

Domestic Violence Law for Magistrates

Domestic Violence Defined

Domestic violence means

- Commission of certain acts
- Upon plaintiff or child in custody of plaintiff
- By a person with whom plaintiff has or has had personal relationship.

Domestic Violence Acts

- Causing or attempting to cause bodily injury to plaintiff or minor child in custody of plaintiff.
- Placing plaintiff or member of family or household in fear of
 - imminent serious bodily injury; or
 - continued harassment that rises to level as to inflict substantial emotional distress.
- Committing rape or sexual offense against plaintiff or child.
- DOES NOT INCLUDE acts of self-defense

Personal Relationship

- Current or former spouse
- Opposite sex live or have lived together
- Child in common
- Parent & child or grandparent & grandchild
- Current or former household members
- Opposite sex in dating relationship

Domestic Violence Law for Magistrates

Initiating Action

- Who issues orders?
 - District court judge
 - Ex parte by designated magistrate
- How is it begun?
 - Complaint filed with clerk, CV-303
- May have ex parte order.
- Always have 10-day hearing.

Magistrate Issuing Ex Parte Order

- Plaintiff fills out complaint & infor. sheet
- Plaintiff under 18 must have GAL
- No court costs
- Is block requesting ex parte checked?
- Under oath
- Ask about guns

When Issue Order

- If it clearly appears that
 - plaintiff and defendant have a personal relationship,
 - past act of domestic violence, and
 - there is danger of acts of domestic violence
- If not sufficient evidence for ex parte, deny but 10-day hearing

Ex Parte Order

- Specify relief granted
 - Must restrain from further acts of dv
 - Must order surrender of firearms if conditions met
 - Special provisions for child custody
 - Child's school
- Specify time and date when order expires; end of next day district court is in session
- Set second ex parte hearing before judge (AOC-CV-311)

Surrender Firearms if Defendant

- used or threatened to use deadly weapon against plaintiff or child
- has pattern of conduct using or threatening violence with gun against any one
- made threats to seriously injure or kill plaintiff or child
- threatened suicide
- inflicted serious injuries on plaintiff or child

Temporary Child Custody

- Award only if find that child is exposed to a substantial risk of
 - physical injury
 - emotional injury
 - sexual abuse
- Custody; stay away from child; return child to plaintiff; not remove child from plaintiff's physical care.
- Visitation?

Domestic Violence Law for Magistrates

Person Qualifies for Order But Magistrate Not Authorized To Issue

- Explain procedure for protective order.
- Send victim to local domestic violence program or give them card about program.
- If conduct constituted a crime, can issue criminal process for the crime.

Enforcing Protective Orders

- Motion To Show Cause for Contempt
- Issue Criminal Process for Crime of Violating Protective Order

Enforcement by Contempt

- Plaintiff files motion, AOC-CV-307, with clerk asking for a contempt hearing.
- Clerk issues order, AOC-CV-308, to defendant to appear at a hearing before the district court judge as to whether to hold defendant in contempt.

Crime of Violating Protective Order

- G.S. 50B-4.1
- Class A1 misdemeanor
- Defendant knowingly violated a valid protective order entered into pursuant to Ch. 50B or entered by the courts of another state or courts of an Indian tribe

Determining Probable Cause

- Defendant knowingly
 - Aware or conscious of what doing
- Violated
 - any violation is a crime
- Valid protective order
 - out-of- state order is valid if see copy of order and victim states it is still in effect
 - can use any other information that gives you probable cause there is an order outstanding

Magistrate's Duty When Defendant Arrested for 50B-4.1

- | | |
|---|---|
| ■ Without warrant | ■ With warrant |
| <input type="checkbox"/> Determine probable cause | <input type="checkbox"/> Conduct initial appearance |
| <input type="checkbox"/> Determine whether other crimes committed | <input type="checkbox"/> But don't set conditions of pretrial release |
| <input type="checkbox"/> Issue magistrate's order | |
| <input type="checkbox"/> Conduct initial appearance | |
| <input type="checkbox"/> But don't set conditions of pretrial release | |

Domestic Violence Law for Magistrates

Special Domestic Violence Pre-trial Release Provisions

- G.S. 15A-534.1
- When certain crimes are charged, only judge may set conditions of pretrial release for first 48-hours from the time of arrest.
- If judge has not acted to set conditions within that time, magistrate shall set conditions of pretrial release.

To Whom 48-hr. Rule Applies

<i>Crime</i>	<i>Relationship Between Defendant and Victim</i>
■ Assault	■ Must be current or former spouse or person (of the opposite sex) with whom lives or has lived as if married
■ Communicating threat	■ Same as above
■ Domestic criminal trespass	■ Same as above
■ Violating Domestic Violence Order (GS 50B-4.1)	■ Must be current or former spouse; person opposite sex with whom lives or has lived; parent & child or grandparent & grandchild; have child in common; current or former household members; persons of opposite sex in dating relationship

To Whom 48-hr. Rule Applies: Continued

<i>Crime</i>	<i>Relationship Between Defendant and Victim</i>
■ Felony under Art. 7A (sexual offense)	■ Must be current or former spouse or person of the opposite sex with whom lives or has lived as if married
■ Felony under Art. 8 (assaults)	■ Same as above
■ Felony under Art. 10 (kidnapping)	■ Same as above
■ Felony under Art. 15 (arson and other burnings)	■ Same as above

Domestic Violence Law for Magistrates

If 48-hour Pretrial Release Rule Applies

- At stage of arrest do everything but set conditions of pretrial release.
- Special block on release order for persons for whom special domestic violence pretrial release provisions apply.
 - Produce at first session of district or superior court etc.

Setting Conditions of Pretrial Release

- If no judge sets bond within 48 hours magistrate must set.
 - Can't wait until convenient for magistrate or jailer
- Set bond using normal procedure.
- May impose conditions that defendant
 - stay away from home, school, business or place of employment of alleged victim
 - not assault, beat, molest, or wound victim
 - not remove, damage or injure identified property.
- Immediate release pose danger—hold for reasonable period.

When Case is Domestic Misdemeanor for Purposes of Victim's Assistance

- | | |
|--|---|
| <ul style="list-style-type: none">■ Charge <ul style="list-style-type: none">Simple assaultAssault inflicting serious injuryAssault with a deadly weaponAssault on a femaleAssault by pointing a gunDomestic criminal trespassStalking (first offense or after being ordered not to) | <ul style="list-style-type: none">■ Personal Relationship <ul style="list-style-type: none">Current or former spouseOpposite sex with whom lives or has livedHave child in commonParent and childGrandparent and childCurrent or former household membersPersons of the opposite sex in dating relationship |
|--|---|
