

Firearms: Domestic Violence, IVCs, and Restoration

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Section 1: DVPOs

- Mandatory inquiry
 - The court “shall inquire” of the plaintiff about the defendant’s possession of, or access to, guns/ammunition/permits at an ex parte or emergency hearing, G.S. 50B-3.1(b), and shall inquire of the defendant at the 10-day hearing, G.S. 50B-3.1(c).
- Surrender order
 - Upon issuance of an ex parte or emergency order, the court “shall order” order the defendant to surrender guns/ammunition/permits if it finds any of the four factors in G.S. 50B-3.1(a) (use/threat of a deadly weapon or pattern of prior use/threat of firearm; threat to injure or kill the plaintiff or a child; threat to commit suicide; serious injury inflicted on the plaintiff or a child).
 - Although the statute references only ex parte and emergency orders, the North Carolina Court of Appeals has stated that the procedure for ordering the defendant to surrender firearms “applies to both an ex parte DVPO and a DVPO.” *Stancill v. Stancill*, 241 N.C. App. 529 (2015). The final DVPO form, [AOC-CV-306](#), has check boxes for the statutory findings and for ordering surrender.
 - Absent one of the four factors described above, a court cannot order a defendant to surrender firearms. *Stancill, supra* (holding that a surrender order was erroneous where “the trial court failed to check any of the boxes on the form that contained the statutory findings necessary to order the surrender of firearms”). That seems to rule out an order to surrender firearms predicated on the general remedial authority in G.S. 50B-2(c)(1) (for ex parte orders) and G.S. 50B-3(a)(13) (for final orders). Whether those general provisions might support other orders limiting a defendant’s access to firearms is discussed later in this outline.
 - The statute covers weapons “that are in the care, custody, possession, ownership, or control of the defendant.” G.S. 50B-3.1(a). Therefore, a defendant who owns firearms cannot avoid a surrender order by transferring

the guns to a friend or relative for safekeeping; the defendant's ownership of the weapons would continue.

- A defendant who continues to possess firearms in violation of a surrender order commits a Class H felony. G.S. 50B-3.1(j), G.S. 14-269.8. See also *State v. Poole*, 228 N.C. App. 248 (2013) (criminal provisions may be predicated on violation of an ex parte order).
- Regardless of whether a surrender order is issued, it is a federal crime for a person subject to a final DVPO to possess a firearm. See 18 U.S.C. § 922(g)(8). Because the federal statute applies only to an order “issued after a hearing of which [the defendant] received actual notice, and at which [the defendant] had an opportunity to participate,” an ex parte order is not covered.
- Although a *surrender* order may be issued only when one of the statutory conditions are present, a court issuing a final DVPO may forbid the defendant from *purchasing* a firearm even absent the statutory conditions. G.S. 50B-3(a)(11). Less clear is whether a court issuing an ex parte or final DVPO may bar a defendant from *possessing* a firearm when the statutory conditions are not present. Both statutes contain broad remedial language that could be read to support such a prohibition. See G.S. 50B-2(c)(1) (in an ex parte DVPO, a court may issue “orders as it deems necessary to protect the aggrieved party or minor children”); G.S. 50B-3(a)(13) (in a final DVPO, a court may impose “any additional prohibitions or requirements the court deems necessary to protect any party or any minor child”). And both the ex parte and final DVPO forms provide check boxes for prohibiting gun possession separate from the check boxes for surrender. However, one could argue that given the various specific provisions concerning guns in Chapter 50B, the general remedial provisions cited above should not be interpreted to allow further restrictions on firearm possession. A violation of any lawful court order limiting the defendant's access to firearms would be a Class H felony under G.S. 50B-3.1(j) and G.S. 14-269.8. Cf. *State v. Poole*, 228 N.C. App. 248 (2013) (criminal provisions may be predicated on violation of an ex parte order).
- Surrender
 - “Upon service of the order, the defendant shall immediately surrender to the sheriff” all guns/ammunition/permits. G.S. 50B-3.1(d). If surrender can't be done immediately upon service, it must be done within 24 hours. *Id.*

