

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 951
Committee Substitute Favorable 4/30/03

Short Title: Create Civil No-Contact Protective Orders.

(Public)

Sponsors:

Referred to:

April 8, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH CIVIL NO-CONTACT ORDERS FOR THE
3 PROTECTION OF INDIVIDUALS WHO ARE VICTIMS OF UNLAWFUL
4 CONDUCT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. The General Statutes are amended by adding a new Chapter to
7 read:

8 **"Chapter 50C.**

9 **"Civil No-Contact Orders.**

10 **"§ 50C-1. Short title.**

11 This Chapter may be cited as the 'Civil No-Contact Order Act'.

12 **"§ 50C-2. Definitions.**

13 The following definitions apply in this Chapter:

- 14 (1) Abuse. – Any physical or mental harassment, intimidation, or
15 interference with the personal liberty of another.
- 16 (2) Civil no-contact order. – A temporary or permanent order granted
17 under this Chapter, which includes a remedy authorized by G.S.
18 50C-9.
- 19 (3) Nonconsensual. – A lack of freely given consent.
- 20 (4) Sexual conduct. – Any intentional or knowing touching, fondling, or
21 sexual penetration by a person, either directly or through clothing, of
22 the sexual organs, anus, or breast of another, whether an adult or a
23 minor, for the purpose of sexual gratification or arousal. For purposes
24 of this subdivision, the term shall include the transfer or transmission
25 of semen.
- 26 (5) Sexual penetration. – The penetration, however slight, by any object
27 into the genital or anal opening of another person's body. Evidence of
28 emission of semen is not required to prove sexual penetration.

- 1 (6) Stalking. – Following on more than one occasion or otherwise
2 harassing, as defined in G.S. 14-277.3(c), another person without legal
3 purpose with the intent to do any of the following:
4 a. Place the person in reasonable fear either for the person's safety
5 or the safety of the person's immediate family or close personal
6 associates.
7 b. Cause that person to suffer substantial emotional distress by
8 placing that person in fear of death, bodily injury, or continued
9 harassment and that in fact causes that person substantial
10 emotional distress.
- 11 (7) Unlawful conduct. – Unlawful conduct means the commission of one
12 or more of the following acts upon a person, but does not include acts
13 of self-defense or defense of others:
14 a. Attempting to cause bodily injury or intentionally causing
15 bodily injury.
16 b. Nonconsensual sexual conduct, including single incidences of
17 nonconsensual sexual conduct.
18 c. Stalking.
19 d. Willfully threatening, orally, in writing, or by any other means,
20 to physically injure the victim in a manner and under
21 circumstances that would cause a reasonable person to believe
22 that the threat is likely to be carried out and that actually causes
23 the victim to believe that the threat will be carried out.
- 24 (8) Victim. – A person against whom an act of unlawful conduct has been
25 committed.

26 **"§ 50C-3. Civil no-contact orders; persons protected.**

27 A petition for a civil no-contact order may be filed in civil district court by any of
28 the following:

- 29 (1) A person who is a victim of unlawful conduct.
30 (2) A person on behalf of a minor child or an incompetent adult who is a
31 victim of unlawful conduct who cannot file the petition on his or her
32 own behalf.

33 **"§ 50C-4. Commencement of action; filing fees not permitted; assistance.**

34 (a) An action for a civil no-contact order is commenced by filing a petition for a
35 civil no-contact order in any civil district court.

36 (b) The court shall charge no fees for filing or certifying petitions for civil
37 no-contact orders. No fee shall be charged by the sheriff for service by the sheriff of a
38 petition, rule, motion, or order in an action commenced under this section.

39 (c) The court shall provide, through the office of the clerk of the court, simplified
40 forms and clerical assistance to any person not represented by counsel or in need of help
41 with the writing or filing of a petition under this section.

42 **"§ 50C-5. Pleadings; nondisclosure of address.**

1 (a) A petition for a civil no-contact order shall be in writing and verified or
2 accompanied by an affidavit. The petition or affidavit shall allege that the petitioner is
3 one of the following:

4 (1) A victim of unlawful conduct by the respondent.

5 (2) A person filing on behalf of a minor child or an incompetent adult who
6 is a victim of unlawful conduct by the respondent.

7 (b) If, in the petition, the victim states that disclosure of the victim's address
8 would place the victim or any member of the victim's family or household at risk for
9 further abuse, the victim's address may be omitted from all documents filed with the
10 court. If the victim has not disclosed an address under this subsection, the victim shall
11 designate an alternative address to receive notice of any motions or pleadings from the
12 opposing party.

13 **"§ 50C-6. Venue.**

14 A petition for a civil no-contact order may be filed in any of the following counties:

15 (1) Where the petitioner resides.

16 (2) Where the respondent resides.

17 (3) Where the unlawful conduct took place.

18 **"§ 50C-7. Process for action for no-contact order.**

19 (a) Any action for a civil no-contact order requires that a separate summons be
20 issued and served. The summons issued pursuant to this Chapter shall require the
21 respondent to answer or appear in court within 10 days. Attachments to the summons or
22 notice shall include the petition for the civil no-contact order and supporting affidavits,
23 if any, or any emergency civil no-contact order that has been issued.

