

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 807
Committee Substitute Favorable 4/26/23

Short Title: Modify Firearms Retrieval Process in DV Cases.

(Public)

Sponsors:

Referred to:

April 19, 2023

A BILL TO BE ENTITLED

AN ACT TO MODIFY AND CLARIFY PROVISIONS RELATED TO THE RETRIEVAL OF FIREARMS, AMMUNITION, AND PERMITS SURRENDERED PURSUANT TO AN EX PARTE, EMERGENCY, OR PERMANENT DOMESTIC VIOLENCE PROTECTIVE ORDER AND TO PROTECT MINOR VICTIMS OF AND WITNESSES TO CRIME.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3.1 reads as rewritten:

"§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, ~~permits to purchase firearms~~, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

- (1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
- (2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
- (3) Threats to commit suicide by the defendant.
- (4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ~~ammunition, permits to purchase firearms~~, ammunition and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ~~ammunition, permits to purchase firearms~~, ammunition and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, ~~permits to purchase firearms~~, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within



1 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms
2 or contract with a licensed firearms dealer to provide storage.

3 (1) If the court orders the defendant to surrender firearms, ammunition, and
4 permits, the court shall inform the plaintiff and the defendant of the terms of
5 the protective order and include these terms on the face of the order, including
6 that the defendant is prohibited from possessing, purchasing, or receiving or
7 attempting to possess, purchase, or receive a firearm for so long as the
8 protective order or any successive protective order is in effect. The terms of
9 the order shall include instructions as to how the defendant may request
10 retrieval of any firearms, ammunition, and permits surrendered to the sheriff
11 when the protective order is no longer in effect. The terms shall also include
12 notice of the penalty for violation of G.S. 14-269.8.

13 (2) The sheriff may charge the defendant a reasonable fee for the storage of any
14 firearms and ammunition taken pursuant to a protective order. The fees are
15 payable to the sheriff. The sheriff shall transmit the proceeds of these fees to
16 the county finance officer. The fees shall be used by the sheriff to pay the costs
17 of administering this section and for other law enforcement purposes. The
18 county shall expend the restricted funds for these purposes only. The sheriff
19 shall not release firearms, ammunition, or permits without a court order
20 granting the release, unless release without a court order is authorized
21 pursuant to subsection (e) of this section. The defendant must remit all fees
22 owed prior to the authorized return of any firearms, ammunition, or permits.
23 The sheriff shall not incur any civil or criminal liability for alleged damage or
24 deterioration due to storage or transportation of any firearms or ammunition
25 held pursuant to this section.

26 (e) Retrieval. – ~~If the court does not enter a protective order when the ex parte or~~
27 ~~emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff~~
28 ~~unless~~ Unless the court finds that the defendant is precluded from owning or possessing a firearm
29 pursuant to State or federal law or final disposition of any pending criminal charges committed
30 against the person that is the subject of the current protective order, the defendant may
31 retrieve any weapons surrendered to the sheriff without additional order of the court upon the
32 occurrence of one of the following conditions:

33 (1) The court does not enter a protective order when the ex parte or emergency
34 order expires.

35 (2) The protective order is denied by the court following a hearing.

36 Prior to release of any firearms to the defendant pursuant to this subsection, the sheriff shall
37 verify through a criminal history check conducted through the National Instant Criminal
38 Background Check System (NICS) that the defendant is not prohibited by law from possessing
39 a firearm.

40 (f) Motion for ~~Return~~ Return by Defendant. – The defendant may request the return of
41 any firearms, ammunition, or permits surrendered by filing a motion with the court at the
42 expiration of the current order or final disposition of any pending criminal charges committed
43 against the person that is the subject of the current protective order and not later than 90 days
44 after the expiration of the current order or final disposition of any pending criminal charges
45 committed against the person that is the subject of the current protective order. Upon receipt of
46 the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall
47 have the right to appear and be heard and to the sheriff who has control of the firearms,
48 ammunition, or permits. The court shall determine whether the defendant is subject to any State
49 or federal law or court order that precludes the defendant from owning or possessing a firearm.
50 The inquiry shall include:

51 (1) Whether the protective order has been renewed.

- 1 (2) Whether the defendant is subject to any other protective orders.
- 2 (3) Whether the defendant is disqualified from owning or possessing a firearm
- 3 pursuant to 18 U.S.C. § 922 or any State law.
- 4 (4) Whether the defendant has any pending criminal charges, in either State or
- 5 federal court, committed against the person that is the subject of the current
- 6 protective order.

