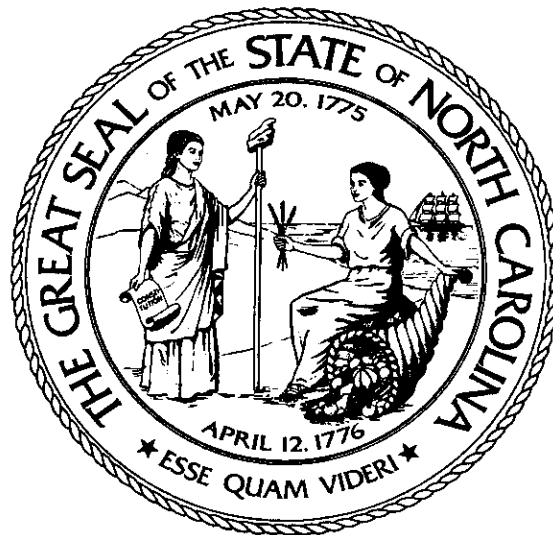

DOMESTIC VIOLENCE AND POLICE INTERVENTION

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NORTH CAROLINA DEPARTMENT OF JUSTICE
LAW ENFORCEMENT LIAISON SECTION

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE NORTH CAROLINA DOMESTIC VIOLENCE ACT	1
III.	N.C.G.S. CHAPTER 50B-1(DOMESTIC VIOLENCE DEFINITION)	1
IV.	N.C.G.S. CHAPTER 50B-2 (OBTAINING A PROTECTIVE ORDER)	2
V.	N.C.G.S. CHAPTER 50B-3 (RELIEF)	4
VI.	N.C.G.S. CHAPTER 50B-3.1 (FIREARMS AND DOMESTIC VIOLENCE ORDERS)	6
VII.	N.C.G.S. CHAPTER 50B-4 (ENFORCEMENT OF ORDERS)	8
	A. CHAPTER 50B-4.1	9
	B. CHAPTER 50B-4.2	10
VIII.	N.C.G.S. CHAPTER 50B-5 (EMERGENCY ASSISTANCE)	10
IX.	N.C.G.S. CHAPTER 50B-5.5(EMPLOYMENT DISCRIMINATION UNLAWFUL)	10
X.	NEW LEGISLATION	10
XI.	N.C.G.S. CHAPTER 50C	11
XII.	COMMON QUESTIONS	12
	A. FIREARMS AND DOMESTIC VIOLENCE PROTECTIVE ORDERS	12
	B. RECONCILIATION AFTER THE ENTRY OF AN ORDER	13
	C. OFFICER ENTRY INTO PRIVATE PREMISES	13
	D. ARREST POWERS OF THE OFFICER DURING DOMESTIC DISTURBANCE ..	14
	E. BAIL AND PRE-TRIAL RELEASE	14

F.	THE OFFENSE OF STALKING	15
XIII.	CONCLUSION	16
XIV.	APPENDIX	17

APPENDIX

Instructions for Domestic Violence Forms (AOC-CV-303)
Complaint and Motion for Domestic Violence Protective Order (AOC-CV-303)
Notice of Hearing (AOC-CV-305) (Spanish Version Available)
Ex Parte Domestic Violence Order of Protection (AOC-CV-304)
Civil Summons (AOC-CV-100)
Domestic Violence Order of Protection (AOC-CV-306 and AOC-CV-306A) (Spanish Version Available)
Motion for Order to Show Cause (AOC-CV-307)
Order to Appear and Show Cause for Failure to Comply With Domestic Violence Protective Order (AOC-CV-308)
Contempt Order (AOC-CV-309)
Notice of Ex Parte Hearing Before District Court Judge (AOC-CV-311)
Identifying Information About Defendant Domestic Violence Action (AOC-CV-312)
Motion to Renew Domestic Violence Protective Order Notice of Hearing (AOC-CV-313)
Order Renewing Domestic Violence Protective Order and Order Setting Aside Domestic Violence Protective Order (AOC-CV-314)

I GRATEFULLY ACKNOWLEDGE THE VALUABLE ASSISTANCE ON THIS PROJECT BY KAREN TWARDOWSKI, A LAW STUDENT AT THE UNIVERSITY OF NORTH CAROLINA, CHAPEL HILL. KAREN SERVED AS AN INTERN WITH THE DEPARTMENT OF JUSTICE DURING HER SECOND YEAR IN LAW SCHOOL. HER ASSISTANCE IN THE REWRITING OF THIS PUBLICATION GREATLY ADDED TO ITS COMPLETENESS. ADDITIONAL THANKS TO BRANTLEY SPRINGETT, A THIRD YEAR LAW STUDENT AT THE NORMAN ADRIAN WIGGINS SCHOOL OF LAW AT CAMPBELL UNIVERSITY. BRANTLEY ASSISTED IN THE MOST RECENT REVISIONS TO THE PUBLICATION.

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LAW ENFORCEMENT LIAISON SECTION

I. INTRODUCTION

One of the most volatile and dangerous calls an officer will encounter is the domestic violence situation. Over the past twenty years, the area of domestic violence has generated a great deal of attention from law enforcement, the legislature, and the general public. With this increased interest, the powers and responsibilities of law enforcement officers have changed dramatically. The purpose of this publication is to provide law enforcement officers and their agencies with a reference tool that addresses the area of domestic violence intervention and to specifically provide the law enforcement officer with the requirements of Chapter 50B of the North Carolina General Statutes.

According to a 1998 United States Department of Justice study of violence against women, 1.9 million women are physically assaulted each year, and of these attacks, 76% are committed by someone the victim knew and/or was intimate with, such as a husband, boyfriend, or other family member. The injuries are not always limited to the participants in the disturbance. The patrol officer is more likely to be injured in his or her response to disturbance calls than any other type of call. With such a high number of deaths, it is imperative that the responding officers be well versed in the laws relating to domestic violence and the legal alternatives and intervention methods available to them.

II. THE NORTH CAROLINA DOMESTIC VIOLENCE ACT

In 1979, the North Carolina General Assembly passed the Domestic Violence Act, N.C.G.S. Chapter 50B. These statutes provide options that were not previously available without the assistance of a privately retained attorney. Chapter 50B has expanded the arrest powers of officers responding to domestic violence and in some cases mandated the action of law enforcement personnel to specific situations. In addition, the Act allows victims of domestic violence to obtain assistance from the courts through a relatively simple process that provides for both emergency relief and protective orders that can be enforced up to one year after issuance.

III. N.C.G.S. CHAPTER 50B-1 (DOMESTIC VIOLENCE DEFINITION)

N.C.G.S. § 50B-1 defines domestic violence, acts of domestic violence, and the term personal relationship.

The current definition of domestic violence is as follows,

the commission of one or more acts of domestic violence 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.

Domestic Violence Acts Include:

- (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 N.C.G.S. § 14-277.3, that rises to such a level as to inflict substantial emotional distress; or
- (3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7 (first-degree rape; second-degree rape; first-degree sexual offense; second-degree sexual offense; intercourse and sexual offenses with certain victims).

