

May 11, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. 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. Effective for offenses committed on or after Dec. 1, 2004, adds new GS 15A-1353(b)(12) to make as regular probation condition that defendant attend and complete abuser treatment program if court finds defendant is responsible for acts of domestic violence and there is program, approved by Domestic Violence Comm'n, reasonably available to defendant, unless court finds program would not be in best interests of justice. Effective for offenses committed on or after Dec. 1, 2004, amends GS 143B-262 to require Dep't of Correction, in consultation with Domestic Violence Comm'n, to establish domestic violence treatment program for offenders sentenced to term of imprisonment in custody of Dep't and whose record includes court finding that offender committed acts of domestic violence; requires offender to complete program before completing incarceration, with specified exception. Amends various provisions in GS Ch. 17C and 17E to require specified entry-level and in-service domestic violence training for law enforcement officers; amount of training hours and effective dates for training specified in bill. Requires Dep't of Public Instruction, in collaboration with State Board of Education, to study issue of anti-violence programs in schools and training for school personnel dealing with students who are victims of domestic and relationship violence; specifies reporting dates to legislative committees.

Adds new Art. 37B to GS Ch. 7B to create Domestic Violence Victim Assistance Act. Funds appropriated under art. shall be used to (1) provide legal assistance to domestic violence victims; (2) provide education to domestic violence victims concerning their legal rights and duties; and (3) involve private bar in representation of domestic violence victims. Emphasis to be placed on representing clients needing legal assistance with GS Ch. 50B proceedings. Funds to be provided to NC State Bar for provision of direct services by and support of established legal services programs as specified in bill; State Bar to report as specified in bill to General Assembly on use and disbursement of funds. Amends GS 84-4.1 (limited practice of out-of-state attorneys) to add \$100 fee with motion to practice in NC, with funds being remitted to NC State Bar for above-described act; effective for motions filed on or after July 1, 2004.

Effective for orders issued on or after July 1, 2004, amends GS 50B-3 to provide that if, on completion of 10-day hearing, court issues protective order, court must require defendant to pay \$100 fee. However, fee not to be assessed on renewal of same order. Effective July 1, 2004, appropriates \$2 million for 2004-2005 from General Fund to Dep't of Administration, to be credited to Domestic Violence Center Fund established under GS 50B-9. Amends GS 7B-1402 to add following members to Child Fatality Task Force: (1) representative from NC Domestic Violence Comm'n, appointed by House Speaker upon recommendation by Comm'n Director; and (2) representative from NC Coalition Against Domestic Violence, appointed by Senate Pres. Pro. Tem upon recommendation of coalition's Executive Director. Deletes two public members from Comm'n. Requires Dep't of Health and Human Services to study and develop plan for serving clients of domestic violence programs with mental health and substance abuse service needs; specifies reporting to legislative committee. Requires NC State Bar, in cooperation with NC Bar Ass'n, to study issue of providing CLE credit to attorneys for providing pro bono legal representation, and specifically for such representation to domestic violence victims; specifies reporting to legislative committee.

Effective for offenses committed on or after Dec. 1, 2004, (1) amends statutory aggravating factor in GS 15B-1340.16(d)(15) (taking advantage of position of trust) to specifically include domestic relationship; (2) amends GS 14-32.4 to provide that person who assaults another person and inflicts physical injury by strangulation is guilty of Class H felony; (3) amends GS 14-33.2 (habitual misdemeanor assault) to require proof of two or more prior convictions for either misdemeanor or felony assault (now, requires proof of five or more prior misdemeanor convictions, two or which were misdemeanor assaults); provides that conviction of GS 14-33.2 may not be used as prior conviction for any other habitual offense statute; and (4) amends GS 15A-1343.2(e) (delegation to probation officer in community punishment) to add within delegation probationer's submission to curfew requiring probationer to remain in specified place for specified period each day and wear electronic monitoring device.

Effective for offenses committed on or after Dec. 1, 2004, adds new GS 15A-1382.1 to provide that when defendant is convicted of offense involving assault or communicating threat and judge determines that victim had personal relationship [as defined in GS 50B-1(b)] between defendant and victim, then judge must indicate on judgment that case involved domestic violence; clerk must insure that official record of defendant's conviction includes this determination. If community punishment is imposed, court must determine whether defendant must comply with special conditions of probation under GS 15A-1343(b1); judge is also authorized to require electronic monitoring under GS 15A-1343(b1)(3c), despite the provisions of GS 15A-1340.11(6)c.

Directs Sentencing and Policy Advisory Comm'n to study classification of misdemeanor offenses, particularly classification of assault offenses in relation to property offenses, crimes against society, and felony assault offenses; comm'n to develop system for classifying misdemeanor offenses based on their severity. Specifies reporting to General Assembly.

