

DVPOs

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Ex Parte DVPOs—Bullet Points

What It Is & When It's Available

- Primary relief sought by plaintiff is protective order issued by DC enforceable by contempt or criminal law
- Ex parte DVPO is supplemental remedy sought by plaintiff for purpose of protection during interval between filing complaint/motion and DC hearing.
- Ex parte DVPO issued following hearing conducted in absence of defendant.
- Magistrates may issue ex parte DVPO if
 - ✓ Authorized by CDCJ
 - ✓ Court is not in session
 - ✓ No DCJ available within next four hours
- Ex parte DVPO expires at midnight of next day district court is in session.

Ultimate Legal Questions

Does it clearly appear from specific facts shown that there is a danger of acts of domestic violence against the plaintiff or minor child? If so, what relief is necessary to protect plaintiff/child from such acts?

Has an act of domestic violence in fact occurred?

Essential Elements

Requires plaintiff to prove

- 1) Relationship &
- 2) Act

Firearms

If plaintiff establishes right to relief, magistrate must inquire about firearms.

If any of 5 statutory factors are present, magistrate must order surrender of firearms.

Remedy

Magistrate must order defendant to refrain from further acts of DV, Magistrate may order additional relief necessary to protect the plaintiff/child.

LEGAL ISSUES IN DOMESTIC VIOLENCE

SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS¹

G.S. Ch. 50B creates a special kind of civil action in which the relief sought is protection from injury by the defendant, in the form of a coercive order by a judge prohibiting the defendant from taking certain actions. If the defendant knowingly violates the order, he may be found in contempt of court for violation of a court order. As an alternative to being found in contempt, the defendant may be found guilty of the crime of violating a DVPO.

A special kind of DVPO is available to a plaintiff who fears that she may be injured during the interval between filing the complaint and the time the hearing is held. What statistical fact suggests that this concern of plaintiffs is often well-founded?

A person seeking a DVPO has the option of asking for an **ex parte DVPO** as well. An ex parte DVPO is a protective order already in place before the defendant learns that the victim has filed for a DVPO. An ex parte DVPO is issued following a hearing conducted in the absence of the defendant. What concern does this raise in your mind?

Magistrates never issue DVPOs, but in some counties magistrates are authorized to determine whether an ex parte DVPO should issue. Authorized magistrates may conduct hearings on requests for ex parte DVPOs only if (1) district court is not in session, and (2) no district court judge will be available to conduct the hearing for at least four hours.

Has your chief district court judge authorized magistrates to issue ex parte DVPO's?

Never

Only during conferences or other relatively rare occasions

Theoretically, but we are strongly urged to use criminal charges when possible

Yes

¹ This outline refers to the victim of domestic violence as "the plaintiff" or "she", and the perpetrator of domestic violence as "the defendant" or "he", but any of these terms may be inaccurate in a specific case. The terms are used consistently in order to avoid confusion, and were chosen because they are accurate in the majority of cases. In fact, though, a significant minority of victims of domestic violence are male. And because a person may seek a DVPO either by filing a civil action or by filing a motion in an already-existent civil action, that person may be a plaintiff or a defendant.

An ex parte DVPO issued by a magistrate is valid until midnight of the next day district court is in session. A district court judge will conduct another ex parte hearing when court is back in session.

The “permanent” hearing on plaintiff’s request for a DVPO is referred to as the “10 day hearing.” After defendant is served with the complaint, a full hearing is conducted on whether plaintiff is entitled to a DVPO and, if so, what provisions the order should contain. The order entered by the district court judge after hearing the evidence is valid for one year, and may be extended at the end of that time for up to two years.

A DVPO is available only to parties involved in a **type of personal relationship** specified in the statute. These relationships are:

- current or former spouses
- persons of the opposite sex who live together or have lived together
- parents and children,² and grandparents and grandchildren. NOTE: no DVPO may issue under this section against a child under the age of 16.
- persons having a child in common
- current or former household members
- persons of the opposite sex who are or have been in a dating relationship.³

² Including those acting *in loco parentis* to a minor child.

³ A dating relationship is defined as a relationship in which the parties are romantically involved over time and on a continuous basis over the course of the relationship.