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 (see below);
- (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 (see below).

For purposes of subsection (3), above, an aggrieved party may not obtain a Protective Order against a child or grandchild under the age of 16.

For purposes of subsection (6), above, a "dating relationship" is defined as a relationship "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 specifically excluded.

IV. N.C.G.S. CHAPTER 50B-2 (OBTAINING A PROTECTIVE ORDER)

In order to obtain a Domestic Violence Protective Order, it is not required for the victim to retain the services of an attorney. The aggrieved party may seek an Order on his or her own, or on behalf of any minor child who resides with or is in the custody of the aggrieved party.

Subsection (a) of 50B-2 states the two ways a Protective Order can be initiated:

- (1) By filing a motion in any existing action arising under N.C.G.S. Chapter 50 (divorce or alimony, generally), or
- (2) By filing a civil action under N.C.G.S. Chapter 50-B.

A Protective Order can be one of two general types:

1. Emergency Relief [50B-2(b)]—This type of order involves a full hearing with both parties present. An aggrieved party can ask for emergency relief if they can show a danger of serious and immediate injury to the victim or a minor child. A hearing will be held five days after notice has been given to the opposing party or five days from the date of service of process on the other party, whichever occurs first.

2. Ex Parte Orders [50B-2(c)]

a. This type of order does not require a full hearing prior to issuance. If the aggrieved party seeking *ex parte* relief is acting *pro se* (i.e., without the services of an attorney), the clerk of court must schedule an *ex parte* hearing with the district court within 72 hours of the filing of such relief or by the end of the next day on which the district court is in session, whichever occurs first. If the district court is not in session in the county where the request for the ex-parte order is filed, 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 of that county by the end of the next day on which the court is in session in that county.

However, if an *ex parte* order is issued under this subsection, a hearing must be held within 10 days from the date of issuance of the *ex parte* order or within seven days from the date of service of process on the other party, whichever occurs later.

The Court may not enter a temporary order for child custody *ex parte* unless the court

finds the child is exposed to a substantial risk of physical or emotional injury or sexual abuse. If the court so finds, the court may upon request by the aggrieved party, order the other party to stay away from a minor child, or to return a minor child to, or not remove the child from, the physical care of a parent or person in loco parentis.

b. In some instances an authorized magistrate can enter an Ex Parte Order. Pursuant to 50B-2(c1), the chief district court judge may authorize one or more magistrates to hear any motions for emergency relief *ex parte*. However, the magistrate may only hear the motion if 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. Additionally, this order will expire and the magistrate will schedule an ex parte hearing before a district court judge by the end of the next day on which district court is in session in the county where the action was filed. The Magistrate may not enter a temporary order for child custody ex parte unless the court finds the child is exposed to a substantial risk of physical or emotional injury or sexual abuse. If the court so finds, the court may upon request by the aggrieved party , order the other party to stay away from a minor child, or to return a minor child to, or not remove the child from, the physical care of a parent or person in loco parentis.

At the hearing subsequent to the issuance of an Ex Parte Order, the defendant is entitled to present his or her version of the story. At the hearing, the presiding district court judge will have the option of allowing the Protective Order to remain valid up to its statutory limit or rescinding or modifying the current order.

V. N.C.G.S. 50B-3 (RELIEF)

The court, including magistrates, shall grant a protective order restraining the defendant from further acts of domestic violence if there is a finding that an act of domestic violence has occurred or approve any consent agreement to prevent further acts of domestic violence. The domestic violence orders may:

- (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;

- (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;
- (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, or
 - 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 available within a reasonable distance of that party's residence and is approved by the Department of Administration; and
- (13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

The court may also, at the request of either party at the hearing after notice or service of process, enter an order regarding temporary custody of a minor or visitation with a minor. See N.C.G.S. § 50B-3 (a1) for details.

Protective Orders entered will be for a fixed period of time not to exceed one year. However, upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to two additional years. The Act specifically provides that Protective 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. N.C.G.S. § 50B-3(b).

A copy of any Order entered and filed shall be issued to each party. In addition, a copy of the Order shall be issued promptly to and retained by the local police department if the victim resides in the city, or by the sheriff's office or county police department, if the victim resides in the county. It is important that these copies be maintained and kept current at the respective department. Such careful maintenance is required because when an officer is called upon to enforce the terms of such an Order, it is imperative that the officer be able to quickly retrieve and evaluate the terms of the Order. Access to these copies should be available at all times. 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. N.C.G.S. § 50B-3(c).

When a protective order is entered, the Clerk of Superior Court will provide the applicant with literature explaining his/her right to apply for a concealed handgun permit. N.C.G.S. § 50B-3(c).

The sheriff of any county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center (NCIC) registry and shall provide for 24-hour-a-day access of such orders to magistrates. Modifications, terminations, renewals, and dismissals of the order shall also be promptly entered. N.C.G.S. § 50B-3(d).

VI. N.C.G.S. 50B-3.1 FIREARMS AND DOMESTIC VIOLENCE ORDERS

Upon the issuance of an emergency or ex parte domestic violence protection order, 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 defendant has used or threatened the use of a deadly weapon or exhibited a pattern of prior conduct involving the use or threatened use of a firearm against persons;
- (2) The defendant threatened to seriously injure or kill the aggrieved party or minor child;

- (3) Defendant threatened to commit suicide; or
- (4) The defendant has inflicted serious injuries upon the aggrieved party or minor child.

A. Surrender and Storage

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. If this is not possible at the time the order is served, the defendant shall surrender the items within 24 hours of service at a time and place specified by the sheriff.

The sheriff must store the firearms or contract with a licensed firearms dealer to provide storage and may charge the defendant a reasonable fee for such storage of firearms and ammunition. 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.

The fees are payable to the sheriff. The sheriff shall then transmit the fees to the county finance officer and the fees are earmarked for the use of the sheriff in administering this section or for any other law enforcement purpose. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release, and defendant must remit all fees owed prior to the return of any such items.

B. Retrieval

Pursuant to G.S. §50B-3.1(e), 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.

C. Motion for Return

The defendant may request the return of firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or the disposition of criminal charges no later than 90 days after the expiration of the current order or disposition of criminal charges. Upon receipt of the motion, the court will schedule a

hearing and provide written notice to the plaintiff and the sheriff who each have a right to attend the hearing and be heard. After a hearing the court must 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. This inquiry shall include the following:

- (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.

D. Third party owners

A third party owner of firearms, ammunition, or permits may also file a motion requesting the return of any such items to that party that are in the possession of the sheriff seized as a result of the entry of a domestic violence protective order as long as:

- (1) The third party is eligible to possess such items. If the court, upon a hearing, determines that the third party is disqualified from owning or possessing above items pursuant to State or federal law, return of the items will not be ordered.
- (2) The motion is filed no later than 30 days after seizure by the sheriff.

