

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 216

Short Title: Dom. Viol./Emer. Relief.

(Public)

---

Sponsors: Representative Spears; Gardner, H. Hunter, McAllister, McLawhorn, Richardson, Russell, Warner, and Wright.

---

Referred to: Judiciary I.

---

February 19, 1993

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE, UNDER CERTAIN CONDITIONS, MAGISTRATES TO  
2 ISSUE DOMESTIC VIOLENCE RESTRAINING ORDERS AND TO CONDUCT  
3 HEARINGS FOR CIVIL CONTEMPT OF DOMESTIC VIOLENCE  
4 RESTRAINING ORDERS, AND TO MAKE CONFORMING CHANGES TO THE  
5 GENERAL STATUTES.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 50B-2 reads as rewritten:

9 "**§ 50B-2. Institution of civil action; motion for emergency relief; temporary**  
10 **orders.**

11 (a) Any person residing in this State may seek relief under this Chapter by filing  
12 a civil action or by filing a motion in any existing action filed under Chapter 50 of the  
13 General Statutes alleging acts of domestic violence against himself or herself or a minor  
14 child who resides with or is in the custody of such person. Any aggrieved party entitled  
15 to relief under this Chapter may file a civil action and proceed **pro se**, without the  
16 assistance of legal counsel. The district court division of the General Court of Justice  
17 shall have original jurisdiction over actions instituted under this Chapter.

18 (b) Emergency Relief. – A party may move the court for emergency relief if he  
19 or she believes there is a danger of serious and immediate injury to himself or herself or  
20 a minor child. A hearing on a motion for emergency relief, where no **ex parte** order is  
21 entered, shall be held after five days' notice of the hearing to the other party or after five  
22 days from the date of service of process on the other party, whichever occurs first,  
23 provided, however, that no hearing shall be required if the service of process is not

1 completed on the other party. If the party is proceeding **pro se** and does not request an  
2 **ex parte** hearing, the clerk shall set a date for hearing and issue a notice of hearing  
3 within the time periods provided in this subsection, and shall effect service of the  
4 summons, complaint, notice, and other papers through the appropriate law enforcement  
5 agency where the defendant is to be served, upon payment of the required service fees.

6 (c) **Ex parte** Orders. – Prior to the hearing, if it clearly appears to the court from  
7 specific facts shown, that there is a danger of acts of domestic violence against the  
8 aggrieved party or a minor child, the court may enter such orders as it deems necessary  
9 to protect the aggrieved party or minor children from such acts provided, however, that  
10 a temporary order for custody **ex parte** and prior to service of process and notice shall  
11 not be entered unless the court finds that the child is exposed to a substantial risk of  
12 bodily injury or sexual abuse. Upon the issuance of an **ex parte** order under this  
13 subsection, a hearing shall be held within 10 days from the date of issuance of the order  
14 or within seven days from the date of service of process on the other party, whichever  
15 occurs later. If an aggrieved party acting **pro se** requests **ex parte** relief, the Clerk of  
16 Superior Court shall schedule an **ex parte** hearing with the district court division of the  
17 General Court of Justice within 72 hours of the filing for said relief, or by the end of the  
18 next day on which the district court is in session in the county in which the action was  
19 filed, whichever shall first occur. If the district court is not in session in said county, the  
20 aggrieved party may contact the Clerk of Superior Court in any other county within the  
21 same judicial district who shall schedule an **ex parte** hearing with the district court  
22 division of the General Court of Justice by the end of the next day on which said court  
23 division is in session in that county. Upon the issuance of an **ex parte** order under this  
24 subsection, if the party is proceeding **pro se**, the Clerk shall set a date for hearing and  
25 issue a notice of hearing within the time periods provided in this subsection, and shall  
26 effect service of the summons, complaint, notice, order and other papers through the  
27 appropriate law enforcement agency where the defendant is to be served, upon payment  
28 of the required service fees.

29 (c1) **Ex parte** Orders by Magistrate. Prior to the hearing, if at the time the party is  
30 seeking emergency relief **ex parte** the clerk of superior court is not available, the  
31 district court is not in session, and a district court judge is not and will not be available  
32 to hear the motion for a period of eight or more hours, the motion may be heard by the  
33 magistrate. If it clearly appears to the magistrate from specific facts shown that there is  
34 a danger of acts of domestic violence against the aggrieved party or a minor child, the  
35 magistrate may enter such orders as it deems necessary to protect the aggrieved party or  
36 minor children from such acts, except that a temporary order for custody **ex parte** and  
37 prior to service of process and notice shall not be entered unless the magistrate finds  
38 that the child is exposed to a substantial risk of bodily injury or sexual abuse. An **ex**  
39 **parte** order entered under this subsection shall expire and the magistrate shall schedule  
40 an **ex parte** hearing before a district court judge within 72 hours of the filing for relief  
41 under this subsection, or by the end of the next day on which the district court is in  
42 session in the county in which the action was filed, whichever occurs first. A party who  
43 has paid court costs due for seeking an order from the magistrate under this subsection  
44 shall not be liable for court costs for a hearing before the district court judge scheduled

1 and heard pursuant to an order entered by the magistrate under this subsection. **Ex**  
 2 **parte** orders entered by the district court judge pursuant to this subsection shall be  
 3 entered and scheduled in accordance with subsection (c) of this section.