Particular behavior qualifies as domestic violence only if the defendant:

- tried to cause physical injury;
- intentionally caused physical injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid of imminent serious bodily injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid that defendant will continue to terrorize that person to such a degree that the person experiences significant mental suffering. This behavior must be intentional on the part of the defendant, and it must have no legitimate purpose.⁴ The statute refers to this behavior as **harassment**.
- committed any act defined as rape or sexual offense in GS 14-27.2 to 14-27.7.

If a magistrate determines that *it clearly appears* from *specific facts shown* that there is *danger of acts of domestic violence* against the plaintiff or a minor child, the magistrate *may* order any relief necessary to protect them from such acts. [Note, however, additional showing required for order related to child custody.]

If a magistrate finds that an act of domestic violence *did in fact occur* (i.e., the defendant committed one of the acts listed above against a person in a personal relationship protected by the statute), the magistrate *MUST* enter an order which at a minimum prohibits the defendant from committing any further acts of domestic violence.

And the magistrate must do one other thing as well: the magistrate must question the plaintiff about defendant's ownership or access to firearms. (Does the defendant have access? Does the defendant own or have access to ammunition? A permit to purchase firearms? A permit to carry a concealed firearm?)

The magistrate must ask about the information above in every case, but in some cases the magistrate is required to go further and specifically order the defendant to turn over to the sheriff all guns, ammunition, and permits within his custody or control. This order is mandatory if any of the following factors are present:

⁴ The statute specifically states that this behavior may include, among other things, written communication, telephone calls (including voice mail), email, faxes, and pager messages.

- 1) The defendant has at some time in the past used or threatened to use a deadly weapon.
- 2) The defendant has a pattern of prior conduct involving the use or threatened use of violence with a firearm against people.
- 3) The defendant has made threats to seriously injure or kill the plaintiff or minor child.
- 4) The defendant has threatened suicide.
- 5) The defendant has inflicted serious injuries on the plaintiff or minor child.

The magistrate has authority to grant a wide range of additional relief to the plaintiff, depending on the particular circumstances of the case. These remedies include

- 1) granting the plaintiff possession of the parties' shared residence, and ordering the defendant to leave the home;
- 2) determining which party has the right to possession of personal property during the time the order is effective, including possession of family pets; and
- 3) ordering the defendant to stay away from the plaintiff, as well as specific places such as the plaintiff's workplace and homes of family members.

The magistrate is often asked to make a determination of temporary custody of minor children residing with one or both parties. The magistrate is explicitly prohibited by GS 50B-2(c)(1) from doing this, unless the magistrate finds that . . .

. . . the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

If a magistrate makes this finding, s/he may then go on to order that the defendant stay away from the minor child, return the child to the plaintiff, or not remove the child from the plaintiff. In support of this order, the magistrate must make a formal finding that the order is necessary for the child's safety.

ANSWERING QUESTIONS ABOUT DVPO'S

Every magistrate should know the answers to the following questions, and those answers sometimes vary from one county to the next—and one magistrate to the next, depending on your personality, the shift you're working, and other circumstances. Magistrates should be guided by two fundamental principles in responding to these questions:

Providing information to citizens about the court system's response to domestic violence is an important part of your job;
and

You have a responsibility to be certain that the information you provide is accurate.

1. How do I get a DVPO?
2. Why should I consider a DVPO?
3. How much does it cost?
4. What do I have to prove to get one?
5. What if my spouse violates the order?
6. How long will it last?
7. Can I get one for my kids and family too?
8. Do I need a lawyer to get one?
9. Is there anyone that can help me fill out the forms?
10. When will my spouse find out about it?

List other questions you've heard or can think of:

11. _____
12. _____
13. _____

In many counties, the clerk's office or local agency offering assistance to domestic violence has prepared brochures or other handouts providing victims with answers to these questions. In every case, the magistrate should be certain that the citizen is informed that **there are no court costs** associated with seeking a DVPO, and that an attorney is not necessary to access these services.

Chapter 50B.

Domestic Violence.

G.S. Ch. 50B was amended by the General Assembly in 2019 by S.L. 2019-168. Because of their recency, those changes are not reflected in the following document. While the legislative changes are significant for district court judges, they do not directly affect magistrates' responsibilities under the statute.

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or
- (3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, 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.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties. (1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1; 1997-471, s. 1; 2001-518, s. 3; 2003-107, s. 1; 2009-58, s. 5; 2015-181, s. 36.)