E. Disposal of Firearms

The sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant and apply to the court for an order of disposition of the firearms, ammunition, or permits if:

- (1) The defendant does not file a motion requesting the return of any firearms, ammunition or permits surrendered within the time period described above;
- (2) The court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered; or,

- (3) 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 firearms, ammunition, or permits.

Upon a hearing, the judge may order the disposition of the firearms, ammunition, or permits in accordance with G.S. 14-269.1, subsections (4), (4a), (5), or (6).

VII. N.C.G.S. 50B-4 (ENFORCEMENT OF ORDERS)

A party can file a motion for contempt for a violation of any order entered pursuant to this chapter. This party may proceed with that motion *pro se* (without an attorney), using forms provided by the clerk of superior court. Upon the filing of the motion for contempt, if the facts clearly show there is danger of acts of domestic violence, the clerk, or the authorized magistrate, 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.
N.C.G.S. § 50B-4(a).

A valid protective order must be enforced by all North Carolina law enforcement agencies. Moreover, a valid protective order entered by the courts of another state or the courts of an Indian tribe must be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered with the courts. These orders must be enforced by law enforcement agencies in North Carolina as if it were an order issued by a North Carolina court. To determine the validity of an out of state order for the 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.
N.C.G.S. § 50B-4(c-d).

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 NCIC registry pursuant to G.S. 50B-3(d). N.C.G.S. § 50B-4(d).

When the validity of an out of state order is raised, the court shall determine whether the order remains in full force and effect. N.C.G.S. § 50B-4(e).

A. SECTION 50B-4.1

Section 50B-4.1 now makes a knowing violation of any portion of a valid protective order entered by a North Carolina Court, court of another state, or the courts of an Indian tribe, a Class A1 misdemeanor.

It also requires a law enforcement officer to arrest and take into custody, without a warrant, a person whom they have probable cause to believe has knowingly violated one of the following two provisions of a valid protective order:

- 1) Excluding the person from the residence or household as indicated in § 50B-3(a)(2); or
- 2) Directing the person to refrain from doing any or all of the acts specified in § 50B-3(a)(9).

Only a violation of these two provisions will mandate a warrantless arrest of the aggressive party. As with any other arrest, the person must be brought before a judicial official.

Furthermore, when a law enforcement officer make a warrantless arrest under this section, 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 applicable information which appears on the NCIC registry. N.C.G.S. § 50B-4.1(c).

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 shall be guilty of a felony one class higher than the principal felony described in the charging document. This does not apply to a person who is charged with or convicted of a Class A or B1 felony or to a person charged under subsection (f) of G.S. 50B-4.1 (discussed below). N.C.G.S. § 50B-4.1(d).

Subsection (f) states that unless covered under some other provisions of law providing greater punishment, any person who knowingly violates a valid protective order, after having been previously convicted of three offenses under this Chapter, shall be guilty of a Class H felony.

Subsection(g) states that unless covered under some other provision of law providing greater punishment, any person who, while in the 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 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.

B. SECTION 50B-4.2

A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order; issued under Chapter 50 or issued in the courts of another state or Indian tribe, remains in effect shall be guilty of a Class 2 misdemeanor.

VIII. N.C.G.S. 50B-5 (EMERGENCY ASSISTANCE)

This section deals with the common scenario encountered by law enforcement officers when they receive a late night disturbance call and neither party has a Protective Order. Section 50B-5 provides that 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. This law enforcement agency "shall" respond to the request for assistance as soon as practicable. The current statute also authorizes a law enforcement officer to take whatever steps are reasonably necessary to protect the complainant from harm. The officer is authorized to advise the complainant of the sources of shelter, medical care, counseling and other services that will be available to the victim. In addition, the officer is authorized, although not required, to transport the complainant to his or her residence so that the complainant can remove food, clothing, etc. However, the officer should exercise caution to ensure that the victim only removes those items of food or personal property that are necessary for their survival until further decisions are made by the court.

Section 50B-5 further provides that an officer may not be held criminally or civilly liable on account of reasonable measures taken under the authority of the Act.

IX. N.C.G.S. 50B-5.5 (EMPLOYMENT DISCRIMINATION UNLAWFUL)

Additionally, an employer cannot discharge, demote, deny a promotion to, or discipline an employee because the employee took reasonable time off work to obtain relief pursuant to a protective order. Of course the employee must follow the policies and procedures of the employer in taking time off.

X. NEW LEGISLATION

A. Session Law 2007-15 (House Bill 46)

Upon request of a domestic violence victim, where practical, the clerk of Superior Court of any county shall coordinate with the Sheriff to make available to the victim a secure area segregated from the general population of the courtroom to await hearing of their court case. The clerk of court shall notify the presiding judge on the date of the hearing that the victim is present in a segregated location.

B. Session Law 2007-294 (House Bill 1810)

Amends Chapter 15A by adding the following new section, N.C.G.S. § 15A-831.1 regarding Polygraph examinations of victims of sexual assault. Specifically, a criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter. An agency wishing to perform a polygraph or similar examination of a person claiming to be a victim or witness of a sexual assault shall inform the person of the following:

1. Taking a Polygraph is voluntary;
2. Results are not admissible in court;
3. Person's decision to submit or refuse to take a polygraph will not be the sole basis for a decision by the agency not to investigate the matter.

An agency that declines to investigate an alleged case of sexual assault following a person claiming to be a victim's decision not to submit to a polygraph shall provide to the person the reasons for not investigating in writing at the request of the person.

C. Session Law 2007-116 (Senate Bill 30)

This law modifies the provision of N.C.G.S. § 101-2 regarding the procedures, petition and notice requirements for a person intending to change their name. Specifically, the general requirement that an application for a name change be published at the courthouse door is not required if the applicant is a :

1. Participant in the address confidentiality program under Chapter 15C of the General Statutes; or
2. Provides evidence that the applicant is a victim of domestic violence, sexual offense, or stalking.

Furthermore, the court's entire record of the proceedings relating to the applicant's name change is not a matter of public record, shall be maintained separately from other

records, and may be examined only by order of the court or with the written consent of the applicant.

XI. N.C.G.S. 50C (CIVIL NO-CONTACT ORDERS)

This chapter provides for the issuance of a civil no-contact order for a person(s) who have been the victim of unlawful conduct committed by a person not involved in a personal relationship as defined in 50 B. Pursuant to 50C-9, the clerk of court shall deliver a copy of the civil no-contact order to the sheriff on the same day that the order is issued. If the respondent was not in court when the order was issued, the sheriff shall serve the order on the respondent and file proof of service. A copy of the order shall be issued promptly to and retained by the police department of the municipality of the victim's residence or if the victim lives in the county, to the sheriff of that county. Any order extending, modifying, or revoking any civil no-contact order shall be promptly delivered to the sheriff by the clerk and served by the sheriff. The orders entered pursuant to Chapter 50C are not to be entered into NCIC.

