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Short Title: Strengthen Domestic Violence Laws.

(Public)

Sponsors:

Referred to:

May 11, 2004

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST DOMESTIC VIOLENCE, TO
PROVIDE ADDITIONAL ASSISTANCE TO DOMESTIC VIOLENCE VICTIMS,
AND TO MAKE OTHER CHANGES AS RECOMMENDED BY THE HOUSE
SELECT COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

PART I. DOMESTIC VIOLENCE OFFENDER TREATMENT

SECTION 1.1. G.S. 15A-1343 reads as rewritten:

"§ 15A-1343. Conditions of probation.

(a) In General. – The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. – As regular conditions of probation, a defendant must:

- (1) Commit no criminal offense in any jurisdiction.
- (2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
- (3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.
- (4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

- 1 (5) Possess no firearm, explosive device or other deadly weapon listed in
2 G.S. 14-269 without the written permission of the court.
- 3 (6) Pay a supervision fee as specified in subsection (c1).
- 4 (7) Remain gainfully and suitably employed or faithfully pursue a course
5 of study or of vocational training that will equip him for suitable
6 employment. A defendant pursuing a course of study or of vocational
7 training shall abide by all of the rules of the institution providing the
8 education or training, and the probation officer shall forward a copy of
9 the probation judgment to that institution and request to be notified of
10 any violations of institutional rules by the defendant.
- 11 (8) Notify the probation officer if he fails to obtain or retain satisfactory
12 employment.
- 13 (9) Pay the costs of court, any fine ordered by the court, and make
14 restitution or reparation as provided in subsection (d).
- 15 (10) Pay the State of North Carolina for the costs of appointed counsel,
16 public defender, or appellate defender to represent him in the case(s)
17 for which he was placed on probation.
- 18 (11) At a time to be designated by his probation officer, visit with his
19 probation officer a facility maintained by the Division of Prisons.
- 20 (12) Attend and complete an abuser treatment program if (i) the court finds
21 the defendant is responsible for acts of domestic violence and (ii) there
22 is a program, approved by the Domestic Violence Commission,
23 reasonably available to the defendant, unless the court finds that such
24 would not be in the best interests of justice.

25 In addition to these regular conditions of probation, a defendant required to serve an
26 active term of imprisonment as a condition of special probation pursuant to
27 G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of
28 probation, obey the rules and regulations of the Department of Correction governing the
29 conduct of inmates while imprisoned and report to a probation officer in the State of
30 North Carolina within 72 hours of his discharge from the active term of imprisonment.

31 Regular conditions of probation apply to each defendant placed on supervised
32 probation unless the presiding judge specifically exempts the defendant from one or
33 more of the conditions in open court and in the judgment of the court. It is not necessary
34 for the presiding judge to state each regular condition of probation in open court, but the
35 conditions must be set forth in the judgment of the court.

36 Defendants placed on unsupervised probation are subject to the provisions of this
37 subsection, except that defendants placed on unsupervised probation are not subject to
38 the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

39 (b1) Special Conditions. – In addition to the regular conditions of probation
40 specified in subsection (b), the court may, as a condition of probation, require that
41 during the probation the defendant comply with one or more of the following special
42 conditions:

- 43 (1) Undergo available medical or psychiatric treatment and remain in a
44 specified institution if required for that purpose.

- 1 (2) Attend or reside in a facility providing rehabilitation, counseling,
2 treatment, social skills, or employment training, instruction, recreation,
3 or residence for persons on probation.
- 4 (2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August
5 15, 2002.
- 6 (2b) Participate in and successfully complete a Drug Treatment Court
7 Program pursuant to Article 62 of Chapter 7A of the General Statutes.
- 8 (3) Submit to imprisonment required for special probation under
9 G.S. 15A-1351(a) or G.S. 15A-1344(e).
- 10 (3a) Repealed by Session Laws 1997-57, s. 3.
- 11 (3b) Submit to supervision by officers assigned to the Intensive Supervision
12 Program established pursuant to G.S. 143B-262(c), and abide by the
13 rules adopted for that Program. Unless otherwise ordered by the court,
14 intensive supervision also requires multiple contacts by a probation
15 officer per week, a specific period each day during which the offender
16 must be at his or her residence, and that the offender remain gainfully
17 and suitably employed or faithfully pursue a course of study or of
18 vocational training that will equip the offender for suitable
19 employment.
- 20 (3c) Remain at his or her residence unless the court or the probation officer
21 authorizes the offender to leave for the purpose of employment,
22 counseling, a course of study, or vocational training. The offender
23 shall be required to wear a device which permits the supervising
24 agency to monitor the offender's compliance with the condition
25 electronically.
- 26 (4) Surrender his or her driver's license to the clerk of superior court, and
27 not operate a motor vehicle for a period specified by the court.
- 28 (5) Compensate the Department of Environment and Natural Resources or
29 the North Carolina Wildlife Resources Commission, as the case may
30 be, for the replacement costs of any marine and estuarine resources or
31 any wildlife resources which were taken, injured, removed, harmfully
32 altered, damaged or destroyed as a result of a criminal offense of
33 which the defendant was convicted. If any investigation is required by
34 officers or agents of the Department of Environment and Natural
35 Resources or the Wildlife Resources Commission in determining the
36 extent of the destruction of resources involved, the court may include
37 compensation of the agency for investigative costs as a condition of
38 probation. This subdivision does not apply in any case governed by
39 G.S. 143-215.3(a)(7).
- 40 (6) Perform community or reparation service and pay any fee required by
41 law or ordered by the court for participation in the community or
42 reparation service program.
- 43 (7) Submit at reasonable times to warrantless searches by a probation
44 officer of his or her person and of his or her vehicle and premises

1 while the probationer is present, for purposes specified by the court
2 and reasonably related to his or her probation supervision, but the
3 probationer may not be required to submit to any other search that
4 would otherwise be unlawful. Whenever the warrantless search
5 consists of testing for the presence of illegal drugs, the probationer
6 may also be required to reimburse the Department of Correction for
7 the actual cost of drug screening and drug testing, if the results are
8 positive.

9 (8) Not use, possess, or control any illegal drug or controlled substance
10 unless it has been prescribed for him or her by a licensed physician and
11 is in the original container with the prescription number affixed on it;
12 not knowingly associate with any known or previously convicted
13 users, possessors or sellers of any such illegal drugs or controlled
14 substances; and not knowingly be present at or frequent any place
15 where such illegal drugs or controlled substances are sold, kept, or
16 used.

17 (8a) Purchase the least expensive annual statewide license or combination
18 of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3,
19 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to
20 engage lawfully in the specific activity or activities in which the
21 defendant was engaged and which constitute the basis of the offense or
22 offenses of which he was convicted.

23 (9) If the offense is one in which there is evidence of physical, mental or
24 sexual abuse of a minor, the court should encourage the minor and the
25 minor's parents or custodians to participate in rehabilitative treatment
26 and may order the defendant to pay the cost of such treatment.

27 ~~(9a) Attend and complete an abuser treatment program if (i) the court finds~~
28 ~~the defendant is responsible for acts of domestic violence and (ii) the~~
29 ~~program is approved by the Domestic Violence Commission.~~

30 (10) Satisfy any other conditions determined by the court to be reasonably
31 related to his rehabilitation.

32 (b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of
33 Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – As special
34 conditions of probation, a defendant who has been convicted of an offense which is a
35 reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical,
36 mental, or sexual abuse of a minor, must:

37 (1) Register as required by G.S. 14-208.7 if the offense is a reportable
38 conviction as defined by G.S. 14-208.6(4).

39 (2) Participate in such evaluation and treatment as is necessary to
40 complete a prescribed course of psychiatric, psychological, or other
41 rehabilitative treatment as ordered by the court.

42 (3) Not communicate with, be in the presence of, or found in or on the
43 premises of the victim of the offense.

- 1 (4) Not reside in a household with any minor child if the offense is one in
2 which there is evidence of sexual abuse of a minor.
- 3 (5) Not reside in a household with any minor child if the offense is one in
4 which there is evidence of physical or mental abuse of a minor, unless
5 the court expressly finds that it is unlikely that the defendant's harmful
6 or abusive conduct will recur and that it would be in the minor child's
7 best interest to allow the probationer to reside in the same household
8 with a minor child.
- 9 (6) Satisfy any other conditions determined by the court to be reasonably
10 related to his rehabilitation.

11 Defendants subject to the provisions of this subsection shall not be placed on
12 unsupervised probation.

13 (b3) Screening and Assessing for Chemical Dependency. – A defendant ordered to
14 submit to a period of residential treatment in the Drug Alcohol Recovery Treatment
15 program (DART) operated by the Department of Correction must undergo a screening
16 to determine chemical dependency. If the screening indicates the defendant is
17 chemically dependent, the court shall order an assessment to determine the appropriate
18 level of treatment. The assessment may be conducted either before or after the court
19 imposes the condition, but participation in the program shall be based on the results of
20 the assessment.

21 (c) Statement of Conditions. – A defendant released on supervised probation
22 must be given a written statement explicitly setting forth the conditions on which he is
23 being released. If any modification of the terms of that probation is subsequently made,
24 he must be given a written statement setting forth the modifications.

25 (c1) Supervision Fee. – Any person placed on supervised probation pursuant to
26 subsection (a) of this section shall pay a supervision fee of thirty dollars (\$30.00) per
27 month, unless exempted by the court. The court may exempt a person from paying the
28 fee only for good cause and upon ~~written~~ motion of the person placed on supervised
29 probation. No person shall be required to pay more than one supervision fee per month.
30 The court may require that the fee be paid in advance or in a lump sum or sums, and a
31 probation officer may require payment by such methods if he is authorized by
32 subsection (g) to determine the payment schedule. Supervision fees must be paid to the
33 clerk of court for the county in which the judgment was entered or the deferred
34 prosecution agreement was filed. Fees collected under this subsection shall be
35 transmitted to the State for deposit into the State's General Fund.

