

# Domestic Violence Crimes and the 48-Hour Rule

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## Overview

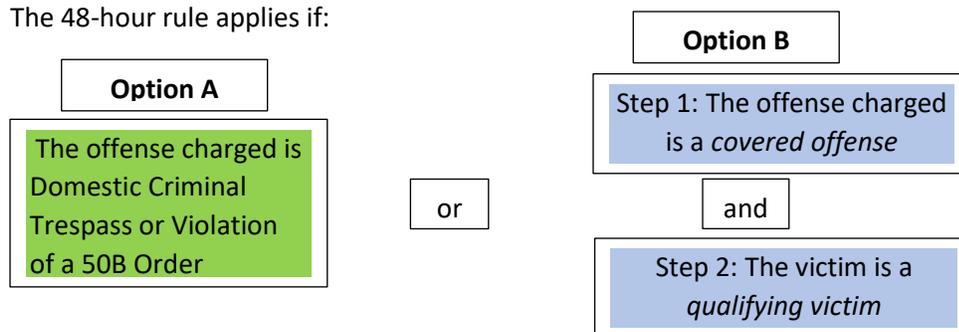
G.S. 15A-534.1 provides that, for certain domestic violence crimes, only a judge may set conditions of release in the first 48 hours after the defendant’s arrest. A magistrate is empowered to set conditions only if 48 hours pass without a judge setting conditions. For example, if a defendant is arrested on Friday night and no judge is available during the weekend, a magistrate could set conditions on Sunday night. This provision is known across the state as “the 48-hour rule.” Note that the rule does not require or permit the defendant to be held for 48 hours if a judge is available to set conditions of release sooner. If a judge is available and the defendant is not presented to him or her, the case may be dismissed. See *State v. Thompspon*, 349 N.C. 483 (1998) (finding a due process violation where a defendant was held despite several judges being available). Thus, the rule is *not* a “48-hour hold.”

The rule applies “[i]n all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse, a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes.” G.S. 15A-534.1.

This document is intended to assist magistrates and others in applying the 48-hour rule. It is current as of December 1, 2019. It does not address the similar rule contained in G.S. 15A-534.7 regarding defendants charged with communicating certain threats of mass violence.<sup>1</sup>

## 48-Hour Rule Flow Chart

The 48-hour rule applies if:



<sup>1</sup> Previous versions of this document also addressed whether certain offenses were covered by the Crime Victims’ Rights Act, Article 46 of Chapter 15A of the General Statutes. However, the victims’ rights statutes were substantially revised by the General Assembly during the 2019 legislative session. Whether an offense is covered by the victims’ rights statutes now depends exclusively on the offense charged, regardless of the relationship between the defendant and the victim, and thus is an entirely separate question from whether the 48-hour rule applies. A complete list of offenses covered by the new victims’ rights statutes may be found at Jamie Markham, [Crimes Covered under the New Victims’ Rights Law](https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/), N.C. CRIM. L. BLOG (Sept. 27, 2019), <https://nccriminallaw.sog.unc.edu/crimes-covered-under-the-new-victims-rights-law/>.

## Option A: When the offense charged is domestic criminal trespass or violation of a 50B order

The 48-hour rule *always* applies when the defendant is charged with

- G.S. 14-134.3: Domestic criminal trespass
- G.S. 50B-4.1: Violation of valid protective order (note that although G.S. 50B-4.1 addresses violations of both North Carolina protective orders and out-of-state orders, G.S. 15A-534.1 applies only to defendants charged with “violation of an order entered pursuant to Chapter 50B,” i.e., to defendants charged with violating North Carolina protective orders)

When one of these crimes is charged, no further inquiry into the relationship between the defendant and the victim is required.

## Option B: When there is a covered offense and a qualifying victim

The 48-hour rule also applies when the defendant is charged with committing what this paper will call a *covered offense* against what this paper will call a *qualifying victim*. Both a covered offense and a qualifying victim are required for the rule to apply. This paper will address the existence of a covered offense as step 1 of the analysis, then will proceed to address the existence of a qualifying victim as step 2.