7 The court shall deny the return of firearms, ammunition, or permits if the court finds that the
8 defendant is precluded from owning or possessing a firearm pursuant to State or federal law or
9 if the defendant has any pending criminal charges, in either State or federal court, committed
10 against the person that is the subject of the current protective order until the final disposition of
11 those charges.

12 (g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,
13 ammunition, or permits who is otherwise eligible to possess such items may file a motion
14 requesting the return to said third party of any such items in the possession of the sheriff seized
15 as a result of the entry of a domestic violence protective order. The motion ~~must~~ may be filed ~~not~~
16 ~~later than 30 days after the~~ at any time following seizure of the items by the ~~sheriff.~~ sheriff prior
17 to their disposal pursuant to subsection (h) of this section. Upon receipt of the third party's
18 motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff.
19 The court shall order return of the items to the third party unless the court determines that the
20 third party is disqualified from owning or possessing said items pursuant to State or federal law.
21 If the court denies the return of said items to the third party, the items shall be disposed of by the
22 sheriff as provided in subsection (h) of this section.

23 (h) Disposal of Firearms. – If the defendant or third-party owner does not file a motion
24 requesting the return of any firearms, ammunition, or permits surrendered within ~~the time period~~
25 ~~prescribed by this section,~~ 90 days after the expiration of the current order or final disposition of
26 any pending criminal charges committed against the person that is the subject of the current
27 protective order, if the court determines that the defendant or third-party owner is precluded from
28 regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or
29 third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within
30 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the
31 sheriff who has control of the firearms, ammunition, or permits shall give notice to the ~~defendant,~~
32 defendant and any known third-party owner, and the sheriff ~~shall~~ may apply to the court for an
33 order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may
34 order the disposition of the firearms, ammunition, or permits in one or more of the ways
35 authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the
36 sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale,
37 and in accordance with all applicable State and federal law, shall be provided to the ~~defendant,~~
38 defendant or any known third-party owner if requested by the defendant or any known third-party
39 owner by motion made before the hearing or at the hearing and if ordered by the judge.

40 (i) It is unlawful for any person subject to a protective order prohibiting the possession
41 or purchase of firearms to:

- 42 (1) Fail to surrender all firearms, ammunition, ~~permits to purchase firearms,~~ and
- 43 permits to carry concealed firearms to the sheriff as ordered by the court;
- 44 (2) Fail to disclose all information pertaining to the possession of firearms,
- 45 ammunition, ~~and permits to purchase~~ and permits to carry concealed firearms
- 46 as requested by the court; or
- 47 (3) Provide false information to the court pertaining to any of these items.

48 (j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to
49 possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in
50 G.S. 14-409.39(2), machine gun, ammunition, or permits to ~~purchase or~~ carry concealed firearms
51 if ordered by the court for so long as that protective order or any successive protective order

1 entered against that person pursuant to this Chapter is in effect. Any defendant violating the
2 provisions of this section shall be guilty of a Class H felony.

3 (k) Official Use Exemption. – This section shall not prohibit law enforcement officers
4 and members of any branch of the Armed Forces of the United States, not otherwise prohibited
5 under federal law, from possessing or using firearms for official use only.

6 (l) Nothing in this section is intended to limit the discretion of the court in granting
7 additional relief as provided in other sections of this Chapter."

8 **SECTION 2.** G.S. 132-1.4(c) reads as rewritten:

9 "(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by
10 law, the following information shall be public records within the meaning of
11 ~~G.S. 132-1~~G.S. 132-1:

12 ...

13 (4) The contents of "911" and other emergency telephone calls received by or on
14 behalf of public law enforcement agencies, except for ~~such contents~~ any of the
15 following:

16 a. Contents of a "911" or other emergency telephone call that reveal
17 reveals the natural voice, name, address, telephone number, or other
18 information that may identify the caller, victim, or witness. In order to
19 protect the identity of the complaining witness, the contents of "911"
20 and other emergency telephone calls may be released pursuant to this
21 section in the form of a written transcript or altered voice reproduction;
22 provided that the original shall be provided under process to be used
23 as evidence in any relevant civil or criminal proceeding.

24 b. Contents of any "911" or other emergency telephone call where the
25 caller is less than 18 years of age.

26"

27 **SECTION 3.** Section 1 of this act is effective when it becomes law and applies (i)
28 to firearms, ammunition, and permits surrendered on or after that date and (ii) beginning 60 days
29 after this act becomes law, to firearms, ammunition, and permits surrendered before the date this
30 act becomes law. The remainder of this act is effective when it becomes law.