36 (d) Restitution as a Condition of Probation. – As a condition of probation, a
37 defendant may be required to make restitution or reparation to an aggrieved party or
38 parties who shall be named by the court for the damage or loss caused by the defendant
39 arising out of the offense or offenses committed by the defendant. When restitution or
40 reparation is a condition imposed, the court shall take into consideration the factors set
41 out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall
42 include but not be limited to the performing of community services, volunteer work, or
43 doing such other acts or things as shall aid the defendant in his rehabilitation. As used
44 herein "aggrieved party" includes individuals, firms, corporations, associations, other

1 organizations, and government agencies, whether federal, State or local, including the
2 Crime Victims Compensation Fund established by G.S. 15B-23. A government agency
3 may benefit by way of reparation even though the agency was not a party to the crime
4 provided that when reparation is ordered, community service work shall be rendered
5 only after approval has been granted by the owner or person in charge of the property or
6 premises where the work will be done.

7 (e) Costs of Court and Appointed Counsel. – Unless the court finds there are
8 extenuating circumstances, any person placed upon supervised or unsupervised
9 probation under the terms set forth by the court shall, as a condition of probation, be
10 required to pay all court costs and costs for appointed counsel or public defender in the
11 case in which he was convicted. The cost of appointed counsel or public defender
12 services shall be determined in accordance with rules adopted by the Office of Indigent
13 Defense Services. The court shall determine the amount of those costs to be repaid and
14 the method of payment.

15 (f) Repealed by Session Laws 1983, c. 561, s. 5.

16 (g) Probation Officer May Determine Payment Schedules. – If a person placed on
17 supervised probation is required as a condition of that probation to pay any moneys to
18 the clerk of superior court, the court may delegate to a probation officer the
19 responsibility to determine the payment schedule. The court may also authorize the
20 probation officer to transfer the person to unsupervised probation after all the moneys
21 are paid to the clerk. If the probation officer transfers a person to unsupervised
22 probation, he must notify the clerk of that action."

23 **SECTION 1.2.** G.S. 143B-262 is amended by adding a new subsection to
24 read:

25 "(e) The Department, in consultation with the Domestic Violence Commission,
26 and in accordance with established best practices, shall establish a domestic violence
27 treatment program for offenders sentenced to a term of imprisonment in the custody of
28 the Department and whose official record includes a finding by the court that the
29 offender committed acts of domestic violence.

30 The Department shall ensure that inmates, whose record includes a finding by the
31 court that the offender committed acts of domestic violence, complete a domestic
32 violence treatment program prior to the completion of the period of incarceration, unless
33 other requirements, deemed critical by the Department, prevent program completion. In
34 the event an inmate does not complete the program during the period of incarceration,
35 the Department shall document, in the inmate's official record, specific reasons why that
36 particular inmate did not or was not able to complete the program."

37 **SECTION 1.3.** This part becomes effective December 1, 2004, and applies
38 to offenses committed on or after that date.

39 **PART II. DOMESTIC VIOLENCE TRAINING FOR LAW ENFORCEMENT**

40 **SECTION 2.1.** G.S. 17C-6(a)(2) reads as rewritten:

41 "(a) In addition to powers conferred upon the Commission elsewhere in this
42 Chapter, the Commission shall have the following powers, which shall be enforceable
43 through its rules and regulations, certification procedures, or the provisions of
44 G.S. 17C-10:

1 ...
 2 (2) Establish minimum educational and training standards that must be
 3 met in order to qualify for entry level employment and retention as a
 4 criminal justice officer in temporary or probationary status or in a
 5 permanent position. The standards for entry level employment shall
 6 include education and training in response to, and investigation of,
 7 domestic violence cases, as well as training in investigation for
 8 evidence-based prosecutions."

9 **SECTION 2.2.** The North Carolina Criminal Justice Education and Training
 10 Standards Commission shall ensure that the domestic violence education and training
 11 required by Section 2.1 of this part is incorporated into all Basic Law Enforcement
 12 Training (BLET) courses as soon as practicable. However, the domestic violence
 13 education and training shall be part of the required BLET curriculum no later than
 14 March 1, 2005.

15 **SECTION 2.3.** G.S. 17C-6(a)(14) reads as rewritten:

16 "(a) In addition to powers conferred upon the Commission elsewhere in this
 17 Chapter, the Commission shall have the following powers, which shall be enforceable
 18 through its rules and regulations, certification procedures, or the provisions of
 19 G.S. 17C-10:

20 ...
 21 (14) Establish minimum standards for in-service training for criminal
 22 justice officers. In-service training standards shall include training in
 23 response to, and investigation of, domestic violence cases, as well as
 24 training investigation for evidence-based prosecutions."

25 **SECTION 2.4.** The North Carolina Criminal Justice Education and Training
 26 Standards Commission shall ensure that the domestic violence in-service training
 27 required by Section 2.3 of this part is available no later than March 1, 2005.

28 **SECTION 2.5.** G.S. 17C-6(a) is amended by adding a new subdivision to
 29 read:

30 "(15) Establish minimum standards and levels of training for certification of
 31 instructors for the domestic violence training required by subdivisions
 32 (2) and (14) of this subsection."

33 **SECTION 2.6.** The North Carolina Criminal Justice Education and Training
 34 Standards Commission shall ensure that the standards and training required for
 35 certification under Section 2.5 of this part are implemented no later than March 1, 2005.

36 **SECTION 2.7.** G.S. 17E-4(a)(2) reads as rewritten:

37 "(a) The Commission shall have the following powers, duties, and responsibilities,
 38 which are enforceable through its rules and regulations, certification procedures, or the
 39 provisions of G.S. 17E-8 and G.S. 17E-9:

40 ...
 41 (2) Establish minimum educational and training standards that may be met
 42 in order to qualify for entry level employment as an officer in
 43 temporary or probationary status or in a permanent ~~position~~; position.
 44 The standards for entry level employment of officers shall include

1 training in response to, and investigation of, domestic violence cases,
2 as well as training in investigation for evidence-based prosecutions.
3 For purposes of the domestic violence training requirement, the term
4 'officers' shall include justice officers as defined in G.S. 17E-2(3)a.,
5 except that the term shall not include 'special deputy sheriffs' as
6 defined in G.S. 17E-2(3)a.;".

7 **SECTION 2.8.** The North Carolina Sheriffs' Education and Training
8 Standards Commission shall ensure that the domestic violence education and training
9 required by Section 2.7 of this part is incorporated into all Basic Law Enforcement
10 Training (BLET) courses as soon as practicable. However, the domestic violence
11 education and training shall be part of the required BLET curriculum no later than
12 March 1, 2005.

13 **SECTION 2.9.** G.S. 17E-4(a)(10) reads as rewritten:

14 "(10) Enter into contracts incident to the administration of its authority
15 pursuant to this ~~Chapter~~ Chapter;"

16 **SECTION 2.10.** G.S. 17E-4(a) is amended by adding a new subdivision to
17 read:

18 "(11) Establish minimum standards for in-service training for justice
19 officers. In-service training standards shall include training in response
20 to, and investigation of, domestic violence cases, as well as training in
21 investigation for evidence-based prosecutions. For purposes of the
22 domestic violence training requirement, the term 'justice officer' shall
23 include those defined in G.S. 17E-2(3)a., except that the term shall not
24 include 'special deputy sheriffs' as defined in G.S. 17E-2(3)a.;".

25 **SECTION 2.11.** The North Carolina Sheriffs' Education and Training
26 Standards Commission shall ensure that the domestic violence in-service training
27 required by Section 2.9 of this part is available no later than March 1, 2005.

28 **SECTION 2.12.** G.S. 17E-4(a) is amended by adding a new subdivision to
29 read:

30 "(12) Establish minimum standards and levels of training for certification of
31 instructors for the domestic violence training required by subdivisions
32 (2) and (11) of this subsection."

33 **SECTION 2.13.** The North Carolina Sheriffs' Education and Training
34 Standards Commission shall ensure that the standards and training required for
35 certification under Section 2.11 of this part are implemented no later than March 1,
36 2005.

37 **SECTION 2.14.** The North Carolina Criminal Justice Education and
38 Training Standards Commission and the North Carolina Sheriffs' Education and
39 Training Standards Commission shall report to the General Assembly on or before
40 March 1, 2005, on the exact standards implemented and the dates they were
41 implemented.

42 **SECTION 2.15.** This part is effective when it becomes law.

43 **PART III. STUDY OF ANTIVIOLENCE EDUCATION IN SCHOOLS AND**
44 **TRAINING FOR SCHOOL PERSONNEL**

1 **SECTION 3.1.** The North Carolina Department of Public Instruction, in
2 collaboration with the State Board of Education, shall study the issue of antiviolence
3 programs in the schools. In studying this issue, the Department shall answer the
4 following:

- 5 (1) How are schools currently addressing antiviolence in their curriculum;
- 6 (2) How do current curriculums vary at each grade level, K-12;
- 7 (3) Do currently used curriculums address physical violence and mental or
8 verbal abuse, particularly instances of domestic and relationship
9 violence;
- 10 (4) Should the State require every public school to have an antiviolence
11 program of instruction incorporated into the curriculum;
- 12 (5) Should an antiviolence program be required at every grade level;
- 13 (6) What would be an appropriate curriculum for each grade level;
- 14 (7) What minimum requirements should be present in an appropriate
15 curriculum to ensure that the curriculum addresses physical violence,
16 mental or verbal abuse, and domestic and relationship violence;
- 17 (8) Should the State implement a particular antiviolence curriculum or
18 allow individual schools to choose an appropriate curriculum from an
19 approved list; and
- 20 (9) What is the fiscal impact of implementing an antiviolence program for
21 all schools, including additional staffing needs, if any.

22 In studying this issue, the Department shall examine some of the antiviolence
23 programs that are in use throughout the country. In addition to any other specific
24 programs examined, the Department shall review in detail the "Second Step" program
25 developed by the Committee for Children.

