

# DOMESTIC VIOLENCE CRIMES AND PROCEDURE

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## ROADMAP

- Domestic Violence Under 50B
- Domestic Violence under G.S. 15A-534
- Arrest and Procedure
  - 48-hour rule
  - Pretrial release conditions

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## DV UNDER 50B

The commission of certain acts against a person ("the victim") or against a child who is living with or in the custody of the victim, by a person who has or has had a personal relationship with the victim. G.S. 50B-1.

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## 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

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## 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.

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

<b>A</b> A wife intentionally hits her husband with a car and breaks his leg.	<b>B</b> A grandmother whips her grandson with a switch until he is bruised and bleeding.
<b>C</b> A man meets a woman for the first time at a bar, invites her to his house and rapes her.	<b>D</b> An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home.

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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	<b>NO QUALIFYING RELATIONSHIP</b>
An ex-boyfriend stalks a woman, constantly sending threatening messages and showing up to her home	Continued harassment	Have been in a dating relationship

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## 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."

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## 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

## 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 or a person with whom the defendant lives or has lived as if married." G.S. 15A-534.1 (a).

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

Assaults	Stalking	Communicating threats	Domestic criminal trespass
Violation of a 50B order	Rape and other sex offenses	Kidnapping and abduction	Arson and other burnings

## ARTICLE 7B

### 7B

**Article 7B - Rape and Other Sex Offenses.**

G.S. 14-27.20	§ 14-27.20. Definitions.
G.S. 14-27.21	§ 14-27.21. First-degree forcible rape.
G.S. 14-27.22	§ 14-27.22. Second-degree forcible rape.
G.S. 14-27.23	§ 14-27.23. Statutory rape of a child by an adult.
G.S. 14-27.24	§ 14-27.24. First-degree statutory rape.
G.S. 14-27.25	§ 14-27.25. Statutory rape of person who is 15 years of age or younger.
G.S. 14-27.26	§ 14-27.26. First-degree forcible sexual offense.
G.S. 14-27.27	§ 14-27.27. Second-degree forcible sexual offense.
G.S. 14-27.28	§ 14-27.28. Statutory sexual offense with a child by an adult.
G.S. 14-27.29	§ 14-27.29. First-degree statutory sexual offense.
G.S. 14-27.30	§ 14-27.30. Statutory sexual offense with a person who is 15 years of age or younger.
G.S. 14-27.31	§ 14-27.31. Sexual activity by a substitute parent or custodian.
G.S. 14-27.32	§ 14-27.32. Sexual activity with a student.
G.S. 14-27.33	§ 14-27.33. Sexual battery.
G.S. 14-27.33A	§ 14-27.33A. Sexual contact or penetration under pretense of medical treatment.
G.S. 14-27.34	§ 14-27.34. No defense that victim is spouse of person committing act.
G.S. 14-27.35	§ 14-27.35. No presumption as to incapacity.
G.S. 14-27.36	§ 14-27.36. Evidence required in prosecutions under this Article.

Article 8 - Assaults	
G.S. 14-28	§ 14-28. Involuntary castration.
G.S. 14-28.1	§ 14-28.1. Female genital mutilation of a child.
G.S. 14-29	§ 14-29. Castration or other maiming without malice aforethought.
G.S. 14-30	§ 14-30. Malicious maiming.
G.S. 14-30.1	§ 14-30.1. Malicious throwing of corrosive acid or alkali.
G.S. 14-31	§ 14-31. Malicious assaulting in a secret manner.
G.S. 14-32	§ 14-32. Frenzied assault with deadly weapon with intent to kill or inflicting serious injury per se.
G.S. 14-32.1	§ 14-32.1. Assaults on individuals with a disability: punishments.
G.S. 14-32.2	§ 14-32.2. Patient abuse and neglect: punishments; definitions.
G.S. 14-32.3	§ 14-32.3. Domestic abuse, neglect, and exploitation of disabled or elder adults.
G.S. 14-32.4	§ 14-32.4. Assault inflicting serious bodily injury: strangulation penalties.
G.S. 14-33	§ 14-33. Misdeemeanor assault, battery, and affray, simple and aggravated: punishments.
G.S. 14-33.1	§ 14-33.1. Evidence of former: first six upon plea of self-defense.
G.S. 14-33.2	§ 14-33.2. Habitual misdemeanor assault.
G.S. 14-34	§ 14-34. Assaulting by pointing gun.
G.S. 14-34.1	§ 14-34.1. Discharging certain barrel weapons or a firearm into occupied property.
G.S. 14-34.2	§ 14-34.2. Assault with a firearm or other deadly weapon upon governmental officers or employ police officers or campus police officers.