### Step 1: Covered offenses

Covered offenses include charges of “assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7B, 8, 10, or 15 of Chapter 14 of the General Statutes upon” a victim. G.S. 15A-534.1. A list of each offense that is covered by the statute is below, organized by the word or clause within G.S. 15A-534.1 that covers the offense.

#### Assaults

The 48-hour rule applies to “assault[s].”<sup>2</sup> Many assault crimes are contained in Article 8 of Chapter 14 of the General Statutes, and the 48-hour rule also applies to all “felon[ies] provided in Article . . . 8,” so the list of assault crimes set forth below is partly redundant with the list of felonies contained in Article 8 that is set forth later in this document.

The list below includes many assault crimes that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim. For example, G.S. 14-16.6 makes it unlawful to assault certain executive, legislative, and court officials “because of the exercise of that officer’s duties.” Such an assault normally will be committed by a disgruntled citizen with no personal relationship to the official in question. But the offense is an assault crime and therefore is a covered offense under the terms of the 48-hour rule, so it is included below.<sup>3</sup>

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<sup>2</sup> Is sexual battery, G.S. 14-27.33, an “assault”? Probably not under *State v. Corbett*, 196 N.C. App. 508 (2009) (ruling in part that “assault is not a lesser included offense of sexual battery”). *But see In re K.C.*, 226 N.C. App. 452 (2013) (stating, in the course of finding insufficient evidence of sexual battery but sufficient evidence of simple assault, that “[a] battery always includes an assault”).

<sup>3</sup> It is possible to imagine unusual circumstances under which the offense would involve a qualifying victim. For example, suppose that a district court judge finds a DWI defendant guilty and imposes an active sentence. The

- G.S. 14-16.6: Assault on executive, legislative, or court officer (including with a firearm and inflicting serious bodily injury)
- G.S. 14-23.5: Assault inflicting serious bodily injury on an unborn child (note that it appears to be impossible for an unborn child to be a qualifying victim, but the statute requires “a battery on the mother of the unborn child,” and the mother could be a qualifying victim)
- G.S. 14-23.6: Battery on an unborn child (same note as for G.S. 14-23.5)
- G.S. 14-28: Malicious castration (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-29: Castration or other maiming without malice aforethought (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30: Malicious maiming (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does appear to require unconsented contact; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability
- G.S. 14-32.2: Patient abuse and neglect (includes several gradations depending on the defendant’s intent and the severity of the injury inflicted; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require physical abuse; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults (note that “assault” is one way of establishing the element of abuse but not the only way, so the assault provisions of the 48-hour rule might apply to some offenses under this statute but not others; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33: Misdemeanor assaults, batteries, and affrays, simple and aggravated (this statute includes simple assault, assault inflicting serious injury, assault on a female, and assault on a child under 12, as well as several other assault offenses less likely to arise in a domestic violence context)
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34: Assaulting by pointing gun
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property (includes several gradations; it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm into occupied property, which

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defendant is angry and assaults the judge. If, years ago, the defendant and the judge had engaged in a dating relationship, the 48-hour rule would apply.

arguably inherently amounts to an assault; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm toward a person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear (it is not entirely clear whether this is an assault crime; the statute does not require an “assault” but it does require discharging a firearm with the intent to incite fear in another person; in any event, this is a covered offense because it is a felony in Article 8 of Chapter 14)
- G.S. 14-288.9: Assault on emergency personnel

## Stalking

The only offense that is clearly covered under this provision is

- G.S. 14-277.3A: Stalking

A frequent question is whether cyberstalking, as defined in G.S. 14-196.3, is a covered offense. At least under most circumstances, it probably is not for the reasons given in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

## Communicating threats

As with the list of assault crimes, above, the list below includes several offenses that are unlikely to arise in a domestic violence context and normally will not involve a qualifying victim.

- G.S. 14-16.7: Threats against executive, legislative, or court officers
- G.S. 14-277.1: Communicating threats
- G.S. 14-277.6: Communicating a threat of mass violence on educational property<sup>4</sup>
- G.S. 14-277.7: Communicating a threat of mass violence at a place of religious worship<sup>5</sup>

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<sup>4</sup> Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

<sup>5</sup> Note that when charging this offense, the 48-hour rule set forth in G.S. 15A-534.7 will apply regardless of whether there is a qualifying victim.

