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SENATE BILL DRS45248-MV-19

Short Title: Expand Victim Services.

(Public)

Sponsors: Senators Britt, Galey, and Batch (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS MODIFICATIONS TO THE GENERAL STATUTES TO
3 EXPAND PROTECTIONS FOR VICTIMS OF CERTAIN CRIMES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.(a) G.S. 7B-1111 reads as rewritten:

6 "§ 7B-1111. Grounds for terminating parental rights.

7 (a) The court may terminate the parental rights upon a finding of one or more of the
8 following:

9 ...

10 (11) The parent has been ~~convicted of~~ found, by clear and convincing evidence, to
11 have committed a sexually related offense under Chapter 14 of the General
12 Statutes that resulted in the conception of the juvenile.

13 (b) The burden in these proceedings is on the petitioner or movant to prove the facts
14 justifying the termination by clear and convincing evidence."

15 SECTION 1.(b) G.S. 7B-1112 reads as rewritten:

16 "§ 7B-1112. Effects of termination order.

17 (a) An order terminating the parental rights completely and permanently terminates all
18 rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from
19 the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent
20 shall not terminate until a final order of adoption is issued. The parent is not ~~thereafter~~ entitled
21 to notice of proceedings to adopt the juvenile and may not object ~~thereto to~~ or otherwise
22 participate ~~therein in the proceedings.~~

23 ~~(1)(b)~~ If the juvenile had been placed in the custody of or released for adoption by one parent
24 to a county department of social services or licensed child-placing agency and is in the custody
25 of the agency at the time of the filing of the petition or motion, including a petition or motion
26 filed pursuant to G.S. 7B-1103(a)(6), that agency shall, upon entry of the order terminating
27 parental rights, acquire all of the rights for placement of the juvenile, except as otherwise
28 provided in G.S. 7B-908(d), as the agency would have acquired had the parent whose rights are
29 terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3
30 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the
31 juvenile.

32 ~~(2)(c)~~ Except as provided in ~~subdivision (1) above,~~ subsection (b) of this section, upon
33 entering an order terminating the parental rights of one or both parents, the court may place the
34 juvenile in the custody of the petitioner or movant, or some other suitable person, or in the
35 custody of the department of social services or licensed child-placing agency, as may appear to
36 be in the best interests of the juvenile.



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1 (d) A parent whose parental rights are terminated pursuant to G.S. 7B-1111(a)(11) has
2 no rights to custody of or rights of inheritance from any child born as a result of the commission
3 of the sexually related offense, nor does the person have any rights related to the child under
4 Chapter 48 of the General Statutes or Subchapter I of Chapter 7B of the General Statutes."

5 **SECTION 1.(c)** This section is effective when it becomes law and applies to
6 proceedings commenced on or after that date.

7 **SECTION 2.(a)** Article 7 of Chapter 8 of the General Statutes is amended by adding
8 a new section to read:

9 **"§ 8-53.12A. Communications with homicide victim advocates privileged.**

10 (a) Definitions. – The following definitions apply in this section:

11 (1) Agent. – An employee of a victim assistance center who has completed a
12 minimum of 30 hours of training as required by the center or a volunteer under
13 the direct supervision of the center who has completed a minimum of 30 hours
14 of training as required by the center.

15 (2) Victim assistance center. – A nonprofit organization registered in this State
16 whose primary purpose is to provide support and services to surviving loved
17 ones of homicide victims and others harmed by violent crime in the State.

18 (3) Services. – The term includes, but is not limited to, assessment and intake,
19 individual counseling, court accompaniment, homicide support groups,
20 outreach, and family support services.

21 (4) Victim. – A person who does the following:

22 a. Alleges a homicide has been attempted against them or committed
23 against a loved one or someone with whom they have a significant
24 relationship. A homicide includes a violation of any of the following:
25 G.S. 14-17, 14-18, 14-18.4, 14-23.2, 14-23.3, and 14-23.4.

26 b. Consults an agent of a victim assistance center for the purpose of
27 obtaining for themselves services concerning mental, physical, or
28 emotional injuries suffered as a result of the homicide.

29 (b) Privileged Communications. – No agent of a victim assistance center shall be required
30 to disclose any information that the agent acquired during the provision of services to a victim
31 and that was necessary to enable the agent to render the services, unless the victim waives the
32 privilege conferred. The privilege afforded under this subsection terminates upon the death of
33 the victim.

34 (c) Required Disclosure. – The court shall compel disclosure, either at the trial or prior
35 to the trial, if the court finds, by a preponderance of the evidence, a good-faith, specific, and
36 reasonable basis for all of the following:

37 (1) The records or testimony sought contain information that is relevant and
38 material to factual issues to be determined in a civil proceeding or that is
39 relevant, material, and exculpatory upon the issue of guilt, degree of guilt, or
40 sentencing in a criminal proceeding for the offense charged or any lesser
41 included offense.