- The statute doesn't authorize a law enforcement officer to search the defendant's home, vehicle, or person for firearms, nor does it allow a court to authorize that. *State v. Elder*, 368 N.C. 70 (2015).
- However, because it is a crime for a person subject to a DVPO to possess a firearm, an officer with probable cause could search the defendant's vehicle for firearms under the vehicle exception to the warrant requirement, and could seek a search warrant to search the defendant's person and residence.
- Retrieval of firearms upon expiration of an ex parte or emergency DVPO
 - Current law provides that "[i]f the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order." G.S. 50B-3.1(e).
 - This provision is probably not self-executing. Although located in a different subsection of the statute, G.S. 50B-3.1(d)(2) states that "[t]he sheriff shall not release firearms, ammunition, or permits without a court order granting the release." Furthermore, the reference in subsection (e) to "unless the court finds" suggests judicial involvement. Most sheriffs and district court judges seem to have concluded that a motion to return under G.S. 50B-3.1(f), and a resulting court order, are required prior to retrieval.
 - Section 20 of S.L. 2025-70 will change the above to allow a defendant to "retrieve any weapons surrendered to the sheriff without additional order of the court" if an ex parte or emergency order expires and no DVPO is entered, or if a court denies a DVPO. The sheriff must first run a NICS check to determine "that the defendant is not prohibited from possessing or receiving a firearm pursuant to [federal or] State law and the defendant does not have any pending criminal charges committed against the person that is the subject of the current protective order or pending charges that, if convicted, would prohibit the defendant from possessing a firearm."
 - When a judge or a sheriff is considering whether a defendant is eligible to possess a firearm, the first place to look is 18 U.S.C. § 922(g), which includes the following disqualifiers:
 - Felons
 - Questions sometimes arise about North Carolina DWI convictions. Federal law states that a person cannot lawfully

possess a firearm if he or she has been “convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1). But 18 U.S.C. § 921(a)(20)(B) excludes from the foregoing “any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.” DWI is a misdemeanor, and all levels except aggravated level one are punishable by two years or less. Under *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc) (holding that whether a Structured Sentencing offense is punishable by more than one year requires looking at the maximum sentence for the defendant’s prior record level, not the maximum for any defendant), the various levels of DWI should probably be treated as distinct offenses such that only aggravated level one convictions disqualify a person from gun possession.

- Fugitives
- Drug users/addicts
 - The statute does not define the relevant terms, but 27 CFR § 478.11 defines in in part as “[a] person who uses a controlled substance and has lost the power of self-control with reference to the use of controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct.” Federal courts have ruled that the term covers at least those whose drug use is “consistent, prolonged, and close in time to [their] gun possession.” *United States v. Hasson*, 24 F.4th 610 (4th Cir. 2022) (quoting *United States v. Sperling*, 400 Fed. App. 765 (4th Cir. 2010).
- IVCs
- Aliens unlawfully in the United States
- Dishonorable discharges
- Persons who have renounced United States citizenship
- Convictions for a “misdemeanor crime of domestic violence”

- North Carolina convictions for simple assault and assault on a female do not qualify because both allow the possibility of a conviction based on a mental state of culpable negligence. See Jeff Welty, *Vinson, Voisine, and Misdemeanor Crimes of Domestic Violence* (N.C. Crim. L. Blog July 18, 2016). Convictions for the new misdemeanor crime of domestic violence, G.S. 14-32.5, do count under federal law.
 - Although the grammar/syntax is somewhat unclear, the reference in the current statute to “final disposition of any pending criminal charges committed against” the victim appears to preclude return of firearms while state or federal criminal charges against the victim are pending, regardless of whether those charges are felonies or misdemeanors, involve firearms, or even involve violence. The provisions of S.L. 2025-70 are more limited in scope.
- Return upon dissolution or expiration of a final order
 - Motion
 - “The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the [victim] and not later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the [victim].” G.S. 50B-3.1(f).
 - The AOC form for the motion is [AOC-CV-319](#).
 - If a defendant files a motion for return later than 90 days, the court likely may still consider it. See Brittany Bromell, *Surrender, Return, and Disposal of Firearms in Domestic Violence Cases*, N.C. Crim. L. Blog, June 3, 2025.
 - Hearing
 - “Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits.” G.S. 50B-3.1(f).
 - Judges often rely on the sheriff to provide information about the defendant’s criminal record and other potential disqualifiers, though in theory, the plaintiff could also be a source of information.
 - Order

