

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 308  
Judiciary Committee Substitute Adopted 4/4/23  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S308-PCS35299-TG-35

Short Title: Guardianship Rights/Modify Firearms Retrieval.

(Public)

Sponsors:

Referred to:

March 15, 2023

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE GUARDIANSHIP ACCOUNTING STATUTE TO ALLOW FOR CERTAIN TIMING ELECTIONS AND EXTENSIONS, TO AMEND THE GENERAL STATUTES TO PREVENT THE ABUSE OR MISUSE OF AUTHORITY GRANTED TO AN AGENT IN A POWER OF ATTORNEY, AND TO PROMOTE THE RIGHTS AND INDEPENDENCE OF PERSONS SUBJECT TO THE GUARDIANSHIP PROCESS AND TO IMPROVE JUDICIAL OVERSIGHT AND ACCOUNTABILITY FOR GUARDIANS OF THE PERSON, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, TO MODIFY AND CLARIFY PROVISIONS RELATED TO THE RETRIEVAL OF FIREARMS, AMMUNITION, AND PERMITS SURRENDERED PURSUANT TO AN EX PARTE, EMERGENCY, OR PERMANENT DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO PROTECT MINOR VICTIMS OF AND WITNESSES TO CRIME.

The General Assembly of North Carolina enacts:

**PART I. GUARDIANSHIP ANNUAL ACCOUNTING CHANGES**

**SECTION 1.1.** G.S. 35A-1264 reads as rewritten:

"§ 35A-1264. Annual accounts.

~~Every~~ Unless the time for filing the annual account has been extended by the clerk, every guardian shall, ~~within 30 days after the expiration of one year from the date of his qualification or appointment, and annually, for~~ so long as any of the estate remains in ~~his~~ the guardian's control, file annually in the office of the clerk an inventory and account, under oath, of the amount of property ~~the guardian~~ received by ~~him, or invested by him, and invested,~~ including the manner and nature of such investment, and ~~his all~~ receipts and disbursements for the past year in the form of debit and credit. All accounts shall be due within 30 days after the close of the fiscal year selected by the guardian, and annually thereafter. The election of a fiscal year shall be made by the guardian upon filing of the first annual account; or, if made in a subsequent year, with the permission of the clerk. In no event may a guardian select a fiscal year-end that is fewer than 11 months nor more than 12 months from the date of the guardian's qualification or appointment. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath ~~such the~~ accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the ~~estate; and having~~ estate. The clerk shall carefully review and audit the account, and, if he approve the same, he approved, must endorse his the approval thereon, on the account and cause the account to be recorded, which shall be deemed prima facie evidence of correctness."



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1           **SECTION 1.2.** This Part is effective January 1, 2024, and applies to annual account  
2 filings made on or after that date.

3  
4 **PART II. PREVENT ABUSE OF AUTHORITY IN POWERS OF ATTORNEY**

5           **SECTION 2.1.** G.S. 32C-1-116 reads as rewritten:

6 **"§ 32C-1-116. Judicial relief.**

7           (a) The clerks of superior court of this State shall have original jurisdiction of  
8 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk  
9 of superior court's jurisdiction is exclusive. The following proceedings are included:

- 10           (1) To compel an accounting by the agent, including the power to compel the  
11 production of evidence substantiating any expenditure made by the agent from  
12 the principal's assets.
- 13           (2) To terminate a power of attorney or to suspend or terminate the authority of  
14 an agent where a guardian of the estate or a general guardian has been  
15 appointed.
- 16           (3) To determine compensation and expenses for an agent under  
17 G.S. 32C-1-112(b) and G.S. 32C-1-112(c).
- 18           (4) To determine an agent's authority and powers, to construe the terms of a power  
19 of attorney created or governed by this Chapter, and to determine any question  
20 arising in the performance by an agent of the agent's powers and authority  
21 under a power of attorney governed by this Chapter, including, but not limited  
22 to, the following proceedings:
- 23           a. To determine whether and to what extent an agent holds a specific  
24 grant of authority under G.S. 32C-2-201.
- 25           b. To approve an agent's ability to make a gift on behalf of the principal  
26 where the gift is governed by G.S. 32C-2-217 because the power of  
27 attorney grants the agent only general authority with respect to gifts.
- 28           c. To authorize the agent to make a gift of the principal's property under  
29 G.S. 32C-2-218.
- 30           d. To authorize the agent to do an act described in G.S. 32C-2-201(a),  
31 other than the act to make a gift, under G.S. 32C-2-219.
- 32           e. To determine whether and to what extent acceptance of a power of  
33 attorney shall be mandated under G.S. 32C-1-120(f).