42 (2) The evidence is not sought merely for character impeachment purposes.

43 (3) The evidence sought is not merely cumulative of other evidence or
44 information available or already obtained by the party seeking the disclosure.

45 (d) Duties of the Court Regarding Disclosure. – Before requiring production of records,
46 the court shall find that the party seeking disclosure has made a sufficient showing that the
47 records are likely to contain information subject to disclosure under this subsection. If the court
48 finds a sufficient showing has been made, the court shall (i) order that the records be produced
49 for the court under seal and (ii) examine the records in camera. The court shall allow disclosure
50 only of those portions of the records that the court finds contain information subject to disclosure
51 under this subsection. After all appeals in the action have been exhausted, any records received

1 by the court under seal shall be returned to the victim assistance center, unless otherwise ordered
 2 by the court.

3 (e) Duty in Case of Abuse or Neglect. – Nothing in this section shall be construed to
 4 relieve any person of any duty pertaining to abuse or neglect of a child or disabled adult as
 5 required by law."

6 **SECTION 2.(b)** G.S. 42-40 reads as rewritten:

7 **"§ 42-40. Definitions.**

8 For the purpose of this Article, the following definitions shall apply:

- 9 (1) ~~"Action"~~ Action. – The term includes recoupment, counterclaim, defense,
 10 setoff, and any other proceeding including an action for possession.
- 11 (2) ~~"Premises" means a~~ Premises. – A dwelling unit, including mobile homes or
 12 mobile home spaces, and the structure of which it is a part and facilities and
 13 appurtenances therein and grounds, areas, and facilities normally held out for
 14 the use of residential tenants.
- 15 (3) ~~"Landlord" means any~~ Landlord. – Any owner and any rental management
 16 company, rental agency, or any other person having the actual or apparent
 17 authority of an agent to perform the duties imposed by this Article.
- 18 (4) ~~"Protected tenant" means a~~ Protected tenant. – A tenant or household member
 19 who is a ~~any of the following:~~
 20 a. A victim of domestic violence under Chapter 50B of the General
 21 Statutes or sexual assault or stalking under Chapter 14 of the General
 22 Statutes.
 23 b. A victim of attempted homicide or household member of a victim of
 24 homicide under G.S. 14-17, 14-18, 14-18.4, 14-23.2, 14-23.3, or
 25 14-23.4, where the premises was the location of the crime."

26 **SECTION 2.(c)** G.S. 42-45.1 reads as rewritten:

27 **"§ 42-45.1. Early termination of rental agreement by ~~victims of domestic violence, sexual~~**
 28 **~~assault, or stalking~~ protected tenants.**

29 (a) Any protected tenant may terminate his or her rental agreement for a dwelling unit by
 30 providing the landlord with a written notice of termination to be effective on a date stated in the
 31 notice that is at least 30 days after the landlord's receipt of the notice. The notice to the landlord
 32 shall be accompanied by ~~either~~ any of the following: (i) a copy of a valid order of protection
 33 issued by a court pursuant to Chapter 50B or 50C of the General Statutes, other than an ex parte
 34 order, (ii) a criminal order that restrains a person from contact with a protected tenant, ~~or~~ (iii) a
 35 valid Address Confidentiality Program card issued pursuant to G.S. 15C-4 to the victim or a
 36 minor member of the tenant's ~~household~~ household, or (iv) if the protected tenant is a victim of
 37 attempted homicide or household member of a victim of homicide, law enforcement, court, or
 38 federal agency records or files. A victim of domestic violence or sexual assault must submit a
 39 copy of a safety plan with the notice to terminate. The safety plan, dated during the term of the
 40 tenancy to be terminated, must be provided by a domestic violence or sexual assault program
 41 which substantially complies with the requirements set forth in G.S. 50B-9 and must recommend
 42 relocation of the protected tenant.

43"

44 **SECTION 2.(d)** G.S. 42-42.2 reads as rewritten:

45 **"§ 42-42.2. Victim protection – nondiscrimination.**

46 (a) A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into
 47 a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially ~~on~~ on any
 48 of the following:

- 49 (1) ~~(i) the~~ The tenant, applicant, or a household member's status as ~~a~~ any of the
 50 following:
 51 a. A victim of domestic violence, sexual assault, or ~~stalking~~ stalking.

- 1 b. A victim of attempted homicide when the premises was the location
 2 of the crime.
 3 c. A household member of a victim of homicide when the premises was
 4 the location of the crime.