26 The Department shall make a preliminary report to the House Select
27 Committee on Domestic Violence and to the Joint Legislative Education Oversight
28 Committee no later than November 15, 2004, and a final report to the Joint Legislative
29 Education Oversight Committee and the General Assembly on or before January 15,
30 2005.

31 **SECTION 3.2.** The North Carolina Department of Public Instruction, in
32 collaboration with the State Board of Education, shall study training for school
33 personnel dealing with students who are victims of physical violence and mental or
34 verbal abuse, particularly instances of domestic violence and relationship violence. In
35 studying this issue, the Department shall answer the following:

- 36 (1) What type of training is currently available and/or required for school
37 personnel.
- 38 (2) Should training be required for school personnel.
- 39 (3) If training should be required, which school personnel should be
40 required to receive the training.
- 41 (4) What type of training should be required.
- 42 (5) What is the fiscal impact of requiring school personnel to receive such
43 training.

1 The Department shall make a preliminary report to the House Select
2 Committee on Domestic Violence and to the Joint Legislative Education Oversight
3 Committee no later than November 15, 2004, and a final report to the Joint Legislative
4 Education Oversight Committee and the General Assembly on or before January 15,
5 2005.

6 **SECTION 3.3.** This part is effective when it becomes law.

7 **PART IV. LEGAL SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE**

8 **SECTION 4.1.** Chapter 7A of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 37B.

11 "Domestic Violence Victim Assistance Act.

12 **"§ 7A-474.6. Legislative findings and purpose.**

13 The General Assembly of North Carolina declares it to be its purpose to provide
14 access to legal representation for domestic violence victims in certain kinds of civil
15 matters. The General Assembly finds that such representation can best be provided in an
16 efficient, effective, and economic manner through established legal services programs in
17 this State.

18 **"§ 7A-474.7. Definitions.**

19 The following definitions shall apply throughout this Article, unless the context
20 otherwise requires:

21 (1) "Domestic violence victim" means a resident of North Carolina that
22 has been subjected to acts of domestic violence as defined in
23 G.S. 50B-1. A resident is not required to seek a protective order under
24 Chapter 50B of the General Statutes to qualify as a domestic violence
25 victim under this Article.

26 (2) "Legal assistance" means the provision of any legal services, as
27 defined by Chapter 84 of the General Statutes, consistent with this
28 Article. Provided, that all legal services provided hereunder shall be
29 performed consistently with the Rules of Professional Conduct
30 promulgated by the North Carolina State Bar. Provided, further, that
31 no funds appropriated under this Article shall be used for lobbying to
32 influence the passage or defeat of any legislation before any municipal,
33 county, state, or national legislative body.

34 (3) "Established legal services program" means the following
35 not-for-profit corporations using State funds to serve the counties
36 listed: Legal Aid Society of Northwest North Carolina, serving Davie,
37 Forsyth, Iredell, Stokes, Surry, and Yadkin Counties; Pisgah Legal
38 Services, serving Buncombe, Henderson, Madison, Polk, Rutherford,
39 and Transylvania Counties; and Legal Aid of North Carolina; or any
40 successor entity or entities of the named organizations, or, should any
41 of the named organizations dissolve, the entity or entities providing
42 substantially the same services in substantially the same service area.

43 **"§ 7A-474.8. Eligible activities and limitations.**

1 (a) Eligible Activities. – Funds appropriated under this Article shall be used only
2 for the following purposes:

3 (1) To provide legal assistance to domestic violence victims.

4 (2) To provide education to domestic violence victims regarding their
5 rights and duties under the law.

6 (3) To involve the private bar in the representation of domestic violence
7 victims pursuant to this Article.

8 (b) Eligible Cases. – The funds shall be prioritized by each legal services
9 program to serve the greatest number of eligible clients, with emphasis placed on
10 representation of clients needing legal assistance with proceedings pursuant to Chapter
11 50B of the General Statutes. Legal assistance shall be provided to eligible clients under
12 this Article only in the following types of cases:

13 (1) Actions for protective orders issued pursuant to Chapter 50B of the
14 General Statutes;

15 (2) Child custody and visitation issues; and

16 (3) Legal services which ensure the safety of the client and the client's
17 children.

18 (c) Limitations. – No funds appropriated under this Article shall be used for any
19 of the following purposes:

20 (1) To provide legal assistance with respect to any criminal proceeding; or

21 (2) To provide legal assistance to any prisoner within the North Carolina
22 Department of Correction with regard to the terms of that person's
23 incarceration.

24 **"§ 7A-474.9. Funds.**

25 Funds to provide representation pursuant to this Article shall be provided to the
26 North Carolina State Bar for provision of direct services by and support of the
27 established legal services programs. The North Carolina State Bar shall allocate these
28 funds directly to each of the established legal services programs with Pisgah Legal
29 Services receiving the allocation for Buncombe, Henderson, Madison, Polk, Rutherford,
30 and Transylvania Counties, and Legal Aid Society of Northwest North Carolina
31 receiving the allocation for Davie, Forsyth, Iredell, Stokes, Surry, and Yadkin Counties.
32 Funds shall be allocated to each program based on the counties served by that program
33 using the following formula:

34 (1) Twenty percent (20%) based on a fixed equal dollar amount for each
35 county.

36 (2) Eighty percent (80%) based on the rate of civil actions filed pursuant
37 to Chapter 50B of the General Statutes in that county.

38 The North Carolina State Bar shall not use any of these funds for its administrative
39 costs.

40 **"§ 7A-474.10. Records and reports.**

41 The established legal services programs shall keep appropriate records and make
42 periodic reports, as requested, to the North Carolina State Bar. The North Carolina State
43 Bar shall report annually to the General Assembly on the amount of the funds disbursed
44 and the use of the funds by each legal services program receiving funds. The report to

1 the General Assembly shall be made by January 15 of each year beginning January 15,
2 2006."

3 **SECTION 4.2.** G.S. 84-4.1 reads as rewritten:

4 **"§ 84-4.1. Limited practice of out-of-state attorneys.**

5 Any attorney domiciled in another state, and regularly admitted to practice in the
6 courts of record of that state and in good standing therein, having been retained as
7 attorney for a party to any civil or criminal legal proceeding pending in the General
8 Court of Justice of North Carolina, the North Carolina Utilities Commission, the North
9 Carolina Industrial Commission, the Office of Administrative Hearings of North
10 Carolina, or any administrative agency, may, on motion, be admitted to practice in that
11 forum for the sole purpose of appearing for a client in the litigation. The motion
12 required under this section shall be signed by the attorney and shall contain or be
13 accompanied by:

- 14 (1) The attorney's full name, post-office address, bar membership number,
15 and status as a practicing attorney in another state.
- 16 (2) A statement, signed by the client, setting forth the client's address and
17 declaring that the client has retained the attorney to represent the client
18 in the proceeding.
- 19 (3) A statement that unless permitted to withdraw sooner by order of the
20 court, the attorney will continue to represent the client in the
21 proceeding until the final determination thereof, and that with
22 reference to all matters incident to the proceeding, the attorney agrees
23 to be subject to the orders and amenable to the disciplinary action and
24 the civil jurisdiction of the General Court of Justice and the North
25 Carolina State Bar in all respects as if the attorney were a regularly
26 admitted and licensed member of the Bar of North Carolina in good
27 standing.
- 28 (4) A statement that the state in which the attorney is regularly admitted to
29 practice grants like privileges to members of the Bar of North Carolina
30 in good standing.
- 31 (5) A statement to the effect that the attorney has associated and is
32 personally appearing in the proceeding, with an attorney who is a
33 resident of this State and is duly and legally admitted to practice in the
34 General Court of Justice of North Carolina, upon whom service may
35 be had in all matters connected with the legal proceedings, or any
36 disciplinary matter, with the same effect as if personally made on the
37 foreign attorney within this State.
- 38 (6) A statement accurately disclosing a record of all that attorney's
39 disciplinary history. Discipline shall include (i) public discipline by
40 any court or lawyer regulatory organization, and (ii) revocation of any
41 pro hac vice admission.
- 42 (7) A fee in the amount of one hundred dollars (\$100.00) for support of
43 the General Court of Justice to be remitted to the State Treasurer.

1 Compliance with the foregoing requirements does not deprive the court of the
2 discretionary power to allow or reject the application."

3 **SECTION 4.3.** G.S. 7A-305(a) reads as rewritten:

4 "(a) In every civil action in the superior or district court, except for actions
5 brought under Chapter 50B of the General Statutes, the following costs shall be
6 assessed:

7 (1) For the use of the courtroom and related judicial facilities, the sum of
8 twelve dollars (\$12.00) in cases heard before a magistrate, and the sum
9 of sixteen dollars (\$16.00) in district and superior court, to be remitted
10 to the county in which the judgment is rendered, except that in all
11 cases in which the judgment is rendered in facilities provided by a
12 municipality, the facilities fee shall be paid to the municipality. Funds
13 derived from the facilities fees shall be used in the same manner, for
14 the same purposes, and subject to the same restrictions, as facilities
15 fees assessed in criminal actions.

16 (2) For support of the General Court of Justice, the sum of sixty-nine
17 dollars (\$69.00) in the superior court, and the sum of fifty-four dollars
18 (\$54.00) in the district court except that if the case is assigned to a
19 magistrate the sum shall be forty-three dollars (\$43.00). Sums
20 collected under this subdivision shall be remitted to the State
21 Treasurer. The State Treasurer shall remit the sum of one dollar and
22 five cents (\$1.05) of each fee collected under this subdivision to the
23 North Carolina State Bar for the provision of services described in
24 G.S. 7A-474.4. G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee
25 collected under this subdivision to the North Carolina State Bar for the
26 provision of services described in G.S. 7A-474.9."

27 **SECTION 4.4.** G.S. 7A-304(a) reads as rewritten:

28 "(a) In every criminal case in the superior or district court, wherein the defendant
29 is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed
30 against the prosecuting witness, the following costs shall be assessed and collected,
31 except that when the judgment imposes an active prison sentence, costs shall be
32 assessed and collected only when the judgment specifically so provides, and that no
33 costs may be assessed when a case is dismissed.