34           Any party may file a notice of transfer of a proceeding pursuant to this  
35 subdivision to the superior court division of the General Court of Justice as  
36 provided in G.S. 28A-2-6(h). In the absence of a removal to superior court,  
37 Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding  
38 commenced under this Chapter to the extent consistent with this subsection.

39 ...

40           (f) Upon motion by the ~~principal~~, principal individually and not through an agent, the  
41 clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless  
42 the clerk of superior court determines the principal is incapacitated within the meaning of  
43 G.S. 32C-1-102(6).

44           (g) Any party adversely affected by an order of the clerk of superior court in a proceeding  
45 commenced under subsection (a) of this section may appeal the clerk's order as provided in  
46 G.S. 1-301.3."

47           **SECTION 2.2.** This Part is effective when it becomes law and applies to proceedings  
48 filed on or after that date.

49  
50 **PART III. CHANGES TO GUARDIANSHIP STATUTES**

51           **SECTION 3.1.** G.S. 35A-1101 reads as rewritten:

1 **"§ 35A-1101. Definitions.**

2 The following definitions apply in this Subchapter:

3 ...

4 (7) Incompetent adult. – An adult or emancipated minor who lacks sufficient  
5 capacity to manage the adult's own affairs or to make or communicate  
6 important decisions concerning the adult's person, family, or property whether  
7 the lack of capacity is due to mental illness, intellectual disability, epilepsy,  
8 cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or  
9 condition. An adult or emancipated minor does not lack capacity if, by means  
10 of a less restrictive alternative, he or she is able to sufficiently (i) manage his  
11 or her affairs and (ii) communicate important decisions concerning his or her  
12 person, family, and property.

13 (8) Incompetent child. – A minor who is at least 17 1/2 years of age and who,  
14 other than by reason of minority, lacks sufficient capacity to make or  
15 communicate important decisions concerning the child's person, family, or  
16 property whether the lack of capacity is due to mental illness, intellectual  
17 disability, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or  
18 similar cause or condition. An incompetent child does not lack capacity if, by  
19 means of a less restrictive alternative, he or she is able to sufficiently (i)  
20 manage his or her affairs and (ii) communicate important decisions  
21 concerning his or her person, family, and property.

22 (9) Indigent. – Unable to pay for legal representation and other necessary  
23 expenses of a proceeding brought under this Subchapter.

24 (10) Inebriety. – The habitual use of alcohol or drugs rendering a person  
25 incompetent to transact ordinary business concerning the person's estate,  
26 dangerous to person or property, cruel and intolerable to family, or unable to  
27 provide for family.

28 (10a) Intellectual disability. – Significantly subaverage general intellectual  
29 functioning existing concurrently with deficits in adaptive behavior and  
30 manifested before age 22.

31 (11) Interim guardian. – A guardian, appointed prior to adjudication of  
32 incompetence and for a temporary period, for a person who requires  
33 immediate intervention to address conditions that constitute imminent or  
34 foreseeable risk of harm to the person's physical well-being or to the person's  
35 estate.

