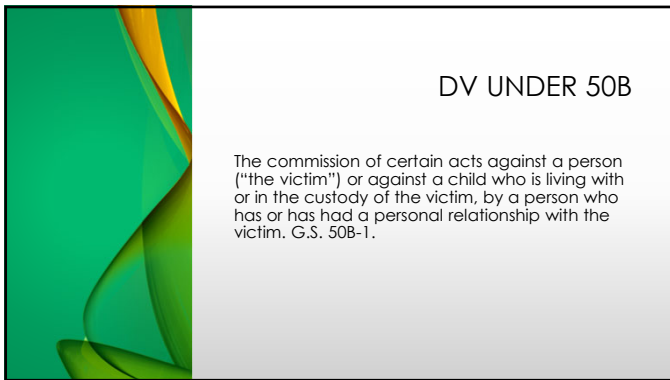


ROADMAP

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

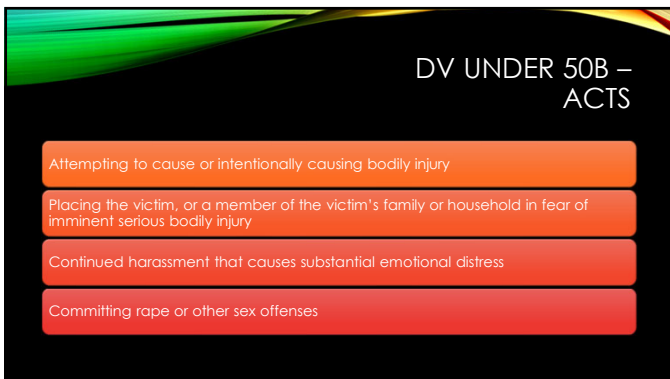
4



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.

5



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

6

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.

7

Which of the following does not fall within the scope of domestic violence under 50B?

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

Powered by Poll Everywhere
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poll.com/app

8

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

9

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."

10

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

11

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).

12

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

13

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

14

Which of the following does not fall within the scope of domestic violence under G.S. 15A-534.1?

- An ex-roommate sets a woman's car on fire **A**
- An ex-husband shows up to a woman's home without authorization **B**
- A wife contacts her estranged husband in violation of a valid DVPO **C**
- An ex-girlfriend shows up with a baseball bat and threatens to bust the windows out of a man's car **D**

Powered by Poll Everywhere
Start the presentation to see live content. For screen share software, share the entire screen. Get help at poller.com/app

15

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

16

ARREST AND PRETRIAL RELEASE

17

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).

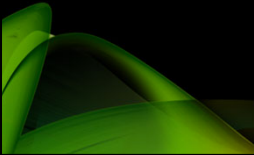
18



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


19



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.

20




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

21


To whom does the 48-hour rule NOT apply?




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




Assaults his sister, with whom he lives



Assaults his pregnant fiancée



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

Powered by  Pall Everywhere
Start the presentation to see how content. Hit screen down to follow, when the screen scrolls. Get help at pall everywhere

22

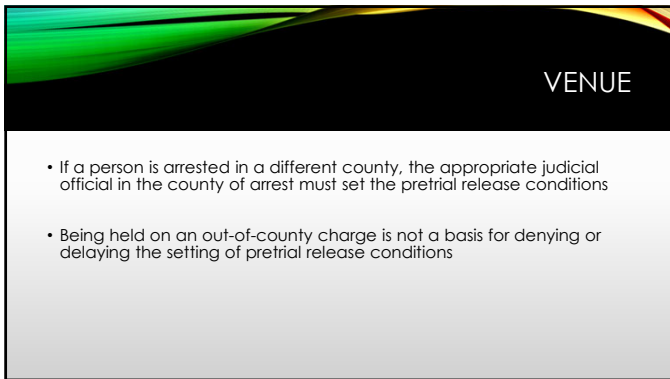
Scenario	Act	Relationship
A man trespasses on the property of his ex-wife and her new husband	Domestic criminal trespass	Former spouse (although no relationship required)
A man assaults his sister, with whom he lives	Assault	NO QUALIFYING RELATIONSHIP
A man assaults his pregnant fiancée	Assault	Dating 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

23

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.

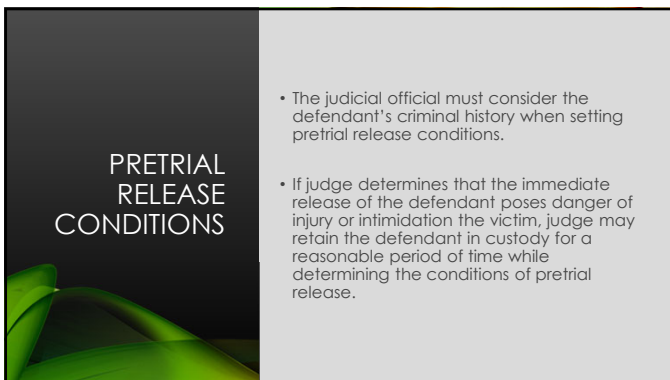
24



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

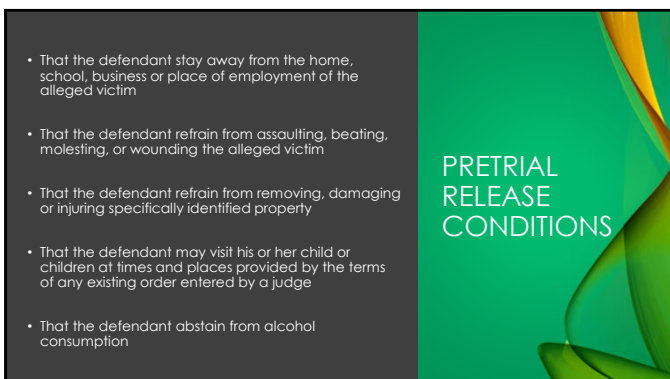
25



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.

26



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

27