Effective for offenses committed on or after Dec. 1, 2004, amends GS 15A-401(b)(2) to authorize law enforcement officer to make arrest without arrest warrant when defendant has violated pretrial release order entered under GS 15A-534.1(2) (apparently intends (a)(2), which concerns judge's imposition of conditions when defendant was released after being charged with domestic violence crime). Effective for offenses committed on or after Dec. 1, 2004, amends GS 14-415.1 to prohibit convicted felon from possessing any firearm (now, only handgun or firearm with barrel length less than 18 inches or overall length less than 26 inches). Deletes provision that allows convicted felon to possess firearm in own home or place of business. Amends GS 15A-304 to provide that judicial official may not refuse to issue arrest warrant solely because prior arrest warrant had been issued for another person involving same matter.

Effective for actions filed on or after Oct. 1, 2004, amends GS 50B-2(c) (ex parte order by judge) and (d) (ex parte order by authorized magistrate) to permit, if court or magistrate finds that child is exposed to substantial risk of physical or emotional injury or sexual abuse, on request of aggrieved party, court or magistrate may order other party to stay away from minor child, or return minor child to, or not remove minor child from, physical care of parent or person in loco parentis, if court or magistrate finds order is necessary for child's safety. Court or magistrate may specify terms of contact, if permitted, between minor child and other party, as set out in bill.

Effective for actions filed on or after Oct. 1, 2004, (1) adds new GS 50B-3(a1) to provide that, on request of either party at hearing after notice or service of process, court shall consider and may award temporary custody of minor children and establish temporary visitation rights as set out in bill; (2) amends GS 50B-3(b) to provide that temporary award of custody may not be renewed to extend such custody beyond maximum one-year period; (3) adds new GS 50B-5.5 and amends GS 95-241(a) to prohibit employment discrimination against domestic violence victims.

Requests NC Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases. Requires Administrative Office of Courts to study issue of training for court personnel in domestic violence issues and report findings and recommendations to 2005 legislative session.

Intro. by McLawhorn, Sherrill.

Ref. to Rules

GS 7A,7B,8,14,15A,17C,17E,50,50B,84,95,143B,
STUDY

June 16, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. House committee substitute makes the following changes to 1st edition. Amends GS 17C-6(a)(2) and -6(a)(14), 17E-4(a)(11) and -4(a)(2) to eliminate minimum hourly training requirements contained in training standards. Amends Sections 2.2, 2.4, 2.6, 2.11, and 2.13 to require that required training shall be available no later than March 1, 2005 (was, Jan. 1, 2005). Adds requirement that NC Criminal Justice Education and Training Standards Comm'n and NC Sheriffs' Education and Training Standards Comm'n report to the General Assembly by March 1, 2005, on the exact standards implemented and date on which they were implemented. Amends GS 50B-2(c) and (c1) and GS 50B-3(a1)(1) to require that courts and magistrates consider what is in the best interests of the child in addition to considering the safety of the minor child. Makes technical changes.

June 17, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. House committee substitute makes the following changes to 2nd edition. Amends GS 50B-5.5 to prohibit employer from penalizing employee from taking "reasonable" time off (was, time off) and to require that employee state the reason for taking time off in writing when request is made. Makes technical changes.

June 21, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. House amendment makes the following changes to 3rd edition. Amends section dealing with nurse's privilege to clarify that nothing in the section precludes the admission of otherwise admissible records in any judicial proceeding after a determination by the court that disclosure should be compelled pursuant to G.S. 8-44.1.

July 8, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. Senate committee substitute makes the following changes to 4th edition. Deletes appropriation of \$2 million to the Domestic Violence Center Fund. Amends GS 14-33.2 (habitual misdemeanor) to require that in order to be counted, additional convictions must have occurred within 15 years prior to the date of the current violation. Deletes amendments to GS 15A-1343.2. Amends GS 50B-5.5(a) to prohibit employers from taking 'tangible job action' (was, listed certain job actions) against employee for absences required to obtain relief under Ch. Further amends subsection to require that employee follow employer's usual time-off policy and to authorize employer to request documentation of any emergency that prevented employee from providing advance notice of absence only if such advance notice was required by employer's policy (was, required that employee request time off in writing and provide documentation of the reason for absence, regardless of employer's general absence policy). Enacts new GS 50B-5.5(b) providing that fact that tangible job action took place after employee's protected activity does not prove a violation of sec. Enacts new GS 50B-5.5(c) requiring that the Comm'r of Labor enforce provisions of GS 50B-5.5. Makes technical changes.

July 9, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. Senate committee substitute makes the following changes to 5th edition. Amends GS 84-4.1(7) to delete provision requiring that \$100 fee be used to provide services described in GS 7A-474.9. Effective Oct. 1, 2004, amends GS 7A-305(a)(2) (civil action fees) and GS 7A-304(a)(4) (criminal action fees) to require that 95 cents of each fee collected under subdivisions be remitted to the NC State Bar for the provision of GS 7A-474.9 services. Amends GS 50B-5.5(a) to delete reference to tangible job action and replace with list of specific job actions and to delete subsection (b).

July 12, 2004

H 1354. STRENGTHEN DOMESTIC VIOLENCE LAWS. Intro. 5/11/04. Senate amendment makes the following changes to 6th edition. Makes technical changes only.