## ARTICLE 8

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G.S. 14-34.5	§ 14-34.5. Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility.
G.S. 14-34.6	§ 14-34.6. Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel.
G.S. 14-34.7	§ 14-34.7. Certain assaults on a law enforcement, probation, or parole officer, or on a member of the Carolina National Guard, or on a person employed at a State or local detention facility; penalty.
G.S. 14-34.8	§ 14-34.8. Criminal use of laser device.

## ARTICLE 8

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Article 10 - Kidnapping and Abduction.	
G.S. 14-39	§ 14-39. Kidnapping.
G.S. 14-40	§ 14-40. Enticing minors out of the State for the purpose of employment.
G.S. 14-41	§ 14-41. Abduction of children.
G.S. 14-42	§ 14-42: Repealed by Session Laws 1993, c. 539, s. 1358.2.
G.S. 14-43	§ 14-43: Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 767, s. 29(2).
G.S. 14-43.1	§ 14-43.1. Unlawful arrest by officers from other states.
G.S. 14-43.2	§ 14-43.2: Repealed by Session Laws 2006-247, s. 20(a), effective December 1, 2006, and applicable to offenses committed on or after that date.

## ARTICLE 10

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Article 15 - Arson and Other Burnings.	
G.S. 14-58	§ 14-58. Punishment for arson.
G.S. 14-58.1	§ 14-58.1. Definition of "house" and "building"
G.S. 14-58.2	§ 14-58.2. Burning of mobile home, manufactured type house or recreational trailer home.
G.S. 14-59	§ 14-59. Burning of certain public buildings.
G.S. 14-60	§ 14-60. Burning of schoolhouses or buildings of educational institutions.
G.S. 14-61	§ 14-61. Burning of certain bridges and buildings.
G.S. 14-62	§ 14-62. Burning of certain buildings.
G.S. 14-62.1	§ 14-62.1. Burning of building or structure in process of construction.
G.S. 14-62.2	§ 14-62.2. Burning of churches and certain other religious buildings.
G.S. 14-63	§ 14-63. Burning of boats and barges.
G.S. 14-64	§ 14-64. Burning of garages and tobacco houses.
G.S. 14-65	§ 14-65. Fraudulently setting fire to dwelling houses.
G.S. 14-66	§ 14-66. Burning of personal property.
G.S. 14-67	§ 14-67: Repealed by Session Laws 1993, c. 539, s. 1358.2.
G.S. 14-67.1	§ 14-67.1. Burning other buildings.
G.S. 14-67.2	§ 14-67.2. Burning caused during commission of another felony.
G.S. 14-68	§ 14-68. Failure of owner of property to comply with orders of public authorities.
G.S. 14-69	§ 14-69. Failure of officers to investigate incendiary fires.
G.S. 14-69.1	§ 14-69.1. Making a false report concerning incendiary fire.
G.S. 14-69.2	§ 14-69.2. Preparing to use of flame bomb or other device.
G.S. 14-69.3	§ 14-69.3. Arson or other unlawful burning that results in serious bodily injury to a firefighter, law enforcement officer, or emergency medical technician.

## ARTICLE 15

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## EXAMPLES OF NON-QUALIFYING OFFENSES

- G.S. 15-54 – Break or enter to terrorize or injure occupant
  - Chapter 14, ARTICLE 14
- G.S. 14-286 – Interfering with emergency communication
  - Chapter 14, ARTICLE 36

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## 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

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## 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