XII. COMMON QUESTIONS

A. FIREARMS AND DOMESTIC VIOLENCE PROTECTIVE ORDERS

N.C.G.S. § 50B-3(a)(11) provides specifically that a district court judge or authorized magistrate may order that a party not purchase a firearm for a fixed period of time.

Additionally, the law (N.C.G.S. § 50B-3(a)(13)) provides that the judge or magistrate may "include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child." Therefore, the judge or magistrate can include as a prohibition that the subject person not receive or possess a firearm.

Federal law, found at 18 U.S.C. 921(a)(32-33), prohibits the possession of firearms and ammunition by anyone convicted of a misdemeanor under federal or state law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, by a person with whom the victim shares a child in common, or by a person who is cohabitating with or has cohabited with the victim as a spouse.

A person is not considered convicted under this law unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and if the person was entitled to a jury trial, the person was tried by a jury or waived their right to such a trial. Further, the person is not considered convicted if the conviction has

been expunged, set aside, pardoned, or the person has had their civil rights restored, unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Another federal law, found at 18 U.S.C. § 922(g)(8)(b), provides that it shall be unlawful for any person to possess or receive firearms or ammunition when the person is subject to a court order that:

- (1) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child;
- (3) (I) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

North Carolina's Concealed Handgun Permit law also provides that the sheriff shall deny a permit to any applicant who "is ineligible to own, possess, or receive a firearm under provisions of state or federal law." In addition, the Concealed Handgun Permit law has a provision which specifically allows for revocation or suspension of a permit when a permittee is subject to a Domestic Violence Protective Order.

B. RECONCILIATION AFTER THE ENTRY OF AN ORDER

A common scenario that may cause problems for the patrol officer occurs when the parties have reconciled after the entry of an Order requiring the aggressive party to stay away from the aggrieved party. An officer must remember that the parties to an order cannot evade its provisions and render it void. Unless a Protective Order is modified or vacated by the court, it remains in full force and effect until its stated date of expiration. If the offense mandates an arrest (i.e., when 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 or directing the person to refrain from doing any or all of the acts specified in § 50B-3(a)(9)), the officer is still required to arrest under these circumstances. Furthermore, an officer's authority to arrest for domestic violence criminal offenses is not diminished

because the victim does not want the defendant arrested or does not want to “press charges.” Once initiated, pursuing criminal charges is the prerogative of the district attorney’s office.

C. OFFICER ENTRY INTO PRIVATE PREMISES

In order for an officer to adequately intercede in a domestic violence situation, he/she may be required to enter a house where the complainant requests the officer’s presence but another resident of the home adamantly demands that the officer remove himself from the property. Initially, the officer should determine that the complainant is actually a resident of the premises. A short-term visitor may not be able to grant permission for the officer to enter the private premises, but an actual resident of the premises has authority to do so. Once the officer determines the complainant is a resident, he is allowed to enter the private premises with the complainant’s permission.

North Carolina General Statute § 15A-285 may also allow for entry when an “urgent necessity” exists. If the circumstances indicate to the officer that there is a reasonable and imminent likelihood of serious injury to a person, the officer would be authorized to make an entry into the premises. The necessary proof required by an officer in such a situation is “reasonable suspicion,” not the higher level of proof used in criminal searches, that of “probable cause.”

D. ARREST POWERS OF THE OFFICER DURING DOMESTIC DISTURBANCES

An officer can arrest without a warrant for a felony offense based on probable cause and the offense does not have to occur in the officer’s presence. For a misdemeanor committed in the officer’s presence, the officer can make an arrest without a warrant based on probable cause.

In addition, as stated previously, for a violation of the “possession of the residence” or “harassment or interference” provisions of a valid Domestic Violence Protective Order, the officer is required to make an arrest without a warrant when probable cause exists.

For a misdemeanor committed outside the officer’s presence, the officer cannot make a warrantless arrest unless the officer also has reason to believe the suspect will cause injury to himself or others, damage property, or evade apprehension if not arrested immediately, or the misdemeanor is for a specific type of crime. N.C.G.S. § 15A-401(b)(2)(d) provides that an officer may also arrest for a misdemeanor that occurred outside of his presence if the offense committed was a simple assault, assault on a female, communicating a threat, or domestic criminal trespass. The offense must be committed by a person with whom the alleged victim has a personal relationship as defined by N.C.G.S. § 50B-1.

Except for the mandated arrest provisions for a Domestic Violence Protective Order, an arrest is not required in all situations. It is therefore incumbent on each law enforcement agency to address their response to any of the above situations through their own departmental directives or standard operating procedures.

E. BAIL AND PRE-TRIAL RELEASE

Once an arrest is made for an appropriate violation of a Domestic Violence Protective Order the defendant is entitled to the bail provisions given to any arrested individual. Therefore, he or she should first be brought before a judicial official for purposes of setting conditions for release and N.C.G.S. § 15A-534.1 requires this judicial official to be a judge. The defendant may be retained in custody up to 48 hours (but the 48 hour retention is not mandatory) without a determination of release being made by a judge. However, if a judge has not acted within 48 hours of arrest, the magistrate shall step in and act. When an individual has been arrested for a violation of a Domestic Violence Protective Order, it is helpful to bring a copy of the Order which has been violated, if one exists, to assist the judge or magistrate.

If the judge determines that the immediate release of the defendant would pose a danger of injury to the alleged victim or to any other person or is likely to result in intimidation to the alleged victim, the judge may retain the defendant in custody for a reasonable period of time while determining the conditions of pre-trial release.

The judge can also impose four other conditions upon the defendant's release. First, the defendant may be ordered to stay away from the home, school, business, or place of employment of the alleged victim. Second, the defendant can be ordered to refrain from assaulting, beating, molesting, or wounding the alleged victim. Third, the judge may order the defendant to refrain from removing, damaging, or injuring specifically identified property. Finally, the defendant may be allowed to visit his or her children at times and places provided by the judge.

F. THE OFFENSE OF STALKING N.C.G.S. § 14-277.3

A person commits the offense of stalking if the person wilfully and on more than one occasion follows or is in the presence of, or otherwise harasses, another person without legal purpose and with the intent to do any of the following:

- (1) Place that person in reasonable fear either for the person's safety or the safety of the person's immediate family or close personal associates.

- (2) Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment, and that in fact causes that person substantial emotional distress.

Penalties are based on the number of prior convictions and whether a court order that prohibited the activity is in effect at the time of the act. For a first offense, the crime is punishable as a Class A1 misdemeanor. If the offense occurs while there is a court order in effect prohibiting such behavior, the crime is punishable as a Class H felony. A second or subsequent offense within five years of a prior conviction is a Class F felony.

NOTE: The term "harasses" or "harassment" means knowing conduct, including written or printed communication or transmission, telephone or cellular or otherwise wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions, directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

XIII. CONCLUSION

Domestic violence situations have been, and will continue to be, one of the most dangerous situations for law enforcement officers to handle. In order to better address such dangerous situations, officers should become very familiar with what they are authorized and required to do under North Carolina law, especially N.C.G.S. Chapter 50B. Proper training, constant updates on domestic violence intervention, and implementation of departmental policies will serve to protect the citizens, officers, and their respective agencies from injury or liability.