34 (1) For each arrest or personal service of criminal process, including
35 citations and subpoenas, the sum of five dollars (\$5.00), to be remitted
36 to the county wherein the arrest was made or process was served,
37 except that in those cases in which the arrest was made or process
38 served by a law-enforcement officer employed by a municipality, the
39 fee shall be paid to the municipality employing the officer.

40 (2) For the use of the courtroom and related judicial facilities, the sum of
41 twelve dollars (\$12.00) in the district court, including cases before a
42 magistrate, and the sum of thirty dollars (\$30.00) in superior court, to
43 be remitted to the county in which the judgment is rendered. In all
44 cases where the judgment is rendered in facilities provided by a

1 municipality, the facilities fee shall be paid to the municipality. Funds
2 derived from the facilities fees shall be used exclusively by the county
3 or municipality for providing, maintaining, and constructing adequate
4 courtroom and related judicial facilities, including: adequate space and
5 furniture for judges, district attorneys, public defenders and other
6 personnel of the Office of Indigent Defense Services, magistrates,
7 juries, and other court related personnel; office space, furniture and
8 vaults for the clerk; jail and juvenile detention facilities; free parking
9 for jurors; and a law library (including books) if one has heretofore
10 been established or if the governing body hereafter decides to establish
11 one. In the event the funds derived from the facilities fees exceed what
12 is needed for these purposes, the county or municipality may, with the
13 approval of the Administrative Officer of the Courts as to the amount,
14 use any or all of the excess to retire outstanding indebtedness incurred
15 in the construction of the facilities, or to reimburse the county or
16 municipality for funds expended in constructing or renovating the
17 facilities (without incurring any indebtedness) within a period of two
18 years before or after the date a district court is established in such
19 county, or to supplement the operations of the General Court of Justice
20 in the county.

21 (3) For the retirement and insurance benefits of both State and local
22 government law-enforcement officers, the sum of six dollars and
23 twenty-five cents (\$6.25), to be remitted to the State Treasurer. Fifty
24 cents (50¢) of this sum shall be administered as is provided in Article
25 12C of Chapter 143 of the General Statutes. Five dollars and
26 seventy-five cents (\$5.75) of this sum shall be administered as is
27 provided in Article 12E of Chapter 143 of the General Statutes, with
28 one dollar and twenty-five cents (\$1.25) being administered in
29 accordance with the provisions of G.S. 143-166.50(e).

30 (3a) For the supplemental pension benefits of sheriffs, the sum of
31 seventy-five cents (75¢) to be remitted to the Department of Justice
32 and administered under the provisions of Article 12G of Chapter 143
33 of the General Statutes.

34 (4) For support of the General Court of Justice, the sum of seventy-six
35 dollars (\$76.00) in the district court, including cases before a
36 magistrate, and the sum of eighty-three dollars (\$83.00) in the superior
37 court, to be remitted to the State Treasurer. For a person convicted of a
38 felony in superior court who has made a first appearance in district
39 court, both the district court and superior court fees shall be assessed.
40 The State Treasurer shall remit the sum of one dollar and five cents
41 (\$1.05) of each fee collected under this subdivision to the North
42 Carolina State Bar for the provision of services described in
43 ~~G.S. 7A-474.4~~ G.S. 7A-474.4, and ninety-five cents (\$.95) of each fee

1 collected under this subdivision to the North Carolina State Bar for the
2 provision of services described in G.S. 7A-474.9.

3 (5) For using pretrial release services, the district or superior court judge
4 shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be
5 remitted to the county providing the pretrial release services. This cost
6 shall be assessed and collected only if the defendant had been accepted
7 and released to the supervision of the agency providing the pretrial
8 release services.

9 (6) For support of the General Court of Justice, for the issuance by the
10 clerk of a report to the Division of Motor Vehicles pursuant to
11 G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the
12 State Treasurer. Upon a showing to the court that the defendant failed
13 to appear because of an error or omission of a judicial official, a
14 prosecutor, or a law-enforcement officer, the court shall waive this fee.

15 (7) For the services of the State Bureau of Investigation laboratory
16 facilities, the district or superior court judge shall, upon conviction,
17 order payment of the sum of three hundred dollars (\$300.00) to be
18 remitted to the Department of Justice for support of the State Bureau
19 of Investigation. This cost shall be assessed only in cases in which, as
20 part of the investigation leading to the defendant's conviction, the
21 laboratories have performed DNA analysis of the crime, tests of bodily
22 fluids of the defendant for the presence of alcohol or controlled
23 substances, or analysis of any controlled substance possessed by the
24 defendant or the defendant's agent. The court may waive or reduce the
25 amount of the payment required by this subdivision upon a finding of
26 just cause to grant such a waiver or reduction."

27 **SECTION 4.5.** Sections 4.2, 4.3, and 4.4 of this part become effective
28 October 1, 2004, and apply to all motions filed on or after that date. The remainder of
29 this part is effective when it becomes law.

30 **PART V. DOMESTIC VIOLENCE ADVOCATES ON CHILD FATALITY TASK**
31 **FORCE**

32 **SECTION 5.1.** G.S. 7B-1402 reads as rewritten:

33 "**§ 7B-1402. Task Force – creation; membership; vacancies.**

34 (a) There is created the North Carolina Child Fatality Task Force within the
35 Department of Health and Human Services for budgetary purposes only.

36 (b) The Task Force shall be composed of 35 members, 11 of whom shall be ex
37 officio members, four of whom shall be appointed by the Governor, 10 of whom shall
38 be appointed by the Speaker of the House of Representatives, and 10 of whom shall be
39 appointed by the President Pro Tempore of the Senate. The ex officio members other
40 than the Chief Medical Examiner shall be nonvoting members and may designate
41 representatives from their particular departments, divisions, or offices to represent them
42 on the Task Force. The members shall be as follows:

- 43 (1) The Chief Medical Examiner;
44 (2) The Attorney General;

- 1 (3) The Director of the Division of Social Services;
- 2 (4) The Director of the State Bureau of Investigation;
- 3 (5) The Director of the Division of Maternal and Child Health of the
- 4 Department of Health and Human Services;
- 5 (6) The Director of the Governor's Youth Advocacy and Involvement
- 6 Office;
- 7 (7) The Superintendent of Public Instruction;
- 8 (8) The Chairman of the State Board of Education;
- 9 (9) The Director of the Division of Mental Health, Developmental
- 10 Disabilities, and Substance Abuse Services;
- 11 (10) The Secretary of the Department of Health and Human Services;
- 12 (11) The Director of the Administrative Office of the Courts;
- 13 (12) A director of a county department of social services, appointed by the
- 14 Governor upon recommendation of the President of the North Carolina
- 15 Association of County Directors of Social Services;
- 16 (13) A representative from a Sudden Infant Death Syndrome counseling
- 17 and education program, appointed by the Governor upon
- 18 recommendation of the Director of the Division of Maternal and Child
- 19 Health of the Department of Health and Human Services;
- 20 (14) A representative from the North Carolina Child Advocacy Institute,
- 21 appointed by the Governor upon recommendation of the President of
- 22 the Institute;
- 23 (15) A director of a local department of health, appointed by the Governor
- 24 upon the recommendation of the President of the North Carolina
- 25 Association of Local Health Directors;
- 26 (16) A representative from a private group, other than the North Carolina
- 27 Child Advocacy Institute, that advocates for children, appointed by the
- 28 Speaker of the House of Representatives upon recommendation of
- 29 private child advocacy organizations;
- 30 (17) A pediatrician, licensed to practice medicine in North Carolina,
- 31 appointed by the Speaker of the House of Representatives upon
- 32 recommendation of the North Carolina Pediatric Society;
- 33 (18) A representative from the North Carolina League of Municipalities,
- 34 appointed by the Speaker of the House of Representatives upon
- 35 recommendation of the League;
- 36 (18a) A representative from the North Carolina Domestic Violence
- 37 Commission, appointed by the Speaker of the House of
- 38 Representatives upon recommendation of the Director of the
- 39 Commission;
- 40 ~~(19) Two public members,~~ One public member, appointed by the Speaker of
- 41 the House of Representatives;
- 42 (20) A county or municipal law enforcement officer, appointed by the
- 43 President Pro Tempore of the Senate upon recommendation of
- 44 organizations that represent local law enforcement officers;

- 1 (21) A district attorney, appointed by the President Pro Tempore of the
2 Senate upon recommendation of the President of the North Carolina
3 Conference of District Attorneys;
- 4 (22) A representative from the North Carolina Association of County
5 Commissioners, appointed by the President Pro Tempore of the Senate
6 upon recommendation of the Association;
- 7 (22a) A representative from the North Carolina Coalition Against Domestic
8 Violence, appointed by the President Pro Tempore of the Senate upon
9 recommendation of the Executive Director of the Coalition;
- 10 (23) ~~Two public members,~~One public member, appointed by the President
11 Pro Tempore of the Senate; and
- 12 (24) Five members of the Senate, appointed by the President Pro Tempore
13 of the Senate, and five members of the House of Representatives,
14 appointed by the Speaker of the House of Representatives.

15 (c) All members of the Task Force are voting members. Vacancies in the
16 appointed membership shall be filled by the appointing officer who made the initial
17 appointment. Terms shall be two years. The members shall elect a chair who shall
18 preside for the duration of the chair's term as member. In the event a vacancy occurs in
19 the chair before the expiration of the chair's term, the members shall elect an acting
20 chair to serve for the remainder of the unexpired term."

21 **SECTION 5.2.** The public members serving on the Child Fatality Task
22 Force on the effective date of this act shall complete their current terms. The new
23 appointments contained in Section 1 of this act shall take effect at the end of those
24 terms.

25 **SECTION 5.3.** This part is effective when it becomes law.

