

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

S

1

SENATE BILL 718

Short Title: Amend Domestic Violence Laws/Temp. Custody. (Public)

Sponsors: Senators Hagan; and Garrou.

Referred to: Judiciary II.

April 3, 2003

1 **A BILL TO BE ENTITLED**

2 AN ACT AMENDING THE DOMESTIC VIOLENCE LAWS TO REMOVE THE
3 CURRENT LIMITATIONS UNDER WHICH COURTS MAY ADDRESS THE
4 ISSUE OF CUSTODY EX PARTE, REQUIRING COURTS TO CONSIDER
5 CUSTODY AS PART OF AN EX PARTE OR PERMANENT ORDER HEARING,
6 AND CREATING A PRESUMPTION THAT IT IS IN THE BEST INTEREST OF
7 THE CHILD TO BE PLACED IN THE CUSTODY OF THE NONOFFENDING
8 CAREGIVER.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 50B-2 reads as rewritten:

11 **"§ 50B-2. Institution of civil action; motion for emergency relief; temporary
12 orders.temporary orders; temporary custody.**

13 (a) Any person residing in this State may seek relief under this Chapter by filing
14 a civil action or by filing a motion in any existing action filed under Chapter 50 of the
15 General Statutes alleging acts of domestic violence against himself or herself or a minor
16 child who resides with or is in the custody of such person. Any aggrieved party entitled
17 to relief under this Chapter may file a civil action and proceed pro se, without the
18 assistance of legal counsel. The district court division of the General Court of Justice
19 shall have original jurisdiction over actions instituted under this Chapter. No court costs
20 shall be assessed for the filing, issuance, registration, or service of a protective order or
21 petition for a protective order or witness subpoena in compliance with the Violence
22 Against Women Act, 42 U.S.C. § 3796gg-5.

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

1 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing
2 within the time periods provided in this subsection, and shall effect service of the
3 summons, complaint, notice, and other papers through the appropriate law enforcement
4 agency where the defendant is to be served.

5 (c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from
6 specific facts shown, that there is a danger of acts of domestic violence against the
7 aggrieved party or a minor child, the court may enter such orders as it deems necessary
8 to protect the aggrieved party or minor children from ~~such acts provided, however, that~~
~~a temporary order for custody ex parte and prior to service of process and notice shall~~
9 ~~not be entered unless the court finds that the child is exposed to a substantial risk of~~
10 ~~bodily injury or sexual abuse those acts.~~ Upon the issuance of an ex parte order under
11 this subsection, a hearing shall be held within 10 days from the date of issuance of the
12 order or within seven days from the date of service of process on the other party,
13 whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the
14 clerk of superior court shall schedule an ex parte hearing with the district court division
15 of the General Court of Justice within 72 hours of the filing for said relief, or by the end
16 of the next day on which the district court is in session in the county in which the action
17 was filed, whichever shall first occur. If the district court is not in session in said
18 county, the aggrieved party may contact the clerk of superior court in any other county
19 within the same judicial district who shall schedule an ex parte hearing with the district
20 court division of the General Court of Justice by the end of the next day on which said
21 court division is in session in that county. Upon the issuance of an ex parte order under
22 this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing
23 and issue a notice of hearing within the time periods provided in this subsection, and
24 shall effect service of the summons, complaint, notice, order and other papers through
25 the appropriate law enforcement agency where the defendant is to be served.
26

27 Upon the request of either party, the court shall consider temporary custody as part
28 of an ex parte or permanent order hearing. However, where there is evidence of
29 domestic violence, there shall be a presumption that it is in the best interest of the child
30 to be placed in the custody of the nonoffending primary caregiver.

31 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge
32 may authorize a magistrate or magistrates to hear any motions for emergency relief ex
33 parte. Prior to the hearing, if the magistrate determines that at the time the party is
34 seeking emergency relief ex parte the district court is not in session and a district court
35 judge is not and will not be available to hear the motion for a period of four or more
36 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
37 from specific facts shown that there is a danger of acts of domestic violence against the
38 aggrieved party or a minor child, the magistrate may enter such orders as it deems
39 necessary to protect the aggrieved party or minor children from ~~such acts, except that a~~
40 ~~temporary order for custody ex parte and prior to service of process and notice shall not~~
41 ~~be entered unless the magistrate finds that the child is exposed to a substantial risk of~~
42 ~~bodily injury or sexual abuse those acts.~~ An ex parte order entered under this subsection
43 shall expire and the magistrate shall schedule an ex parte hearing before a district court
44 judge by the end of the next day on which the district court is in session in the county in

1 which the action was filed. Ex parte orders entered by the district court judge pursuant
2 to this subsection shall be entered and scheduled in accordance with subsection (c) of
3 this section.

4 Upon the request of either party, the magistrate shall consider temporary custody as
5 part of an ex parte hearing. However, where there is evidence of domestic violence,
6 there shall be a presumption that it is in the best interest of the child to be placed in the
7 custody of the nonoffending primary caregiver.

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

12 (d) Pro Se Forms. – The clerk of superior court of each county shall provide to
13 pro se complainants all forms which are necessary or appropriate to enable them to
14 proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms
15 to authorized magistrates who shall make the forms available to complainants seeking
16 relief under subsection (c1) of this section."

17 **SECTION 2.** G.S. 50-13.2(a) reads as rewritten:

18 "(a) An order for custody of a minor child entered pursuant to this section shall
19 award the custody of such child to such person, agency, organization or institution as
20 will best promote the interest and welfare of the child. In making the determination, the
21 court shall consider all relevant factors including acts of domestic violence between the
22 parties, the safety of the child, and the safety of either party from domestic violence by
23 the other party and shall make findings accordingly. An order for custody must include
24 findings of fact which support the determination of what is in the best interest of the
25 child. Between the mother and father, whether natural or adoptive, no presumption shall
26 apply as to who will better promote the interest and welfare of the child. However,
27 where there is evidence of domestic violence, there shall be a presumption that it is in
28 the best interest of the child to be placed in the custody of the nonoffending primary
29 caregiver.

30 Joint custody to the parents shall be considered upon the request of either parent."

31 **SECTION 3.** This act is effective when it becomes law.