

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 868

Short Title: Domestic Violence/No Firearm.

(Public)

Sponsors: Senators Winner, Odom, Gulley, and Martin of Guilford.

Referred to: Judiciary I/Constitution

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE DOMESTIC VIOLENCE LAW BY REQUIRING DOMESTIC VIOLENCE ORDERS TO BE ACCESSIBLE BY COMPUTER, TO ALLOW ORDER TO PROHIBIT POSSESSION AND ALLOW SEIZURE OF FIREARMS, AND TO ESTABLISH THE PENALTY FOR PURCHASE OR POSSESSION OF FIREARMS BY PERSONS SUBJECT TO DOMESTIC VIOLENCE ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50B-3 reads as rewritten:

"§ 50B-3. Relief.

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

- (1) Direct a party to refrain from such acts;
- (2) Grant to a spouse possession of the residence or household of the parties and exclude the other spouse 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;

- 1 (5) Order the eviction of a party from the residence or household and
2 assistance to the victim in returning to it;
- 3 (6) Order either party to make payments for the support of a minor child as
4 required by law;
- 5 (7) Order either party to make payments for the support of a spouse as
6 required by law;
- 7 (8) Provide for possession of personal property of the parties;
- 8 (9) Order a party to refrain from harassing or interfering with the other; ~~and~~
- 9 (10) Award costs and attorney's fees to either ~~party-party~~;
- 10 (11) Order a party to surrender all firearms possessed by the party for a time
11 period fixed in the order but not exceeding 90 days from the date the
12 order is issued unless the court subsequently extends the time period for
13 good cause shown;
- 14 (12) Order a party to not purchase or possess a firearm for a time period
15 fixed in the order but not exceeding 90 days from the date the order is
16 issued unless the court subsequently extends the time period for good
17 cause shown; and
- 18 (13) Order a party to attend and complete an abuser treatment program if the
19 program is available within a reasonable distance of the abuser's
20 residence and is approved by the Administrative Office of the Courts.

21 (b) Protective orders entered or consent orders approved pursuant to this Chapter
22 shall be for a fixed period of ~~time not to exceed one year-time~~.

23 (c) A copy of any order entered and filed under this Article shall be issued to each
24 party. In addition, a copy of the order shall be issued to and retained by the police
25 department of the city of the victim's residence. If the victim does not reside in a city or
26 resides in a city with no police department, copies shall be issued to and retained by the
27 sheriff, and the county police department, if any, of the county in which the victim
28 resides.

29 (d) If an order issued pursuant to this section requires surrender of firearms, then,
30 upon a finding of probable cause that:

31 (1) The party subject to the order has failed or refuses to surrender the
32 firearms in the party's possession, and

33 (2) Search and seizure of the firearms will further the purposes of the
34 domestic violence protective order,

35 the court may issue a search warrant for the premises where the firearms may be found,
36 authorizing officers to enter the premises and to seize and impound the firearms. Search
37 warrants issued pursuant to this subsection shall meet the requirements of Article 11 of
38 Chapter 15A of the General Statutes.

39 (e) If a domestic violence order issued pursuant to this section contains a provision
40 ordering a party to surrender all firearms possessed by the party, the party shall surrender
41 the firearms to the sheriff or other person specified in the order, and the sheriff or person
42 specified in the order shall impound the firearms for the time period stated in the
43 domestic violence order. The person who impounded the firearms shall return the

1 firearms to the lawful owner, upon the owner's request, on or after the expiration of the
2 time period stated in the domestic violence order pursuant to which the firearms were
3 impounded. In order to regain possession of firearms impounded pursuant to this section,
4 the person requesting return of the firearms must provide proof of lawful ownership of
5 the firearms. If lawful ownership of the firearms impounded pursuant to this section has
6 not been established or if lawful claim to the firearms has not been made after 60 days
7 from the expiration of the time period for which an order requiring surrender of the
8 firearms is effective, then the firearms impounded shall be disposed of in the same
9 manner as weapons seized pursuant to G.S. 15-11.1.

10 (f) The Administrative Office of the Courts shall provide for immediate entry of
11 domestic violence orders in its computerized records and shall provide for access to the
12 records by magistrates and law enforcement personnel on a 24-hour-a-day basis. The
13 records shall indicate whether an order requires surrender of firearms, or prohibits
14 possession or purchase of firearms, or both, and shall include all modifications to the
15 order."

16 Sec. 2. G.S. 15A-242 reads as rewritten:

17 "**§ 15A-242. Items subject to seizure under a search warrant.**

18 An item is subject to seizure pursuant to a search warrant if there is probable cause to
19 believe that it:

- 20 (1) Is stolen or embezzled; or
- 21 (2) Is contraband or otherwise unlawfully possessed; or
- 22 (3) Has been used or is possessed for the purpose of being used to commit
23 or conceal the commission of a crime; or
- 24 (4) Constitutes evidence of an offense or the identity of a person
25 participating in an ~~offense~~-offense; or
- 26 (5) Is possessed by a person subject to a domestic violence protection order
27 in force and effect and issued pursuant to Chapter 50B of the General
28 Statutes that specifically orders the person to surrender or not to
29 purchase or possess the item."

30 Sec. 3. Chapter 14 of the General Statutes is amended by adding the following
31 new section to read:

32 "**§ 14-269.8. Prohibition against purchase and possession of firearms by person**
33 **subject to domestic violence order.**

34 (a) It is unlawful for any person to purchase, attempt to purchase, possess, or
35 carry, whether openly or concealed, any gun, rifle, pistol, or other firearm while there
36 remains in force and effect a domestic violence order issued pursuant to Chapter 50B of
37 the General Statutes that specifically prohibits the purchase or possession of firearms.

38 (b) It is unlawful for any person to sell or give any gun, rifle, pistol, or other
39 firearm to another person, who is subject to a currently enforceable domestic violence
40 order issued pursuant to Chapter 50B of the General Statutes that specifically prohibits
41 the purchase or possession of a firearm, when the seller or giver knows or reasonably
42 should know that the person is subject to the Chapter 50B order.

43 (c) A person violating this section shall be guilty of a Class H felony."

1 Sec. 4. This act becomes effective December 1, 1995, and applies to offenses
2 committed on or after that date.