36 (11a) Less restrictive alternative. – An arrangement enabling a respondent to  
37 manage his or her affairs or to make or communicate important decisions  
38 concerning his or her person, property, and family that restricts fewer rights  
39 of the respondent than would the adjudication of incompetency and  
40 appointment of a guardian. The term includes supported decision making,  
41 appropriate and available technological assistance, appointment of a  
42 representative payee, and appointment of an agent by the respondent,  
43 including appointment under a power of attorney for health care or power of  
44 attorney for finances.

45 ...."

46 **SECTION 3.2.** G.S. 35A-1106 reads as rewritten:

47 **"§ 35A-1106. Contents of petition.**

48 The petition shall set forth, to the extent ~~known~~:known, all of the following:

- 49 (1) The name, age, address, and county of residence of the ~~respondent~~:respondent.  
50 (2) The name, address, and county of residence of the petitioner, and ~~his~~-the  
51 petitioner's interest in the ~~proceeding~~:proceeding.

- 1 (3) A general statement of the respondent's assets and liabilities with an estimate  
2 of the value of any property, including any compensation, insurance, pension,  
3 or allowance to which ~~he the respondent is entitled;~~entitled.  
4 (4) A statement of the facts tending to show that the respondent is incompetent  
5 and the reason or reasons why the adjudication of incompetence is  
6 ~~sought;~~sought.  
7 (4a) A statement identifying what less restrictive alternatives have been considered  
8 prior to seeking adjudication and why those less restrictive alternatives are  
9 insufficient to meet the needs of the respondent.  
10 (5) The name, address, and county of residence of the respondent's next of kin  
11 and other persons known to have an interest in the ~~proceeding;~~proceeding.  
12 (6) Facts regarding the adjudication of respondent's incompetence by a court of  
13 another state, if an adjudication is sought on that basis pursuant to  
14 G.S. 35A-1113(1)."

15 **SECTION 3.3.** G.S. 35A-1107 reads as rewritten:

16 **"§ 35A-1107. Right to counsel or guardian ad litem.**

17 (a) The respondent is entitled to be represented by counsel of the respondent's own choice  
18 or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be appointed  
19 as guardian ad litem to represent the respondent unless the respondent retains counsel, in which  
20 event the guardian ad litem may be discharged. Appointment and discharge of an appointed  
21 guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense  
22 Services.

23 (b) An attorney appointed as a guardian ad litem under this section shall represent the  
24 respondent until any of the following occurs:

- 25 (1) The petition is dismissed.  
26 (2) A guardian is appointed under Subchapter II of this Chapter.  
27 (3) Other relief is granted under Article 2 of this Subchapter.

28 (c) After being appointed, the guardian ad litem shall personally visit the respondent as  
29 soon as possible and shall make every reasonable effort to determine the respondent's wishes  
30 regarding the incompetency proceeding and any proposed guardianship. During the personal  
31 visit, and at any time upon request by the respondent, the guardian ad litem shall explain the  
32 notice of rights required under G.S. 35A-1117 to the respondent. The guardian ad litem shall  
33 present to the clerk the respondent's express wishes at all relevant stages of the proceedings. The  
34 guardian ad litem also may make recommendations to the clerk concerning the respondent's best  
35 interests if those interests differ from the respondent's express wishes. In appropriate cases, the  
36 guardian ad litem shall consider the possibility of a limited guardianship and shall make  
37 recommendations to the clerk concerning the rights, powers, and privileges that the respondent  
38 should retain under a limited guardianship."

39 **SECTION 3.4.** G.S. 35A-1108 reads as rewritten:

40 **"§ 35A-1108. Issuance of notice.**

41 (a) Within five days after filing of the petition, the clerk shall issue a written notice of the  
42 date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor  
43 more than 30 days after service of the notice of rights required under G.S. 35A-1117 and the  
44 petition and initial notice of hearing on the respondent, unless the clerk extends the time for good  
45 cause, for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111, or for the  
46 completion of a mediation.