26 **PART VI. STUDY OF MENTAL HEALTH SERVICES FOR DOMESTIC**
27 **VIOLENCE VICTIMS**

28 **SECTION 6.1.** The Department of Health and Human Services shall study
29 and develop a plan for serving clients of domestic violence programs with mental health
30 and substance abuse service needs. The plan will address providing diagnostic and
31 referral services for any client suspected of having a mental illness or a substance abuse
32 problem. The plan will also address the delivery of appropriate services to clients
33 meeting the target population criteria, as defined in the State Plan developed pursuant to
34 G.S. 122C-102. Services must be best practices, as determined by the Department. The
35 Department will consult various stakeholders in the domestic violence network of
36 organizations. The Department will also consider the delivery of services to children
37 identified through domestic violence programs. The Department shall also consider the
38 fiscal impact, if any, of implementing the plan developed pursuant to this study.

39 The Department shall make a preliminary report to the House Select
40 Committee on Domestic Violence and the Joint Legislative Oversight Committee on
41 Mental Health, Developmental Disabilities and Substance Abuse Services no later than
42 October 1, 2004, and a final report to the Joint Legislative Oversight Committee on
43 Mental Health, Developmental Disabilities and Substance Abuse Services and the
44 General Assembly on or before January 15, 2005.

1 **SECTION 6.2.** This part is effective when it becomes law.

2 **PART VII. STUDY OF CLE CREDIT FOR PRO BONO LEGAL**
3 **REPRESENTATION**

4 **SECTION 7.1.** The North Carolina State Bar, in cooperation with the North
5 Carolina Bar Association, shall study the issue of providing Continuing Legal Education
6 (CLE) credit to active attorneys for providing pro bono legal representation. The Bar
7 shall consider what types of pro bono legal representation, if any, should qualify for
8 CLE credit and what administrative requirements would be necessary to provide such
9 credit. The Bar shall specifically look at the possible benefits of providing CLE credit
10 for pro bono legal representation to domestic violence victims. The Bar shall also
11 consider the fiscal impact, if any, of providing the credit.

12 The Bar shall make a preliminary report to the House Select Committee on
13 Domestic Violence no later than October 1, 2004, and a final report to the General
14 Assembly on or before January 15, 2005.

15 **SECTION 7.2.** This part is effective when it becomes law.

16 **PART VIII. DOMESTIC RELATIONSHIP AGGRAVATING FACTOR**

17 **SECTION 8.1.** G.S. 15A-1340.16(d) reads as rewritten:

18 "(d) Aggravating Factors. – The following are aggravating factors:

- 19 (1) The defendant induced others to participate in the commission of the
20 offense or occupied a position of leadership or dominance of other
21 participants.
- 22 (2) The defendant joined with more than one other person in committing
23 the offense and was not charged with committing a conspiracy.
- 24 (2a) The offense was committed for the benefit of, or at the direction of,
25 any criminal street gang, with the specific intent to promote, further, or
26 assist in any criminal conduct by gang members, and the defendant
27 was not charged with committing a conspiracy. A "criminal street
28 gang" means any ongoing organization, association, or group of three
29 or more persons, whether formal or informal, having as one of its
30 primary activities the commission of felony or violent misdemeanor
31 offenses, or delinquent acts that would be felonies or violent
32 misdemeanors if committed by an adult, and having a common name
33 or common identifying sign, colors, or symbols.
- 34 (3) The offense was committed for the purpose of avoiding or preventing a
35 lawful arrest or effecting an escape from custody.
- 36 (4) The defendant was hired or paid to commit the offense.
- 37 (5) The offense was committed to disrupt or hinder the lawful exercise of
38 any governmental function or the enforcement of laws.
- 39 (6) The offense was committed against or proximately caused serious
40 injury to a present or former law enforcement officer, employee of the
41 Department of Correction, jailer, fireman, emergency medical
42 technician, ambulance attendant, justice or judge, clerk or assistant or
43 deputy clerk of court, magistrate, prosecutor, juror, or witness against

- 1 the defendant, while engaged in the performance of that person's
2 official duties or because of the exercise of that person's official duties.
- 3 (7) The offense was especially heinous, atrocious, or cruel.
- 4 (8) The defendant knowingly created a great risk of death to more than
5 one person by means of a weapon or device which would normally be
6 hazardous to the lives of more than one person.
- 7 (9) The defendant held public office at the time of the offense and the
8 offense related to the conduct of the office.
- 9 (10) The defendant was armed with or used a deadly weapon at the time of
10 the crime.
- 11 (11) The victim was very young, or very old, or mentally or physically
12 infirm, or handicapped.
- 13 (12) The defendant committed the offense while on pretrial release on
14 another charge.
- 15 (13) The defendant involved a person under the age of 16 in the
16 commission of the crime.
- 17 (14) The offense involved an attempted or actual taking of property of great
18 monetary value or damage causing great monetary loss, or the offense
19 involved an unusually large quantity of contraband.
- 20 (15) The defendant took advantage of a position of trust or ~~confidence~~
21 confidence, including a domestic relationship, to commit the offense.
- 22 (16) The offense involved the sale or delivery of a controlled substance to a
23 minor.
- 24 (17) The offense for which the defendant stands convicted was committed
25 against a victim because of the victim's race, color, religion,
26 nationality, or country of origin.
- 27 (18) The defendant does not support the defendant's family.
- 28 (18a) The defendant has previously been adjudicated delinquent for an
29 offense that would be a Class A, B1, B2, C, D, or E felony if
30 committed by an adult.
- 31 (19) The serious injury inflicted upon the victim is permanent and
32 debilitating.
- 33 (20) Any other aggravating factor reasonably related to the purposes of
34 sentencing.

35 Evidence necessary to prove an element of the offense shall not be used to prove any
36 factor in aggravation, and the same item of evidence shall not be used to prove more
37 than one factor in aggravation. Evidence necessary to establish that an enhanced
38 sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in
39 aggravation.

40 The judge shall not consider as an aggravating factor the fact that the defendant
41 exercised the right to a jury trial."

42 **SECTION 8.2.** This part is effective December 1, 2004, and applies to
43 offenses committed on or after that date.

44 **PART IX. CREATE STRANGULATION OFFENSE**

1 **SECTION 9.1.** G.S. 14-32.4 reads as rewritten:

2 "**§ 14-32.4. Assault inflicting serious bodily injury; injury; strangulation; penalties.**

3 (a) Unless the conduct is covered under some other provision of law providing
4 greater punishment, any person who assaults another person and inflicts serious bodily
5 injury is guilty of a Class F felony. "Serious bodily injury" is defined as bodily injury
6 that creates a substantial risk of death, or that causes serious permanent disfigurement,
7 coma, a permanent or protracted condition that causes extreme pain, or permanent or
8 protracted loss or impairment of the function of any bodily member or organ, or that
9 results in prolonged hospitalization.

10 (b) Unless the conduct is covered under some other provision of law providing
11 greater punishment, any person who assaults another person and inflicts physical injury
12 by strangulation is guilty of a Class H felony."

13 **SECTION 9.2.** This part becomes effective December 1, 2004, and applies
14 to offenses committed on or after that date.

15 **PART X. AMEND HABITUAL MISDEMEANOR ASSAULT STATUTE**

16 **SECTION 10.1.** G.S. 14-33.2 reads as rewritten:

17 "**§ 14-33.2. Habitual misdemeanor assault.**

18 A person commits the offense of habitual misdemeanor assault if that person violates
19 any of the provisions of ~~G.S. 14-33(e) or G.S. 14-34~~G.S. 14-33 and causes physical
20 injury, or G.S. 14-34, and has two or more prior convictions for either misdemeanor or
21 felony assault, with the earlier of the two prior convictions occurring no more than 15
22 years prior to the date of the current violation.~~been convicted of five or more prior~~
23 ~~misdemeanor convictions, two of which were assaults.~~ A conviction under this section
24 shall not be used as a prior conviction for any other habitual offense statute. A person
25 convicted of violating this section is guilty of a Class H felony."

26 **SECTION 10.2.** This part is effective December 1, 2004, and applies to
27 offenses committed on or after that date. Prosecutions for offenses committed before
28 the effective date of this part are not abated or affected by this part, and the statutory
29 provisions that would be applicable but for this part remain applicable to those
30 prosecutions.

31 **PART XI. DOMESTIC VIOLENCE OFFENSE TRACKING**

32 **SECTION 11.1.** Article 86 of Chapter 15A of the General Statutes is
33 amended by adding a new section to read:

34 "**§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

35 (a) When a defendant is found guilty of an offense involving assault, or
36 communicating a threat, the presiding judge shall determine whether the defendant and
37 victim had a personal relationship. If the judge determines that there was a personal
38 relationship between the defendant and the victim, then the judge shall indicate on the
39 form reflecting the judgment that the case involved domestic violence. The clerk of
40 court shall insure that the official record of the defendant's conviction includes the
41 court's determination, so that any inquiry into the defendant's criminal record will reflect
42 that the offense involved domestic violence.

43 (b) If the presiding judge determines that there was a personal relationship
44 between the defendant and the victim, and a sentence to community punishment is

1 imposed, the judge shall determine whether the defendant shall comply with one or
2 more of the special conditions of probation set forth at G.S. 15A-1343(b1), in addition
3 to any other authorized punishment. Notwithstanding the provisions of
4 G.S. 15A-1340.11(6)c, the court may require the defendant to comply with the
5 provisions of G.S. 15A-1343(b1)(3c).

6 (c) The following definitions apply to this section:

7 (1) "Personal relationship" is as defined in G.S. 50B-1(b).

8 (2) "An offense involving assault" includes any offense where an assault
9 occurred, whether or not the conviction is for an offense under Article
10 8 of Chapter 14 of the General Statutes.

11 (3) "Inquiry" shall include any lawful review of the criminal records of
12 persons convicted of an offense in this State, whether by law
13 enforcement personnel or by private individuals."

14 **SECTION 11.2.** This part is effective December 1, 2004, and applies to
15 offenses committed on or after that date.

