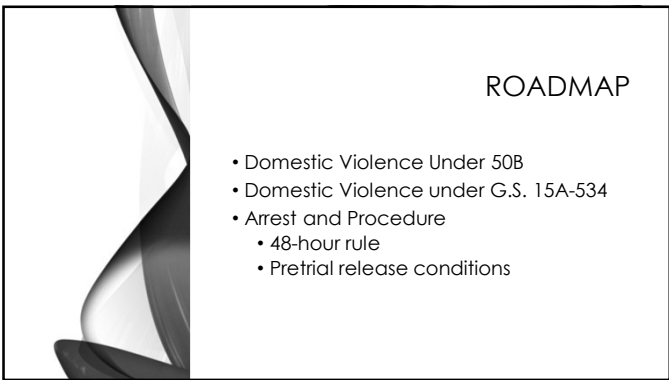
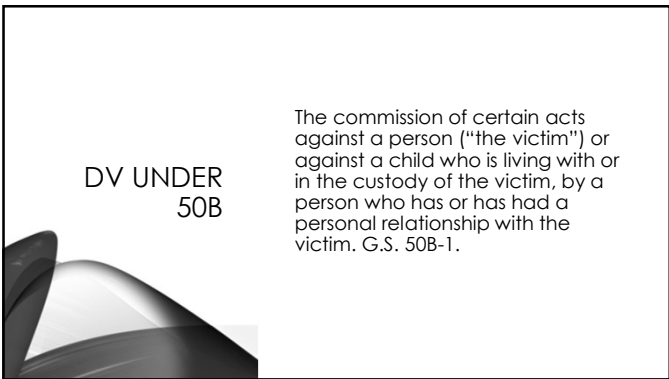


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3

DV UNDER 50B – ACTS

Attempting to cause or intentionally causing bodily injury

Placing the victim, or a member of the victim's family or household in fear of imminent serious bodily injury

Continued harassment that causes substantial emotional distress

Committing rape or other sex offenses

4

DV UNDER 50B – RELATIONSHIPS

Current or former spouses

People of the opposite sex who live or have lived together

Parent and child or grandparent and grandchild

Parents with a child in common

Current or former household members

People of the opposite sex who are or have been in a dating relationship.

5

WHICH OF THE FOLLOWING SCENARIOS DOES NOT FALL WITHIN THE SCOPE OF DOMESTIC VIOLENCE UNDER 50B?

A

A wife intentionally hits her husband with a car and breaks his leg.

B

A grandmother whips her grandson with a switch until he is bruised and bleeding.

C

A man meets a woman for the first time at a bar, invites her to his house and rapes her.

D

An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home.

6

Scenario	Act	Relationship
A wife intentionally hits her husband with a car and breaks his leg	Intentionally causing bodily injury	Current spouse
A grandmother whips her grandson with a switch until he is bruised and bleeding	Intentionally causing bodily injury	Grandparent and grandchild
A man meets a woman for the first time at a bar, invites her to his house and rapes her	Committing rape	NO QUALIFYING RELATIONSHIP
An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home	Continued harassment	Have been in a dating relationship

7

ISSUING EX PARTE DV ORDERS


- Chief district court judge may authorize a magistrate to hear any motion for emergency relief ex parte. G.S. 50B-2(c1).
- Authorized magistrate may hear a motion for ex parte relief when the district court is not in session and a district court judge is not and will not be available for a period of four or more hours.
- Magistrate is authorized to enter orders ex parte if it clearly appears to the magistrate from specific facts shown that there is a "danger of acts of domestic violence against the aggrieved party or minor child."

