

# DOMESTIC VIOLENCE AND FIREARMS

## 1. SURRENDER OF WEAPONS UPON DVPO 50B-3.1(a)

- a) Court SHALL order surrender to Sheriff of all firearms, machine guns, ammunition, and permits controlled by Defendant if you find ANY of the following:
  - i) The use or threatened use of deadly weapon by Defendant;
  - ii) Pattern of conduct involving use or threatened use of violence with firearm;
  - iii) Threats to seriously injure or kill party or minor child by Defendant;
  - iv) Threats to commit suicide;
  - v) Serious injuries inflicted on party or minor child by Defendant.
- b) Court must ask Plaintiff at the ex parte hearing whether Defendant has weapons, ammunition, permits. **50B-3.1(b)**. If so, Court must describe and put location of weapons in the order whenever possible.
- c) Court must ask Defendant at ten (10) day return whether Defendant has firearms, ammunition or permits. **50B-3.1(c)**. Include identifying information and location in the order whenever possible.
- d) Must advise parties about terms of the DVPO including surrender of weapons and that Defendant prohibited from purchasing or possessing firearms.
- e) **Note that firearms must be surrendered at the time of the issuance of the Order or within 24 hours. Wake County Sheriff takes position that they have no authority to search for weapons. They can ask for weapons, but if Defendant says he does not have them, they will not take further action.**
- f) But See 50B-3.1(i) and (j):
  - i. It's unlawful to fail to surrender firearms, or provide false information to law enforcement about the possession of firearms.
  - ii. CLASS H Felony to possess purchase or receive or attempt to purchase or possess firearm in violation of DVPO.

*NOTE: It is not clear whether we have authority under 50C-5 to order surrender of weapons in a 50C case. There is a catch all "Order other relief deemed necessary and appropriate by the court, including assessing attorneys' fees to either party."*

## 2. RETURN OF WEAPONS TO DEFENDANT PROVIDED - §50B-3.1 WHERE DVPO IS DISMISSED OR EXPIRED

- a) If the ex parte expires without entry of a DVPO, or the DVPO expires, the Defendant can request a return of weapons.
- b) **Time Limit.** Request by Defendant must be made within **90 days** of the expiration of DVPO, or the final disposition of criminal cases with person subject to DVPO. (*What if later than 90 days? I think 90 day protection is to protect Sheriff in the event of destruction, but statute says "not later than 90 days."*)
- c) **Notice.** Written notice of the hearing must be given to Sheriff and the Plaintiff.
- d) **Court SHALL** determine whether Defendant is subject to any State or federal law or court order which precludes Defendant from owning or possessing a firearm.
- e) **Court shall deny** return of firearms if:
  - a. Defendant is disqualified from owning or possessing under State or Federal Law; OR
  - b. Defendant is subject to Court Order (DVPO) that prohibits owning or possessing; OR
  - c. Defendant has any pending criminal charges, in State or Federal Court, committed against the person who is the subject of the DVPO. (*Can be Plaintiff, or minor child, etc.*)
- f) **Disqualification** under Federal Law 18 U.S.C. §922 (page 214).

It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person:

- is under indictment for, or has been convicted in any court of a crime punishable by imprisonment of a term of more than one year;
- Is a fugitive from justice;
- Is an unlawful user of or addicted to any controlled substances (See 21 U.S.C. 802);
- Has been adjudicated mentally defective or has been committed to any mental institution;
- unlawfully in the United States OR admitted to US under a non-immigrant visa (but there are exceptions for those here under non-immigrant visa);
- Has been discharged from armed forces under dishonorable conditions;
- Has been a citizen and renounced his or her citizenship;

- Is subject to any DVPO – actually says court order that prohibits harassing, stalking, or threatening intimate partner (or child) or prohibits conduct placing that person in fear of bodily injury. Order must have been entered after notice and must make specific finding that person is a credible threat, or the terms of the order prohibit use or threatened use of force against intimate partner (or child);
- Has been convicted in any court of a misdemeanor crime of domestic violence.

**g) Important Definitions 27 CFR §478.11:**

1. Alien illegally or unlawfully in the United States (page 22);
2. Adjudicated as a mentally defective person (page 22)
  - i. Determination by court, board, commission or other lawful authority that person is danger to self or others, or lacks mental capacity to manage affairs.
3. Committed to a mental institution (page 23)
  - i. Formal commitment by court, board, commission, or other lawful authority;
  - ii. Includes involuntary commitments for mental illness or substance abuse;
  - iii. Does not include “in a mental institution for observation” or voluntary admission.
4. Crime punishable by imprisonment for a term exceeding one year (page 23)
  - i. Definition excludes misdemeanors punishable by a term of two years or less.
5. Intimate Partner (page 24)
  - spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person.
6. Misdemeanor crime of domestic violence (page 26)
  - i. Do not consider if pardon, expunction, or set aside
  - ii. Tried by jury or waived right to jury

7. Unlawful user of or addicted to any controlled substance (page 29)

i. Complicated Definition

**h) Prohibited Weapons.** Do not return prohibited weapons. Examples include armor piercing ammunition, short barreled shot guns, or certain machine guns.