§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been

issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. In compliance with the federal Violence Against Women Act, no court costs or attorneys' fees shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena, except as provided in G.S. 1A-1, Rule 11.

(b) Emergency Relief. - A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c) Ex Parte Orders. -

- (1) Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts.
- (2) A temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.
- (3) If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to (i) stay away from a minor child, or (ii) return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child.
- (4) If the court determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party.
- (5) Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. A continuance shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown. The hearing shall have priority on the court calendar.
- (6) If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county.

- (7) Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. - The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. 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 a minor child, the magistrate may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. - The clerk of superior court of each county shall provide to pro se complainants all forms that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section.

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically. Hearings held to consider ex parte relief pursuant to subsection (c) of this section may be held via video conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a) or (b) of this section shall not be held via video conference. (1979, c. 561, s. 1; 1985, c. 113, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 893, s. 2; 1989, c. 461, s. 1; 1994, Ex. Sess., c. 4, s. 1; 1997-471, s. 2; 2001-518, s. 4; 2002-126, s. 29A.6(a); 2004-186, ss. 17.2, 19.1; 2009-342, s. 2; 2012-20, s. 1; 2013-390, s. 1; 2015-62, s. 3(b).)

§ 50B-3. Relief.

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

- (1) Direct a party to refrain from such acts.
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.
- (3) Require a party to provide a spouse and his or her children suitable alternate housing.
- (4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.
- (5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.
- (6) Order either party to make payments for the support of a minor child as required by law.
- (7) Order either party to make payments for the support of a spouse as required by law.
- (8) Provide for possession of personal property of the parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- (9) Order a party to refrain from doing any or all of the following:
 - a. Threatening, abusing, or following the other party.
 - b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.
 - b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
 - c. Otherwise interfering with the other party.
- (10) Award attorney's fees to either party.
- (11) Prohibit a party from purchasing a firearm for a time fixed in the order.
- (12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.
- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

- (1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.
- (2) For purposes of determining custody and visitation issues, the court shall consider:
 - a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.
 - b. Whether the minor child was present during acts of domestic violence.
 - c. Whether a weapon was used or threatened to be used during any act of domestic violence.
 - d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.
 - e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.

- f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
 - g. Whether there is a pattern of abuse against an aggrieved party or the minor child.
 - h. Whether a party has abused or endangered the minor child during visitation.
 - i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
 - j. Whether a party has improperly concealed or detained the minor child.
 - k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.
- (3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:
- a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
 - b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
 - c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
 - d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
 - e. Ordering the noncustodial parent to pay the costs of supervised visitation.
 - f. Prohibiting overnight visitation.
 - g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
 - h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
 - i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

- (4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an

order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(b1) A consent protective order may be entered pursuant to this Chapter without findings of fact and conclusions of law if the parties agree in writing that no findings of fact and conclusions of law will be included in the consent protective order. The consent protective order shall be valid and enforceable and shall have the same force and effect as a protective order entered with findings of fact and conclusions of law.

(b2) Upon the written request of either party at a hearing after notice or service of process, the court may modify any protective order entered pursuant to this Chapter after a finding of good cause.

(c) A copy of any order entered and filed under this Article shall be issued to each party. Law enforcement agencies shall accept receipt of copies of the order issued by the clerk of court by electronic or facsimile transmission for service on defendants. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

- (1) Domestic violence agencies and services.
- (2) Sexual assault agencies and services.
- (3) Victims' compensation services.
- (4) Legal aid services.
- (5) Address confidentiality services.
- (6) An explanation of the plaintiff's right to apply for a permit under G.S. 14-415.15.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, renewals, and dismissals of the order shall also be promptly entered. (1979, c. 561, s. 1; 1985, c. 463; 1994, Ex. Sess., c. 4, s. 2; 1995, c. 527, s. 1; 1995 (Reg. Sess., 1996), c. 591, s. 2; c. 742, s. 42.1.; 1999-23, s. 1; 2000-125, s. 9; 2002-105, s. 2; 2002-126, s. 29A.6(b); 2003-107, s. 2; 2004-186, ss. 17.3-17.5; 2005-343, s. 2; 2005-423, s. 1; 2007-116, s. 3; 2009-425, s. 1; 2013-237, s. 1; 2015-176, s. 1; 2017-92, s. 2.)

