

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 589
Committee Substitute Favorable 5/4/11
Third Edition Engrossed 5/10/11
Senate Judiciary II Committee Substitute Adopted 5/31/12

Short Title: Divorce/DVPO/Child Support Changes.

(Public)

Sponsors:

Referred to:

April 5, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS RELATING TO DOMESTIC VIOLENCE PROTECTIVE
3 ORDERS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION;
4 AND TO PROVIDE FOR TERMINATION OF CHILD SUPPORT WHEN A CHILD IS
5 ENROLLED IN AN EARLY COLLEGE PROGRAM.

6 The General Assembly of North Carolina enacts:

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

8 "(c) Ex Parte Orders. –

9 (1) Prior to the hearing, if it clearly appears to the court from specific facts
10 shown, that there is a danger of acts of domestic violence against the
11 aggrieved party or a minor child, the court may enter orders as it deems
12 necessary to protect the aggrieved party or minor children from those ~~acts~~
13 ~~acts. provided, however, that a~~

14 (2) A temporary order for custody ex parte and prior to service of process and
15 notice shall not be entered unless the court finds that the child is exposed to
16 a substantial risk of physical or emotional injury or sexual abuse.

17 (3) If the court finds that the child is exposed to a substantial risk of physical or
18 emotional injury or sexual abuse, upon request of the aggrieved party, the
19 court shall consider and may order the other party to (i) stay away from a
20 minor child, or (ii) ~~to~~-return a minor child to, or not remove a minor child
21 from, the physical care of a parent or person in loco parentis, if the court
22 finds that the order is in the best interest of the minor child and is necessary
23 for the safety of the minor child.

24 (4) If the court determines that it is in the best interest of the minor child for the
25 other party to have contact with the minor child or children, the court shall
26 issue an order designed to protect the safety and well-being of the minor
27 child and the aggrieved party. The order shall specify the terms of contact
28 between the other party and the minor child and may include a specific
29 schedule of time and location of exchange of the minor child, supervision by
30 a third party or supervised visitation center, and any other conditions that
31 will ensure both the well-being of the minor child and the aggrieved party.

32 (5) Upon the issuance of an ex parte order under this subsection, a hearing shall
33 be held within 10 days from the date of issuance of the order or within seven
34 days from the date of service of process on the other party, whichever occurs



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1 later. A continuance shall be limited to one extension of no more than 10
2 days unless all parties consent or good cause is shown. The hearing shall
3 have priority on the court calendar.

4 (6) If an aggrieved party acting pro se requests ex parte relief, the clerk of
5 superior court shall schedule an ex parte hearing with the district court
6 division of the General Court of Justice within 72 hours of the filing for said
7 relief, or by the end of the next day on which the district court is in session
8 in the county in which the action was filed, whichever shall first occur. If the
9 district court is not in session in said county, the aggrieved party may contact
10 the clerk of superior court in any other county within the same judicial
11 district who shall schedule an ex parte hearing with the district court division
12 of the General Court of Justice by the end of the next day on which said
13 court division is in session in that county.

14 (7) Upon the issuance of an ex parte order under this subsection, if the party is
15 proceeding pro se, the Clerk shall set a date for hearing and issue a notice of
16 hearing within the time periods provided in this subsection, and shall effect
17 service of the summons, complaint, notice, order and other papers through
18 the appropriate law enforcement agency where the defendant is to be
19 served."

20 **SECTION 2.** G.S. 50-13.4(c) reads as rewritten:

21 "(c) Payments ordered for the support of a minor child shall be in such amount as to
22 meet the reasonable needs of the child for health, education, and maintenance, having due
23 regard to the estates, earnings, conditions, accustomed standard of living of the child and the
24 parties, the child care and homemaker contributions of each party, and other facts of the
25 particular case. Payments ordered for the support of a minor child shall be on a monthly basis,
26 due and payable on the first day of each month. The requirement that orders be established on a
27 monthly basis does not affect the availability of garnishment of disposable earnings based on an
28 obligor's pay period.

29 The court shall determine the amount of child support payments by applying the
30 presumptive guidelines established pursuant to subsection (c1) of this section. However, upon
31 request of any party, the Court shall hear evidence, and from the evidence, find the facts
32 relating to the reasonable needs of the child for support and the relative ability of each parent to
33 provide support. If, after considering the evidence, the Court finds by the greater weight of the
34 evidence that the application of the guidelines would not meet or would exceed the reasonable
35 needs of the child considering the relative ability of each parent to provide support or would be
36 otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an
37 amount other than the amount determined by application of the presumptive guidelines, the
38 court shall make findings of fact as to the criteria that justify varying from the guidelines and
39 the basis for the amount ordered.

40 Payments ordered for the support of a child shall terminate when the child reaches the age
41 of 18 except:

- 42 (1) If the child is otherwise emancipated, payments shall terminate at that time;
43 (2) If the child is still in primary or secondary school when the child reaches age
44 18, support payments shall continue until the child graduates, otherwise
45 ceases to attend school on a regular basis, fails to make satisfactory
46 academic progress towards graduation, or reaches age 20, whichever comes
47 first, unless the court in its discretion orders that payments cease at age 18 or
48 prior to high school graduation.

49 (3) If the child is enrolled in a cooperative innovative high school program
50 authorized under Part 9 of Article 16 of Chapter 115C of the General
51 Statutes, then payments shall terminate when the child completes his or her

1 fourth year of enrollment or when the child reaches the age of 18, whichever
2 occurs later.

3 In the case of graduation, or attaining age 20, payments shall terminate without order by the
4 court, subject to the right of the party receiving support to show, upon motion and with notice
5 to the opposing party, that the child has not graduated or attained the age of 20.

6 If an arrearage for child support or fees due exists at the time that a child support obligation
7 terminates, payments shall continue in the same total amount that was due under the terms of
8 the previous court order or income withholding in effect at the time of the support obligation.
9 The total amount of these payments is to be applied to the arrearage until all arrearages and fees
10 are satisfied or until further order of the court."

11 **SECTION 3.** This act becomes effective October 1, 2012, and applies to actions or
12 motions filed on or after that date.