4 (d) **Pro Se** Forms. The Clerk of Superior Court of each county shall provide to  
 5 **pro se** complainants all forms which are necessary or appropriate to enable them to  
 6 proceed **pro se** pursuant to this section. The Clerk shall provide a supply of **pro se**  
 7 forms to magistrates who shall make the forms available to complainants seeking relief  
 8 under subsection (c1) of this section."

9 Sec. 2. G.S. 50B-3(a) reads as rewritten:

10 "(a) ~~The court~~ including magistrates as authorized under G.S. 50B-2(c1),  
 11 may grant any protective order or approve any consent agreement to bring about a  
 12 cessation of acts of domestic violence. The orders or agreements may:

- 13 (1) Direct a party to refrain from such acts;
- 14 (2) Grant to a spouse possession of the residence or household of the  
 15 parties and exclude the other spouse from the residence or household;
- 16 (3) Require a party to provide a spouse and his or her children suitable  
 17 alternate housing;
- 18 (4) Award temporary custody of minor children and establish temporary  
 19 visitation rights;
- 20 (5) Order the eviction of a party from the residence or household and  
 21 assistance to the victim in returning to it;
- 22 (6) Order either party to make payments for the support of a minor child  
 23 as required by law;
- 24 (7) Order either party to make payments for the support of a spouse as  
 25 required by law;
- 26 (8) Provide for possession of personal property of the parties;
- 27 (9) Order a party to refrain from harassing or interfering with the other;  
 28 and
- 29 (10) Award costs and attorney's fees to either party."

30 Sec. 3. G.S. 50B-4 reads as rewritten:

31 **§ 50B-4. Enforcement of orders.**

32 (a) A party may file a motion for contempt for violation of any order entered pursuant  
 33 to this Chapter. Said party may file and proceed with such motion **pro se**, using forms  
 34 provided by the Clerk of Superior ~~Court~~ Court or the magistrate. Upon the filing **pro se**  
 35 of a motion for contempt under this subsection, ~~the clerk-clerk, or the magistrate, if the~~  
 36 facts show clearly that there is danger of acts of domestic violence against the aggrieved  
 37 party or a minor child and the motion is made at a time when the clerk is not available,  
 38 shall schedule and issue notice of a show cause hearing with the district court division  
 39 of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The  
 40 ~~Clerk~~ Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to  
 41 this subsection, shall effect service of the motion, notice, and other papers through the  
 42 appropriate law enforcement agency where the defendant is to be served, upon payment  
 43 of the required service fees.

1 (b) A law-enforcement officer shall arrest and take a person into custody without  
2 a warrant or other process if the officer has probable cause to believe that the person has  
3 violated a court order excluding the person from the residence or household occupied by  
4 a victim of domestic violence or directing the person to refrain from harassing or  
5 interfering with the victim, and if the victim, or someone acting on the victim's behalf,  
6 presents the law-enforcement officer with a copy of the order or the officer determines  
7 that such an order exists, and can ascertain the contents thereof, through phone, radio or  
8 other communication with appropriate authorities. The person arrested shall be brought  
9 before the appropriate district court ~~judge~~ judge, or the magistrate if district court is not  
10 in session and a district court judge is not and will not be available for eight or more  
11 hours, at the earliest time possible to show cause why he or she should not be held in  
12 civil contempt for violation of the order. The person arrested shall be entitled to be  
13 released under the provisions of Article 26, Bail, of Chapter 15A of the General  
14 Statutes."

15 Sec. 4. G.S. 5A-23(b) reads as rewritten:

16 "(b) Except when the General Statutes specifically provide for the exercise of  
17 contempt power by the clerk of superior ~~court,~~ court or the magistrate, proceedings  
18 under this section are before a district court judge, unless a court superior to the district  
19 court issued the order in which case the proceedings are before that court. When the  
20 proceedings are before a superior court, venue is in the superior court district or set of  
21 districts as defined in G.S. 7A-41.1 of the court which issued the order. Otherwise,  
22 venue is in the county where the order was issued."

23 Sec. 5. G.S. 7A-292 reads as rewritten:

24 "**§ 7A-292. Additional powers of magistrates.**

25 In addition to the jurisdiction and powers assigned in this Chapter to the magistrate  
26 in civil and criminal actions, each magistrate has the following additional powers:

- 27 (1) To administer oaths;
- 28 (2) To punish for direct criminal contempt and for civil contempt as  
29 authorized under G.S. 50B-4, subject to the limitations contained in  
30 Chapter 5A of the General Statutes of North Carolina;
- 31 (3) When authorized by the chief district judge, to take depositions and  
32 examinations before trial;
- 33 (4) To issue subpoenas and capiases valid throughout the county;
- 34 (5) To take affidavits for the verification of pleadings;
- 35 (6) To issue writs of habeas corpus ad testificandum, as provided in G.S.  
36 17-41;
- 37 (7) To assign a year's allowance to the surviving spouse and a child's  
38 allowance to the children as provided in Chapter 30, Article 4, of the  
39 General Statutes;
- 40 (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- 41 (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- 42 (10) To take acknowledgment of a written contract or separation agreement  
43 between husband and wife; and

- 1           (12) To assess contribution for damages or for work done on a dam, canal,  
2           or ditch, as provided in ~~G.S. 156-15~~, and G.S. 156-15."  
3           Sec. 6. This act becomes effective October 1, 1993, and applies to actions  
4 filed on or after that date.