

When can the court order surrender of firearms in a DVPO?

Both federal and state law prohibits the possession of firearms by anyone subject to a qualifying domestic violence protective order. However, the fact that possession of firearm is a crime does not give the trial court authority to order a defendant in a 50B proceeding to surrender all weapons.

Explicit firearm provisions in 50B

[GS 50B-3.1](#) specifically addresses the surrender of firearms. That statute requires the court to order defendant to surrender all weapons to the sheriff if the court finds one of the following:

- The use or threatened use of a weapon by defendant or a pattern of conduct involving the use or threatened use of violence with a firearm.
- Threats to seriously injure or kill the party or minor child by defendant.
- Threats to commit suicide by defendant.
- Serious injuries inflicted upon the party or minor child by defendant.

[GS 50B-3.1\(a\)](#).

If one of these facts is found, the court must order surrender.

What if the court does not make one of these findings?

[Stancill v. Stancill, 773 SE2d 890 \(NC App, June 16, 2015\)](#), reversed an order to surrender weapons because the trial court failed to check a box beside one of the [GS 50B-3.1\(a\)](#) findings of fact on the DVPO form. According to the court, the trial court erred in ordering surrender without finding at least one factors listed in [GS 50B-3.1](#).

What about the “catch-all”?

[GS 50B-3](#) sets out the forms of relief a court is authorized to grant in a DVPO. If the court concludes defendant committed an act of domestic violence, a DVPO must be entered but the only form of relief required is an order that defendant not commit further acts of domestic violence. The trial court has discretion to determine what other forms of relief are appropriate under the circumstances.

[GS 50B-3\(a\)\(11\)](#) lists as relief the authority to “prohibit a party from purchasing a firearm.” This provision makes no reference to possession or surrender of a firearm.

However, [GS 50B-3\(a\)\(13\)](#) states that in addition to all enumerated relief, the court also may order

“any additional prohibitions or requirements the court deems necessary to protect any party or minor child.” This ‘catch-all’ provision appears to grant the court unlimited authority with regard to relief.

So can a court use this broad authority to order surrender of firearms when one of the factors in [GS 50B-3.1](#) is not present?

The [Stancill](#) case does not address the catch-all factor explicitly but it implies that this general factor cannot be used to support surrender because the court states clearly that an order of surrender is not appropriate unless the court finds one of the factors listed in [GS 50B-3.1](#).

In addition to [Stancill](#), rules of statutory construction indicate it is not appropriate to interpret the catch-all provision in a way that allows more expansive regulation of firearm possession than allowed by the provision in that same statute dealing specifically with firearms. In other words, if the General Assembly intended for the court to have unlimited authority to prohibit possession or require surrender of weapons, why would the provision in that same statute specifically allow only a restriction on the purchase of weapons? And, if the General Assembly intended to grant unlimited discretion to regulate firearm possession in [GS 50B-3\(a\)\(13\)](#), why did it limit the court’s authority to order surrender in [GS 50B-3.1](#)?

State v. Elder

The Court of Appeals first addressed the catch-all factor in [State v. Elder, 753 SE2d 504 \(NC App. Jan. 21, 2004\)](#). In that case, the trial court used the provision to order law enforcement to search defendant’s home and seize all weapons found. The search resulted in a drug conviction and defendant appealed, arguing the court had no authority to order the search.

The Court of Appeals agreed the search was illegal because the DVPO exceeded the authority of the trial court. According to the Court of Appeals, the general catch-all provision must be interpreted in conjunction with the more specific provisions found in [GS 50B-3.1](#). Because [GS 50B-3.1](#) allows a court to order only the surrender of weapons, [GS 50B-3.1](#) cannot be interpreted broadly enough to authorize orders for searches or seizures of weapons.

[The Supreme Court affirmed the court of appeals](#) but adopted a different analysis to interpret the catch-all factor. The Supreme Court agreed with the Court of Appeals that rules of statutory construction require that the catch-all provision be interpreted in a way that is consistent with the more specific provisions in Chapter 50B. [State v. Elder, 368 NC 70 \(2015\)](#). However, instead of focusing on [GS 50B-3.1](#), the Supreme Court focused on GS 50B-3(a) and held that because all of the specifically enumerated remedies in [GS 50B-3](#) either prohibit or require action by a party, the catch-all provision can be used only to order prohibitions or requirements directed at the parties. Accordingly, the court held that the trial court exceeded the authority granted by this section when it ordered action by law enforcement.

So can we use the catch-all to order surrender?

I think the answer to this question is no. Both the Court of Appeals and the Supreme Court agreed that the catch-all must be interpreted in conjunction with other provisions in Chapter 50B and both used that rule of statutory construction to limit the seemingly unlimited authority granted by [GS 50B-3\(a\)\(13\)](#). The Supreme Court gives no explanation as to why it did not simply adopt the analysis of the Court of Appeals and this at least raises the possibility that the Supreme Court is unwilling to limit trial court authority regarding the regulation of firearms between the parties. However, we still have [Stancill](#) and the clear implication from that opinion that [GS 50B-3.1](#) is the exclusive way to order surrender of firearms, and we have the rule of construction adopted by both courts in *Elder* indicating that the more specific authority regarding weapons granted by [GS 50B-3.1](#) will control over the general broad authority granted by the catch-all.