24 (b) The summons shall be served by the sheriff or other law enforcement officer
25 at the earliest time and shall take precedence over other summonses except those of a
26 similar emergency nature.

27 (c) Service of process on a member of the respondent's household or by
28 publication shall be adequate if all of the following apply:

29 (1) The petitioner has made all reasonable efforts to accomplish actual
30 service of process personally upon the respondent but the respondent
31 cannot be found to effect the service.

32 (2) The petitioner files an affidavit or presents sworn testimony as to those
33 efforts.

34 (d) The court may enter a civil no-contact order by default for the remedy sought
35 in the petition if the respondent has been served or given notice in accordance with this
36 section and fails to appear as directed or fails to appear on any subsequent appearance
37 or hearing date agreed to by the parties or set by the court.

38 **"§ 50C-8. Hearsay exception.**

39 (a) In proceedings for a civil no-contact order or prosecutions for violating a civil
40 no-contact order, the prior sexual activity or the reputation of the victim is inadmissible
41 except under the following circumstances:

42 (1) As evidence concerning the past sexual conduct of the victim with the
43 respondent when this evidence is offered by the respondent regarding

1 the issue of whether the victim consented to the sexual conduct as
2 related to the offense being alleged.

3 (2) When constitutionally required to be admitted.

4 (b) No evidence admissible under this section may be introduced unless ruled
5 admissible by the trial judge after an offer of proof has been made at a hearing held in
6 camera. At this hearing, the court shall determine whether the respondent has evidence
7 to impeach the witness in the event that prior sexual activity with the respondent is
8 denied. The offer of proof shall include reasonably specific information as to the date,
9 time, and place of the past sexual conduct between the victim and the respondent.
10 Unless the court finds that reasonably specific information as to date, time, or place, or
11 some combination thereof, has been offered as to prior sexual activity with the
12 respondent, counsel for the respondent shall be ordered to refrain from inquiring into
13 prior sexual activity between the victim and the respondent. The court shall not admit
14 evidence under this section unless it determines at the hearing that the evidence is
15 relevant and the probative value of the evidence outweighs the danger of unfair
16 prejudice. The evidence is admissible at trial to the extent the court specifies the
17 evidence that may be admitted and the areas in which the victim may be examined or
18 cross-examined.

19 **"§ 50C-9. Civil no-contact order; remedy.**

20 (a) If the court finds that the petitioner has proven that the petitioner is a victim
21 of unlawful conduct, a civil no-contact order shall issue. However, the petitioner must
22 satisfy the requirements of G.S. 50C-10 for emergency orders or G.S. 50C-11 for
23 permanent orders. In determining whether or not to issue a civil no-contact order, the
24 court shall not require physical injury on the person of the victim.

25 (b) The court may include any one or more of the following orders in its
26 temporary or permanent orders under this Chapter:

27 (1) Order the respondent not to visit, assault, molest, or otherwise interfere
28 with the victim.

29 (2) Order the respondent to cease stalking the victim, including at the
30 victim's workplace.

31 (3) Order the respondent to cease harassment of the victim.

32 (4) Order the respondent not to abuse or injure the victim.

33 (5) Order the respondent not to telephone the victim.

34 (6) Order the respondent to refrain from entering or remaining present at
35 the victim's residence, school, place of employment, or other specified
36 places at times when the victim is present, if reasonable.

37 (7) Order other relief deemed necessary and appropriate by the court.

38 (c) Denial of a remedy shall not be based, in whole or in part, on evidence that:

39 (1) The respondent had cause for use of force, unless the use of force was
40 justified as determined by the court.

41 (2) The respondent was voluntarily intoxicated.

42 (3) The victim acted or failed to act in self-defense or defense of another.

43 (4) The victim left or failed to leave the residence or household to avoid
44 further unlawful conduct by the respondent.

1 (d) Monetary damages are not recoverable as a remedy under this Chapter.

2 **"§ 50C-10. Temporary civil no-contact order; court holidays and evenings.**

3 (a) A court may issue a temporary civil no-contact order if the petitioner satisfies
4 the following requirements:

5 (1) The petitioner has met the requirements of G.S. 50C-9.

6 (2) There is good cause to grant the remedy, regardless of prior service of
7 process or of notice upon the respondent, because the harm that the
8 remedy is intended to prevent would likely occur if the respondent
9 were given any prior notice or greater notice than was actually given
10 of the petitioner's efforts to obtain judicial relief.

11 (b) If the respondent appears in court for this hearing for a temporary order, the
12 respondent may elect to file a general appearance and testify. Any resulting order may
13 be a temporary order, governed by this section. Notwithstanding the requirements of
14 this section, if all requirements of G.S. 50C-11 have been met, the court may issue a
15 permanent order.

16 (c) When the court is unavailable at the close of business, the petitioner may file
17 a petition for a 21-day temporary order before any available judge or magistrate who
18 may grant relief under this Chapter. If the judge or magistrate finds that there is an
19 immediate and present danger of abuse against the petitioner or victim and that the
20 petitioner has satisfied the prerequisites set forth in subsection (a) of this section, the
21 judge or magistrate may issue a temporary civil no-contact order.

