

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 589  
Committee Substitute Favorable 5/4/11  
Third Edition Engrossed 5/10/11  
PROPOSED SENATE COMMITTEE SUBSTITUTE H589-PCS30623-RV-47

Short Title: Divorce/DVPO/Child Support Changes.

(Public)

Sponsors:

Referred to:

April 5, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAWS RELATING TO DOMESTIC VIOLENCE PROTECTIVE  
3 ORDERS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION;  
4 AND TO PROVIDE FOR TERMINATION OF CHILD SUPPORT WHEN A CHILD IS  
5 ENROLLED IN AN EARLY COLLEGE PROGRAM.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 50B-2(c) reads as rewritten:

8 "(c) Ex Parte Orders. –

9 (1) Prior to the hearing, if it clearly appears to the court from specific facts  
10 shown, that there is a danger of acts of domestic violence against the  
11 aggrieved party or a minor child, the court may enter orders as it deems  
12 necessary to protect the aggrieved party or minor children from those acts  
13 ~~acts. provided, however, that a~~

14 (2) A temporary order for custody ex parte and prior to service of process and  
15 notice shall not be entered unless the court finds that the child is exposed to  
16 a substantial risk of physical or emotional injury or sexual abuse.

17 (3) If the court finds that the child is exposed to a substantial risk of physical or  
18 emotional injury or sexual abuse, upon request of the aggrieved party, the  
19 court shall consider and may order the other party to (i) stay away from a  
20 minor child, or (ii) ~~to~~ return a minor child to, or not remove a minor child  
21 from, the physical care of a parent or person in loco parentis, if the court  
22 finds that the order is in the best interest of the minor child and is necessary  
23 for the safety of the minor child.

24 (4) If the court determines that it is in the best interest of the minor child for the  
25 other party to have contact with the minor child or children, the court shall  
26 issue an order designed to protect the safety and well-being of the minor  
27 child and the aggrieved party. The order shall specify the terms of contact  
28 between the other party and the minor child and may include a specific  
29 schedule of time and location of exchange of the minor child, supervision by  
30 a third party or supervised visitation center, and any other conditions that  
31 will ensure both the well-being of the minor child and the aggrieved party.



\* H 5 8 9 - P C S 3 0 6 2 3 - R V - 4 7 \*

1           (5) Upon the issuance of an ex parte order under this subsection, a hearing shall  
2 be held within 10 days from the date of issuance of the order or within seven  
3 days from the date of service of process on the other party, whichever occurs  
4 later. A continuance shall be limited to one extension of no more than 10  
5 days unless all parties consent or good cause is shown. The hearing shall  
6 have priority on the court calendar.

7           (6) If an aggrieved party acting pro se requests ex parte relief, the clerk of  
8 superior court shall schedule an ex parte hearing with the district court  
9 division of the General Court of Justice within 72 hours of the filing for said  
10 relief, or by the end of the next day on which the district court is in session  
11 in the county in which the action was filed, whichever shall first occur. If the  
12 district court is not in session in said county, the aggrieved party may contact  
13 the clerk of superior court in any other county within the same judicial  
14 district who shall schedule an ex parte hearing with the district court division  
15 of the General Court of Justice by the end of the next day on which said  
16 court division is in session in that county.

17           (7) Upon the issuance of an ex parte order under this subsection, if the party is  
18 proceeding pro se, the Clerk shall set a date for hearing and issue a notice of  
19 hearing within the time periods provided in this subsection, and shall effect  
20 service of the summons, complaint, notice, order and other papers through  
21 the appropriate law enforcement agency where the defendant is to be  
22 served."

23           **SECTION 2.** G.S. 50-13.4(c) reads as rewritten:

24           "(c) Payments ordered for the support of a minor child shall be in such amount as to  
25 meet the reasonable needs of the child for health, education, and maintenance, having due  
26 regard to the estates, earnings, conditions, accustomed standard of living of the child and the  
27 parties, the child care and homemaker contributions of each party, and other facts of the  
28 particular case. Payments ordered for the support of a minor child shall be on a monthly basis,  
29 due and payable on the first day of each month. The requirement that orders be established on a  
30 monthly basis does not affect the availability of garnishment of disposable earnings based on an  
31 obligor's pay period.

32           The court shall determine the amount of child support payments by applying the  
33 presumptive guidelines established pursuant to subsection (c1) of this section. However, upon  
34 request of any party, the Court shall hear evidence, and from the evidence, find the facts  
35 relating to the reasonable needs of the child for support and the relative ability of each parent to  
36 provide support. If, after considering the evidence, the Court finds by the greater weight of the  
37 evidence that the application of the guidelines would not meet or would exceed the reasonable  
38 needs of the child considering the relative ability of each parent to provide support or would be  
39 otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an  
40 amount other than the amount determined by application of the presumptive guidelines, the  
41 court shall make findings of fact as to the criteria that justify varying from the guidelines and  
42 the basis for the amount ordered.

43           Payments ordered for the support of a child shall terminate when the child reaches the age  
44 of 18 except:

- 45           (1) If the child is otherwise emancipated, payments shall terminate at that time;  
46           (2) If the child is still in primary or secondary school when the child reaches age  
47 18, support payments shall continue until the child graduates, otherwise  
48 ceases to attend school on a regular basis, fails to make satisfactory  
49 academic progress towards graduation, or reaches age 20, whichever comes  
50 first, unless the court in its discretion orders that payments cease at age 18 or  
51 prior to high school graduation.

1           (3)   If the child is enrolled in a cooperative innovative high school program  
2                   authorized under Part 9 of Article 16 of Chapter 115C of the General  
3                   Statutes, then payments shall terminate when the child completes his or her  
4                   fourth year of enrollment or when the child reaches the age of 18, whichever  
5                   occurs later.

6           In the case of graduation, or attaining age 20, payments shall terminate without order by the  
7           court, subject to the right of the party receiving support to show, upon motion and with notice  
8           to the opposing party, that the child has not graduated or attained the age of 20.

9           If an arrearage for child support or fees due exists at the time that a child support obligation  
10          terminates, payments shall continue in the same total amount that was due under the terms of  
11          the previous court order or income withholding in effect at the time of the support obligation.  
12          The total amount of these payments is to be applied to the arrearage until all arrearages and fees  
13          are satisfied or until further order of the court."

14          **SECTION 3.** This act becomes effective October 1, 2012, and applies to actions or  
15          motions filed on or after that date.