APPENDIX

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 - defendant is spouse, former spouse, or person of the opposite sex with whom you live or have lived as if married.
 - (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 1, asking for an Ex Parte Order. An Ex Parte Order will be heard very soon 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 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 in remainder of form.
- III. Ex Parte Domestic Violence Protective Order (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
 - (d) **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".
 - (e) **DO NOT** fill out the remainder of this form.
- V. Identifying Information About Defendant/Domestic Violence Actions (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 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 The Status Of The 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 only one (1) copy of this form.
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 (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 married. are divorced.
 - 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 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).
- 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.
- 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)

VERSUS

File No.

Name Of Defendant

- 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, ammunition, 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)

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

- Deputy CSC
- Assistant CSC

- Clerk of Superior Court
- Designated Magistrate

Name Of Plaintiff (Type Or Print)

- Notary

Date My Commission Expires

SEAL

County Where Notarized

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name And Address Of Defendant

NOTICE OF HEARING
ON DOMESTIC VIOLENCE
PROTECTIVE ORDER

G.S. 50B-2

To The Defendant Named Above:

The attached Complaint has been filed alleging that you have committed acts of domestic violence against the plaintiff and/or the plaintiff's minor child(ren).

- 1. The attached Ex Parte Order has been issued against you. If you violate the Order, you are subject to being held in contempt or being charged with the crime of violating this Ex Parte Order. A hearing will be held before a district court judge at the date, time and location indicated below. At that hearing it will be determined whether the Order will be continued.
- 2. A hearing will be held before a district court judge at the date, time and location indicated below. At that hearing it will be determined whether emergency relief in protecting the plaintiff and the plaintiff's child(ren) should be granted

Date Of Hearing

Time Of Hearing

AM PM

Date

Location Of Hearing

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO CLERK: If the first block is checked, the hearing must be scheduled within ten (10) days of the issuance of the Ex Parte Order or seven (7) days from date of service on defendant, whichever occurs later. If the second block is checked, the defendant must be given five (5) days notice of the hearing. Give or mail a copy of the Notice to the plaintiff.

RETURN OF SERVICE

I certify that this Notice and a copy of the Complaint and the Ex Parte Order were received and served on the defendant as follows:

Date Served

Name Of Defendant

- 1. By delivering to the defendant named above a copy of this Notice of Hearing and a copy of the Complaint and the Ex Parte Order in this action.
- 2. By leaving a copy of this Notice of Hearing and a copy of the Complaint and the Ex Parte Order in this action at the defendant's dwelling house or usual place of above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

Defendant WAS NOT served for the following reason:

Date Received

Date Of Return

Name Of Sheriff

County Of Sheriff

Deputy Sheriff Making Return

Case No.

Court General Court of Justice
District Court Division

County NORTH CAROLINA

**EX PARTE
DOMESTIC VIOLENCE
ORDER OF PROTECTION**

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

PETITIONER/PLAINTIFF

First Middle Last

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

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

Other Protected Persons/DOB:

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

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
Eyes	Hair	Social Security Number		
Drivers License No.		State	Expiration Date	

CAUTION:
 Weapon Involved

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 abuse or make any threats of abuse.
 The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, 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- 27.2 (1st deg. rape) 27.3 (2nd deg. rape) 27.4 (1st deg. sexual off.) 27.5 (2nd deg. sexual off.) 27.5A (sexual battery) 27.7 (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 The Status Of The 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.)* 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 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]
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.
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, owning 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, owning, 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:

1. If this Order prohibits you from possessing, owning, 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 30 months.
2. 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 30 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, "Motion For Return Of Weapons Surrendered Under Domestic Violence 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:

1. 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.
2. 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.
3. 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.

CERTIFICATION

I certify this order is a true copy.

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

Name Of Defendant

File No.

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
-------------	--	-------------------

- 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 Sheriff (Type Or Print)
County Of Sheriff	

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
Address
City, State, Zip
VERSUS
Name Of Defendant(s)

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS

G.S. 1A-1, Rules 3, 4

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

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
Name And Address Of Defendant 2

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 thirty (30) 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
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

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
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

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

DEFENDANT 1

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- 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.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
-------------	--	-------------------

- 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.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason.

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

Case No.

Court General Court of Justice
District Court Division

County NORTH CAROLINA

**DOMESTIC VIOLENCE
ORDER OF PROTECTION**
 CONSENT ORDER

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

PETITIONER/PLAINTIFF

First Middle Last

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

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

Other Protected Persons/DOB:

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

CAUTION:
 Weapon Involved

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
Eyes	Hair	Social Security Number		
Drivers License No.	State	Expiration Date		

Distinguishing Features

THE COURT HEREBY FINDS THAT:
 This matter was heard by the undersigned district court judge, the court has jurisdiction over the parties and subject matter, and the Respondent/Defendant has been provided with reasonable notice and opportunity to be heard.
 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 abuse or make any threats of abuse.
 The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, 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).
 Federal law makes it a crime for you to possess, transport, ship or receive any firearm or ammunition while this order is in effect even if this order does not prohibit you from possessing firearms. (18 U.S.C. Section 922(g)(8)).
 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. Present at the hearing were: the plaintiff, represented by _____
 the defendant, represented by _____
2. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.
3. On (date of most recent conduct) _____, the defendant
- a. attempted to cause intentionally caused bodily injury to the plaintiff a minor child(ren) 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- 27.2 (1st deg. rape) 27.3 (2nd deg. rape) 27.4 (1st deg. sexual off.)
 27.5 (2nd deg. sexual off.) 27.5A (sexual battery) 27.7 (sexual activity by substitute parent) against the
 plaintiff child(ren) living with or in the custody of the plaintiff
- by (describe defendant's conduct) _____
4. 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.)
5. 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) _____
6. The defendant plaintiff is presently in possession of the parties' residence at _____
7. The defendant plaintiff is presently in possession of the parties' vehicle described below: _____
8. Other: (specify) _____

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. There is danger of serious and immediate injury to the plaintiff. minor child(ren). [G.S. 50B-2(b)]

4. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. (G.S. 50.B-3.1)
5. The plaintiff has failed to prove grounds for issuance of a domestic violence protective order.

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]
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.
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:
- | | |
|---|--|
| <input type="checkbox"/> (a) the place where the plaintiff works. [04] | <input type="checkbox"/> (b) any school(s) the child(ren) attend. [04] |
| <input type="checkbox"/> (c) the place where the child(ren) receives day care. [04] | <input type="checkbox"/> (d) the plaintiff's school. [04] |
| <input type="checkbox"/> (e) Other: (name other places) [04] | |

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

9. the plaintiff is granted possession and use of the vehicle described in Block 7 on Page 2. [08]
10. the defendant is ordered to make payments to the plaintiff for support of the minor child(ren) as required by law. [08]
11. the defendant is prohibited from possessing, owning 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.
12. the defendant surrender to the Sheriff serving this order the firearms, ammunition, gun permits described in block No. 4 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 at the time the sheriff serves this Order 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, owning, 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.**
13. the defendant shall attend and complete an abuser treatment program offered by the following agency, which is approved by the Domestic Violence Commission: [08]
14. Other: (specify) [08]
15. this action is dismissed and as of this date any ex parte order issued in this case is null and void.