16 **PART XII. STUDY OF MISDEMEANOR OFFENSE CLASSIFICATIONS**

17 **SECTION 12.1.** The General Assembly finds that the North Carolina
18 Sentencing and Policy Advisory Commission has adopted formal criteria for classifying
19 felony offenses. The Sentencing Commission has identified three general types of
20 harms: harms to persons (including both physical and mental injury); harms to
21 property; and harms to society. The degrees of harm are divided into three levels:

22 (1) Injury to person, property, or society;

23 (2) Significant injury to person, property, or society; and

24 (3) Serious injury to person, property, or society. The stated purpose of
25 establishing the criteria was "to create a rational and consistent
26 philosophical basis for classifying offenses; to assure proportionality
27 in severity; and to provide a guidepost for classifying new crimes in
28 the future."

29 In contrast to the felony classification criteria, the Commission did not create
30 classification criteria for misdemeanors. However, the current misdemeanor sentencing
31 laws include an assault offense that has serious injury as an element – even though
32 "serious injury to a person" is a category of harm for felony offense classification. The
33 General Assembly finds that the classification of assault offenses that involve serious
34 injury as misdemeanors is inconsistent with the Sentencing Commission's classification
35 of felonies based on harm.

36 The North Carolina Sentencing and Policy Advisory Commission, pursuant to
37 its statutory responsibilities under Article 4 of Chapter 164 of the General Statutes, shall
38 study the classification of misdemeanor offenses. In particular, the Commission shall
39 examine the classification of assault offenses in relation to property offenses, crimes
40 against society, and felony assault offenses. The Commission shall develop a system for
41 classifying misdemeanor offenses on the basis of their severity. The Commission may
42 consider reclassifying existing offenses and creating new offenses in order to insure
43 proportionality and consistency. The Commission shall report its findings and
44 recommendations to the 2005 General Assembly, 2005 Regular Session. The report

1 shall describe the status of the Commission's work and shall include any completed
2 policy recommendations and proposed legislation. The Commission shall make a final
3 report to the 2005 General Assembly, 2006 Regular Session.

4 **SECTION 12.2.** This part is effective when it becomes law.

5 **PART XIII. WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL**
6 **RELEASE CONDITIONS**

7 **SECTION 13.1.** G.S. 15A-401 reads as rewritten:

8 **"§ 15A-401. Arrest by law-enforcement officer.**

9 (a) Arrest by Officer Pursuant to a Warrant. –

10 (1) Warrant in Possession of Officer. – An officer having a warrant for
11 arrest in his possession may arrest the person named or described
12 therein at any time and at any place within the officer's territorial
13 jurisdiction.

14 (2) Warrant Not in Possession of Officer. – An officer who has knowledge
15 that a warrant for arrest has been issued and has not been executed, but
16 who does not have the warrant in his possession, may arrest the person
17 named therein at any time. The officer must inform the person arrested
18 that the warrant has been issued and serve the warrant upon him as
19 soon as possible. This subdivision applies even though the arrest
20 process has been returned to the clerk under G.S. 15A-301.

21 (b) Arrest by Officer Without a Warrant. –

22 (1) Offense in Presence of Officer. – An officer may arrest without a
23 warrant any person who the officer has probable cause to believe has
24 committed a criminal offense in the officer's presence.

25 (2) Offense Out of Presence of Officer. – An officer may arrest without a
26 warrant any person who the officer has probable cause to believe:

27 a. Has committed a felony; or

28 b. Has committed a misdemeanor, and:

29 1. Will not be apprehended unless immediately arrested, or

30 2. May cause physical injury to himself or others, or
31 damage to property unless immediately arrested; or

32 c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3,
33 20-138.1, or 20-138.2; or

34 d. Has committed a misdemeanor under G.S. 14-33(a),
35 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was
36 committed by a person with whom the alleged victim has a
37 personal relationship as defined in G.S. 50B-1; or

38 e. Has committed a misdemeanor under ~~G.S. 50B-4.1(a)~~G.S.
39 50B-4.1(a); or

40 f. Has violated a pretrial release order entered under
41 G.S. 15A-534.1(a)(2).

42 (3) Repealed by Session Laws 1991, c. 150.

43 (4) A law enforcement officer may detain an individual arrested for
44 violation of an order limiting freedom of movement or access issued

1 pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by
2 the State Health Director or local health director pursuant to such
3 order. The person may be detained in such area until the initial
4 appearance before a judicial official pursuant to G.S. 15A-511 and
5 G.S. 15A-534.5.

6 (c) How Arrest Made. –

7 (1) An arrest is complete when:

- 8 a. The person submits to the control of the arresting officer who
9 has indicated his intention to arrest, or
10 b. The arresting officer, with intent to make an arrest, takes a
11 person into custody by the use of physical force.

12 (2) Upon making an arrest, a law-enforcement officer must:

- 13 a. Identify himself as a law-enforcement officer unless his identity
14 is otherwise apparent,
15 b. Inform the arrested person that he is under arrest, and
16 c. As promptly as is reasonable under the circumstances, inform
17 the arrested person of the cause of the arrest, unless the cause
18 appears to be evident.

19 (d) Use of Force in Arrest. –

20 (1) Subject to the provisions of subdivision (2), a law-enforcement officer
21 is justified in using force upon another person when and to the extent
22 that he reasonably believes it necessary:

- 23 a. To prevent the escape from custody or to effect an arrest of a
24 person who he reasonably believes has committed a criminal
25 offense, unless he knows that the arrest is unauthorized; or
26 b. To defend himself or a third person from what he reasonably
27 believes to be the use or imminent use of physical force while
28 effecting or attempting to effect an arrest or while preventing or
29 attempting to prevent an escape.

30 (2) A law-enforcement officer is justified in using deadly physical force
31 upon another person for a purpose specified in subdivision (1) of this
32 subsection only when it is or appears to be reasonably necessary
33 thereby:

- 34 a. To defend himself or a third person from what he reasonably
35 believes to be the use or imminent use of deadly physical force;
36 b. To effect an arrest or to prevent the escape from custody of a
37 person who he reasonably believes is attempting to escape by
38 means of a deadly weapon, or who by his conduct or any other
39 means indicates that he presents an imminent threat of death or
40 serious physical injury to others unless apprehended without
41 delay; or
42 c. To prevent the escape of a person from custody imposed upon
43 him as a result of conviction for a felony.

1 Nothing in this subdivision constitutes justification for willful,
2 malicious or criminally negligent conduct by any person which injures
3 or endangers any person or property, nor shall it be construed to
4 excuse or justify the use of unreasonable or excessive force.

5 (e) Entry on Private Premises or Vehicle; Use of Force. –

6 (1) A law-enforcement officer may enter private premises or a vehicle to
7 effect an arrest when:

- 8 a. The officer has in his possession a warrant or order or a copy of
9 the warrant or order for the arrest of a person, provided that an
10 officer may utilize a copy of a warrant or order only if the
11 original warrant or order is in the possession of a member of a
12 law enforcement agency located in the county where the officer
13 is employed and the officer verifies with the agency that the
14 warrant is current and valid; or the officer is authorized to arrest
15 a person without a warrant or order having been issued,
16 b. The officer has reasonable cause to believe the person to be
17 arrested is present, and
18 c. The officer has given, or made reasonable effort to give, notice
19 of his authority and purpose to an occupant thereof, unless there
20 is reasonable cause to believe that the giving of such notice
21 would present a clear danger to human life.

22 (2) The law-enforcement officer may use force to enter the premises or
23 vehicle if he reasonably believes that admittance is being denied or
24 unreasonably delayed, or if he is authorized under subsection (e)(1)c
25 to enter without giving notice of his authority and purpose.

26 (f) Use of Deadly Weapon or Deadly Force to Resist Arrest. –

27 (1) A person is not justified in using a deadly weapon or deadly force to
28 resist an arrest by a law-enforcement officer using reasonable force,
29 when the person knows or has reason to know that the officer is a
30 law-enforcement officer and that the officer is effecting or attempting
31 to effect an arrest.

32 (2) The fact that the arrest was not authorized under this section is no
33 defense to an otherwise valid criminal charge arising out of the use of
34 such deadly weapon or deadly force.

35 (3) Nothing contained in this subsection (f) shall be construed to excuse or
36 justify the unreasonable or excessive force by an officer in effecting an
37 arrest. Nothing contained in this subsection (f) shall be construed to
38 bar or limit any civil action arising out of an arrest not authorized by
39 this Article."

40 **SECTION 13.2.** This part becomes effective December 1, 2004, and applies
41 to offenses committed on or after that date.

42 **PART XIV. CONFORM STATE FIREARMS LAW TO FEDERAL LAW**

43 **SECTION 14.1.** G.S. 14-415.1 reads as rewritten:

44 "**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

1 (a) It shall be unlawful for any person who has been convicted of a felony to
2 purchase, own, possess, or have in his custody, care, or control any ~~handgun or other~~
3 ~~firearm~~ firearm with a barrel length of less than 18 inches or an overall length of less
4 ~~than 26 inches~~, or any weapon of mass death and destruction as defined in
5 G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including
6 a starter gun, which will or is designed to or may readily be converted to expel a
7 projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm
8 muffler or firearm silencer.

9 Every person violating the provisions of this section shall be punished as a Class G
10 felon.

11 ~~Nothing in this subsection would prohibit the right of any person to have possession~~
12 ~~of a firearm within his own home or on his lawful place of business.~~

13 (b) Prior convictions which cause disenfranchisement under this section shall only
14 include:

- 15 (1) Felony convictions in North Carolina that occur before, on, or after
16 December 1, 1995; and
- 17 (2) Repealed by Session Laws 1995, c. 487, s. 3.
- 18 (3) Violations of criminal laws of other states or of the United States that
19 occur before, on, or after December 1, 1995, and that are substantially
20 similar to the crimes covered in subdivision (1) which are punishable
21 where committed by imprisonment for a term exceeding one year.

22 When a person is charged under this section, records of prior convictions of any offense,
23 whether in the courts of this State, or in the courts of any other state or of the United
24 States, shall be admissible in evidence for the purpose of proving a violation of this
25 section. The term "conviction" is defined as a final judgment in any case in which
26 felony punishment, or imprisonment for a term exceeding one year, as the case may be,
27 is permissible, without regard to the plea entered or to the sentence imposed. A
28 judgment of a conviction of the defendant or a plea of guilty by the defendant to such an
29 offense certified to a superior court of this State from the custodian of records of any
30 state or federal court shall be prima facie evidence of the facts so certified.

