

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE DRS55558-RKz-22A* (04/23)

Short Title: DV Cases/Review Criminal Record.

(Public)

Sponsors: Senator Graham.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A COURT, WHEN CONSIDERING WHETHER TO ISSUE A DOMESTIC VIOLENCE PROTECTIVE ORDER, OR PRETRIAL RELEASE UNDER THE DOMESTIC VIOLENCE CRIMES STATUTE, CONSIDERS THE DEFENDANT'S CRIMINAL RECORD, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

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

"(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. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. Upon receipt of the complaint and summons for service, the law enforcement agency shall provide the clerk of court with a State criminal background check of the defendant named in the complaint for inclusion in the court's file. 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."

SECTION 2. G.S. 50B-3(a) reads as rewritten:

"§ 50B-3. Relief.

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. The court, when considering whether to grant relief, shall consider the defendant's criminal record as a factor in making its decision. A protective order may include any of the following types of relief:

...."

SECTION 3. G.S. 15A-534.1(a) reads as rewritten:

"§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.



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1 (a) In all cases in which the defendant is charged with assault on, stalking,
2 communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of
3 Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the
4 defendant lives or has lived as if married, with domestic criminal trespass, or with violation of
5 an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the
6 judicial official who determines the conditions of pretrial release shall be a judge, who shall
7 consider the defendant's criminal record, if any, and the following provisions shall apply in
8 addition to the provisions of G.S. 15A-534:

9"

10 **SECTION 4.** This act becomes effective October 1, 2010.