47 (b) If a multidisciplinary evaluation or mediation is ordered after a notice of hearing has  
48 been issued, the clerk may extend the time for hearing and issue a notice to the parties that the  
49 hearing has been continued, the reason therefor, and the date, time, and place of the new hearing,  
50 which shall not be less than 10 days nor more than 30 days after service of such notice on the  
51 respondent.

1 (c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5,  
2 Rules of Civil Procedure, unless the clerk orders otherwise."

3 **SECTION 3.5.** G.S. 35A-1109 reads as rewritten:

4 "**§ 35A-1109. Service of notice and petition.**

5 (a) Copies of the notice of rights required under G.S. 35A-1117 and the petition and  
6 initial notice of hearing shall be personally served on the respondent. Respondent's counsel or  
7 guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A  
8 sheriff who serves the notice and petition shall do so without demanding his fees in advance. The  
9 petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class  
10 mail, copies of the notice of rights and the petition and initial notice of hearing to the respondent's  
11 next of kin alleged in the petition and any other persons the clerk may designate, unless such  
12 person has accepted notice. Proof of such mailing or acceptance shall be by affidavit or certificate  
13 of acceptance of notice filed with the clerk. The clerk shall mail, by first-class mail, copies of  
14 subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk  
15 deems appropriate.

16 (b) Expired August 1, 2020, pursuant to Session Laws 2020-3, s. 4.11(b)."

17 **SECTION 3.6.** G.S. 35A-1116 reads as rewritten:

18 "**§ 35A-1116. Costs and fees.**

19 (a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special  
20 proceedings. Costs, including any reasonable fees and expenses of ~~counsel for the petitioner~~  
21 ~~which the clerk, in his discretion, may allow, may be taxed against either party counsel, shall be~~  
22 ~~taxed against any party or apportioned among the parties, in the discretion of the court~~  
23 ~~unless court. In exercising such discretion, the court shall tax costs incurred by any party against~~  
24 ~~the respondent if the court finds that such costs were incurred for the benefit of the respondent,~~  
25 ~~unless doing so would be inequitable. If the clerk finds that the petitioner did not have reasonable~~  
26 ~~grounds to bring the proceeding, costs shall be taxed to the petitioner. In the event that~~

27 ~~(1) The clerk finds that the petitioner did not have reasonable grounds to bring the~~  
28 ~~proceeding, in which case costs shall be taxed to the petitioner; or~~

29 ~~(2) The respondent is indigent, in which case the costs shall be waived by the~~  
30 ~~clerk if not taxed against the petitioner a party other than the respondent as~~  
31 ~~provided above in this subsection or otherwise paid as provided in subsection~~  
32 ~~(b) or (e)-(c) of this section.~~

33 (b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order  
34 pursuant to G.S. 35A-1111 shall be assessed as follows:

35 (1) If the respondent is adjudicated incompetent and is not indigent, the cost shall  
36 be assessed against the respondent;

37 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be  
38 borne by the Department of Health and Human Services;

39 (3) If the respondent is not adjudicated incompetent, the cost may be taxed against  
40 either party, apportioned among the parties, or borne by the Department of  
41 Health and Human Services, in the discretion of the court.

42 (c) Witness. – Witness fees shall be paid by:

43 (1) The respondent, if the respondent is adjudicated incompetent and is not  
44 indigent;

45 (2) The petitioner, if the respondent is not adjudicated incompetent and the clerk  
46 finds that there were not reasonable grounds to bring the proceeding;

47 (2a) The petitioner for any of the petitioner's witnesses, and the respondent for any  
48 of the respondent's witnesses, when the clerk finds all of the following:

49 a. There were reasonable grounds to bring the proceeding.

50 b. The respondent was not adjudicated incompetent.

51 c. The respondent is not indigent.

