

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 718
Judiciary II Committee Substitute Adopted 4/30/03

Short Title: Amend Domestic Violence Laws/Temp. Custody.

(Public)

Sponsors:

Referred to:

April 3, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE DOMESTIC VIOLENCE LAWS TO REMOVE THE CURRENT LIMITATIONS UNDER WHICH COURTS MAY ADDRESS THE ISSUE OF CUSTODY EX PARTE, REQUIRING COURTS TO CONSIDER CUSTODY AS PART OF AN EX PARTE OR PERMANENT ORDER HEARING, AND CREATING A REBUTTABLE PRESUMPTION THAT IT IS IN THE BEST INTEREST OF THE CHILD TO BE PLACED IN THE CUSTODY OF THE NONOFFENDING CAREGIVER.

The General Assembly of North Carolina enacts:

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

"§ 50B-2. Institution of civil action; motion for emergency relief; ~~temporary orders.~~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. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(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

1 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing
2 within the time periods provided in this subsection, and shall effect service of the
3 summons, complaint, notice, and other papers through the appropriate law enforcement
4 agency where the defendant is to be served.

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

27 Upon the request of either party, the court shall consider temporary custody as part
28 of an ex parte order hearing. However, where there is evidence of domestic violence,
29 there is a rebuttable presumption that it is in the best interest of the child to be placed in
30 the custody of the nonoffending primary caregiver.

31 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge
32 may authorize a magistrate or magistrates to hear any motions for emergency relief ex
33 parte. Prior to the hearing, if the magistrate determines that at the time the party is
34 seeking emergency relief ex parte the district court is not in session and a district court
35 judge is not and will not be available to hear the motion for a period of four or more
36 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
37 from specific facts shown that there is a danger of acts of domestic violence against the
38 aggrieved party or a minor child, the magistrate may enter such orders as it deems
39 necessary to protect the aggrieved party or minor children from ~~such acts, except that a~~
40 ~~temporary order for custody ex parte and prior to service of process and notice shall not~~
41 ~~be entered unless the magistrate finds that the child is exposed to a substantial risk of~~
42 ~~bodily injury or sexual abuse.~~those acts. An ex parte order entered under this subsection
43 shall expire and the magistrate shall schedule an ex parte hearing before a district court
44 judge by the end of the next day on which the district court is in session in the county in

1 which the action was filed. Ex parte orders entered by the district court judge pursuant
2 to this subsection shall be entered and scheduled in accordance with subsection (c) of
3 this section.

4 Upon the request of either party, the magistrate shall consider temporary custody as
5 part of an ex parte hearing. However, where there is evidence of domestic violence,
6 there is a rebuttable presumption that it is in the best interest of the child to be placed in
7 the custody of the nonoffending primary caregiver.

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

12 (d) Pro Se Forms. – The clerk of superior court of each county shall provide to
13 pro se complainants all forms which are necessary or appropriate to enable them to
14 proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms
15 to authorized magistrates who shall make the forms available to complainants seeking
16 relief under subsection (c1) of this section.

17 Joint custody to the parents shall be considered upon the request of either parent."

18 **SECTION 2.** G.S. 50B-3(a)(4) is repealed.

19 **SECTION 3.** G.S. 50B-3 is amended by adding the following new
20 subsection to read:

21 "(a1) Upon the request of either party, the court shall consider and may award
22 temporary custody and establish temporary visitation rights. However, there is a
23 rebuttable presumption that it is in the best interest of the child to be placed in the
24 custody of the nonoffending primary caregiver."

25 **SECTION 4.** G.S. 50-13.2(a) reads as rewritten:

26 "(a) An order for custody of a minor child entered pursuant to this section shall
27 award the custody of such child to such person, agency, organization or institution as
28 will best promote the interest and welfare of the child. In making the determination, the
29 court shall consider all relevant factors including acts of domestic violence between the
30 parties, the safety of the child, and the safety of either party from domestic violence by
31 the other party and shall make findings accordingly. An order for custody must include
32 findings of fact which support the determination of what is in the best interest of the
33 child. Between the mother and father, whether natural or adoptive, no presumption shall
34 apply as to who will better promote the interest and welfare of the child. However,
35 where there is evidence of domestic violence, there is a rebuttable presumption that it is
36 in the best interest of the child to be placed in the custody of the nonoffending primary
37 caregiver."

38 **SECTION 5.** This act is effective when it becomes law.