22 (d) The chief district court judge may designate for each county at least one
23 judge or magistrate to be reasonably available to issue orally, by telephone, by
24 facsimile, or otherwise an emergency civil no-contact order at all times, whether or not
25 the court is in session.

26 **"§ 50C-11. Permanent civil no-contact order.**

27 A permanent civil no-contact order shall issue if the petitioner has served notice of
28 the hearing for the permanent civil no-contact order on the respondent in accordance
29 with G.S. 50C-7 and satisfied the following requirements:

30 (1) The petitioner has met the requirements of G.S. 50C-9.

31 (2) A general appearance was made or filed by or for the respondent or
32 process was served on the respondent in the manner required by G.S.
33 50C-7.

34 (3) The respondent has answered or is in default.

35 **"§ 50C-12. Duration; extension of orders.**

36 (a) Unless reopened, extended, or voided by entry of an order of greater duration,
37 a temporary civil no-contact order shall be effective for not less than 14 days nor greater
38 than 21 days.

39 (b) Except as otherwise provided in this section, a permanent civil no-contact
40 order shall be effective for a fixed period of time not to exceed one year. A permanent
41 civil no-contact order entered in conjunction with another civil proceeding shall remain
42 in effect as follows:

43 (1) If entered as preliminary relief in the other civil proceeding, until entry
44 of final judgment in the other civil proceeding.

1 (2) If incorporated into the final judgment in the other civil proceeding,
2 until the civil no-contact order is vacated or modified.

3 (3) If incorporated in an order for involuntary commitment, until
4 termination of both the involuntary commitment and any voluntary
5 commitment or for a fixed period of time not exceeding one year.

6 (c) Any temporary or permanent order may be extended one or more times, as
7 required, provided that the requirements of G.S. 50C-10 or G.S. 50C-11, as appropriate,
8 are satisfied. The court may renew a temporary or permanent order, including an order
9 that previously has been renewed, upon a motion by the petitioner filed before the
10 expiration of the current order. The court may renew the order for good cause. The
11 commission of an act of unlawful conduct by the respondent after entry of the current
12 order is not required for an order to be renewed. If the motion for extension is
13 uncontested and the petitioner seeks no modification of the order, the order may be
14 extended if the petitioner's motion or affidavit states that there has been no material
15 change in relevant circumstances since entry of the order and states the reason for the
16 requested extension. Extensions may be granted only in open court and not under the
17 provisions of G.S. 50C-10(c).

18 (d) Any civil no-contact order expiring on a court holiday shall expire at the
19 close of the next court business day.

20 **"§ 50C-13. Contents of orders.**

21 (a) A civil no-contact order shall state the following:

22 (1) The name of each person that the court finds was the victim of
23 unlawful conduct by the respondent and the name of any other person
24 protected by the order. The order shall further state that any person
25 named in the order is protected by this Chapter.

26 (2) The date and time the civil no-contact order was issued, whether it is a
27 temporary or permanent order, and the duration of the order.

28 (3) The date, time, and place for any scheduled hearing for extension of
29 the civil no-contact order or for any other order of greater duration or
30 scope.

31 (4) For each remedy in a temporary civil no-contact order, the reason for
32 entering that remedy without prior notice to the respondent or greater
33 notice than was actually given.

34 (b) A civil no-contact order shall include the following notice, printed in
35 conspicuous type: 'A knowing violation of a civil no-contact order shall be punishable
36 as contempt of court which may result in a fine or imprisonment.'

37 **"§ 50C-14. Notice of orders.**

38 (a) The clerk of court shall, or the petitioner may, on the same day that a civil
39 no-contact order is issued, file a certified copy of that order with the sheriff or other law
40 enforcement personnel charged with maintaining criminal records or serving the order
41 upon the respondent.

42 (b) Unless the respondent was present in court when the order was issued, the
43 sheriff, other law enforcement personnel, or special process server shall promptly serve
44 that order upon the respondent and file proof of service in the manner provided for

1 service of process in civil proceedings. If process has not yet been served upon the
2 respondent, it shall be served with the order.

3 (c) Any order extending, modifying, or revoking any civil no-contact order shall
4 be promptly recorded, issued, and served in accordance with the provisions of this
5 Chapter.

6 **"§ 50C-15. Violation.**

7 A knowing violation of a civil no-contact order shall be punished as contempt of
8 court.

9 **"§ 50C-16. Enforcement of orders.**

10 (a) A valid protective order entered pursuant to this Chapter shall be enforced by
11 all North Carolina law enforcement agencies without further order of the court.

12 (b) Any law enforcement officer may make an arrest without a warrant if the
13 officer has probable cause to believe that a person has knowingly committed or is
14 knowingly committing a violation of a civil no-contact order.

15 (c) The law enforcement officer may verify the existence of a civil no-contact
16 order by telephone or radio communication with his or her law enforcement agency or
17 by referring to the copy of the order provided by the petitioner or the respondent."

18 **SECTION 2.** This act becomes effective December 1, 2003, and applies to
19 actions that give rise to civil no-contact orders issued under this act on or after that date.