31 (c) The indictment charging the defendant under the terms of this section shall be
32 separate from any indictment charging him with other offenses related to or giving rise
33 to a charge under this section. An indictment which charges the person with violation of
34 this section must set forth the date that the prior offense was committed, the type of
35 offense and the penalty therefore, and the date that the defendant was convicted or plead
36 guilty to such offense, the identity of the court in which the conviction or plea of guilty
37 took place and the verdict and judgment rendered therein."

38 **SECTION 14.2.** This part becomes effective December 1, 2004, and applies
39 to offenses committed on or after that date. Prosecutions for offenses committed before
40 the effective date of this act are not abated or affected by this act, and the statutory
41 provisions that would be applicable but for this act remain applicable to those
42 prosecutions.

43 **PART XV. SPECIFICALLY ALLOW CROSS-WARRANTS**

44 **SECTION 15.1.** G.S. 15A-304 reads as rewritten:

1 **"§ 15A-304. Warrant for arrest.**

2 (a) Definition. – A warrant for arrest consists of a statement of the crime of
3 which the person to be arrested is accused, and an order directing that the person so
4 accused be arrested and held to answer to the charges made against him. It is based
5 upon a showing of probable cause supported by oath or affirmation.

6 (b) When Issued. – A warrant for arrest may be issued, instead of or subsequent
7 to a criminal summons, when it appears to the judicial official that the person named
8 should be taken into custody. Circumstances to be considered in determining whether
9 the person should be taken into custody may include, but are not limited to, failure to
10 appear when previously summoned, facts making it apparent that a person summoned
11 will fail to appear, danger that the person accused will escape, danger that there may be
12 injury to person or property, or the seriousness of the offense.

13 (c) Statement of the Crime. – The warrant must contain a statement of the crime
14 of which the person to be arrested is accused. No warrant for arrest, nor any arrest made
15 pursuant thereto, is invalid because of any technicality of pleading if the statement is
16 sufficient to identify the crime.

17 (d) Showing of Probable Cause. – A judicial official may issue a warrant for
18 arrest only when he is supplied with sufficient information, supported by oath or
19 affirmation, to make an independent judgment that there is probable cause to believe
20 that a crime has been committed and that the person to be arrested committed it. The
21 information must be shown by one or more of the following:

- 22 (1) Affidavit;
- 23 (2) Oral testimony under oath or affirmation before the issuing official; or
- 24 (3) Oral testimony under oath or affirmation presented by a sworn law
25 enforcement officer to the issuing official by means of an audio and
26 video transmission in which both parties can see and hear each other.
27 Prior to the use of audio and video transmission pursuant to this
28 subdivision, the procedures and type of equipment for audio and video
29 transmission shall be submitted to the Administrative Office of the
30 Courts by the senior regular resident superior court judge and the chief
31 district court judge for a judicial district or set of districts and
32 approved by the Administrative Office of the Courts.

33 If the information is insufficient to show probable cause, the warrant may not be
34 issued. A judicial official shall not refuse to issue a warrant for the arrest of a person
35 solely because a prior warrant has been issued for the arrest of another person involved
36 in the same matter.

37 (e) Order for Arrest. – The order for arrest must direct that a law-enforcement
38 officer take the defendant into custody and bring him without unnecessary delay before
39 a judicial official to answer to the charges made against him.

40 (f) Who May Issue. – A warrant for arrest, valid throughout the State, may be
41 issued by:

- 42 (1) A Justice of the Supreme Court.
- 43 (2) A judge of the Court of Appeals.
- 44 (3) A judge of the superior court.

1 (4) A judge of the district court, as provided in G.S. 7A-291.

2 (5) A clerk, as provided in G.S. 7A-180 and 7A-181.

3 (6) A magistrate, as provided in G.S. 7A-273."

4 **SECTION 15.2.** This part is effective when it becomes law.

5 **PART XVI. CLARIFY NURSE'S PRIVILEGE**

6 **SECTION 16.1.** G.S. 8-53.13 reads as rewritten:

7 "**§ 8-53.13. Nurse privilege.**

8 No person licensed pursuant to Article 9A of Chapter 90 of the General Statutes
9 shall be required to disclose any information that may have been acquired in rendering
10 professional nursing services, and which information was necessary to enable that
11 person to render professional nursing services, except that the presiding judge of a
12 superior or district court may compel disclosure if, in the court's opinion, disclosure is
13 necessary to a proper administration of justice and disclosure is not prohibited by other
14 statute or rule. Nothing in this section shall preclude the admission of otherwise
15 admissible written or printed medical records in any judicial proceeding, in accordance
16 with the procedure set forth in G.S. 8-44.1, after a determination by the court that
17 disclosure should be compelled as set forth herein."

18 **SECTION 16.2.** G.S. 8-53.1 reads as rewritten:

19 "**§ 8-53.1. Physician-patient and nurse privilege waived in child abuse.**

20 Notwithstanding the provisions of G.S. 8-53, ~~8-53~~ and G.S. 8-53.13, the
21 physician-patient or nurse privilege shall not be a ground for excluding evidence
22 regarding the abuse or neglect of a child under the age of 16 years or regarding an
23 illness of or injuries to such child or the cause thereof in any judicial proceeding related
24 to a report pursuant to the North Carolina Juvenile Code, Chapter 7B of the General
25 Statutes of North Carolina."

26 **SECTION 16.3.** This part becomes effective December 1, 2004.

27 **PART XVII. TEMPORARY CHILD CUSTODY IN DOMESTIC VIOLENCE**
28 **HEARINGS**

29 **SECTION 17.1.** G.S. 50-13.2(b) reads as rewritten:

30 "(b) An order for custody of a minor child may grant joint custody to the parents,
31 exclusive custody to one person, agency, organization, or institution, or grant custody to
32 two or more persons, agencies, organizations, or institutions. Any order for custody
33 shall include such terms, including visitation, as will best promote the interest and
34 welfare of the child. If the court finds that domestic violence has occurred, the court
35 shall enter such orders that best protect the children and party who were the victims of
36 domestic ~~violence~~-violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2),
37 and (3). Such orders may include a designation of time and place for the exchange of
38 children away from the abused party, the participation of a third party, or supervised
39 visitation. If a party is absent or relocates with or without the children because of an act
40 of domestic violence, the absence or relocation shall not be a factor that weighs against
41 the party in determining custody or visitation. Absent an order of the court to the
42 contrary, each parent shall have equal access to the records of the minor child involving
43 the health, education, and welfare of the child."

44 **SECTION 17.2.** G.S. 50B-2 reads as rewritten:

1 "§ 50B-2. **Institution of civil action; motion for emergency relief; temporary**
2 **~~orders. orders; temporary custody.~~**

3 (a) Any person residing in this State may seek relief under this Chapter by filing
4 a civil action or by filing a motion in any existing action filed under Chapter 50 of the
5 General Statutes alleging acts of domestic violence against himself or herself or a minor
6 child who resides with or is in the custody of such person. Any aggrieved party entitled
7 to relief under this Chapter may file a civil action and proceed pro se, without the
8 assistance of legal counsel. The district court division of the General Court of Justice
9 shall have original jurisdiction over actions instituted under this Chapter. No court costs
10 shall be assessed for the filing, issuance, registration, or service of a protective order or
11 petition for a protective order or witness subpoena in compliance with the Violence
12 Against Women Act, 42 U.S.C. § 3796gg-5.

13 (b) Emergency Relief. – A party may move the court for emergency relief if he
14 or she believes there is a danger of serious and immediate injury to himself or herself or
15 a minor child. A hearing on a motion for emergency relief, where no ex parte order is
16 entered, shall be held after five days' notice of the hearing to the other party or after five
17 days from the date of service of process on the other party, whichever occurs first,
18 provided, however, that no hearing shall be required if the service of process is not
19 completed on the other party. If the party is proceeding pro se and does not request an
20 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing
21 within the time periods provided in this subsection, and shall effect service of the
22 summons, complaint, notice, and other papers through the appropriate law enforcement
23 agency where the defendant is to be served.

24 (c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from
25 specific facts shown, that there is a danger of acts of domestic violence against the
26 aggrieved party or a minor child, the court may enter ~~such~~ orders as it deems necessary
27 to protect the aggrieved party or minor children from ~~such~~ those acts provided,
28 however, that a temporary order for custody ex parte and prior to service of process and
29 notice shall not be entered unless the court finds that the child is exposed to a substantial
30 risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the court finds that the
31 child is exposed to a substantial risk of physical or emotional injury or sexual abuse,
32 upon request of the aggrieved party, the court shall consider and may order the other
33 party to stay away from a minor child, or to return a minor child to, or not remove a
34 minor child from, the physical care of a parent or person in loco parentis, if the court
35 finds that the order is in the best interest of the minor child and is necessary for the
36 safety of the minor child. If the court determines that it is in the best interest of the
37 minor child for the other party to have contact with the minor child or children, the
38 court shall issue an order designed to protect the safety and well-being of the minor
39 child and the aggrieved party. The order shall specify the terms of contact between the
40 other party and the minor child and may include a specific schedule of time and location
41 of exchange of the minor child, supervision by a third party or supervised visitation
42 center, and any other conditions that will ensure both the well-being of the minor child
43 and the aggrieved party. Upon the issuance of an ex parte order under this subsection, a
44 hearing shall be held within 10 days from the date of issuance of the order or within

1 seven days from the date of service of process on the other party, whichever occurs
2 later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior
3 court shall schedule an ex parte hearing with the district court division of the General
4 Court of Justice within 72 hours of the filing for said relief, or by the end of the next day
5 on which the district court is in session in the county in which the action was filed,
6 whichever shall first occur. If the district court is not in session in said county, the
7 aggrieved party may contact the clerk of superior court in any other county within the
8 same judicial district who shall schedule an ex parte hearing with the district court
9 division of the General Court of Justice by the end of the next day on which said court
10 division is in session in that county. Upon the issuance of an ex parte order under this
11 subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and
12 issue a notice of hearing within the time periods provided in this subsection, and shall
13 effect service of the summons, complaint, notice, order and other papers through the
14 appropriate law enforcement agency where the defendant is to be served.

