

Correction: Pretrial Release

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January 20, 2016

During the 2015 Winter Webinar, beginning at minute 52:35 in connection with Slide 23, Magistrates (p. 12 of the printout of the slides), I discussed the General Assembly's changes to the pretrial release statutes. In [S.L. 2015-62](#) (H 465), the General Assembly revised G.S. 15A-534.1 to provide that only a judge, not a magistrate, may set pretrial release conditions during the first 48 hours after arrest if the defendant is charged with certain offenses and the defendant and victim are or have been in a "dating relationship" as defined in G.S. 50B-1(b)(6). Before this change, the 48-hour provisions applied to certain offenses if the defendant and victim are or were spouses or live or have lived together as if married. (The 48-hour provisions also apply to violations of domestic violence protective orders, which may involve other relationships.)

I said during the webinar that marriage and marriage-like relationships include opposite sex and same sex relationships. That continues to be my reading of the law.

I also said that the new dating relationship provision only applies to opposite sex relationships. I now believe my statement was incorrect. My conclusion follows from a closer reading of the wording of the applicable statutes:

- G.S. 50B-1(b)(6) allows "persons of the opposite sex who are in a dating relationship or have been in a dating relationship" to obtain a domestic violence protective order (DVPO). Thus, to be eligible to obtain a DVPO on the basis of a dating relationship, the persons must be of the opposite sex.
- G.S. 50B-1(b)(6) then defines dating relationship as "one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship." It also states that a "casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship." Thus, the actual definition of dating relationship does not require that the persons be of the opposite sex.
- The revised language of G.S. 15A-534.1 requires only that the defendant and victim be or have been in a dating relationship as defined by G.S. 50B-1(b)(6). It does not include a requirement that the persons be of the opposite sex.
- Statutes should be interpreted where possible to avoid constitutional problems. Interpreting the 48-hour provisions in G.S. 15A-534.1 as applying to opposite sex couples but not to same sex couples could raise constitutional concerns. See Jeff Welty, [Recent Changes to the Pretrial Release Statutes](#), N.C. Crim. L., UNC Sch. of Gov't Blog (Nov. 19, 2015).

For these reasons, I believe that the 48-hour law in G.S. 15A-534.1 applies to opposite sex and same sex couples who are or have been in a dating relationship as defined in G.S. 50B-1(b)(6). There still will be questions about what interactions constitute a dating relationship. For a further discussion of the meaning of a dating relationship, see [Thomas v. Williams](#), ___ N.C. App. ___, 773 S.E.2d 900 (2015).