5 (2) ~~or (ii) the~~ The tenant or applicant having terminated a rental agreement under
 6 G.S. 42-45.1.

7 (b) Evidence provided to the landlord of domestic violence, sexual assault, ~~or stalking~~
 8 stalking, attempted homicide, or homicide may include any of the following:

- 9 (1) Law enforcement, court, or federal agency records or files.
 10 (2) Documentation from a domestic violence or sexual assault program.
 11 (3) Documentation from a religious, medical, or other professional."

12 **SECTION 2.(e)** Subsection (a) of this section is effective when it becomes law and
 13 applies to proceedings commenced on or after that date. Subsections (b) through (d) of this
 14 section are effective when they become law and apply to rental agreements entered into,
 15 amended, or renewed on or after that date.

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

17 **"§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders;**
 18 **temporary custody.**

19 (a) Action or Motion for Relief. – Any person residing in this State may seek relief under
 20 this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter
 21 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor
 22 child who resides with or is in the custody of such person. Any aggrieved party entitled to relief
 23 under this Chapter may file a civil action and proceed pro se, without the assistance of legal
 24 counsel. The district court division of the General Court of Justice shall have original jurisdiction
 25 over actions instituted under this Chapter. Any action for a domestic violence protective order
 26 requires that a summons be issued and served. The summons issued pursuant to this Chapter shall
 27 require the defendant to answer within 10 days of the date of service. Attachments to the
 28 summons shall include the complaint, notice of hearing, any temporary or ex parte order that has
 29 been issued, and other papers through the appropriate law enforcement agency where the
 30 defendant is to be served. In compliance with the federal Violence Against Women Act, no court
 31 costs or attorneys' fees shall be assessed for the filing, issuance, registration, or service of a
 32 protective order or petition for a protective order or witness subpoena, except as provided in
 33 G.S. 1A-1, Rule 11.

34 (b) Emergency Relief. – A party may move the court for emergency relief if he or she
 35 believes there is a danger of serious and immediate injury to himself or herself or a minor child.
 36 A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held
 37 after five days' notice of the hearing to the other party or after five days from the date of service
 38 of process on the other party, whichever occurs first, provided, however, that no hearing shall be
 39 required if the service of process is not completed on the other party. If the party is proceeding
 40 pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a
 41 notice of hearing within the time periods provided in this subsection, and shall effect service of
 42 the summons, complaint, notice, and other papers through the appropriate law enforcement
 43 agency where the defendant is to be served.

44 (c) Ex Parte Orders. – The following apply to ex parte orders:

45 ...

46 ~~(c1) Ex Parte Orders by Authorized Magistrate. — The chief district court judge may~~
 47 ~~authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to~~
 48 ~~the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex~~
 49 ~~parte the district court is not in session and a district court judge is not and will not be available~~
 50 ~~to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.~~
 51 ~~If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of~~

1 domestic violence against the aggrieved party or a minor child, the magistrate may enter orders
2 as it deems necessary to protect the aggrieved party or minor children from those acts, except
3 that a temporary order for custody ex parte and prior to service of process and notice shall not be
4 entered unless the magistrate finds that the child is exposed to a substantial risk of physical or
5 emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial
6 risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the
7 magistrate shall consider and may order the other party to stay away from a minor child, or to
8 return a minor child to, or not remove a minor child from, the physical care of a parent or person
9 in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and
10 is necessary for the safety of the minor child. If the magistrate determines that it is in the best
11 interest of the minor child for the other party to have contact with the minor child or children, the
12 magistrate shall issue an order designed to protect the safety and well-being of the minor child
13 and the aggrieved party. The order shall specify the terms of contact between the other party and
14 the minor child and may include a specific schedule of time and location of exchange of the
15 minor child, supervision by a third party or supervised visitation center, and any other conditions
16 that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order
17 entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing
18 before a district court judge by the end of the next day on which the district court is in session in
19 the county in which the action was filed. Ex parte orders entered by the district court judge
20 pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of
21 this section.

22 (e2) The authority granted to authorized magistrates to award temporary child custody
23 pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to
24 custody rules to be established by the supervising chief district judge of each judicial district.

25 ...

26 (e) Electronic Documents; Video Conference Hearings. – All documents filed, issued,
27 registered, or served in an action under this Chapter relating to an ex parte, emergency, or
28 permanent domestic violence protective order may be filed electronically. Hearings held to
29 consider ex parte relief pursuant to subsection (e) of this section may be held via video
30 conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a)
31 or (b) of this section shall not be held via video conference."

32 **SECTION 3.(b)** This section becomes effective October 1, 2021, and applies to
33 hearings held on or after that date.

34 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
35 law.