TEMPORARY CUSTODY

"Temporary Child Custody Addendum To Domestic Violence Protective Order," AOC-CV-306A, is attached and incorporated into this Order.

FOR CONSENT JUDGMENTS ONLY

Each of us enters into this Consent Order knowingly, freely, and voluntarily. The defendant understands that in consenting to this Order all of the consequences set out in the Notice to Parties and Warnings to Respondent/Defendant in this Order apply.

Date	Signature Of Plaintiff	Date	Signature Of Defendant
------	------------------------	------	------------------------

SIGNATURE OF JUDGE

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge
------	--	-----------------------------------

NOTICE TO PARTIES

TO THE DEFENDANT:

1. If this Order prohibits you from possessing, owning, 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 30 months.
2. If you have been ordered to surrender your 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 provided false information to the Court about any of these items you may be charged with a Class H felony and may be imprisoned for up to 30 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, "Motion For Return Of Weapons Surrendered Under Domestic Violence 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 required 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 surrendered 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 weapon. 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:

1. You should keep a copy of this protective 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.
2. 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.
3. 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 Protection 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.

CERTIFICATE OF SERVICE WHEN DEFENDANT NOT PRESENT AT HEARING

I certify that this Order and Notice to Parties has been served on the defendant named by depositing a copy in a post-paid, properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

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

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	

NOTE TO CLERK: A copy of this Order shall be mailed or given to each party, to your sheriff, and to the police department of the plaintiff's residence, if any. Send extra copies to the sheriff if required to deliver copy(ies) to child(ren)'s school.

Name Of Plaintiff	Name Of Defendant	File No.
-------------------	-------------------	----------

**TEMPORARY CHILD CUSTODY ADDENDUM
TO DOMESTIC VIOLENCE PROTECTIVE ORDER
(must be attached to Domestic Violence Order of Protection)**

NOTE TO THE JUDGE: G.S. 50B-3(a1) provides that "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." The Court shall base its decision on the best interest of the child with particular consideration given to the safety of the child.

FINDINGS

1. The defendant requested custody and gave proper notice of this request to the plaintiff.
2. The parties are the parents of the following children under the age of eighteen (18). The child(ren) are presently in the physical custody of the plaintiff. defendant. The plaintiff defendant has submitted an "Affidavit As To The Status Of The Status Of The Minor Child," which is incorporated by reference into this Order. **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

3. The following statutory factors were raised by the evidence and the Court makes the following findings based on the evidence presented. (Check only those factors for which evidence was presented and make findings regarding the evidence presented for those factors.)

"Whether the minor child **was exposed to a substantial risk of physical or emotional injury or sexual abuse.**" Findings:

"Whether the minor child **was present during acts of domestic violence.**" Findings:

"Whether a **weapon was used or threatened to be used** during any act of violence." Findings:

"Whether a party **caused or attempted to cause serious bodily injury** to the aggrieved party or minor child." Findings:

"Whether a party placed the aggrieved party or the minor child in **reasonable fear of imminent serious bodily injury.**" Findings:

"Whether a party **caused an aggrieved party to engage involuntarily in sexual relations** by force, threat or duress." Findings:

"Whether there is a **pattern of abuse** against the aggrieved party or minor child." Findings:

"Whether a party has **abused or endangered the minor child during visitation.**" Findings:

FINDINGS (continued)

"Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party." Findings:

"Whether a party has improperly concealed or detained the minor child." Findings:

"Whether a party has otherwise acted in a manner that is not in the best interest of the minor child." Findings:

4. Other findings as to whether it is in the best interest of the child(ren) that custody be awarded with particular consideration given to the safety of the child(ren):

CONCLUSIONS

- 1. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.
- 2. It is in the best interest of the minor child(ren) that temporary custody be given to plaintiff. defendant. [08]
 and that the defendant plaintiff be granted visitation.
- 3. The Court concludes that temporary custody should not be awarded at this time.

ORDER

Therefore it is ORDERED that:

- 1. temporary custody of the minor child(ren) named on Side One is granted to plaintiff. defendant.
- 2. The defendant plaintiff is entitled to visitation under the terms listed below:
 - a. supervised visitation as follows: *(specify the person or agency providing supervision, the location, frequency and length of visitation)*

OR

unsupervised visitation as follows: *(specify the location, frequency and length of visitation)*

- b. *(Name person)* _____ shall be responsible for transportation of the minor child(ren) to visitation and *(name person)* _____ shall be responsible for transportation of the minor child(ren) from visitation. The exchange at the start of visitation shall occur at *(name location)* _____ and the exchange at the conclusion of visitation shall occur at *(name location)* _____.
- c. Other:

- 3. temporary custody is not awarded.
- 4. The order is effective until *(give date which cannot be longer than one year)* _____

Date	Name Of District Court Judge (Type Or Print)	Signature Of District Court Judge
------	--	-----------------------------------

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

**MOTION FOR ORDER
TO SHOW CAUSE
DOMESTIC VIOLENCE
PROTECTIVE ORDER**

VERSUS

Name Of Defendant

G.S. 50B-4; 5A-15, -23

The Court issued a Domestic Violence Protective Order in this case on (Give date of Order.) _____
The defendant has willfully violated that Order by (Tell what the defendant did that violated the Order.):

I am informed and believe that the defendant has the means to comply with the Order.

I want the Court to issue an Order which requires the defendant to appear and to show cause, if any, why the defendant should not be held in contempt for the defendant's failure to comply with the Court's Order.