- 1 (3) The Administrative Office of the Courts for witness fees for the respondent,  
2 if the respondent is indigent.
- 3 (c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed  
4 in accordance with G.S. 7A-38.3B.
- 5 (c2) Guardian Ad Litem. – The fees of an appointed guardian ad litem shall be paid by:  
6 (1) The respondent, if:  
7 a. The respondent is adjudicated incompetent; and  
8 b. The respondent is not indigent.
- 9 (2) The respondent, if:  
10 a. The respondent is not adjudicated incompetent;  
11 b. The clerk finds that there were reasonable grounds to bring the  
12 proceeding; and  
13 c. The respondent is not indigent.
- 14 (3) The petitioner, if:  
15 a. The respondent is not adjudicated incompetent; and  
16 b. The clerk finds that there were not reasonable grounds to bring the  
17 proceedings.
- 18 (4) The Office of Indigent Defense Services in all other cases.
- 19 (d) The provisions of this section shall also apply to all parties to any proceedings under  
20 this Chapter, including a guardian who has been removed from office and the sureties on the  
21 guardian's bond."

22 **SECTION 3.7.** Article 1 of Subchapter 1 of Chapter 35A of the General Statutes is  
23 amended by adding a new section to read:

24 **"§ 35A-1117. Notice of rights of respondent.**

25 (a) Notice of Rights. – Every respondent in a proceeding under this Chapter shall be given  
26 a notice of his or her rights which shall be set forth in a conspicuous manner and substantially  
27 similar to the following language:

28  
29 **"THE LAWS GOVERNING INCOMPETENCY AND GUARDIANSHIP ARE**  
30 **COMPLEX. THIS IS A SUMMARY OF RIGHTS FOR INFORMATIONAL PURPOSES**  
31 **ONLY. IT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OF ALL RIGHTS.**  
32 **THE RIGHTS LISTED MAY NOT APPLY IN ALL CASES AND SHOULD NOT BE**  
33 **CITED AS LAW IN A COURT PROCEEDING. YOU SHOULD CONSULT WITH AN**  
34 **ATTORNEY OF YOUR CHOOSING IF YOU HAVE ANY QUESTIONS ABOUT YOUR**  
35 **RIGHTS.**

36  
37 a. Rights of Respondents Before Adjudication of Incompetence:

38  
39 1. **Right to Notice** – You have a right to receive a copy of the petition, the initial notice  
40 of hearing, and this notice of rights before the hearing. You also have the right at any time to  
41 request a copy of this notice of rights from your court-appointed guardian ad litem or the court.

42 2. **Right to an Attorney** – You have the right to hire an attorney of your choice to  
43 represent you in the proceeding. If you do not hire your own attorney, you will be represented by  
44 an attorney called a guardian ad litem. If you do hire an attorney, the court may require the  
45 guardian ad litem to continue to be involved in your case. The guardian ad litem will present your  
46 express wishes to the court and consider the possibility of a limited guardianship, making  
47 recommendations to the court regarding the rights that you should keep if the guardianship is  
48 limited. The guardian ad litem may also make recommendations to the court that the guardian ad  
49 litem feels are in your best interest, even if those recommendations differ from your express  
50 wishes.

1        3.        **Right to Gather Evidence** – You have a right to require witnesses to appear and to  
2 gather documents concerning your ability to make decisions. You have a right to request an  
3 evaluation (called a multidisciplinary evaluation) to assist the court in determining the extent of  
4 your ability to make decisions and to assist in making an appropriate guardianship plan. You or  
5 your attorney must request a multidisciplinary evaluation in writing no later than 10 days after  
6 you are served with the petition.

7        4.        **Right to a Hearing** – A hearing must be held before you can be adjudicated to be  
8 incompetent. The hearing will be held between 10 and 30 days after you receive a copy of the  
9 petition, notice of hearing, and this notice of rights unless the court delays the hearing for a good  
10 reason. You have the right to ask the court to change the date of the hearing for a good reason,  
11 and the court will decide whether or not to change the hearing date. You have a right to attend  
12 the hearing if you choose to do so. You can give up your right to attend the hearing. You have a  
13 right to have your express wishes communicated to the court by the court-appointed guardian ad  
14 litam at all relevant stages of the proceedings.