§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

(a) Required Surrender of Firearms. - Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

- (1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
- (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
- (3) Threats to commit suicide by the defendant.
- (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. - The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. - The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. - Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from possessing, purchasing, or receiving or attempting to possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(e) Retrieval. - If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.

(f) Motion for Return. - The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms,

ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

- (1) Whether the protective order has been renewed.
- (2) Whether the defendant is subject to any other protective orders.
- (3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
- (4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. - A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. - If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

- (1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court;
- (2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or
- (3) Provide false information to the court pertaining to any of these items.

(j) Violations. - In accordance with G.S. 14-269.8, it is unlawful for any person to possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to

this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. - This section shall not prohibit law enforcement officers and members of any branch of the Armed Forces of the United States, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter. (2003-410, s. 1; 2004-203, s. 34(a); 2005-287, s. 4; 2005-423, ss. 2, 3; 2011-183, s. 40; 2011-268, ss. 23, 24.)

§ 50B-4. Enforcement of orders.

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. This party may file and proceed with that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) Repealed by Session Laws 1999-23, s. 2, effective February 1, 2000.

(c) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(d) A valid protective order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law enforcement agencies of North Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county. Unless the issuing state has already entered the order, the sheriff shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d).

(e) Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect.

(f) The term "valid protective order," as used in subsections (c) and (d) of this section, shall include an emergency or ex parte order entered under this Chapter.

(g) Notwithstanding the provisions of G.S. 1-294, a valid protective order entered pursuant to this Chapter which has been appealed to the appellate division is enforceable in the trial court during the pendency of the appeal. Upon motion by the aggrieved party, the court of the appellate division in which the appeal is pending may stay an order of the trial court until the appeal is decided, if justice so requires. (1979, c. 561, s. 1; 1985, c. 113, s. 4; 1987, c. 739, s. 6; 1989, c. 461, s. 2; 1994, Ex. Sess., c. 4, s. 3; 1995 (Reg. Sess., 1996), c. 591, s. 3; 1999-23, s. 2; 2002-126, s. 29A.6(c); 2003-107, s. 3; 2009-342, s. 4; 2017-92, s. 1.)

§ 50B-4.1. Violation of valid protective order.

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to convictions of a Class A or B1 felony or to convictions of the offenses set forth in subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of two offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about his or her person or within close proximity to his or her person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony.

(g1) Unless covered under some other provision of law providing greater punishment, any person who is subject to a valid protective order, as provided in subsection (a) of this section, who enters property operated as a safe house or haven for victims of domestic violence, where a person protected under the order is residing, shall be guilty of a Class H felony. A person violates this subsection regardless of whether the person protected under the order is present on the property.

(h) For the purposes of this section, the term "valid protective order" shall include an emergency or ex parte order entered under this Chapter. (1997-471, s. 3; 1997-456, s. 27; 1999-23, s. 4; 2001-518, s. 5; 2007-190, s. 1; 2008-93, s. 1; 2009-342, s. 5; 2009-389, s. 2; 2010-5, s. 1; 2015-91, s. 3.)

§ 50B-4.2. False statement regarding protective order a misdemeanor.

A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe remains in effect shall be guilty of a Class 2 misdemeanor. (1999-23, s. 5.)

§ 50B-5. Emergency assistance.

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law enforcement agency. The local law enforcement agency shall respond to the request for assistance as soon as practicable. The local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the complainant from harm and may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law enforcement officer may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings.

(b) In providing the assistance authorized by subsection (a), no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (a). (1979, c. 561, s. 1; 1985, c. 113, s. 5; 1999-23, s. 6.)

§ 50B-5.5. Employment discrimination unlawful.

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article. (2004-186, s. 18.1.)

§ 50B-6. Construction of Chapter.

This Chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This Chapter shall not be construed as relieving any person or institution of the duty to report to the department of social services, as required by G.S. 7B-301, if the person or institution has cause to suspect that a juvenile is abused or neglected. (1979, c. 561, s. 1; 1985, c. 113, s. 6; 1998-202, s. 13(r).)

§ 50B-7. Remedies not exclusive.