- “The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include” (1) whether the DVPO has been renewed, (2) whether the defendant is subject to other DVPOs, (3) whether state or federal law precludes the defendant from possessing a gun, and (4) whether the defendant has pending criminal charges against the victim. G.S. 50B–3.1(f).
 - If the defendant is ineligible, the court “shall deny” return. *Id.*
 - Although the statute does not say so expressly, if the defendant is *not* ineligible, the court should order the guns/ammunition/permits to be returned. Interpreting the statute to allow a judge unfettered discretion to deny return would likely violate the Second Amendment as interpreted in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) (ruling New York’s concealed handgun permit regime unconstitutional, in part because it allowed state officials unfettered discretion to deny a permit).
 - The AOC form for an order on a motion for return is [AOC-CV-320](#).
- Return to third-party owners
 - “A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order.” G.S. 50B-3.1(g).
 - The same AOC form that can be used by defendants, AOC-CV-319, may also be used by third-party owners and contains blocks to be used by such owners.
 - “The motion must be filed not later than 30 days after the seizure of the items by the sheriff.” G.S. 50B-3.1(g).
 - Late-filed motions should probably be considered under the same logic as late-filed motions by defendants, discussed above.
 - “[T]he court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law.” G.S. 50B-3.1(g).
 - The court may wish to explore whether the third party is in fact the owner of the items in question, rather than a bailee acting on behalf of the defendant.
 - “If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff.” G.S. 50B-3.1(g).
- Storage fees

- The sheriff “may charge the defendant a reasonable fee” for storage of firearms and ammunition. G.S. 50B-3.1(d)(2). The statute does not say what a “reasonable” fee is.
- It is unclear whether a judge ordering the return of a defendant’s firearms and ammunition has the authority to assess the reasonableness of a sheriff’s fee, or to order the sheriff to reduce the fee. Nothing in Chapter 50B expressly allows a judge to do that. By contrast, G.S. 20-28.4 expressly provides for the possibility of a “judicial hearing” on mechanic’s liens arising from storage costs incurred in connection with potential DWI vehicle forfeitures. On the other hand, the statute requires that the fees be “reasonable,” and perhaps the law should not be read to create a right without a remedy.
- Disposal/disposition by the sheriff
 - If the defendant doesn’t file a timely motion for return; if the court deems the defendant ineligible for return; or if the court orders return but the defendant doesn’t pay any storage fees within 30 days, the sheriff shall apply for a disposition order. G.S. 50B-3.1(h).
 - [AOC-CV-321](#) is the form a sheriff may use for this purpose.
 - The court may order disposition “in one or more of the ways authorized by law, including subdivision (4) [destruction if no serial number or unsafe], (4b) [use or sale by the sheriff if requested], (5) [Crime Lab’s reference library], or (6) [Justice Academy] of G.S. 14-269.1.” G.S. 50B-3.1(h). [AOC-CV-322](#) is the form on which a judge may enter an order regarding the disposition of weapons.
 - If the sheriff sells the guns, the defendant may be entitled to any proceeds, less storage fees, upon request under certain circumstances. G.S. 50B-3.1(h).

Section 2: Involuntary Commitment

- Federal law
 - Under 18 U.S.C. § 922(g)(4), it is a crime for a person “who has been adjudicated as a mental defective or who has been committed to a mental institution” to possess a firearm.
 - Under 27 CFR § 478.11 “adjudicated as a mental defective” means a “determination by a court . . . or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease [1] [i]s a danger to himself or to others; or [2] [l]acks the mental capacity to contract or manage his own affairs.” The term includes a

“finding of insanity by a court in a criminal case,” a finding of incompetence to stand trial, and a finding of “not guilty by reason of lack of mental responsibility” under federal or military law.