15        5.        **Right to a Jury** – You have the right to request that a jury hear your case. You lose  
16 that right to a jury if you wait too long to ask.

17        6.        **Right to a Closed Hearing** – The hearing is open to the public unless you or your  
18 attorney ask for it to be private. You or your attorney have the right to ask the court to close the  
19 hearing and exclude anyone who is not directly involved or testifying at the hearing.

20        7.        **Right to Present Evidence and Testimony** – You have a right to present evidence  
21 at the hearing. You have a right to testify at the hearing.

22        8.        **Right to Call Witnesses and Right to Question Witnesses** – You have the right to  
23 call and question witnesses at the hearing, including family members and medical providers. You  
24 have the right to question witnesses anyone else calls at the hearing.

25        9.        **Right to Express Wishes Regarding Your Rights** – If you are adjudicated to be  
26 incompetent, you will lose the right to direct your healthcare, employment, interpersonal  
27 relationships, and religious, social, and community activities unless the court specifically agrees  
28 to allow you to keep those rights. You have the right to tell the court what rights you would like  
29 to keep. The court will consider your wishes, but the court is not required to follow your wishes.

30        10.       **Right to Express Wishes as to Who Serves as Your Guardian** – If the court decides  
31 that you need a guardian, you have the right to tell the court who you want to be your guardian.  
32 The court will consider your wishes, but the court is not required to follow your wishes.

33        11.       **Right to Appeal** – If you have a good reason to believe that your case was wrongly  
34 decided, (i) you have the right to appeal the decision adjudicating you to be incompetent by filing  
35 a written notice of appeal with the clerk within 10 days of the clerk entering the order and (ii)  
36 you have the right to appeal the clerk's decision about who is appointed as your guardian by filing  
37 a written notice of appeal with the clerk within 10 days of the order being served on you. You  
38 lose your rights to appeal any decision made by the clerk if you do not file a written notice of  
39 appeal in time.

40  
41        b.        **Rights of Wards After Adjudication of Incompetence:**

42  
43        1.        **Right to a Qualified, Responsible Guardian** – You have the right to a qualified,  
44 responsible guardian.

45        2.        **Right to Request Transfer to Another County** – If you have a good reason to  
46 believe that your guardianship should be administered in a different county, you have the right  
47 to request that your guardianship be transferred to another county.

48        3.        **Right to Request Restoration of Competency** – If there has been a change in your  
49 circumstances and you believe that you can show to the court that you have regained your  
50 competency, you have the right to request that the court restore your competency and end your  
51 guardianship.

1       4.     **Right to Request a Review or Modification of Your Guardianship** – If there has  
2 been a change in your circumstances and you believe that your guardianship should be modified  
3 or reviewed, you have the right to file a motion to request that the court review or modify your  
4 guardianship.

5       5.     **Right to Vote** – You have a right to register to vote and vote in elections if you are  
6 otherwise qualified.

7       6.     **Right to Request a Hearing in a Petition for Procedure to Permit Sterilization** –  
8 If your guardian asks the court for an order to sterilize you, you have the right to know about it,  
9 to participate in the hearing, to have an attorney at the hearing, and to appeal the court's decision  
10 by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order.

11       7.     **Ability to Drive** – You may lose your ability to drive a car or other vehicle. The clerk  
12 must notify the Department of Motor Vehicles (DMV) that you have been adjudicated  
13 incompetent, and the clerk will make a recommendation on whether you should keep your  
14 driver's license. The DMV will contact you and you may get a letter from the DMV revoking  
15 your license. You have the right to make a written request to the DMV to review a decision to  
16 revoke your license.

17       8.     **Additional Rights** – *Some rights depend on whether you have the capacity to*  
18 *exercise the right. Different rights have different tests for capacity. Examples of rights where*  
19 *you need to demonstrate you have the required capacity are the right to marry, make a last will*  
20 *and testament, and testify as a witness. You should consult with an attorney of your choosing*  
21 *to discuss whether you have the capacity to exercise these rights."*

22  
23       (b)    The Administrative Office of the Courts shall develop a form notice as set forth in  
24 subsection (a) of this section and shall make a Spanish translation of the form available."