**i) Juveniles**

- a. Unlawful for licensed dealers to sell or deliver firearms or ammunition to persons under 18 years of age.
- b. Unlawful for licensed dealers to sell or deliver firearms or ammunition to persons under 21 years of age, unless it's a rifle or shotgun or ammunition for rifle or shotgun.
- c. Unlawful for a person to sell deliver or otherwise transfer a handgun or ammunition suitable for a handgun to a juvenile and unlawful for juvenile to possess a handgun or ammunition suitable for use only in handgun.
- d. Juvenile defined as person under 18 years of age.
- e. There are exceptions to possession by juveniles for military or employment purposes in the statute, but I don't think those will typically apply in our cases.

### 3. RETURN OF WEAPONS TO THIRD PARTY OWNER 50B-3.1(g)

- a) **Time Limits.** Third party owner can file motion not later than 30 days after the seizure of the items. (What about notice requirement? If they petition after 30 days from seizure but within 30 days of notice of seizure can Court return weapons?)
- b) **Notice.** Written notice to all parties and Sheriff required.
- c) **MUST RETURN** weapons unless third party owner is disqualified under State or Federal law (18 U.S.C. §922).
- d) **Prohibited Weapons.** Do not return prohibited weapons. Examples include armor piercing ammunition, short barreled shot guns, or certain machine guns.

### 4. REINSTATEMENT OF FIREARM RIGHTS N.C.G.S. §14-415.4

- a) Upon conviction of felony (or any offense from another state that is substantially similar to a felony and punishable where committed by imprisonment for a term exceeding a year), N.C.G.S. §14-415.1 prohibits a person from owning, purchasing or possessing a firearm or any weapon of mass destruction.
  - i. Does not apply to antique firearms
  - ii. Does not apply if pardon

- iii. Does not apply if conviction for certain unfair trade practices or antitrust violations which are felonies.
- b) Violation of N.C.G.S §14-415.1 is class G felony.
- c) N.C.G.S. §14-415.4 provides a procedure for persons convicted of a single non-violent felony and whose citizenship rights have been restored, to petition the district court to restore the person's firearm rights.
  - i. Petitioner will use AOC-SP-620
  - ii. Flat fee of \$200
  - iii. Petitioner must submit fingerprints for background check
- d) Person who was convicted of a single non-violent felony and who has had citizenship rights restored pursuant to Chapter 13 for at least 20 years may petition district court for restoration of firearm rights.
- e) Definition of Non-Violent Felony contains of list of things that are NOT non-violent felonies such as:
  - i. Class A, B1, B2
  - ii. Class C – I if assault element of offense
  - iii. Class C – I if offense involves use of weapon
  - iv. Class C – I if offense requires registration under Article 27A
- f) If conviction was in another jurisdiction but person resides in North Carolina, he or she can petition North Carolina court only if civil rights, including firearm rights, restored in the jurisdiction in which the offense occurred for at least 20 years.
- g) Chapter 13 Citizenship Rights
  - i. Rights are automatically restored upon happening if any of the following conditions:
    - i. Unconditional discharge of inmate, probationer, or parolee by the federal or state agency having jurisdiction over the person or a defendant under suspended sentence by the court;
    - ii. Unconditional pardon;
    - iii. Satisfaction of all the conditions of a conditional pardon;
  - ii. Orders of restoration, warrants of unconditional pardon, and endorsements reflecting satisfactory completion of conditions of conditional pardon must be filed where conviction arose.

h) N.C.G.S. §14-415.4 permits restoration if:

- i. Petitioner is a resident of North Carolina and has been for more than one year immediately preceding the filing;
- ii. Petitioner has only one non-violent felony. Multiple felonies arising out of the same event and consolidated for sentencing will be treated as one;
- iii. Citizenship rights have been restored under Chapter 13, or if conviction in foreign jurisdiction, they have been restored according to the laws of the jurisdiction in which the offense occurred for a period of at least 20 years;
- iv. Petitioner does not have any new misdemeanors since the original non-violent felony;
- v. Petitioner submits fingerprints for background check. (Note: background check is confidential and must be sealed in the file.)
- vi. Petitioner is NOT OTHERWISE DISQUALIFIED.

i) Petitioner is DISQUALIFIED if:

- i. Any other law prohibits purchase or possession of handgun. See 18 U.S.C §922;
- ii. Petitioner is under indictment for felony or there has been a finding of probable cause to believe felony committed;
- iii. Petitioner is a fugitive;
- iv. Petitioner is unlawful user of or addicted to narcotic or controlled substance;
- v. Petitioner has been dishonorably discharged from military;
- vi. Petitioner has a conviction (or PJC) for one or more crimes of violence constituting a misdemeanor;
- vii. Petitioner has a PJC for a felony in addition to the one non-violent felony;
- viii. Petitioner is out on bond for an offense that would disqualify;
- ix. DVPO (or similar foreign order) is in effect against petitioner;
- x. 50C (or similar foreign order) is in effect against petitioner.

j) If there is a new felony after restoration, firearm rights are automatically revoked and shall not be restored.