- Under 27 CFR § 478.11 “committed to a mental institution” means a “formal commitment of a person to a mental institution by a court . . . or other lawful authority” including involuntary commitment “for mental defectiveness or mental illness” or drug use. It “does not include a person in a mental institution for observation or a voluntary admission to a mental institution.”
- Application to state process
 - By its terms, the definition of “adjudicated as a mental defective” includes criminal defendants found not guilty by reason of insanity or deemed incompetent to stand trial. The clerk must report either situation to NICS within two working days. G.S. 14-409.43(a)(4), (5).
 - The reference to a lack of “the mental capacity to contract or manage his own affairs” in the definition of “adjudicated as a metal defective” appears to bring individuals deemed incompetent in civil guardianship proceedings within the scope of the statute. Under G.S. 35A-1101(a)(7) the standard for civil incompetence is “lack[ing] sufficient capacity to manage [one’s] own affairs or to make or communicate important decisions.” *Cf. Petramala v. United States Department of Justice*, 2011 WL 3880826 (D. Ariz. Sept. 2, 2011) (unpublished) (stating that an individual was disqualified after, inter alia, a state court “appointed a guardian to manage his affairs because it found him incapable of providing for his own needs”); *Pennsylvania State Police v. Heggenstaller*, 784 A.2d 853 (Comm. Ct. Pa. 2001) (ruling that an individual was disqualified because the VA had found him “mentally incompetent to manage his personal affairs, including disbursement of his VA benefits”). Under G.S. 14-409.43(a)(6), the clerk must notify NICS within two working days of a “finding that an individual lacks the capacity to manage the individual’s own affairs due to marked subnormal intelligence or mental illness, incompetency, condition, or disease.”
 - “Formal commitment” happens after the hearing before a district court judge under G.S. 122C-268. [AOC-SP-203](#) is the form used for such orders. Restraint of the respondent’s liberty prior to that time is preliminary in nature.
 - The clerk’s obligation to report a commitment to NICS arises only after a “judicial determination or finding” regarding commitment. G.S. 14-409.43(a).
 - A respondent who agrees to voluntary admission at any point prior to the issuance of the district court judge’s final order is not subject to a formal

involuntary commitment and is not disqualified. Voluntary admission may be memorialized on DHHS form number [DMH 5-72-19-2](#), the form used by clinicians conducting a second examination. (In the area of the form for the clinician's recommendation, there is a box for IVC and a separate, alternative box for "Respondent or Legally Responsible Person Consented to Voluntary Treatment.") Or, if the respondent consents later in the process – perhaps after conferring with appointed counsel – it may be memorialized on the AOC-SP-203, which contains a box for a finding that the respondent "signed voluntary commitment before court date," at which point the judge might potentially dismiss the case.

- The clerk must report IVC orders to NICS within two business days. G.S. 14-409.43(a)(1).
- Seizure of firearms by law enforcement
 - There is no authority in Chapter 122C for a court to order an officer who is transporting a respondent in connection with an IVC evaluation to seize the respondent's firearms. The word "firearm" does not appear in Chapter 122C.
 - An officer may have authority under the community caretaking doctrine, the emergency doctrine, or other, similar legal theories to seize a respondent's firearms under some circumstances. However, the existence and scope of such authority is unclear, and officers should be mindful of *Caniglia v. Strom*, 593 U. S. ____ (2021), where the Supreme Court held that the community caretaking doctrine did not justify officers' decision to enter the home of an individual with mental health issues and remove his firearms. The fact that the respondent is being removed from contact with the firearms weighs against any such authority because it mitigates any imminent danger.
 - A respondent who is involuntarily committed is prohibited from possessing firearms under federal law. A federal officer might obtain a search warrant to seize a respondent's guns in connection with that offense. (Perhaps a state officer could do that too, on the theory that G.S. 15A-242(4) allows a warrant to issue based on probable cause that the officer will be able to seize "evidence of an offense," not just a North Carolina offense, but without clearer authority, this is likely an issue better left to federal officers.)
- Concealed carry permits and mental health
 - Permit applicants are required to provide the sheriff with a release regarding "any records concerning the mental health or capacity of the applicant." G.S. 14-415.13(a)(5).

- The sheriff must request any pertinent records within 10 days, G.S. 14-415.15(a), and providers must “promptly” provide records to the sheriff, G.S. 14-415.14(c).
- The sheriff may deny a permit if the applicant suffers from a “mental infirmity that prevents the safe handling of a handgun,” G.S. 14-415.12(a)(3), or has been adjudicated “lacking mental capacity or mentally ill,” G.S. 14-415.12(b)(6).
 - These standards appear somewhat elastic and are broader than the federal disqualifier for IVCs.
- Appeal of a denial is to the district court. G.S. 14-415.15(c).