The remedies provided by this Chapter are not exclusive but are additional to remedies provided under Chapter 50 and elsewhere in the General Statutes. (1979, c. 561, s. 1.)

§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

The granting of a protective order, prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals. (1979, c. 561, s. 1; 2003-107, s. 4.)

§ 50B-9. Domestic Violence Center Fund.

(a) The Domestic Violence Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence, Inc. This fund shall be administered in accordance with the provisions of the Executive Budget Act. The Department of Administration shall make quarterly grants to each eligible domestic violence center and to The North Carolina Coalition Against Domestic Violence, Inc. Effective July 1, 2017, and each fiscal year thereafter, the Department of Administration shall send the contracts to grantees within 10 business days of the date the Current Operations Appropriations Act, as defined in G.S. 143C-1-1, is certified for that fiscal year.

(b) Each grant recipient shall receive the same amount. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

- (1) It shall have been in operation on the preceding July 1 and shall continue to be in operation.
- (2) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and it shall fulfill other criteria established by the Department of Administration.
- (3) It shall be a nonprofit corporation or a local governmental entity.

(c) The North Carolina Council for Women shall report on the quarterly distributions of the grants from the Domestic Violence Center Fund to the House and Senate chairs of the General Government Appropriations Committee within five business days of distribution. The report shall include the date, amount, and recipients of the fund disbursements. The report shall also include any eligible programs which are ineligible to receive funding during the relative reporting cycle as well as the reason of the ineligibility for that relative reporting cycle. (1991, c. 693, s. 3; 1991 (Reg. Sess., 1992), c. 988, s. 1; 2017-57, s. 31.2(a).)

**EX PARTE
DOMESTIC VIOLENCE
ORDER OF PROTECTION**

G.S. 50B-2, -3, -3.1

Case No.

Court General Court of Justice
District Court Division

County **NORTH CAROLINA**

PETITIONER/PLAINTIFF

First Middle Last

And/or on behalf of minor family member(s): *(List Name And DOB)*

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

Other Protected Persons/DOB:

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

VERSUS

RESPONDENT/DEFENDANT

First Middle Last

- Relationship to Petitioner: spouse former spouse
 unmarried, of opposite sex, currently or formerly living together
 unmarried, have a child in common
 of opposite sex, currently or formerly in dating relationship
 current or former household member
 parent grandparent child grandchild

Respondent's/Defendant's Address

CAUTION:
 Weapon Involved

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Eyes	Hair	Social Security Number		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Drivers License No.	State	Expiration Date		
<input type="text"/>	<input type="text"/>	<input type="text"/>		

Distinguishing Features

THE COURT HEREBY FINDS THAT:

This matter was heard by the undersigned district court judge. magistrate. The court has jurisdiction over the subject matter.

Additional findings of this order are set forth on Page 2.

THE COURT HEREBY ORDERS THAT:

- The above named Respondent/Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence (G.S. 50B-1).
 The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, except through an attorney, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. **[05]**
 Additional terms of this order are as set forth on Pages 3 and 4.

The terms of this order shall be effective until ,

WARNINGS TO THE RESPONDENT/DEFENDANT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

This order will be enforced anywhere in North Carolina.

Only the Court can change this order. The plaintiff cannot give you permission to violate this order.

See additional warnings on Page 4.

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.
2. That on *(date of most recent conduct)* _____, the defendant
- a. attempted to cause intentionally caused bodily injury to the plaintiff the child(ren) living with or in the custody of the plaintiff
 - b. placed in fear of imminent serious bodily injury the plaintiff a member of the plaintiff's family a member of the plaintiff's household
 - c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress the plaintiff a member of plaintiff's family a member of plaintiff's household
 - d. committed an act defined in G.S. 14- 27.21 (1st deg. rape) 27.22 (2nd deg. rape) 27.26 (1st deg. sexual off.) 27.27 (2nd deg. sexual off.) 27.33 (sexual battery) 27.31 (sexual activity by substitute parent) against the plaintiff a child(ren) living with or in the custody of the plaintiff by
(describe defendant's conduct)

3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

4. The defendant
- a. used threatened to use a deadly weapon against the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - b. has a pattern of prior conduct involving the use threatened use of violence with a firearm against persons
 - c. made threats to seriously injure or kill the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - d. made threats to commit suicide
 - e. inflicted serious injuries upon the plaintiff minor child(ren) residing with or in the custody of the plaintiff in that *(state facts)*:

5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the plaintiff. defendant. The plaintiff has submitted an "Affidavit As To Status Of Minor Child."

NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:
7. It is in the best interest of and necessary for the safety of the minor child(ren) that defendant stay away from the minor child(ren) that the defendant return the minor child(ren) to plaintiff and that the defendant not remove the minor child(ren) from plaintiff in that:
8. *(Check block only if plaintiff is entitled to physical care of child(ren).)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:
9. The defendant plaintiff is presently in possession of the parties' residence at _____

10. The defendant plaintiff is presently in possession of the parties' vehicle. (describe vehicle)

11. Other: (specify)

12. (for magistrate only) This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

- 1. The defendant has committed acts of domestic violence against the plaintiff.
- 2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.
- 3. It clearly appears that there is a danger of acts of domestic violence against the plaintiff. minor child(ren). [G.S. 50B-2(c)]
- 4. The minor child(ren) is exposed to a substantial risk of physical injury. emotional injury. sexual abuse. [G.S. 50B-2(c)]
- 5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.
- 6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant stay away from the minor child(ren). (and) return the minor child(ren) to the physical care of the plaintiff. (and) not remove the minor child(ren) from the physical care of the plaintiff.
- 7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. [G.S. 50B-3.1]
- 8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

- 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**
- 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**
- 3. the defendant shall not threaten a member of the plaintiff's family or household. **[02]**
- 3a. the defendant shall not cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. **[03]**
- 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. **[08]**
- 6. the plaintiff **[08]** defendant **[08]** is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the plaintiff defendant in returning to the residence to get these items.
- 6a. the plaintiff is granted the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[04]**
- 8. the defendant shall stay away from the following places:
 - a. the place where the plaintiff works. **[04]**
 - b. any school(s) the child(ren) attend. **[04]**
 - c. the place where the child(ren) receives day care. **[04]**
 - d. the plaintiff's school. **[04]**
 - e. Other: (name other places) **[04]** _____

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): (name schools)

- 9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. **[08]**
- 10. The plaintiff is awarded temporary custody of the minor child(ren) (Check any of a, b, or c that apply.)
 - a. and the defendant is ordered to stay away from the minor child(ren).
 - b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.
 - c. and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

11. (If No. 10 is checked and you are allowing visitation to defendant) The defendant is allowed the following contact with the minor child(ren):
12. the defendant is prohibited from possessing or receiving [07] purchasing a firearm for the effective period of this Order [07] and the defendant's concealed handgun permit is suspended for the effective period of this Order. [08]
 The defendant is a law enforcement officer/member of the armed services and may may not possess or use a firearm for official use.
13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT: You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on Page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.**
14. the request for Ex Parte Order is denied.
15. Other: (specify) [08]

Date	Signature	<input type="checkbox"/> District Court Judge <input type="checkbox"/> Designated Magistrate
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NOTE TO PLAINTIFF: If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.

NOTE TO CLERK: Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.

NOTICE TO PARTIES

TO THE DEFENDANT:

- If this Order prohibits you from possessing, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 39 months.**
- If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 39 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form, "Motion For Return Of Weapons Surrendered Under Domestic Violence Protective Order" AOC-CV- 319, is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

- You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
- The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
- If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

Name Of Defendant

File No.

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk of Superior Court	

RETURN OF SERVICE

NOTE: To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- By delivering to the defendant named above a copy of the order.
- By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

- Other manner of service on the defendant (specify)
- Defendant WAS NOT served for the following reason.

Date Received	Signature Of Deputy Sheriff Making Return
---------------	---

Date Of Return	Name Of Deputy Sheriff Making Return (type or print)
----------------	--

County Of Sheriff

STATE OF NORTH CAROLINA

File No. _____

In The General Court Of Justice
District Court Division

_____ County

Name Of Plaintiff (Person Filing Complaint)

VERSUS

Name And Address Of Defendant (Person Accused Of Abuse)

**COMPLAINT AND MOTION
FOR
DOMESTIC VIOLENCE
PROTECTIVE ORDER**

G.S. 50B-1, -2, -3, -4

(Check only boxes that apply and fill in blanks. Additional sheets may be attached.)

