

## Domestic Violence Law and Procedure

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**Categories :** [Crimes and Elements](#), [Procedure](#), [Sentencing](#), [Uncategorized](#)

**Tagged as :** [domestic violence](#), [DVPOpersonal relationship](#)

**Date :** September 5, 2017

In getting ready for the North Carolina magistrates' fall conference and a session that I'm teaching on issuing process in domestic violence cases, I began thinking about the ways that North Carolina criminal law addresses domestic violence. The North Carolina General Assembly has made numerous changes and additions in this area of criminal law, collected below. If I omitted some part of North Carolina criminal law involving domestic violence cases, please let me know.

### Crimes Involving Domestic Violence

Several laws address crimes involving domestic relationships, although the relationship requirement varies. Some offenses require a romantic relationship of some kind. For example, domestic criminal trespass requires that the defendant trespass on premises occupied by the defendant's present or former spouse or a person with whom the defendant lives or has lived as if married. Others incorporate the broader definition of "personal relationship" for obtaining a domestic violence protective order (DVPO) in G.S. 50B-1, as for the offense of assault in the presence of a minor. Some offenses do not require a specific relationship but were evidently enacted with relationship violence in mind, such as assault by strangulation under G.S. 14-32.4(b) and stalking under G.S. 14-277A. Although the latter statute does not require a specific relationship, it opens with the statement that the General Assembly "recognizes . . . the strong connections between stalking and domestic violence . . ."

The offenses requiring a specific relationship include:

- Domestic criminal trespass, G.S. 14-134.3
  - Simple, Class 1 misdemeanor
  - Entry of safe house with deadly weapon, Class G felony
- Assault with a deadly weapon or inflicting serious injury, a Class A1 misdemeanor, in the presence of a minor, G.S. 14-33(d)
  - First offense, supervised probation if active sentence not imposed
  - Subsequent offense, minimum 30 day active sentence
- Disclosure of private images (sometimes referred to as revenge porn), G.S. 14-190.5A
  - If the defendant is 18 or older at the time of the offense, Class H felony
  - If the defendant is under 18 at the time of the offense, Class 1 misdemeanor for the first offense and Class H felony for a subsequent offense
  - This offense has required a personal relationship between the defendant and victim, but the requirement does not apply to offenses committed on or after December 1, 2017
- Domestic violence homicide, G.S. 14-17(a1) (effective for offenses committed on or after December 1, 2017)
  - First-degree premeditated and deliberate murder, Class A felony
  - This crime is based on a rebuttable presumption that the defendant acted with premeditation and deliberation if he kills with malice as defined in G.S. 14-17(b)(1) and was in a certain type of relationship with the victim and had previously been convicted of a certain type of crime against the victim. As written, this presumption may not be enforceable because it bases premeditation and deliberation on the version of malice in G.S. 14-17(b)(1), which involves recklessness, not an intentional act. See

*generally County Court of Ulster v. Allen*, 442 U.S. 140 (1979) (even if a presumption is considered permissive, there must be a “rational connection” between the facts proved and the fact to presumed); *see also State v. Coble*, 351 N.C. 448 (2000) (crime of attempted second-degree murder, which requires specific intent to commit underlying offense, does not exist because second-degree murder does not include specific intent to kill as element).

Several other offenses involve violations of domestic violence protective orders:

- DVPO violation, G.S. 50B-4.1
  - Simple, Class A1 misdemeanor
  - Third offense, Class H felony
  - Felony while DVPO prohibits act, one class higher than felony committed
  - Violation of stay-away condition with deadly weapon, Class H felony
  - Entry of safe house where protected person resides, Class H felony
- Possession of firearm while DVPO in effect, Class H felony, G.S. 14-269.8, G.S. 50B-3.1(j)
- Cyberstalking by electronic tracking device while subject to DVPO, Class 2 misdemeanor, G.S. 14-196.3(b)(5)

## **Arrest Procedures**

Several provisions permit or require law enforcement officers to take action in cases involving domestic violence.

*Warrantless arrests.* G.S. 15A-401(b)(2) regulates an officer’s authority to make a warrantless arrest for offenses committed outside the officer’s presence. An officer has this authority when the officer has probable cause for any felony but only for certain misdemeanors. The statute gives officers this authority for the following misdemeanors involving domestic violence (as well as in cases in which the person will cause physical injury or property damage or will not be apprehended unless immediately arrested):

- Domestic criminal trespass
- Simple assault, assault with deadly weapon or inflicting serious injury, and assault by pointing a gun if a personal relationship exists as defined in G.S. 50B-1
- DVPO violation

An officer also may make a warrantless arrest for a violation of a pretrial release condition, whether committed in or outside the officer’s presence. G.S. 15A-401(b)(1), (2). Originally, this statute concerned domestic violence cases only, allowing warrantless arrests for violations of pretrial release conditions under G.S. 15A-534.1(a)(2), which lists pretrial release conditions in domestic violence cases. The statute was later broadened to other pretrial release violations.

