

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 145
Feb 24, 2021
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40089-ML-47

Short Title: Property Protection Act/DVPO. (Public)

Sponsors: Representatives Adams, Kidwell, McNeill, and Turner (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE PROPERTY RIGHTS OF PERSONS SUBJECT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER BY ALLOWING THEM TO STORE THEIR FIREARMS WITH OR SELL THEIR FIREARMS TO OR THROUGH A FEDERALLY LICENSED FIREARMS DEALER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3.1 reads as rewritten:

"§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff or a licensed firearms dealer all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

- (1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
- (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
- (3) Threats to commit suicide by the defendant.
- (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

...

(c1) Notice on Order. – If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from possessing, purchasing, or receiving or attempting to possess, purchase, or receive a firearm for the duration of the protective order or any successive protective order in effect. The terms of the order shall include instructions on how the defendant may request retrieval of any firearms, ammunition, and permits surrendered when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(d) Surrender. – ~~Upon~~ Except as otherwise authorized in subsection (d1) of this section, upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within ~~24 hours~~



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1 two business days of service at a time and place specified by the sheriff. The sheriff shall store
2 the firearms or contract with a licensed firearms dealer to provide storage.

3 (1) ~~If the court orders the defendant to surrender firearms, ammunition, and~~
4 ~~permits, the court shall inform the plaintiff and the defendant of the terms of~~
5 ~~the protective order and include these terms on the face of the order, including~~
6 ~~that the defendant is prohibited from possessing, purchasing, or receiving or~~
7 ~~attempting to possess, purchase, or receive a firearm for so long as the~~
8 ~~protective order or any successive protective order is in effect. The terms of~~
9 ~~the order shall include instructions as to how the defendant may request~~
10 ~~retrieval of any firearms, ammunition, and permits surrendered to the sheriff~~
11 ~~when the protective order is no longer in effect. The terms shall also include~~
12 ~~notice of the penalty for violation of G.S. 14-269.8.~~

13 (2) The sheriff may charge the defendant a reasonable fee for the storage of any
14 firearms and ammunition taken pursuant to a protective order. order, not to
15 exceed the sum of ten dollars (\$10.00) per month. The fees are payable to the
16 ~~sheriff.~~ sheriff, and the sheriff shall provide the defendant with a receipt that
17 details the cost incurred by the sheriff for storing the firearms and ammunition.
18 The sheriff shall transmit the proceeds of these fees to the county finance
19 officer. The fees shall be used by the sheriff to pay the costs of administering
20 this section and for other law enforcement purposes. The county shall expend
21 the restricted funds for these purposes only. The sheriff shall not release
22 firearms, ammunition, or permits without a court order granting the release.
23 The defendant must remit all fees owed prior to the authorized return of any
24 firearms, ammunition, or permits. The sheriff shall not incur any civil or
25 criminal liability for alleged damage or deterioration due to storage or
26 transportation of any firearms or ammunition held pursuant to this
27 ~~section.~~ section, but the sheriff shall store the firearms or ammunition in a
28 manner designed to reasonably ensure against any deterioration or damage to
29 the firearms or ammunition.

30 (d1) Surrender or Sale to Dealer. – Upon service of the order, the defendant may choose
31 to (i) enter into an agreement with a licensed firearms dealer to surrender possession of all
32 firearms, machine guns, and ammunition that are in the care, custody, possession, ownership, or
33 control of the defendant directly to the dealer or (ii) sell the firearms, machine guns, and
34 ammunition to or through a licensed firearms dealer if the defendant is the owner of the firearms,
35 machine guns, and ammunition. If the defendant intends to surrender or sell the firearms, machine
36 guns, and ammunition pursuant to this subsection, at the time of service of the order, the
37 defendant shall notify the sheriff of that intent, and the firearms, machine guns, and ammunition
38 must be surrendered to or sold to or through a licensed firearms dealer within two business days
39 of service of the order. Any funds received from the sale of a firearm, machine gun, or
40 ammunition by a defendant pursuant to this subsection are the property of the defendant. A
41 defendant surrendering or selling firearms, machine guns, and ammunition pursuant to this
42 subsection shall surrender all permits to purchase firearms and permits to carry concealed
43 firearms to the sheriff as provided in subsection (d) of this section.

