

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 567
House Committee Substitute Favorable 6/14/95

Short Title: Domestic Violence Changes.

(Public)

Sponsors:

Referred to:

April 3, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES PERTAINING TO
3 DOMESTIC VIOLENCE.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 50B-1. Domestic violence; definition.**

7 (a) Domestic violence means the commission of one or more of the following acts
8 upon an aggrieved party or upon a minor child residing with or in the custody of the
9 aggrieved party by a current or former spouse of the aggrieved party or by a person of the
10 opposite sex with whom the aggrieved party lives or has lived as if married; by a person with
11 whom the aggrieved party has or has had a familial relationship, but does not include acts
12 of self-defense:

- 13 (1) Attempting to cause bodily injury, or intentionally causing bodily
14 injury; or
15 (2) Placing the aggrieved party or a member of the aggrieved party's family
16 or household in fear of imminent serious bodily injury by the threat of
17 force-injury; or
18 (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

1 (b) ~~Notwithstanding the provisions of subsection (a) above, domestic violence also~~
2 ~~means the commission of one or more of the following acts upon a minor residing with or~~
3 ~~in the custody of the aggrieved party by a current or former spouse of the aggrieved party~~
4 ~~or by a person of the opposite sex with whom the aggrieved party lives or has lived as if~~
5 ~~married:~~

- 6 (1) ~~Attempting to cause bodily injury, or intentionally causing bodily~~
7 ~~injury;~~
8 (2) ~~Placing the minor in fear of imminent serious bodily injury by the threat~~
9 ~~of force; or~~
10 (3) ~~Committing any act defined in G.S. 14-27.2 through 14-27.7.~~

11 (b) For purposes of this section, the term 'familial relationship' means a
12 relationship wherein the parties involved:

- 13 (1) Are current or former spouses;
14 (2) Are persons of opposite sex who live together or have lived together;
15 (3) Are parents, grandparents, or others acting in loco parentis to a minor
16 child, or children and grandchildren;
17 (4) Have a child in common."

18 Sec. 2. G.S. 50B-3 reads as rewritten:

19 "**§ 50B-3. Relief.**

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

- 23 (1) Direct a party to refrain from such acts;
24 (2) Grant to a ~~spouse-party~~ possession of the residence or household of the
25 parties and exclude the other ~~spouse-party~~ from the residence or
26 household;
27 (3) Require a party to provide a spouse and his or her children suitable
28 alternate housing;
29 (4) Award temporary custody of minor children and establish temporary
30 visitation rights;
31 (5) Order the eviction of a party from the residence or household and
32 assistance to the victim in returning to it;
33 (6) Order either party to make payments for the support of a minor child as
34 required by law;
35 (7) Order either party to make payments for the support of a spouse as
36 required by law;
37 (8) Provide for possession of personal property of the parties;
38 (9) Order a party to refrain from ~~harassing or interfering with the other; and~~
39 doing any or all of the following:
40 a. Threatening, abusing, or following the other party,
41 b. Harassing the other party, including by telephone, visiting the
42 home or workplace, or other means, or
43 c. Otherwise interfering with the other party; and

1 (10) Award costs and attorney's fees to either party.

2 (b) Protective orders entered or consent orders approved pursuant to this Chapter
3 shall be for a fixed period of time not to exceed one year. Upon application of the
4 aggrieved party, a judge may renew the original or any succeeding order for up to one
5 additional year. Protective orders entered or consent orders approved shall not be mutual
6 in nature except where both parties file a claim and the court makes detailed findings of
7 fact indicating that both parties acted as aggressors, that neither party acted primarily in
8 self-defense, and that the right of each party to due process is preserved.

9 (c) A copy of any order entered and filed under this Article shall be issued to each
10 party. In addition, a copy of the order shall be issued to and retained by the police
11 department of the city of the victim's residence. If the victim does not reside in a city or
12 resides in a city with no police department, copies shall be issued to and retained by the
13 sheriff, and the county police department, if any, of the county in which the victim
14 resides."

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

16 "**§ 50B-4. Enforcement of orders.**

17 (a) A party may file a motion for contempt for violation of any order entered
18 pursuant to this Chapter. Said party may file and proceed with such motion pro se, using
19 forms provided by the Clerk of Superior Court or a magistrate authorized under G.S.
20 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the
21 clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of
22 domestic violence against the aggrieved party or a minor child and the motion is made at
23 a time when the clerk is not available, shall schedule and issue notice of a show cause
24 hearing with the district court division of the General Court of Justice at the earliest
25 possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice
26 issued by the magistrate pursuant to this subsection, shall effect service of the motion,
27 notice, and other papers through the appropriate law enforcement agency where the
28 defendant is to be served, upon payment of the required service fees.