*Mandatory arrests.* An officer must arrest when the officer has probable cause that a person has violated a DVPO excluding the person from the residence or household of a domestic violence victim or directing the person to refrain from doing any act in G.S. 50B-3(a)(9), such as threatening the victim. G.S. 50B-4.1(b).

*Fingerprinting and other information.* The arresting law enforcement agency must take the fingerprints of a defendant for all felonies and certain misdemeanors, including the following domestic violence offenses: domestic criminal trespass; an offense involving domestic violence as described in G.S. 15A-1382.1 (discussed further below under Sentencing); a DVPO violation; and misdemeanor assault, stalking, or communicating a threat if the person is held under G.S. 15A-534.1 (discussed further below under Pretrial Release Procedures). G.S. 15A-502(a2), (a4). The arresting agency must provide the magistrate with available information about the defendant’s relationship with the alleged victim and whether it is a personal relationship as defined in G.S. 50B-1, and the magistrate must enter the information into the court information system. G.S. 15A-502(a3), (a5).

## **Pretrial Release Procedures**

G.S. 15A-534.1 contains several provisions on pretrial release in cases involving domestic violence:

- The most well-known provision is what has become known as the 48-hour law, which requires that a judge set pretrial release conditions in the first 48 hours after arrest. Over the years, the provision has been expanded to cover additional offenses and relationships, such as dating relationships. See Jeff Welty, [Recent Changes to the Pretrial Release Statutes](#), N.C. Crim. L. Blog (Nov. 19, 2015).
- The judicial official, whether a judge or magistrate, must consider the defendant's criminal history when setting pretrial release conditions. G.S. 15A-534.1(a); [Conditions of Release for Person Charged with a Crime of Domestic Violence](#), AOC-CR-630 (Dec. 2015) (form release order with these conditions).
- The judicial official may impose the pretrial release conditions listed in G.S. 15A-534.1(a)(2), such as stay-away conditions.
- The judicial official may detain a defendant for a reasonable time if the judicial official determines that immediate release will pose a danger to the victim or other person or result in intimidation to the victim and an appearance bond will not reasonably avert this risk. G.S. 15A-534.1(a)(1). This provision predated the 48-hour procedure and allowed for a cooling-off period for the defendant and an opportunity for the alleged victim to take safety precautions.

## Sentencing

The following provisions concern sentencing in cases involving domestic violence:

- If the conviction involves assault, communicating a threat, or any act in G.S. 50B-1(a), and the defendant and victim had a personal relationship, the judge must indicate in the judgment and the clerk of court must indicate in the official record that the offense involved domestic violence. G.S. 15A-1382.1(a).
- If the court finds the defendant responsible for acts of domestic violence and sentences the defendant to probation, a regular condition of probation is to attend and complete an abuser treatment program. G.S. 15A-1343(b)(12).
- The Department of Public Safety must establish a domestic violence treatment program for inmates whose official record includes a finding that they committed acts of domestic violence. G.S. 143B-704(e).

See also G.S. 15A-1340.16(d)(15) (aggravating factor at felony sentencing for the defendant to have taken advantage of a position of trust and confidence, including a domestic relationship, in committing the offense).

## Victims' Rights

The North Carolina Crime Victims' Rights Act gives victims of certain offenses various rights, including the right to notice throughout the proceedings and the right to restitution and a civil judgment for damages greater than \$250. G.S. 15A-830 through G.S. 15A-841, G.S. 15A-1340.34(b), G.S. 15A-1340.38. Many felonies are covered. The following misdemeanors, which involve domestic violence, are also covered:

- Simple assault, assault on female, assault with a deadly weapon or inflicting serious injury, assault by pointing a gun, domestic criminal trespass, and stalking if the defendant and victim had a personal relationship as defined in G.S. 50B-1
- Violation of a DVPO

## Firearm Consequences

Federal law imposes a firearms ban for felonies and misdemeanor crimes of domestic violence. State law follows suit, providing that a person may not obtain a permit to purchase or carry a concealed handgun if prohibited by state or federal law. G.S. 14-404(a)(1), G.S. 14-415.12(b)(1), (8b); see also [Firearm Prohibition Notice](#), AOC-CR-617 (Dec. 2007) (form notice to convicted defendants that firearm possession may be unlawful under federal or state law). *But*

see Jeff Welty, [Vinson, Voisine, and Misdemeanor Crimes of Domestic Violence](#) , N.C. Crim. L. Blog (July 18, 2016) (questioning whether North Carolina misdemeanor assaults constitute misdemeanor crimes of domestic violence under federal law as applied by Fourth Circuit, but suggesting that North Carolina courts should continue to consider using AOC form to notify convicted defendants that possession of firearms “may” be unlawful).

During the term of a DVPO, it is unlawful for the defendant to possess firearms (discussed above under Crimes Involving Domestic Violence). After the DVPO expires, a defendant may move for return of firearms surrendered during the term of the DVPO, but the court must deny the motion if the defendant is disqualified from possessing firearms under state or federal law or has pending charges for an offense against the person protected by the DVPO. G.S. 50B-3.1(f).