

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS35138-LU-17 (2/19)

Short Title: Amend Domestic Violence Laws/Temp. Custody. (Public)

Sponsors: Senator Hagan.

Referred to:

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first,

1 provided, however, that no hearing shall be required if the service of process is not
2 completed on the other party. If the party is proceeding pro se and does not request an
3 ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing
4 within the time periods provided in this subsection, and shall effect service of the
5 summons, complaint, notice, and other papers through the appropriate law enforcement
6 agency where the defendant is to be served.

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

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

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

1 shall expire and the magistrate shall schedule an ex parte hearing before a district court
2 judge by the end of the next day on which the district court is in session in the county in
3 which the action was filed. Ex parte orders entered by the district court judge pursuant
4 to this subsection shall be entered and scheduled in accordance with subsection (c) of
5 this section.

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

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

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

19 **SECTION 2.** G.S. 50-13.2(a) reads as rewritten:

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

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

33 **SECTION 3.** This act is effective when it becomes law.