29 (b) A law-enforcement officer shall arrest and take a person into custody without a
30 warrant or other process if the officer has probable cause to believe that the person has
31 violated a court order excluding the person from the residence or household occupied by
32 a victim of domestic violence or directing the person to refrain from ~~harassing or~~
33 ~~interfering with the victim,~~ doing any or all of the acts specified in G.S. 50B-3(a)(9), and if
34 the victim, or someone acting on the victim's behalf, presents the law-enforcement officer
35 with a copy of the order or the officer determines that such an order exists, and can
36 ascertain the contents thereof, through phone, radio or other communication with
37 appropriate authorities. Nothing in this section shall prohibit a law-enforcement officer
38 from securing a warrant for the arrest of a person who is subject to warrantless arrest.
39 The person arrested shall be brought before the appropriate district court judge at the
40 earliest time possible to show cause why he or she should not be held in civil or criminal
41 contempt for violation of the order. The person arrested shall be entitled to be released
42 under the provisions of Article 26, Bail, of Chapter 15A of the General Statutes.

1 (c) Valid protective orders entered pursuant to this section shall be enforced by all
2 North Carolina law-enforcement agencies without further order of the court.

3 (d) Valid protective orders entered by the courts of another state or Indian tribe
4 shall be accorded full faith and credit by the courts of North Carolina and shall be
5 enforced by the law-enforcement agencies of North Carolina."

6 Sec. 4. G.S. 1-110 reads as rewritten:

7 **"§ 1-110. Suit as an indigent; counsel.**

8 Any superior or district court judge or clerk of the superior court may authorize a
9 person to sue as an indigent in their respective courts when the person makes affidavit
10 that he or she is unable to advance the required court costs. The clerk of superior court
11 shall authorize a person to sue as an indigent if the person makes the required affidavit
12 and meets one or more of the following criteria:

13 (1) Receives food stamps.

14 (2) Receives Aid to Families with Dependent Children (AFDC).

15 (3) Receives Supplemental Security Income (SSI).

16 (4) Is represented by a legal services organization that has as its primary
17 purpose the furnishing of legal services to indigent persons.

18 (5) Is represented by private counsel working on the behalf of or under the
19 auspices of a legal services organization under subdivision (4) of this
20 section.

21 (6) Is seeking to obtain a domestic violence protective order pursuant to
22 G.S. 50B-2.

23 A superior or district court judge or clerk of superior court may authorize a person
24 who does not meet one or more of these criteria to sue as an indigent if the person is
25 unable to advance the required court costs. The court to which the summons is returnable
26 may dismiss the case and charge the court costs to the person suing as an indigent if the
27 allegations contained in the affidavit are determined to be untrue or if the court is
28 satisfied that the action is frivolous or malicious."

29 Sec. 5. G.S. 50-13.2 reads as rewritten:

30 **"§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of**
31 **grandparents; taking child out of State.**

32 (a) An order for custody of a minor child entered pursuant to this section shall
33 award the custody of such child to such person, agency, organization or institution as will
34 best promote the interest and welfare of the child. In making the determination, the court
35 shall consider all relevant factors including acts of domestic violence between the parties,
36 the safety of the child, and the safety of either party from domestic violence by the other
37 party and shall make findings accordingly. An order for custody must include findings of
38 fact which support the determination of what is in the best interest of the child. Between
39 the mother and father, whether natural or adoptive, no presumption shall apply as to who
40 will better promote the interest and welfare of the child. Joint custody to the parents shall
41 be considered upon the request of either parent.

42 (b) An order for custody of a minor child may grant joint custody to the parents,
43 exclusive custody to one person, agency, organization, or institution, or grant custody to

1 two or more persons, agencies, organizations, or institutions. Any order for custody
2 shall include such terms, including visitation, as will best promote the interest and
3 welfare of the child. If the court finds that domestic violence has occurred, the court shall
4 enter such orders that best protect the children and party who were the victims of
5 domestic violence. Such orders may include a designation of time and place for the
6 exchange of children away from the abused party, the participation of a third party, or
7 supervised visitation. If a party is absent or relocates with or without the children because
8 of an act of domestic violence, the absence or relocation shall not be a factor that weighs
9 against the party in determining custody or visitation. Absent an order of the court to the
10 contrary, each parent shall have equal access to the records of the minor child involving
11 the health, education, and welfare of the child.

12 (b1) An order for custody of a minor child may provide visitation rights for any
13 grandparent of the child as the court, in its discretion, deems appropriate. As used in this
14 subsection, 'grandparent' includes a biological grandparent of a child adopted by a
15 stepparent or a relative of the child where a substantial relationship exists between the
16 grandparent and the child. Under no circumstances shall a biological grandparent of a
17 child adopted by adoptive parents, neither of whom is related to the child and where
18 parental rights of both biological parents have been terminated, be entitled to visitation
19 rights.

20 (c) An order for custody of a minor child may provide for such child to be taken
21 outside of the State, but if the order contemplates the return of the child to this State, the
22 judge may require the person, agency, organization or institution having custody out of
23 this State to give bond or other security conditioned upon the return of the child to this
24 State in accordance with the order of the court.

25 (d) If, within a reasonable time, one parent fails to consent to adoption pursuant to
26 Chapter 48 of the General Statutes or parental rights have not been terminated, the
27 consent of the other consenting parent shall not be effective in an action for custody of
28 the child."

29 Sec. 6. This act becomes effective October 1, 1995.