SWORN AND SUBSCRIBED TO BEFORE ME

Date

Date

Signature

Signature Of Person Making Motion

Title Of Person Authorized To Administer Oaths

Name Of Person Making Motion (Type Or Print)

Date Commission Expires

SEAL

INSTRUCTIONS ON HOW TO FILL OUT THIS FORM

1. Use this form only if a judge has already signed a Domestic Violence Protective Order or an Ex Parte Order. Do not use this form to start a domestic violence proceeding.
2. Use this form when the defendant has done something which was forbidden by the Order, or has failed to do something which was required by the Order.
3. **THE PEOPLE IN THE CLERK'S OFFICE CANNOT HELP YOU FILL OUT THIS FORM OR TELL YOU WHAT TO SAY.** The law forbids them from doing that.
4. Use the space on the front of this form to tell which item or items in the Order have not been complied with. Then, tell how the defendant failed to comply with those items. Tell what happened in your own words. Tell what the defendant did and said. Tell when and where the defendant did it or said it. Or, tell what the defendant has not done. Finally, tell what shows that the defendant acted **willfully**. Willfully means that the defendant knew that something was forbidden and **did it on purpose**. Willfully also means that the defendant knew that something was required, and **was able to do it**, and still did not do it.
5. Date and sign the form. Then take it to a notary public or the clerk. Tell the notary or the clerk that you want to notarize a show cause order in a domestic violence proceeding. The notary or clerk will have you take an oath or affirmation. Then you will date and sign the form a second time, and the notary or clerk will "notarize" it.
6. Now this form is ready to be "filed" with the clerk. There will be no cost in the clerk's office, but there may be a charge for having the sheriff give papers to the defendant.
7. After this form is filed, the clerk will fill out an "Order to Appear And Show Cause For Failure To Comply With Domestic Violence Protective Order," form AOC-CV-308, commonly called a "Show Cause Order." The Show Cause Order will tell the defendant to appear before a judge at the date, time and place shown on the form. A hearing will be held at that time. The defendant must show cause, if any, why the defendant should not be found in contempt. You will receive a copy of the Show Cause Order and must also attend the hearing. If the judge finds the defendant in criminal contempt, the defendant can be sentenced to serve up to thirty (30) days in jail and fined up to \$500 or both. If the judge finds the defendant in civil contempt, the defendant can be kept in jail until what has been ordered has been done.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

**ORDER TO APPEAR AND
SHOW CAUSE FOR FAILURE
TO COMPLY WITH
DOMESTIC VIOLENCE
PROTECTIVE ORDER**

VERSUS

Name Of Defendant

G.S. 50B-4; 5A-15, -23

To The Defendant Named Above:

I find that there is probable cause to believe that you are in contempt for willfully violating the Domestic Violence Protective Order issued in this case on (give date of order) _____, as alleged in the attached Motion.

You are ORDERED to appear in person at the date, time and place indicated below to show cause why you should not be held in contempt of court for violating the lawful orders of this Court. If the Court finds you in civil contempt, you may be committed to jail for as long as such civil contempt continues. If the Court finds you in criminal contempt, you may be fined up to \$500, imprisoned for up to thirty (30) days, or both.

Date To Appear	Time To Appear	<input type="checkbox"/> AM <input type="checkbox"/> PM	Date Of Order
----------------	----------------	--	---------------

Place To Appear	Signature
	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> District Court Judge <input type="checkbox"/> Designated Magistrate

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Served	Name Of Defendant
-------------	-------------------

- By personally serving the defendant named above.
- Defendant was not served for the following reason:

Date Received	Date Of Return	Name Of Sheriff
---------------	----------------	-----------------

County	Deputy Sheriff Making Return
--------	------------------------------

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

**CONTEMPT ORDER
DOMESTIC VIOLENCE
PROTECTIVE ORDER**

G.S. 50B-4; 5A-15, -23

FINDINGS

A contempt hearing was held before the district court judge named below, pursuant to a show cause order which was served on the defendant on (Give date) _____

The Court makes the following findings of fact:

1. A Domestic Violence Protective Order was issued in this case on (Give date of order) _____ and has been in effect at all relevant times. In that Order the defendant was required to: (list provisions at issue)

2. a. CRIMINAL CONTEMPT

The defendant was represented by counsel, waived representation by counsel, or was not entitled to court appointed counsel. The Court finds beyond a reasonable doubt that the defendant willfully failed to comply with the Protective Order in that: (Set out facts relating to violation(s).)

b. CIVIL CONTEMPT

The defendant was represented by counsel, waived representation by counsel, or was not entitled to court appointed counsel. The Court finds that the defendant has willfully failed to comply with the Protective Order and at this time, has the ability to comply with the order and the purposes of the Order may still be served by compliance, in that: (Set out facts relating to violation, means to comply, and purposes served by compliance.)

3. Other: (specify)

CONCLUSIONS

This matter is properly before the Court and the Court has jurisdiction over the parties and the subject matter.

- 1. The defendant willfully failed to comply with the Domestic Violence Protective Order and is in **CRIMINAL CONTEMPT**.
- 2. The defendant has willfully failed to comply with the Domestic Violence Protective Order, has the present ability to comply, and is in **CIVIL CONTEMPT**.
- 3. The evidence does not support a conclusion that the defendant is in contempt, and this proceeding should be dismissed.
- 4. Other: *(specify)*

ORDER

It is ORDERED that:

- 1. **CRIMINAL CONTEMPT**
the defendant
 - be committed to the county jail for _____ days *(Maximum of 30)*.
 - pay a fine in the amount of \$ _____ *(Maximum of \$500)*.
- 2. **CIVIL CONTEMPT**
the defendant be committed to the county jail for an indefinite period, for as long as the contempt continues. The defendant may purge himself/herself from incarceration by _____
- 3. this proceeding be dismissed.
- 4. Other: *(specify)*

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
------	---	------------------------------

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name Of Defendant

**NOTICE OF EX PARTE
HEARING BEFORE
DISTRICT COURT JUDGE**

G.S. 50B-2(c1)

To The Plaintiff Named Above:

Because the initial Ex Parte Domestic Violence Protective Order was issued by a designated magistrate, it will automatically expire at the date and time stated on that order. You must appear before a district court judge to have another ex parte order issued. You must appear before a district court judge at the date, time and location shown below if you wish to have the order continued.

Date Of Hearing

Time Of Hearing

AM PM

Date

Location of Hearing

Signature Of Designated Magistrate

Name Of Designated Magistrate (Type Or Print)

NOTE: The designated magistrate should give one copy of this form to the plaintiff when the magistrate issues an ex parte order; give the original to the Clerk; and follow policy issued by Judge in notifying Judge of hearing.

STATE OF NORTH CAROLINA

File No. _____

_____ County

In The General Court Of Justice
District Court Division

Name Of Defendant _____

Street Address Of Defendant (Not P.O. Box) _____

City _____

State _____

Zip _____

IDENTIFYING INFORMATION ABOUT DEFENDANT DOMESTIC VIOLENCE ACTION

G.S. 50B-3(d)

INSTRUCTIONS: In order to assist law enforcement agencies in serving and enforcing this Order, if issued by the Court, the following information is requested. It is not required for the issuance of this Order, but may allow law enforcement agencies to locate and more quickly identify the persons involved in this case and to enforce the provisions of this Order more effectively. Answer these questions accurately and honestly.

If you do not know the answer to any of the following questions, leave the question blank.

