

BASED ON THE N.C. DOMESTIC VIOLENCE BEST PRACTICES GUIDE FOR DISTRICT COURT JUDGES

LETHALITY RISK FACTORS

- *Strangulation*
- *Forced Sex*
- *Stalking*
- *Extreme Jealousy & Possessiveness*
- *Threats / Fantasies of Homicide*
- *Weapons / Access to Firearms*
- *Separation*

FIREARMS

- The court **must inquire** about defendant’s access to firearms during protective order hearings under *G.S. 50B-3.1*
- Defendants convicted of a DV misdemeanor **must be notified** that federal law may prohibit possession of firearms; provide defendants with a copy of **AOC-CR-617**

DVPO RENEWAL

- **Do not need new act**
- **Standard: Good Cause**
- **In effect up to 2 years**
- *G.S. 50B-3(b)*

CONSENT ORDERS

Without findings of fact are **void ab initio** (*Kenton v. Kenton, No. COA11-531, Feb. 7 2012*)

ENHANCED SAFETY

- Separate parties in courtroom
- Staggered departures— \Uparrow leaves first
- Strategic placement of court officers
- Use standard courtroom announcements to set tone and rules
- Enforce use of metal detectors in courthouse

EFFECTIVE SCHEDULING

WORK WITH LOCAL LEADERSHIP TO:

- Designate a criminal DV docket—define DV by **relationship between parties** (not by crime) when assigning to DV docket
- Set same time of day for bond hearings
- Designate a civil DV docket

COMPLIANCE HEARINGS

- Consider ordering compliance hearings when entering a DVPO; hold hearings and **monitor** defendant **early and often**
- Reward compliant probationers with fewer court dates; sanction non-compliant probationers with more frequent court dates

VICTIM SAFETY & OFFENDER ACCOUNTABILITY

- Must consider Δ 's criminal history when setting DV conditions of release *G.S. 15A-534.1*
- Use **AOC-CR-630 & AOC-CR-200** (pretrial release form) to set conditions of release
- Inform parties that law enforcement may arrest Δ , **without a warrant**, for violation of **any** conditions of release *G.S. 15A-401(b)*
- Court should consider coordinating with the clerk to enter conditions and modifications in **ACIS/NCAWARE** (so law enforcement can view conditions and **enforce G.S. 15A-401(b)**)

PERTINENT INFORMATION

- **Record** all ex parte hearings and hold hearings in the courtroom
- Identify and address all conflicts in court orders
- Identify all criminal charges and address any conflicts in orders
- Explore **lethality risk factors**

CONTINUANCE POLICY

- Limit continuances
- Civil— always use **AOC-CV-316** to extend the ex parte order if granting continuance
- Criminal—ensure victim and witnesses are subpoenaed before they leave court

COMPREHENSIVE ORDERS

- Orders should be specific and comprehensive
- Avoid all abbreviations
- Instruct both parties about the specific prohibited behaviors & that \Uparrow can not give permission to Δ to violate the order
- Instruct parties that a **violation** of the DVPO is a **criminal offense**



CHAPTER 50B TEMPORARY CUSTODY/VISITATION

EX PARTE ORDER: *child is exposed to a substantial risk of physical or emotional injury or sexual abuse* G.S. 50B-2

PERMANENT ORDER: *best interest of the minor child with particular consideration given to the safety of the minor child* G.S. 50B-3

VISITATION: *best interest of the minor child* G.S. 50B-3

FACTORS: *shall consider for determining custody* G.S. 50B-3(a1)

- *Expose child to risk of injury or sexual abuse*
- *Child present during DV*
- *Use of weapon*
- *Cause or attempts to cause serious bodily injury*
- *Reasonable fear of imminent serious bodily injury*
- *Pattern of abuse*
- *Use of visitation to abuse or harass party*
- *Concealing child*
- *Endanger or abuse child during visits*
- *Act in manner not in best interests of child*

COURT RESOURCES

NCAOC Intranet

<https://cis1.nccourts.org/intranet/aoc/courtprograms/domviolence.jsp>

NCAOC Internet

<http://www.nccourts.org/Citizens/CPrograms/Victims/Default.asp>

CHILD SAFETY & CUSTODY

- The court is **required** to consider temporary custody upon request of either party
- Educate parties as to how to file a Ch. 50 custody action and where to access legal representation
- If custody is not ordered and parties will live separately, orders should **address specific forms of communication allowed** regarding the children
- Use Custody Addendum **AOC-CV-306A**
- Any **subsequent custody** order entered under Ch. 50 **supersedes** a temporary order issued pursuant to Ch. 50B
- Avoid language in the DVPO that might conflict with a future Ch. 50 custody order
- Use language such as **No contact except for the purposes of engaging in custody mediation if required** or **No contact except as otherwise provided in any future order entered pursuant to Ch. 50**
- All adults are required to report suspected child maltreatment to DSS G.S. 7B-301
- Comply with State DSS policy on DV, which lists situations when CPS reports should be made (Family Services Manual, Vol. I, Ch. VIII, Sec. 1409)

SELF-REPRESENTED LITIGANTS/PRO SE

- Connect parties to legal representation and coordinate with local DV agencies
- Consider allowing the ¶¶ to amend the complaint to provide additional details, when necessary
- Explain ground rules for presentation of evidence (no interruptions, time limits, parties can ask questions but not argue)
- Give general explanation of the rules of evidence

ENCOURAGE PARTIES TO ACCESS COURTS

- Make inquiry into ¶¶'s motivation for request of dismissal/set aside
- Document reason for dismissal/set aside
- Ask plaintiffs requesting dismissal/set aside to meet with a DV advocate to assist with safety planning & other resources before ruling on the request
- After setting aside a protective order pursuant to Rule 60(b), consider entering a new order prohibiting abuse—allowing contact

FEDERAL LAW

- **Full Faith & Credit** to DVPOs issued in another state—18 U.S.C. §2265
- Be aware of cases where the facts appear to qualify for federal prosecution
- Interstate Stalking—18 U.S.C. §2261A(1)
- Cyber Stalking—18 U.S.C. §2261A(2)
- Interstate Travel to Violate Order of Protection—18 U.S.C. §2262
- Possession of Firearm or Ammunition while Subject to Order of Protection—18 U.S.C. §922(g)(8)
- Possession of Firearm or Ammunition after Conviction of Misdemeanor Crime of DV—18 U.S.C. §922(g)(9)

COURT LEADERSHIP AND MANAGEMENT

- Develop **LOCAL RULES** and forms with community partners; meet often to revise rules and forms
- Regularly convene local DV advisory committee to review court processes and learn about **COMMUNITY RESOURCES**
- **ASSIGN SPECIALIZED JUDGES**, with training and interest, to hear DV cases
- Assign same judge to compliance hearings so s/he knows the history of the case
- DV judges should meet together regularly