8

VIOLATIONS OF DVPOS

- Knowing violation of a valid DVPO
 - Class A1 misdemeanor
- Committing a felony while DVPO prohibits act
 - Punishment one class higher than the felony
- Third offense
 - Class H felony
- Violation of stay-away condition with deadly weapon
 - Class H felony
- Entry of safe house where protected person resides
 - Class H felony
- Firearms purchase or possession
 - Class H felony
- Using electronic tracking devices
 - Class 2 misdemeanor


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DV UNDER
G.S. 15A-
534.1

A matter is considered a domestic violence crime if the defendant commits certain crimes against "a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship." G.S. 15A-534.1(a).

10



DV UNDER G.S. 15A-534.1 -
ACTS

Assaults

Stalking

Communicating threats

Domestic criminal trespass


Rape and other sex offenses

Kidnapping and abduction

Arson and other burnings

Violation of a 50B order

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DV UNDER G.S. 15A-534.1 -
ACTS

Assaults

Stalking

Communicating threats

Domestic criminal trespass

Rape and other sex offenses

Kidnapping and abduction

Arson and other burnings

Violation of a 50B order

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DV UNDER G.S. 15A-534.1 - ACTS

Assaults
Article 8

Stalking

Communicating threats

Domestic criminal trespass

Rape and other sex offenses
Article 7B

Kidnapping and abduction
Article 10

Arson and other burnings
Article 15

Violation of a 50B order

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EXAMPLES OF NON-QUALIFYING OFFENSES

- G.S. 14-54 – Break or enter to terrorize or injure occupant
 - Chapter 14, ARTICLE 14
- G.S. 14-286.2 – Interfering with emergency communication
 - Chapter 14, ARTICLE 36

14

DV UNDER G.S. 15A-534.1 - RELATIONSHIPS

A spouse or former spouse

A person with whom the defendant lives or has lived as if married

A person with whom the defendant is or has been in a dating relationship

15

WHICH OF THE FOLLOWING SCENARIOS DOES NOT FALL WITHIN THE SCOPE OF DOMESTIC VIOLENCE UNDER 15A-534.1?

A
An ex-roommate sets a woman's car on fire.

B
An ex-husband shows up to a woman's home without authorization.

C
A woman contacts her estranged husband in violation of a valid DVPO.

D
An ex-girlfriend shows up with a baseball bats and threatens to bust the windows out of a man's car.


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Scenario	Act	Relationship
An ex-roommate sets a woman's car on fire	Burning of personal property	NO QUALIFYING RELATIONSHIP
An ex-husband shows up to a woman's home without authorization	Domestic criminal trespass	Former spouse
A woman contacts her estranged husband in violation of a valid DVPO	Violation of a 50B order	Spouse
An ex-girlfriend shows up with a baseball bats and threatens to bust the windows out of a man's car	Communicating threats	Have been in a dating relationship

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ARREST AND PRETRIAL RELEASE


18



MANDATORY ARRESTS

Law enforcement officers must arrest a person, with or without a warrant, if they have probable cause to believe that the person knowingly violated a valid protective order in the circumstances described in G.S. 50B-4.1 (b).

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DISCRETIONARY ARRESTS

- Domestic criminal trespass
- Violation of a domestic violence protective order.
- Where a "personal relationship" existed as defined in G.S. 50B-1:
 - Simple assault or simple assault and battery
 - Assault inflicting serious injury or assault with a deadly weapon
 - Assault on a female
 - Assault by pointing a gun

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PRETRIAL RELEASE: DV 48-HOUR RULE

- A defendant charged with most noncapital offenses must have conditions of pretrial release determined in accordance with G.S. 15A-534.
- During the first 48 hours after arrest for certain domestic violence crimes, only a judge can set conditions of pretrial release.
- A magistrate may set conditions of release if the first 48 hours pass without a judge setting the conditions.

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48-HOUR RULE

Applies to:

- When there is a covered offense and a qualifying victim (G.S. 15A-534.1)
- Domestic criminal trespass
- Violation of valid protective order

Assault Article 8	Stalking	Communicating threats	Domestic criminal trespass
Rape and other sex offenses Article 7B	Kidnapping and obstruction Article 10	Arson and other burnings Article 15	Violation of a SOB order

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TO WHOM DOES THE 48-HOUR RULE **NOT** APPLY?