- G.S. 14-394: Anonymous or threatening letters, mailing or transmitting

A frequent question is whether harassing phone calls, as defined in G.S. 14-196, is a covered offense. At least under most circumstances, it probably is not as discussed in Jeff Welty, *Cyberstalking and the 48-Hour Rule*, N.C. CRIM. L. BLOG (Nov. 28, 2012), <https://nccriminallaw.sog.unc.edu/cyberstalking-and-the-48-hour-rule/>.

#### Felonies in Article 7B (“Rape and Other Sex Offenses”)

The following felonies are contained in Article 7B. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-27.21: First-degree forcible rape
- G.S. 14-27.22: Second-degree forcible rape
- G.S. 14-27.23: Statutory rape of a child by an adult
- G.S. 14-27.24: First-degree statutory rape
- G.S. 14-27.25: Statutory rape of person who is 15 years of age or younger
- G.S. 14-27.26: First-degree forcible sexual offense
- G.S. 14-27.27: Second-degree forcible sexual offense
- G.S. 14-27.28: Statutory sexual offense with a child by an adult
- G.S. 14-27.29: First-degree statutory sexual offense
- G.S. 14-27.30: Statutory sexual offense with a person who is 15 years of age or younger
- G.S. 14-27.31: Sexual activity by a substitute parent or custodian
- G.S. 14-27.32: Sexual activity with a student

#### Felonies in Article 8 (“Assaults”)

The following felonies are contained in Article 8. As noted above, many of these crimes are also assault offenses, making this list partly duplicative of the above list of assault crimes. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-28: Malicious castration
- G.S. 14-29: Castration or other maiming without malice aforethought
- G.S. 14-30: Malicious maiming
- G.S. 14-30.1: Malicious throwing of corrosive acid or alkali
- G.S. 14-31: Maliciously assaulting in a secret manner
- G.S. 14-32: Felonious assault with deadly weapon with intent to kill or inflicting serious injury
- G.S. 14-32.1: Assaults on individuals with a disability (note, not all offenses defined in this statute are felonies)
- G.S. 14-32.2: Patient abuse and neglect
- G.S. 14-32.3: Domestic abuse, neglect, and exploitation of disabled or elder adults
- G.S. 14-32.4: Assault inflicting serious bodily injury; strangulation
- G.S. 14-33.2: Habitual misdemeanor assault
- G.S. 14-34.1: Discharging certain barreled weapons or a firearm into occupied property

- G.S. 14-34.2: Assault with a firearm or other deadly weapon upon governmental officers or employees, company police officers, or campus police officers
- G.S. 14-34.4: Adulterated or misbranded food, drugs, or cosmetics; intent to cause serious injury or death; intent to extort
- G.S. 14-34.5: Assault with a firearm on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.6: Assault or affray on a firefighter, an emergency medical technician, medical responder, and hospital personnel
- G.S. 14-34.7: Certain assaults on a law enforcement, probation, or parole officer, or on a member of the North Carolina National Guard, or on a person employed at a State or local detention facility
- G.S. 14-34.9: Discharging a firearm from within an enclosure
- G.S. 14-34.10: Discharge firearm within enclosure to incite fear

#### Felonies in Article 10 (“Kidnapping and Abduction”)

The following felonies are contained in Article 10. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule.

- G.S. 14-39: Kidnapping
- G.S. 14-41: Abduction of children
- G.S. 14-43.3: Felonious restraint

#### Felonies in Article 15 (“Arson and Other Burnings”)

The following felonies are contained in Article 15. As with several other categories of offenses addressed in this paper, some crimes on this list may be unlikely to involve a qualifying victim and so may rarely require the application of the 48-hour rule. Additionally, for several of the offenses in this Article, it may be difficult to determine whether the offense was committed “upon” a qualifying victim because the principal target of the offense is property, not a person. For example, if A burns B’s residence, has A committed an offense “upon” B? What if A burns a residence that does not belong to B but B is injured in the fire? There is no case law explaining when an arson offense is committed “upon” a person for purposes of G.S. 15A-534.1.