25       **SECTION 3.8.** G.S. 35A-1201 reads as rewritten:

26       "**§ 35A-1201. Purpose.**

27       (a)    The General Assembly of North Carolina recognizes that:

- 28       (1)    Some minors and incompetent persons, regardless of where they are living,  
29            require the assistance of a guardian in order to help them exercise their rights,  
30            including the management of their property and personal affairs.
- 31       (2)    Incompetent persons who are not able to act effectively on their own behalf  
32            have a right to a qualified, responsible guardian.
- 33       (3)    The essential purpose of guardianship for an incompetent person is to replace  
34            the individual's authority to make decisions with the authority of a guardian  
35            when the individual does not have adequate capacity to make such decisions.
- 36       (4)    Limiting the rights of an incompetent person by appointing a guardian for him  
37            should not be undertaken unless it is clear that a guardian will give the  
38            individual a fuller capacity for exercising his rights.
- 39       (5)    Guardianship should seek to preserve for the incompetent person the  
40            opportunity to exercise those rights that are within his comprehension and  
41            judgment, allowing for the possibility of error to the same degree as is allowed  
42            to persons who are not incompetent. To the maximum extent of his  
43            capabilities, an incompetent person should be permitted to participate as fully  
44            as possible in all decisions that will affect him.
- 45       (6)    Minors, because they are legally incompetent to transact business or give  
46            consent for most purposes, need responsible, accountable adults to handle  
47            property or benefits to which they are entitled. Parents are the natural  
48            guardians of the person of their minor children, but unemancipated minors,  
49            when they do not have natural guardians, need some other responsible,  
50            accountable adult to be responsible for their personal welfare and for personal  
51            decision-making on their behalf.



1           (7)    For adults, guardianship should always be a last resort and should only be  
2           imposed after less restrictive alternatives have been considered and found to  
3           be insufficient to meet the adult's needs.

4           (8)    The filing of regular status reports by the guardian of the person or general  
5           guardian concerning the conditions and welfare of an incompetent person is  
6           encouraged and should be required whenever appropriate.

7           ...."

8           **SECTION 3.9.** G.S. 35A-1207 reads as rewritten:

9           "**§ 35A-1207. Motions in the cause.**

10          (a)    Any interested person or the clerk, on the clerk's own motion, may file a motion in  
11          the cause with the clerk in the county where a guardianship is docketed to request modification  
12          of the order appointing a guardian or guardians or consideration of any matter pertaining to the  
13          guardianship.

14          (b)    The clerk shall treat all such requests, however labeled, as motions in the cause.

15          (c)    A movant under this section shall obtain from the clerk a time, date, and place for a  
16          hearing on the motion, and shall serve the motion and notice of hearing on all other parties and  
17          such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil  
18          Procedure, unless the clerk orders otherwise.

19          (d)    If the clerk finds reasonable cause to believe that an emergency exists that threatens  
20          the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate,  
21          the clerk may enter an appropriate ex parte order to address the emergency pending disposition  
22          of the matter at the hearing."

23          **SECTION 3.10.** G.S. 35A-1214 reads as rewritten:

24          "**§ 35A-1214. Priorities for appointment.**

25          The clerk shall consider appointing a guardian according to the following order of priority:  
26          (i) an individual or entity nominated under G.S. 32C-1-108(a) or G.S. 32A-22(b), as applicable;  
27          (ii) an individual recommended under G.S. 35A-1212.1; (iii) an individual; (iv) a corporation; or  
28          (v) a disinterested public agent. No public agent shall be appointed guardian until diligent efforts  
29          have been made to find an appropriate individual or corporation to serve as guardian, but in every  
30          instance the clerk shall base the appointment of a guardian or guardians on the best interest of  
31          the ward."