Trespasses on the property of his ex-wife and her new husband

A

Assaults his sister, with whom he lives

B

Assaults his pregnant fiancée

C

Shows up to her son's school in violation of a valid DVPO

D

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Scenario	Act	Relationship
A man trespasses on the property of his ex-wife and her new husband	Domestic criminal trespass	Former spouse (although no relationship required)
A man assaults his sister, with whom he lives	Assault	NO QUALIFYING RELATIONSHIP
A man assaults his pregnant fiancée	Assault	Dating relationship
A woman shows up to her son's school in violation of a valid DVPO	Violation of a valid protective order	No relationship required

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G.S. 14-32.5 – MISDEMEANOR CRIME OF DOMESTIC VIOLENCE

- Effective December 1, 2023
- Class A1 misdemeanor to use or attempt to use physical force, or threaten the use of a deadly weapon, against another person.
 - A current or former spouse, parent, or guardian of the victim.
 - A person with whom the victim shares a child in common.
 - A person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian.
 - A person similarly situated to a spouse, parent, or guardian of the victim.
 - A person who has a current or recent former dating relationship with the victim.

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Not an automatic trigger
for the 48-hour rule

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FIRST...

Uses or attempts to
use physical force

Threatens the use
a deadly weapon

+

Current or former
spouse, parent, or
guardian of the victim

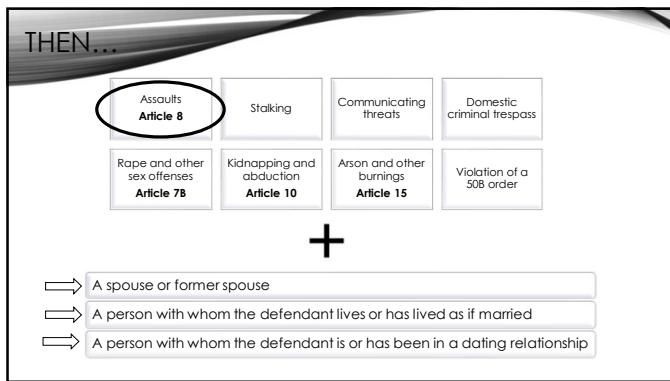
Person with whom the
victim shares a child in
common

Person who is
cohabitating with or
has cohabitated with
the victim as a spouse,
parent, or guardian

Person similarly situated
to a spouse, parent, or
guardian of the victim

Person who has a
current or recent
former dating
relationship with the
victim

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48-HOUR RULE


- No carte blanche to hold the defendant for 48 hours; the defendant must be brought before a judge at the earliest, reasonable opportunity.
- A violation of procedural due process occurs where the defendant is held without conditions of pretrial release and a judge was available to set them.
- Considerations:
 - 1) at what point a judge was available to set conditions of pretrial release, and
 - 2) how long after that point the defendant was held without conditions.

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VENUE

- If a person is arrested in a different county, the appropriate judicial official in the county of arrest must set the pretrial release conditions
- Being held on an out-of-county charge is not a basis for denying or delaying the setting of pretrial release conditions

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PRETRIAL RELEASE CONDITIONS

- The judicial official must consider the defendant's criminal history when setting pretrial release conditions.
- If judge determines that the immediate release of the defendant poses danger of injury or intimidation the victim, judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pretrial release.

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PRETRIAL RELEASE CONDITIONS

- That the defendant stay away from the home, school, business or place of employment of the alleged victim
- That the defendant refrain from assaulting, beating, molesting, or wounding the alleged victim
- That the defendant refrain from removing, damaging or injuring specifically identified property
- That the defendant may visit his or her child or children at times and places provided by the terms of any existing order entered by a judge
- That the defendant abstain from alcohol consumption

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QUESTIONS?

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