

# DOMESTIC VIOLENCE CRIMES AND PROCEDURE

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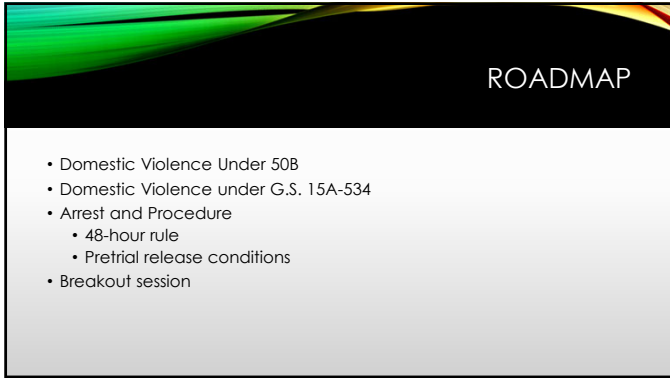
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## ROADMAP

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

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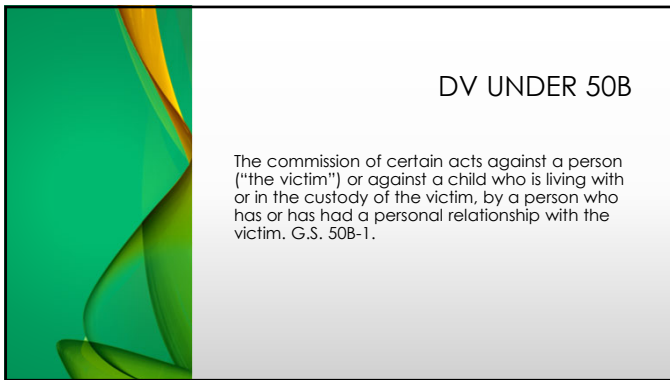
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## DV UNDER 50B

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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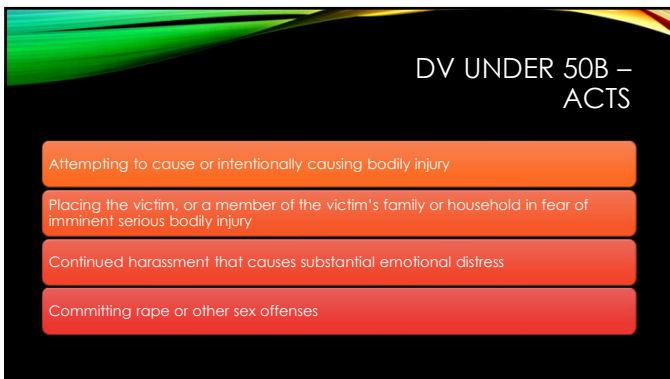
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## DV UNDER 50B – ACTS

- 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 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

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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

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

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## 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

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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 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**

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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?




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 at her son's school in violation of 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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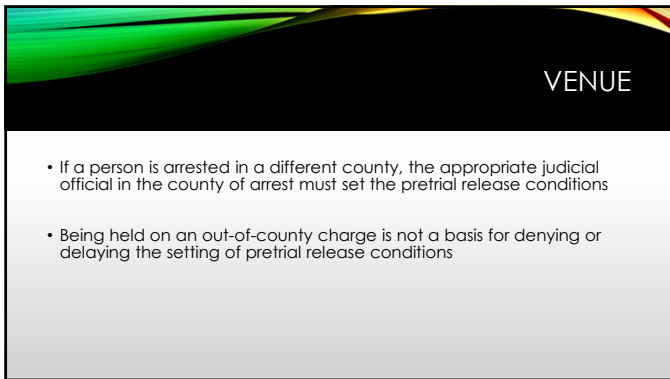
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## VENUE

- 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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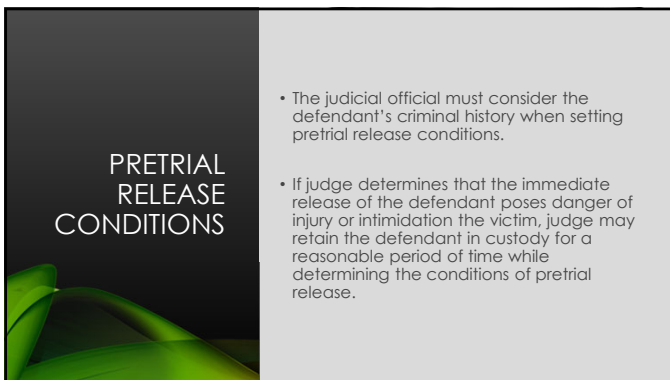
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## PRETRIAL RELEASE CONDITIONS

- 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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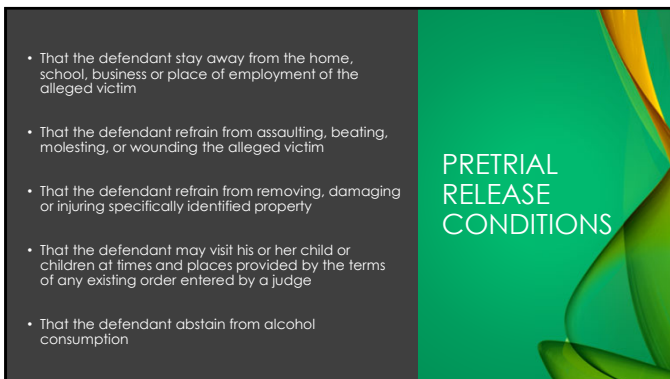
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## PRETRIAL RELEASE CONDITIONS

- 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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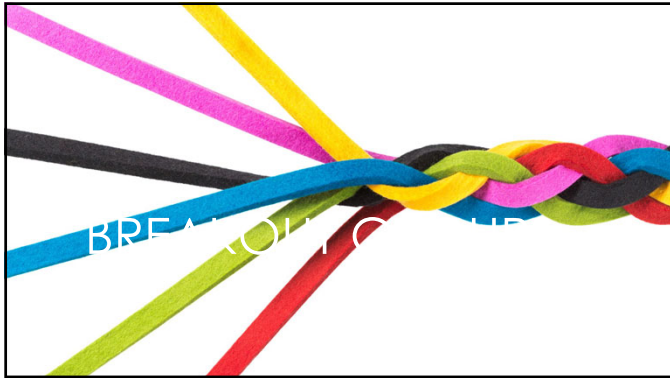
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