- 1. I live in _____ County, North Carolina.
- 2. The defendant and I are spouses. are former spouses.
 are persons of the opposite sex who are not married but live together or have lived together.
 have a child in common.
 are parent and child or grandparent and grandchild.
 are current or former household members.
 are persons of the opposite sex who are in or have been in a dating relationship.
- 3. There is is not another court proceeding between the defendant and me pending in this or any other state. (List county, state, date, and what kind of proceeding, if applicable.)
- 4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: (Give specific dates and describe in detail what happened.)
- 5. The defendant has attempted to cause or has intentionally caused bodily injury to the child(ren) living with me or in my custody; has placed my child(ren) in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against the child(ren) in that: (Give specific dates and describe in detail what happened.)
- 6. I believe there is danger of serious and immediate injury to me or my child(ren).
- 7. (Check this block if you ask for temporary child custody.) The defendant and I are the parents of the following child(ren) under the age of eighteen.

A COPY OF "AFFIDAVIT AS TO STATUS OF MINOR CHILD" (AOC-CV-609) MUST BE ATTACHED FOR EACH CHILD.

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

(Over)

8. (Fill in the block if you are asking for temporary child custody) The minor child(ren) listed in No 7. above is exposed to a substantial risk of physical or emotional injury or sexual abuse in that: (Describe in detail what happened that created a risk of physical or emotional injury or sexual abuse.)
9. The defendant has firearms and ammunition as described below, has a permit to purchase a firearm, and has a permit to carry a concealed weapon. (Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms and gun permits.)
10. The defendant has used or threatened to use a deadly weapon against me or minor child(ren) in my custody or has a pattern of prior conduct involving the use or threatened use of violence with a firearm against any persons in that (Give specific dates and describe in detail what happened.)
11. The defendant has made threats to commit suicide in that (Give specific dates and describe in detail what happened.)

Because Of The Acts Of Domestic Violence By The Defendant, I Am Requesting That The Court Give Me The Following Relief:

(Check only boxes that apply.)

1. I want emergency relief.
2. Since there is a danger of acts of domestic violence against me or my child(ren), I want an Ex Parte Order before notice of a hearing is given to the defendant.
3. I want the Court to order the defendant not to assault, threaten, abuse, follow, harass or interfere with me and my child(ren).
- 3a. I want the defendant ordered not to cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
4. I want possession of our residence at the address listed below, and I want the defendant to move from and not return to the residence.
- Address Of Residence
5. I want the Court to order the eviction of the defendant from the residence listed above and I want assistance in returning to the residence.
6. I want possession of the personal property such as clothing and household goods in the residence listed above except for the defendant's personal clothing, toiletries and tools of trade.
- 6a. I want the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household granted to me.

VERSUS

File No.

Name Of Defendant

7. I want the defendant to be ordered not to come on or about:
- (a) my residence.
 - (b) any place where I am receiving temporary shelter.
 - (c) the place where I work.
 - (d) any school(s) the child(ren) attend.
 - (e) the place where the child(ren) receives day care.
 - (f) the place where I go to school.
 - (g) Other: (name other places)

The child(ren) currently attend: (name school)

8. I want the defendant to be ordered to have no contact with me.
9. I want possession and use of the following vehicle:
- Describe Vehicle
10. I want temporary custody of our minor child(ren) listed in this Complaint. I understand that I must file a separate child custody action for permanent custody.
11. I want the defendant to be ordered to make payments for the support of our minor child(ren), as required by law, but I understand it is only temporary and that I must file a separate child support action for regular, permanent child support.
12. I want the Court to prohibit the defendant from possessing or purchasing a firearm.
13. I want the Court to order the defendant to surrender to the sheriff his/her firearms, ammuniion, and gun permits to purchase a firearm and carry a concealed weapon.
14. I want the defendant to be ordered to attend an abuser treatment program.
15. I want the defendant to be ordered to provide me and the child(ren) suitable alternative housing.
16. I want the defendant to be ordered to make payments for my support as required by law, but I understand it is only temporary and that I must file a separate action for regular permanent spousal support.
17. Other: (specify)

Date	Signature Of Plaintiff (Person Filing Complaint)
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VERIFICATION