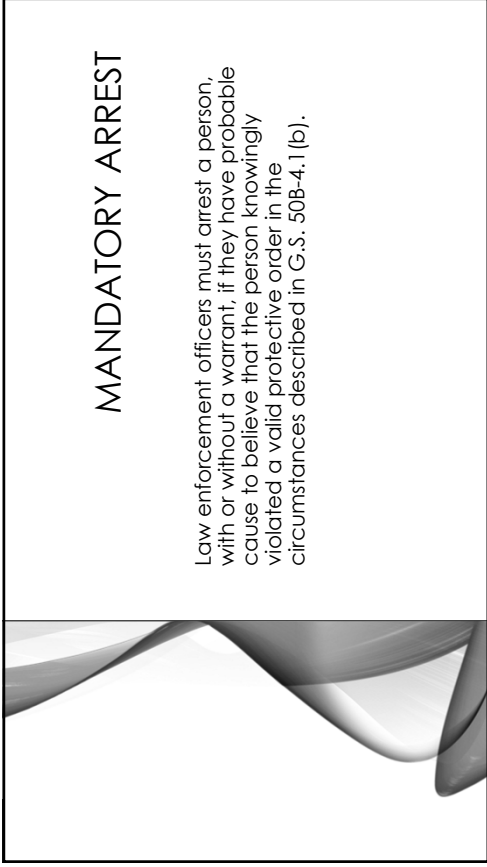
Have been in a dating relationship

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# ARREST AND PRETRIAL RELEASE

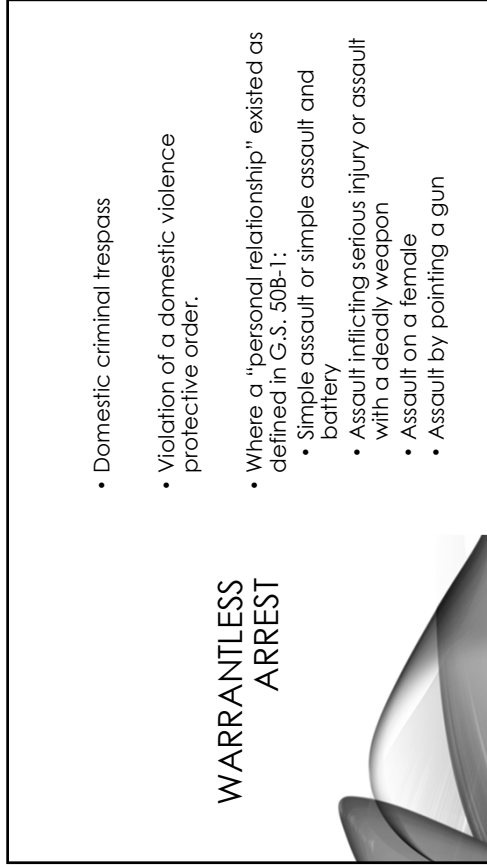
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# MANDATORY ARREST

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).

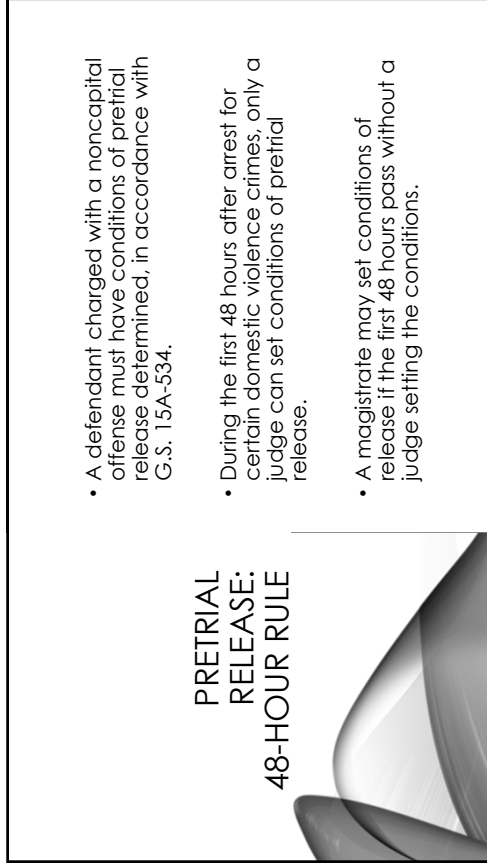
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# WARRANTLESS ARREST

- 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: 48-HOUR RULE

- A defendant charged with a noncapital offense 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

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

Triggers custody of the ex-wife's husband

Assaults the sister with whom he lives

Assaults the defendant's fiancée

Shows up at school in a valid DVPO

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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	<b>NO QUALIFYING RELATIONSHIP</b>
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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## 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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