

3 (b) A law-enforcement officer shall arrest and take a person into custody without
4 a warrant or other process if the officer has probable cause to believe that the person has
5 violated a court order excluding the person from the residence or household occupied by
6 a victim of domestic violence or directing the person to refrain from harassing or
7 interfering with the victim, and if the victim, or someone acting on the victim's behalf,
8 presents the law-enforcement officer with a copy of the order or the officer determines
9 that such an order exists, and can ascertain the contents thereof, through phone, radio or
10 other communication with appropriate authorities. The person arrested shall be brought
11 before the appropriate district court judge at the earliest time possible to show cause
12 why he or she should not be held in civil contempt for violation of the order. The
13 person arrested shall be entitled to be released under the provisions of Article 26, Bail,
14 of Chapter 15A of the General Statutes."

15 Sec. 4. G.S. 7A-292 reads as rewritten:

16 "**§ 7A-292. Additional powers of magistrates.**

17 In addition to the jurisdiction and powers assigned in this Chapter to the magistrate
18 in civil and criminal actions, each magistrate has the following additional powers:

- 19 (1) To administer oaths;
- 20 (2) To punish for direct criminal contempt subject to the limitations
21 contained in Chapter 5A of the General Statutes of North Carolina;
- 22 (3) When authorized by the chief district judge, to take depositions and
23 examinations before trial;
- 24 (4) To issue subpoenas and capiases valid throughout the county;
- 25 (5) To take affidavits for the verification of pleadings;
- 26 (6) To issue writs of habeas corpus ad testificandum, as provided in G.S.
27 17-41;
- 28 (7) To assign a year's allowance to the surviving spouse and a child's
29 allowance to the children as provided in Chapter 30, Article 4, of the
30 General Statutes;
- 31 (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- 32 (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- 33 (10) To take acknowledgment of a written contract or separation agreement
34 between husband and wife; and
- 35 (12) To assess contribution for damages or for work done on a dam, canal,
36 or ditch, as provided in ~~G.S. 156-15;~~ and G.S. 156-15."

37 Sec. 5. This act becomes effective October 1, 1994, and applies to actions
38 filed on or after that date.