- G.S. 14-58: Punishment for arson (note that this statute defines the punishment class for first- and second-degree arson; perhaps an argument could be made that because arson is a common law offense, arson is not a “felony provided in” Article 15 notwithstanding this statute; no case law addresses this issue)
- G.S. 14-58.2: Burning of mobile home, manufactured-type house or recreational trailer home
- G.S. 14-59: Burning of certain public buildings
- G.S. 14-60: Burning of schoolhouses or buildings of educational institutions
- G.S. 14-61: Burning of certain bridges and buildings
- G.S. 14-62: Burning of certain buildings
- G.S. 14-62.1: Burning of building or structure in process of construction
- G.S. 14-62.2: Burning of churches and certain other religious buildings

- G.S. 14-63: Burning of boats and barges
- G.S. 14-64: Burning of ginhouses and tobacco houses
- G.S. 14-65: Fraudulently setting fire to dwelling houses
- G.S. 14-66: Burning of personal property
- G.S. 14-67.1: Burning other buildings
- G.S. 14-67.2: Burning caused during commission of another felony
- G.S. 14-69.1: Making a false report concerning destructive device
- G.S. 14-69.2: Perpetrating hoax by use of false bomb or other device
- G.S. 14-69.3: Arson or other unlawful burning that results in serious bodily injury to a firefighter, law enforcement officer, fire investigator, or emergency medical technician

## Step 2: Qualifying victims

If a defendant is charged with a covered offense, the applicability of the 48-hour rule depends on the existence of a qualifying victim. The statute provides that such a victim is “a spouse or former spouse [of the defendant], a person with whom the defendant lives or has lived as if married, or a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6).” Thus, a qualifying victim must have one of the following relationships to the defendant:

- *Spouse*. Presumably this applies when the victim and the defendant are legally married, even if separated or in the process of divorce.
- *Former spouse*. There is no time limit in the statute, so this provision appears to apply even if the defendant and the victim divorced years or decades ago.
- *Person with whom the defendant lives as if married*. Although this term is not defined in the statute, presumably this provision applies when the victim and the defendant live together and have a romantic or sexual relationship.
- *Person with whom the defendant has lived as if married*. As with the category “former spouse,” there is no time limit in the statute regarding when the defendant and the victim must have lived together.
- *Person with whom the defendant is in a dating relationship as defined in G.S. 50B-1(b)(6)*. Under G.S. 50B-1(b)(6), a “a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”
- *Person with whom the defendant has been in a dating relationship as defined in G.S. 50B-1(b)(6)*. Again, there is no time limit in the statute regarding when the dating relationship must have existed.

It is not relevant whether the defendant and the victim are the same sex or different sexes. Persons of the same sex or of different sexes may be “spouses,” may “live together as if married,” and may have a “dating relationship.” Confusion sometimes arises on this point because of the reference to G.S. 50B-1(b)(6). If one looks at G.S. 50B-1(b) generally, rather than at (b)(6) specifically, one might focus on the definition of the term “personal relationship.” G.S. 50B-1(b)(6) states that a “personal relationship” includes:

persons of the opposite sex who are in a dating relationship or have been in a dating relationship. A dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

Note that nothing in the definition of “dating relationship” requires the parties to be of different sexes. Under the statute, a “dating relationship” is a “personal relationship” only if the parties are of different sexes, but the applicability of the 48-hour rule turns on the existence of a “dating relationship,” not the existence of a “personal relationship.”<sup>6</sup>

## Conclusion

To sum up, the 48-hour rule always applies when the offense charged is domestic criminal trespass or violation of a 50B order. It also applies when a defendant is charged with committing a covered offense against a qualifying victim.

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<sup>6</sup> Whether it would be constitutional to apply the 48-hour rule only to different-sex couples might be questioned under *Obergefell v. Hodges*, 576 U.S. \_\_\_, 135 S. Ct. 2584 (2015) (holding that laws limiting marriage to same-sex couples are unconstitutional, in part on equal protection grounds).