

Legislative Response to *State v. Byrd*

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On July 24, 2009, the Governor signed House Bill 115 (S.L. 2009-342), which among other things amends the domestic violence protective order (DVPO) statutes in response to the North Carolina Supreme Court's decision in *State v. Byrd*, 363 N.C. 214 (May 1, 2009) (discussed in my previous [memo](#)). The bill, which can be viewed [here](#), revises G.S. 50B-4 and 50B-4.1 to provide that a "valid protective order" includes an "emergency" and "*ex parte*" order entered under G.S. Chapter 50B. By expanding the definition of "valid protective order" to include "*ex parte*" orders, **the legislation reverses the Court's decision in *Byrd* in the following respects.** In light of the expanded definition of "valid protective order,"

- It is a Class A1 misdemeanor under G.S. 50B-4.1(a) for a person to knowingly violate an *ex parte* DVPO entered under G.S. Chapter 50B.
- Law enforcement officers must arrest a person, with or without a warrant, if they have probable cause to believe that the person knowingly violated an *ex parte* DVPO in the circumstances described in G.S. 50B-4.1(b), such as violating a provision excluding the person from the residence or household occupied by a victim of domestic violence.
- A person is subject to increased punishment for violating an *ex parte* DVPO in the circumstances described in G.S. 50B-4.1(d), (f), and (g) (for example, violating a DVPO by failing to stay away from a person or place as directed, while possessing a deadly weapon).

House Bill 115 became effective July 24, 2009, when it was signed by the Governor. For criminal law purposes, this effective-date language means that the bill applies to violations of *ex parte* DVPOs committed on or after July 24, 2009. Thus, if an *ex parte* DVPO is entered before July 24 and a person violates the order on or after July 24, a magistrate could issue criminal process and a law enforcement officer could arrest for the Class A1 misdemeanor offense of violating a DVPO.

The expanded definition of a "valid protective order" does not include a violation of a temporary restraining order (TRO) entered under Rule 65 of the North Carolina Rules of Civil Procedure. Therefore, under *Byrd*, a violation of a Rule 65 TRO is not a Class A1 misdemeanor under G.S. 50B-4.1 and is not subject to the other criminal consequences in G.S. 50B-4.1.

Last, in *Byrd*, the North Carolina Supreme Court expressed constitutional concerns about imposing criminal consequences for a violation of an *ex parte* DVPO. The courts will ultimately review the revised statute in light of those concerns, but unless and until the courts issue a ruling to the contrary, the revised statute is controlling and should be followed by magistrates and law enforcement officers.

For periodic updates of criminal law legislation passed by the General Assembly, sign up for Bob Farb's criminal law listserv [here](#). After the legislative session ends, the School of Government will prepare a complete summary of the criminal law legislation enacted in 2009.

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