INFORMATION ABOUT DEFENDANT

Date Of Birth _____

Race: White Black Indian Asian/Pacific Islander OtherSex: Male Female

Height _____

Weight _____

Hair Color _____

Eye Color _____

Identifying Marks (List any marks, scars, tattoos) _____

Does the defendant have a driver's license or state-issued identification card from any state? Yes No

If yes, provide the state and number if possible: State: _____ Number: _____

Vehicle description and license plate number: _____

Social Security No. Of Defendant _____

Telephone No. Of Defendant _____

The defendant's current work information:

Employer's Business Name _____

Business Address _____

Business Telephone No. _____

Defendant's Work Hours (List Work Start Time And Work Stop Time) _____

Does the defendant have a permit to purchase a handgun or crossbow? Yes No

If yes, state which law enforcement agency issued the permit, if known: _____

Does the defendant have a permit to carry a concealed handgun? Yes: No

If yes, state which law enforcement agency issued the permit, if known: _____

Is there any reason that a law enforcement officer should consider the defendant a potential threat (i.e., carries concealed weapons while drinking alcohol, has threatened an officer, etc.)? Yes No

If yes, specify the circumstances: _____

PLAINTIFF

Date Of Birth _____

Race: White Black Indian Asian/Pacific Islander OtherSex: Male Female

Date _____

Name Of Plaintiff (Type Or Print) _____

Signature Of Plaintiff _____

NOTE TO CLERK OR MAGISTRATE: If an order is issued, a copy of this form should be attached to the appropriate order and forwarded to the sheriff of the issuing court county.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name And Address Of Defendant

MOTION [] TO RENEW [] OR SET ASIDE
DOMESTIC VIOLENCE
PROTECTIVE ORDER
NOTICE OF HEARING

G.S. 50B-3(b)

NOTE TO PLAINTIFF: A temporary custody order entered as part of a domestic violence protective order cannot be renewed to extend an award of custody beyond the maximum one year period. Therefore, if your original order granted custody for a one-year period, a renewed order cannot award an order of custody.

MOTION

A Domestic Violence Protective Order, a copy of which is attached, was entered by a district court judge in this county on the date listed below and has an expiration date as listed below. (Attach a copy of the order.)

[] 1. I move that the Domestic Violence Protective Order previously entered on the date listed below and not yet expired be renewed for an additional two years and request the court to set a hearing date to determine whether the order will be renewed. (State facts that cause you to want to renew the order including new violations of the order, if any, and give any other you believe the order should be renewed.)

[] 2. I move that the Domestic Violence Protective Order previously entered on the date listed below be set aside because it is no longer equitable that the order have future application or for other good cause pursuant to G.S. 1A-1, Rule 60(b)(5) or (6), and I request the Court to set a hearing date to determine whether the order will be set aside [] and if it is set aside, whether a new protective order will be entered. (State reasons for setting aside protective order.)

Date Previous Order Entered

Date

Date Of Expiration Of Previous Order

Signature Of Plaintiff/Defendant

NOTICE OF HEARING

NOTICE TO THE PARTIES: You are hereby notified that this Motion To [] Renew [] Set Aside the Domestic Violence Protective Order will be heard on the date, time and at the location set out below. You should appear at that time to show if and why the relief requested in this Motion should not be allowed.

Date Of Hearing

Time Of Hearing

[] AM [] PM

Location Of Hearing

CERTIFICATE OF SERVICE

I certify that on the date of mailing shown below a copy of this Motion and Notice was served on the defendant/plaintiff at the address listed above by depositing a copy in a post-paid, properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date Of Mailing

Date Of Certification

Signature Of Plaintiff/Defendant

(See INSTRUCTIONS on Reverse)

Original-File Copy-Defendant Copy-Plaintiff

INSTRUCTIONS TO PARTY FILING MOTION

1. You must file this Motion with the Clerk of Superior Court in the county in which the previous order was issued. *(If you wish to file in another county, see 7. below.)*
2. Provide to the clerk a stamped envelope addressed to the other party.
3. Ask the Clerk to give you the date, time and location for the hearing before a district court judge and fill in that information on the form.
4. Complete an original and two copies of this Motion.
5. You must mail the completed form to the other party at least eight (8) days before the date set for the hearing.
6. Fill out the certification of service on the form; put one copy of the Motion and Notice in the envelope and mail it to the other party; give the original to the Clerk; and keep the second copy for your records.
7. If you wish to file this Motion in a county different from the one where the previous order was issued, you must first file a motion in the original county to have the case transferred to the new county in which you wish to have the order renewed. The motion to transfer must include the name of the case, case file number, a request to have the case transferred to the specified new county, the reason why you wish to have the case transferred and a request that the Clerk set the motion before the next available district court judge.

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

Name Of Plaintiff

VERSUS

Name And Address Of Defendant

ORDER RENEWING
DOMESTIC VIOLENCE
PROTECTIVE ORDER

G.S. 50B-3(b)

Pursuant to G.S. 50B-3(b) and the motion filed in this case, the Court held a hearing to determine whether the previous Domestic Violence Protective Order should be renewed. The defendant was given proper notice of this hearing. The previous Domestic Violence Protective Order is attached and incorporated by reference.

FINDINGS

The Court finds:

- 1. The motion to renew was was not filed before the previous order expired.
- 2. (State facts regarding good cause to renew the order; a new incident of domestic violence is not required.)
- 3. Other:

CONCLUSION

The Court concludes that

there is is not good cause to renew the protective order.
 Other:

ORDER

It is ORDERED that

- a. all provisions of the Domestic Violence Protective Order entered on (give date) _____, except the award of temporary custody of the minor child(ren) are renewed.
- b. Because the award of temporary custody was less than the maximum one (1) year, the temporary custody order is renewed and will expire on (enter date no more than one (1) year from date of original order) _____.
- the motion is denied.
- Other:

Date

Signature Of Judge

Date Of Expiration Of This Order (May Be Up To Two Years)

Name Of Judge (Type Or Print)

CERTIFICATE OF SERVICE WHEN DEFENDANT NOT PRESENT AT HEARING

I certify that this Order has been served on the defendant named and at the address listed above by depositing a copy in a post-paid, properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date

Signature

Deputy CSC

Assistant CSC

Clerk of Superior Court

Other

NOTE TO CLERK: A copy of this Order shall be mailed or given to each party, to your sheriff, and to the police department of the plaintiff's residence, if any.

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

_____ County

Name Of Plaintiff

VERSUS

Name And Address Of Defendant

**ORDER SETTING ASIDE
DOMESTIC VIOLENCE
PROTECTIVE ORDER**

G.S. 1A-1; Rule 60(b)

Pursuant to the motion filed in this case and after proper notice, the Court held a hearing to determine whether the Domestic Violence Protective Order issued on (state date) _____ should be set aside.

FINDINGS

The Court finds: (state facts found)

CONCLUSIONS

Based on the facts found, the Court concludes that:

- It is no longer equitable that the domestic violence protective order should have future application.
- There is good reason justifying relief from the operation of the domestic violence protective order.
- There is no good reason justifying relief from the operation of the domestic violence protected order and there is no equitable reason that the order should not have future application.

ORDER

Therefore, the Court orders that:

- the Domestic Violence Protective Order entered on (state date) _____ be set aside.
- the motion to set aside the domestic violence protective order be denied.

Date

Name Of Judge (Type Or Print)

Signature Of Judge