I, the undersigned, being first duly sworn, say that I am the plaintiff in this action; that I have read the Complaint and Motion; that the matters and things alleged in the Complaint and Motion are true except as to those things alleged upon information and belief and as to those I believe them to be true and accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		Date
Date	Signature	Signature Of Plaintiff (Person Filing Complaint)
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk of Superior Court <input type="checkbox"/> Designated Magistrate	Name Of Plaintiff (Type Or Print)
<input type="checkbox"/> Notary	Date My Commission Expires	
SEAL	County Where Notarized	

INSTRUCTIONS FOR DOMESTIC VIOLENCE FORMS

FORMS YOU NEED TO FILL OUT:

- I. Complaint And Motion For Domestic Violence Protective Order (AOC-CV-303)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name - you are the plaintiff;
 - (c) Defendant's name and address - a defendant is a spouse, former spouse, person of the opposite sex with whom you live or have lived as if married, your child or grandchild who is at least 16 years old, the mother or father of your child, a current or former household member, or a person of the opposite sex that you are dating or have dated;
 - (d) Check the blocks and fill in the blanks that apply to you. If you are afraid of additional acts of domestic violence and you want the judge/magistrate to act immediately, check block #2 at the bottom of page 2, asking for an Ex Parte Order. A request for an Ex Parte Order will be heard soon and without giving notice to the defendant. If a magistrate hears your request for ex parte relief, the magistrate's order is only good for a short period of time and a second temporary Ex Parte Order must be issued by the judge. If the judge issues the temporary Ex Parte Order, another hearing will be held after the defendant is given notice. If no Ex Parte Order is entered, a hearing will still be held after the defendant is given notice;
 - (e) Date and sign the complaint on the back (*above the verification section*). The verification must be signed before a clerk or notary;
 - (f) In some counties you may be able to take it to the magistrate's office on weekends and evenings.
 3. If you or the defendant is under the age of eighteen (18) and not married, you must ask the clerk for the form to appoint a guardian ad litem (AOC-CV-318).
- II. Notice Of Hearing On Domestic Violence Protective Order (AOC-CV-305)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name;
 - (c) Defendant's name and address.
 3. **DO NOT** fill out the remainder of this form.
- III. Ex Parte Domestic Violence Order Of Protection (AOC-CV-304)
 1. You will need only one (1) copy of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name;
 - (c) Defendant's name and address.
 3. **DO NOT** fill out the remainder of this form.
- IV. Civil Summons Domestic Violence (AOC-CV-317)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name and address. You may give an address where you want your mail to go, not necessarily where you are staying;
 - (c) Defendant's name and address (*under the block designated "Defendant"*);
 - (d) Defendant's name and address again in the block designated "Name and Address of Defendant."
 3. **DO NOT** fill out the remainder of this form.

(Over)

V. Identifying information About Defendant Domestic Violence Action (AOC-CV-312)

1. You will need only one (1) copy of this form.
2. Fill in all the information that you know. Be as complete and accurate as you can.
3. Leave blank any portion for which you do not have the information.
4. You may either:
 - (a) turn in the completed form to the clerk or magistrate with the other papers, or
 - (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

VI. Affidavit As To Status Of Minor Child (AOC-CV-609)

1. You **do not** need this form unless you are asking for temporary custody of the children.
2. You will need one (1) copy of this form for each minor child.
3. You must attach the completed form to the Complaint and give it to the clerk or magistrate with the other papers:
 - (a) turn in the completed form to the clerk or magistrate with the other papers, or
 - (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

TAKE ALL FORMS TO THE CLERK/MAGISTRATE FOR FURTHER DIRECTIONS.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff
Address
City, State, Zip

**CIVIL SUMMONS
DOMESTIC VIOLENCE**
 ALIAS AND PLURIES SUMMONS

G.S. 50B-2(a)

VERSUS

Name Of Defendant

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To The Defendant Named Below:

Name And Address Of Defendant

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within ten (10) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address; and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)	Date Issued	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
	Signature	
	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

<input type="checkbox"/> ENDORSEMENT This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	Date Of Endorsement	Time <input type="checkbox"/> AM <input type="checkbox"/> PM
	Signature	
	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court	

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint and a copy of the ex parte order were received and served as follows:

DEFENDANT

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

Other manner of service (*specify*)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>