15 (c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge
16 may authorize a magistrate or magistrates to hear any motions for emergency relief ex
17 parte. Prior to the hearing, if the magistrate determines that at the time the party is
18 seeking emergency relief ex parte the district court is not in session and a district court
19 judge is not and will not be available to hear the motion for a period of four or more
20 hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate
21 from specific facts shown that there is a danger of acts of domestic violence against the
22 aggrieved party or a minor child, the magistrate may enter ~~such~~ orders as it deems
23 necessary to protect the aggrieved party or minor children from ~~such~~ those acts, except
24 that a temporary order for custody ex parte and prior to service of process and notice
25 shall not be entered unless the magistrate finds that the child is exposed to a substantial
26 risk of ~~bodily~~ physical or emotional injury or sexual abuse. If the magistrate finds that
27 the child is exposed to a substantial risk of physical or emotional injury or sexual abuse,
28 upon request of the aggrieved party, the magistrate shall consider and may order the
29 other party to stay away from a minor child, or to return a minor child to, or not remove
30 a minor child from, the physical care of a parent or person in loco parentis, if the
31 magistrate finds that the order is in the best interest of the minor child and is necessary
32 for the safety of the minor child. If the magistrate determines that it is in the best interest
33 of the minor child for the other party to have contact with the minor child or children,
34 the magistrate shall issue an order designed to protect the safety and well-being of the
35 minor child and the aggrieved party. The order shall specify the terms of contact
36 between the other party and the minor child and may include a specific schedule of time
37 and location of exchange of the minor child, supervision by a third party or supervised
38 visitation center, and any other conditions that will ensure both the well-being of the
39 minor child and the aggrieved party. An ex parte order entered under this subsection
40 shall expire and the magistrate shall schedule an ex parte hearing before a district court
41 judge by the end of the next day on which the district court is in session in the county in
42 which the action was filed. Ex parte orders entered by the district court judge pursuant
43 to this subsection shall be entered and scheduled in accordance with subsection (c) of
44 this section.

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

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

10 **SECTION 17.3.** G.S. 50B-3(a)(4) reads as rewritten:

11 "**§ 50B-3. Relief.**

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

15 ...

16 (4) Award temporary custody of minor children and establish temporary
17 visitation ~~rights;~~ rights pursuant to G.S. 50B-2 if the order is granted ex
18 parte, and pursuant to subsection (a1) of this section if the order is
19 granted after notice or service of process;

20 ..."

21 **SECTION 17.4.** G.S. 50B-3 is amended by adding the following new
22 subsection to read:

23 "(a1) Upon the request of either party at a hearing after notice or service of process,
24 the court shall consider and may award temporary custody of minor children and
25 establish temporary visitation rights as follows:

26 (1) In awarding custody or visitation rights, the court shall base its
27 decision on the best interest of the minor child with particular
28 consideration given to the safety of the minor child.

29 (2) For purposes of determining custody and visitation issues, the court
30 shall consider:

31 a. Whether the minor child was exposed to a substantial risk of
32 physical or emotional injury or sexual abuse.

33 b. Whether the minor child was present during acts of domestic
34 violence.

35 c. Whether a weapon was used or threatened to be used during any
36 act of domestic violence.

37 d. Whether a party caused or attempted to cause serious bodily
38 injury to the aggrieved party or the minor child.

39 e. Whether a party placed the aggrieved party or the minor child in
40 reasonable fear of imminent serious bodily injury.

41 f. Whether a party caused an aggrieved party to engage
42 involuntarily in sexual relations by force, threat, or duress.

43 g. Whether there is a pattern of abuse against an aggrieved party
44 or the minor child.

- 1 h. Whether a party has abused or endangered the minor child
2 during visitation.
- 3 i. Whether a party has used visitation as an opportunity to abuse
4 or harass the aggrieved party.
- 5 j. Whether a party has improperly concealed or detained the
6 minor child.
- 7 k. Whether a party has otherwise acted in a manner that is not in
8 the best interest of the minor child.
- 9 (3) If the court awards custody, the court shall also consider whether
10 visitation is in the best interest of the minor child. If ordering
11 visitation, the court shall provide for the safety and well-being of the
12 minor child and the safety of the aggrieved party. The court may
13 consider any of the following:
- 14 a. Ordering an exchange of the minor child to occur in a protected
15 setting or in the presence of an appropriate third party.
- 16 b. Ordering visitation supervised by an appropriate third party, or
17 at a supervised visitation center or other approved agency.
- 18 c. Ordering the noncustodial parent to attend and complete, to the
19 satisfaction of the court, an abuser treatment program as a
20 condition of visitation.
- 21 d. Ordering either or both parents to abstain from possession or
22 consumption of alcohol or controlled substances during the
23 visitation or for 24 hours preceding an exchange of the minor
24 child.
- 25 e. Ordering the noncustodial parent to pay the costs of supervised
26 visitation.
- 27 f. Prohibiting overnight visitation.
- 28 g. Requiring a bond from the noncustodial parent for the return
29 and safety of the minor child.
- 30 h. Ordering an investigation or appointment of a guardian ad litem
31 or attorney for the minor child.
- 32 i. Imposing any other condition that is deemed necessary to
33 provide for the safety and well-being of the minor child and the
34 safety of the aggrieved party.
- 35 If the court grants visitation, the order shall specify dates and times for
36 the visitation to take place or other specific parameters or conditions
37 that are appropriate. A person, supervised visitation center, or other
38 agency may be approved to supervise visitation after appearing in
39 court or filing an affidavit accepting that responsibility and
40 acknowledging accountability to the court.
- 41 (4) A temporary custody order entered pursuant to this Chapter shall be
42 without prejudice and shall be for a fixed period of time not to exceed
43 one year. Nothing in this section shall be construed to affect the right
44 of the parties to a de novo hearing under Chapter 50 of the General

1 Statutes. Any subsequent custody order entered under Chapter 50 of
2 the General Statutes supersedes a temporary order issued pursuant to
3 this Chapter."

4 **SECTION 17.5.** G.S. 50B-3(b) reads as rewritten:

5 "(b) Protective orders entered pursuant to this Chapter shall be for a fixed period
6 of time not to exceed one year. The court may renew a protective order for a fixed
7 period of time not to exceed one year, including an order that previously has been
8 renewed, upon a motion by the aggrieved party filed before the expiration of the current
9 ~~order~~ order; provided, however, that a temporary award of custody entered as part of a
10 protective order may not be renewed to extend a temporary award of custody beyond
11 the maximum one-year period. The court may renew a protective order for good cause.
12 The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the
13 current order is not required for an order to be renewed. Protective orders entered,
14 including consent orders, shall not be mutual in nature except where both parties file a
15 claim and the court makes detailed findings of fact indicating that both parties acted as
16 aggressors, that neither party acted primarily in self-defense, and that the right of each
17 party to due process is preserved."

18 **SECTION 17.6.** This part becomes effective October 1, 2004, and applies to
19 actions filed on or after that date.

20 **PART XVIII. PROHIBIT EMPLOYMENT DISCRIMINATION AGAINST**
21 **DOMESTIC VIOLENCE VICTIMS**

22 **SECTION 18.1.** Chapter 50B of the General Statutes is amended by adding
23 a new section to read:

24 **"§ 50B-5.5. Employment discrimination unlawful.**

25 (a) No employer shall discharge, demote, deny a promotion, or discipline an
26 employee because the employee took reasonable time off from work to obtain or
27 attempt to obtain relief under this Chapter. An employee who is absent from the
28 workplace shall follow the employer's usual time-off policy or procedure, including
29 advance notice to the employer, when required by the employer's usual procedures,
30 unless an emergency prevents the employee from doing so. An employer may require
31 documentation of any emergency that prevented the employee from complying in
32 advance with the employer's usual time-off policy or procedure, or any other
33 information available to the employee which supports the employee's reason for being
34 absent from the workplace.

35 (b) The Commissioner of Labor shall enforce the provisions of this section
36 according to Article 21 of Chapter 95 of the General Statutes, including the rules and
37 regulations issued pursuant to the Article."

38 **SECTION 18.2.** G.S. 95-241(a) reads as rewritten:

39 "(a) No person shall discriminate or take any retaliatory action against an
40 employee because the employee in good faith does or threatens to do any of the
41 following:

- 42 (1) File a claim or complaint, initiate any inquiry, investigation,
43 inspection, proceeding or other action, or testify or provide
44 information to any person with respect to any of the following:

- a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A of the General Statutes.
 - f. G.S. 95-28.1A.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
 - (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.
 - (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.
 - (5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5."

SECTION 18.3. This part becomes effective October 1, 2004, and applies to actions filed on or after that date.

PART XIX. PRIVACY FOR 50B INTAKE

SECTION 19.1. G.S. 50B-2(d) reads as rewritten:

"(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms ~~which~~ that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The ~~Clerk~~ clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 19.2. This part is effective when it becomes law.

PART XX. TRAINING FOR JUDGES AND COURT PERSONNEL

SECTION 20.1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 20.2. The Administrative Office of the Courts shall study the issue of training for court personnel in the area of domestic violence. The study shall examine the following:

- (1) The extent to which training is currently being done.
- (2) The need for additional training.
- (3) The amount and types of training that would be most appropriate.
- (4) The potential costs and sources of funding for any additional training.

The Administrative Office of the Courts shall report its findings and recommendations to the 2005 Regular Session of the 2005 General Assembly.

SECTION 20.3. This part is effective when it becomes law.

PART XXI. EFFECTIVE DATE

SECTION 21. Except as otherwise provided in this act, this act is effective when it becomes law.