

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 914

Short Title: Modification of DVPO Provisions.

(Public)

Sponsors: Representative R. Turner.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 22, 2019

1 **A BILL TO BE ENTITLED**

2 AN ACT TO EXTEND THE TIME OF EXPIRATION FOR VARIOUS EX PARTE ORDERS
3 AND TO EXPAND VARIOUS NOTICE AND PROCEDURAL REQUIREMENTS WHEN
4 A JUDGE ORDERS A DEFENDANT TO ATTEND AN ABUSER TREATMENT
5 PROGRAM.

6 The General Assembly of North Carolina enacts:

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

8 **"§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders;**
9 **temporary custody.**

10 ...

11 (c) Ex Parte Orders. –

12 ...

13 (5) Upon the issuance of an ex parte order under this subsection, subsection or
14 under subsection (c1) of this section, a hearing shall be held within 10 days
15 from the date of issuance of the order or within seven days from the date of
16 service of process on the other party, whichever occurs later. A continuance
17 shall be limited to one extension of no more than 10 days unless all parties
18 consent or good cause is shown. The hearing shall have priority on the court
19 calendar.

20 (6) If an aggrieved party acting pro se requests ex parte relief, the clerk of superior

21 court shall schedule an ex parte hearing with the district court division of the
22 General Court of Justice within 72 hours of the filing for said relief, or by the
23 end of the next day on which the district court is in session in the county in
24 which the action was filed, whichever shall first occur. If the district court is
25 not in session in said county, the aggrieved party may obtain relief pursuant
26 to subsection (c1) of this section if authorized by the chief district court judge
27 or may contact the clerk of superior court in any other county within the same
28 judicial district who shall schedule an ex parte hearing with the district court
29 division of the General Court of Justice by the end of the next day on which
30 said court division is in session in that county.

31 ...

32 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may
33 authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to
34 the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex
35 parte the district court is not in session and a district court judge is not and will not be available



1 to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.
2 If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of
3 domestic violence against the aggrieved party or a minor child, the magistrate may enter orders
4 as it deems necessary to protect the aggrieved party or minor children from those acts, except
5 that a temporary order for custody ex parte and prior to service of process and notice shall not be
6 entered unless the magistrate finds that the child is exposed to a substantial risk of physical or
7 emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial
8 risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the
9 magistrate shall consider and may order the other party to stay away from a minor child, or to
10 return a minor child to, or not remove a minor child from, the physical care of a parent or person
11 in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and
12 is necessary for the safety of the minor child. If the magistrate determines that it is in the best
13 interest of the minor child for the other party to have contact with the minor child or children, the
14 magistrate shall issue an order designed to protect the safety and well-being of the minor child
15 and the aggrieved party. The order shall specify the terms of contact between the other party and
16 the minor child and may include a specific schedule of time and location of exchange of the
17 minor child, supervision by a third party or supervised visitation center, and any other conditions
18 that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order
19 entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing
20 before a district court judge by the end of the next day on which the district court is in session in
21 the county in which the action was filed. Ex parte orders entered by the district court judge
22 pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of
23 this section.

24"

25 **SECTION 2.** G.S. 50B-3 is amended by adding two new subsections to read:

26 "(a2) If the court orders that the defendant attend an abuser treatment program pursuant to
27 G.S. 50B-3(a)(12), the defendant shall begin regular attendance of the program within 60 days
28 of the entry of the order. When ordering a defendant to attend an abuser treatment program, the
29 court shall also specify a date and time for a review hearing with the court to assess whether the
30 defendant has complied with that part of the order. The review hearing shall be held as soon as
31 practicable after 60 days from the entry of the original order. The date of the review shall be set
32 at the same time as the entry of the original order, and the clerk shall issue a Notice of Hearing
33 for the compliance review to be given to the defendant and filed with the court on the same day
34 as the entry of the order. If a defendant is not present in court at the time the order to attend an
35 abuser treatment program is entered and the Notice of Hearing for review is filed, the clerk shall
36 serve a copy of the Notice of Hearing together with the service of the order. The plaintiff may,
37 but is not required to, attend the 60-day review hearing.

38 "(a3) At any time prior to the 60-day review hearing set forth in subsection (a2) of this
39 section, a defendant who is ordered to attend an abuser treatment program may present to the
40 clerk a written statement from an abuser treatment program showing that the defendant has
41 enrolled in and begun regular attendance in an abuser treatment program. Upon receipt of the
42 written statement, the clerk shall remove the 60-day review hearing from the court docket and
43 the defendant shall not be required to appear for the 60-day review hearing. The clerk shall also
44 notify the plaintiff that the defendant has complied with the order and that no 60-day review
45 hearing will occur."

46 **SECTION 3.** G.S. 50B-3.1(a) reads as rewritten:

47 "(a) Required Surrender of Firearms. – Upon issuance of an emergency or order, ex parte
48 order, or an order issued following notice and due process to the defendant pursuant to this
49 Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns,
50 ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the

1 care, custody, possession, ownership, or control of the defendant if the court finds any of the
2 following factors:

- 3 (1) The use or threatened use of a deadly weapon by the defendant or a pattern of
4 prior conduct involving the use or threatened use of violence with a firearm
5 against persons.
- 6 (2) Threats to seriously injure or kill the aggrieved party or minor child by the
7 defendant.
- 8 (3) Threats to commit suicide by the defendant.
- 9 (4) Serious injuries inflicted upon the aggrieved party or minor child by the
10 defendant.
- 11 (5) Any other factor in which the continued possession of a firearm by the
12 defendant poses a substantial risk of serious injury or death to an aggrieved
13 party or minor child."

14 **SECTION 4.** This act becomes effective December 1, 2019, and applies to court
15 orders issued on or after that date.