Section 3: Restoration of Gun Rights

- After a felony conviction
- Statutory process
 - G.S. 14-415.4 provides a process for restoration of firearm rights for a single, nonviolent felony that is at least 20 years old
 - [AOC-CV-654](#) is a form petition and order for proceedings under G.S. 14-415.4.
 - The petition is to the district court. The clerk notifies the district attorney, who may present evidence opposing restoration. The burden is on the petitioner to prove eligibility by a preponderance of the evidence. G.S. 14-415.4(c), (f).
 - Single felony: “multiple felony convictions arising out of the same event and consolidated for sentencing shall count as one felony only” G.S. 14-415.4(d)(2).
 - Nonviolent felony: excludes Class A, B1, and B2 felonies, and assaults, reportable sex crimes, and felonies involving a firearm. G.S. 14-415.4(a)(2)
 - 20 years old
 - For North Carolina felonies, 20 years must have passed since the person’s “civil rights have been restored.” G.S. 14-415.4(c). Generally, that happens upon the “unconditional discharge of an inmate, of a probationer, or of a parolee.” G.S. 13-1(1). Normally, the Department of Adult Correction issues a form to a defendant at the appropriate time to document their unconditional discharge and restoration of rights. For more detail, see Jamie Markham, *North Carolina’s Voting Restriction for Felons*, N.C. Crim. L. Blog (October 6, 2016).
 - For out-of-state felonies, 20 years must have passed since the “unconditional discharge or unconditional pardon of the person” and

since “the person's civil rights, including the right to possess a firearm, have been restored, pursuant to the law of the jurisdiction where the conviction occurred.” G.S. 14-415.4(c). (Note that if the person’s rights have been restored in another state, they may already be exempt from prosecution under North Carolina’s felon-in-possession statute under G.S. 14-415.1(d), which states that the crime “does not apply to a person who, pursuant to the law of the jurisdiction in which the conviction occurred, has . . . had his or her firearms rights restored if such restoration of rights could also be granted under North Carolina law.”)

- Other requirements: The person must have lived in North Carolina for at least one year, must submit his or her fingerprints to the sheriff, and cannot be subject to any of the disqualifiers in G.S. 14-415.4(e) (mostly tracking the federal disqualifiers but also including, e.g., a conviction of any of several listed violent misdemeanors, or a PJC for a felony).
- State constitutional process
 - In *Britt v. State*, 363 N.C. 546 (2009), the court ruled that a man with a 1979 conviction for PWISD a controlled substance had a state constitutional right to possess a firearm that trumped G.S. 14-415.1.
 - The *Britt* approach to restoration is more flexible than G.S. 14-415.4. For example, in *Baysden v. State*, 217 N.C. App. 20 (2011), *aff’d by equally divided court*, 366 N.C. 370 (2013), a plaintiff with two prior felony convictions, one of which was gun-related, was granted restoration.
 - Factors to be considered in *Britt* cases include (1) whether the felony conviction(s) were violent, (2) how old the conviction(s) are, (3) whether the person has been law-abiding since the conviction(s), (4) any history of lawful gun ownership, and (5) the person’s “assiduous and proactive compliance” with the felony disqualifier. *State v. Whitaker*, 201 N.C. App. 190 (2009).
 - When a defendant is charged with unlawful possession of a gun, the *Britt* line of cases likely does not provide a viable defense. The charge itself undermines factors (3) and (5), above. In *State v. Ducker*, __ N.C. App. __, 917 S.E.2d 266 (2025), the court indicated that it was “not aware [of] any cases in which a defendant has successfully challenged [G.S.] 14-415.1 as applied to him after being convicted under it.”
- After an IVC
 - Petition
 - G.S. 14-409.42 allows a person to “file [a] petition [to remove the mental commitment bar] with a district court judge upon the

expiration of any current inpatient or outpatient commitment.” G.S. 14-409.42(a).

- [AOC-SP-211](#) is the form designed to be used for such petitions (and resulting orders).
- The petition must be filed in “the county where the respondent was the subject of the most recent judicial determination or finding or in the district court of the county of the petitioner's residence.” G.S. 14-409.42(b).

- Notice

- The clerk must notify “the petitioner and the attorney who represented the State in the underlying case” and serve “the director of the relevant inpatient or outpatient treatment facility and the district attorney in the petitioner's current county of residence.” G.S. 14-409.42(b).

- Procedure

- “The burden is on the petitioner to establish by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” G.S. 14-409.42(c).
- The district attorney shall present any and all relevant information to the contrary.” G.S. 14-409.42(c).
- The hearing is presumptively closed. G.S. 14-409.42(c).

- Relief

- If relief is granted, the clerk must send the order to NICS. G.S. 14-409.42(d).
- If relief is denied, the petitioner may appeal for a de novo hearing in superior court, or may wait at least one year and reapply. G.S. 14-409.42(c).

- After a misdemeanor crime of domestic violence

- The disqualification is permanent unless the conviction itself is expunged, pardoned, or vacated (for example, via an MAR).