

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 782

Short Title: Domestic Violence Changes.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary II/Election Laws

April 20, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE GENERAL STATUTES PERTAINING TO
DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

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

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

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

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily ~~injury by the threat of force; injury; or~~

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) ~~Notwithstanding the provisions of subsection (a) above, domestic violence also means the commission of one or more of the following acts upon a minor residing with or~~

1 in the custody of the aggrieved party by a current or former spouse of the aggrieved party
2 or by a person of the opposite sex with whom the aggrieved party lives or has lived as if
3 married:

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

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

- 11 (1) Are current or former spouses;
12 (2) Live together or have lived together;
13 (3) Are dating or have dated;
14 (4) Are engaged in or have engaged in a sexual relationship;
15 (5) Are related by blood or adoption as first cousins or closer;
16 (6) Are or have been related by marriage as first cousins or closer; or
17 (7) 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 possession of the residence or household of the parties
25 and exclude the other spouse from the residence or household;
26 (3) Require a party to provide a spouse and his or her children suitable
27 alternate housing;
28 (4) Award temporary custody of minor children and establish temporary
29 visitation rights;
30 (5) Order the eviction of a party from the residence or household and
31 assistance to the victim in returning to it;
32 (6) Order either party to make payments for the support of a minor child as
33 required by law;
34 (7) Order either party to make payments for the support of a spouse as
35 required by law;
36 (8) Provide for possession of personal property of the parties;
37 (9) Order a party to refrain from ~~harassing or interfering with the other; and~~
38 doing any or all of the following:
39 a. Threatening, abusing, or following the other party,
40 b. Harassing the other party, including by telephone or other means,
41 or
42 c. Otherwise interfering with the other party; and
43 (10) Award costs and attorney's fees to either party.

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

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

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

15 "**§ 50B-4. Enforcement of orders.**

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

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

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

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

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

5 "**§ 1-110. Suit as an indigent; counsel.**

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

11 (1) Receives food stamps.

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

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

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

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

19 (6) Is seeking to obtain a domestic violence protection order pursuant to
20 G.S. 50B-2.

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

27 Sec. 5. This act becomes effective October 1, 1995.