44 A licensed firearms dealer receiving possession of firearms, machine guns, and ammunition
45 pursuant to this subsection must, within 24 hours of receipt of the firearms, machine guns, and
46 ammunition, submit to the sheriff a copy of the record required to be maintained under federal
47 law upon the receipt or disposition of the firearm, machine gun, or ammunition.

48 A dealer who accepts firearms, machine guns, and ammunition pursuant to this subsection
49 shall (i) not release the firearms, machine guns, or ammunition to the defendant without a court
50 order granting the release or (ii) not transfer possession of the firearms, machine guns, or
51 ammunition to any person the dealer knows or reasonably should know will allow the defendant

1 to exercise care, custody, possession, ownership, or control of the firearms, machine guns, or
2 ammunition.

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

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

- 19 (1) Whether the protective order has been renewed.
- 20 (2) Whether the defendant is subject to any other protective orders.
- 21 (3) Whether the defendant is disqualified from owning or possessing a firearm
22 pursuant to 18 U.S.C. § 922 or any State law.
- 23 (4) Whether the defendant has any pending criminal charges, in either State or
24 federal court, committed against the person that is the subject of the current
25 protective order.

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

31 (g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,
32 ammunition, or permits who is otherwise eligible to possess such items may file a motion
33 requesting the return to said third party of any such items in the possession of the sheriff or a
34 licensed firearms dealer seized as a result of the entry of a domestic violence protective order.
35 The motion must be filed not later than 30 days after the seizure of the items by the ~~sheriff.~~ sheriff
36 or surrender to the licensed firearms dealer. Upon receipt of the third party's motion, the court
37 shall schedule a hearing and provide written notice to all parties and the ~~sheriff.~~ sheriff or licensed
38 firearms dealer. The court shall order return of the items to the third party unless the court
39 determines that the third party is disqualified from owning or possessing said items pursuant to
40 State or federal law. If the court denies the return of said items to the third party, the items shall
41 be disposed of by the sheriff or licensed firearms dealer as provided in subsection (h) of this
42 section.

43 (h) Disposal of Firearms. – If the defendant does not file a motion requesting the return
44 of any firearms, ammunition, or permits surrendered within the time period prescribed by this
45 section, if the court determines that the defendant is precluded from regaining possession of any
46 firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to
47 remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of
48 the order granting the return of the firearms, ammunition, or permits, the sheriff or licensed
49 firearms dealer who has control of the firearms, ammunition, or permits shall give notice to the
50 defendant, and the sheriff or licensed firearms dealer shall apply to the court for an order of
51 disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the

1 disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law,
2 including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. Additionally, for firearms and
3 ammunition surrendered to a licensed firearms dealer under subsection (d1) of this section, the
4 judge may order the firearms and ammunition disposed of by sale by the licensed firearms dealer.
5 ~~If a sale by the sheriff or a licensed firearms dealer does occur, occur pursuant to this subsection,~~
6 any proceeds from the sale after deducting any costs associated with the sale, and in accordance
7 with all applicable State and federal law, shall be provided to the ~~defendant, if requested by the~~
8 ~~defendant by motion made before the hearing or at the hearing and if ordered by the~~
9 ~~judge.~~ defendant.

10 (i) Failure to Surrender or Disclose. – It is unlawful for any person subject to a protective
11 order prohibiting the possession or purchase of firearms ~~to do any of the following:~~

- 12 (1) Fail to sell all firearms and ammunition, or fail to surrender all firearms,
13 ammunition, permits to purchase firearms, and permits to carry concealed
14 ~~firearms to the sheriff as ordered by the court;~~ firearms, in accordance with the
15 requirements of this section.
16 (2) Fail to disclose all information pertaining to the possession of firearms,
17 ammunition, and permits to purchase and permits to carry concealed firearms
18 as requested by the ~~court;~~ court.
19 (3) Provide false information to the court pertaining to any of these items.

20 ...

21 (l) Construction. – Nothing in this section is intended to limit the discretion of the court
22 in granting additional relief as provided in other sections of this Chapter."

23 **SECTION 2.** This act is effective when it becomes law and applies to orders issued
24 on or after that date.