32          **SECTION 3.11.** G.S. 35A-1217 reads as rewritten:

33          "**§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

34          The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this  
35          Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk  
36          determines that the ward's interests are not adequately represented. Appointment and discharge  
37          of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent  
38          Defense Services. The guardian ad litem shall explain the notice of rights under G.S. 35A-1117  
39          as part of the guardian ad litem's representation of the ward in connection with all proceedings  
40          under this Subchapter. Nothing herein shall affect the ward's right to retain counsel of his or her  
41          own choice."

42          **SECTION 3.12.** G.S. 35A-1242 reads as rewritten:

43          "**§ 35A-1242. Status reports for incompetent wards.**

44          (a)    Any corporation or disinterested public agent that is guardian of the person for an  
45          incompetent person, within six months after being appointed, shall file an initial status report  
46          with the clerk and submit a copy of the initial status report to the designated agency, if there is  
47          one. Such guardian shall file a second status report with the clerk one year after being appointed,  
48          and subsequent reports annually thereafter. The clerk may order any other guardian of the person  
49          to file status reports. If a guardian required by this section to file a status report is employed by  
50          the designated agency, the guardian shall file any required status report with the clerk and submit  
51          a copy of the status report to the designated agency.

1 ...  
2 (e) Every guardian of the person, upon knowledge of a ward's change of residence, shall  
3 file a notice of change of ward's address with the court within 30 days. The notice shall include  
4 the ward's previous address, the ward's new address, and the date the ward moved to the new  
5 address."

6 **SECTION 3.13.** This Part is effective January 1, 2024, and applies to petitions filed  
7 on or after that date.

8  
9 **PART IV. RETRIEVAL OF FIREARMS, AMMUNITION, AND PERMITS**  
10 **SURRENDERED PURSUANT TO AN EX PARTE, EMERGENCY, OR PERMANENT**  
11 **DOMESTIC VIOLENCE PROTECTIVE ORDER**

12 **SECTION 4.1.** G.S. 50B-3.1 reads as rewritten:

13 **"§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

14 (a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order  
15 pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms,  
16 machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms  
17 that are in the care, custody, possession, ownership, or control of the defendant if the court finds  
18 any of the following factors:

- 19 (1) The use or threatened use of a deadly weapon by the defendant or a pattern of  
20 prior conduct involving the use or threatened use of violence with a firearm  
21 against persons.
- 22 (2) Threats to seriously injure or kill the aggrieved party or minor child by the  
23 defendant.
- 24 (3) Threats to commit suicide by the defendant.
- 25 (4) Serious injuries inflicted upon the aggrieved party or minor child by the  
26 defendant.

27 (b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex  
28 parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the  
29 defendant, as well as ~~ammunition~~, permits to purchase firearms, ammunition and permits to carry  
30 concealed firearms, and include, whenever possible, identifying information regarding the  
31 description, number, and location of firearms, ammunition, and permits in the order.

32 (c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant  
33 the presence of, ownership of, or otherwise access to firearms by the defendant, as well as  
34 ~~ammunition, permits to purchase firearms,~~ ammunition and permits to carry concealed firearms,  
35 and include, whenever possible, identifying information regarding the description, number, and  
36 location of firearms, ammunition, and permits in the order.

37 (d) Surrender. – Upon service of the order, the defendant shall immediately surrender to  
38 the sheriff possession of all firearms, machine guns, ammunition, ~~permits to purchase firearms,~~  
39 and permits to carry concealed firearms that are in the care, custody, possession, ownership, or  
40 control of the defendant. In the event that weapons cannot be surrendered at the time the order is  
41 served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within  
42 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms  
43 or contract with a licensed firearms dealer to provide storage.

- 44 (1) If the court orders the defendant to surrender firearms, ammunition, and  
45 permits, the court shall inform the plaintiff and the defendant of the terms of  
46 the protective order and include these terms on the face of the order, including  
47 that the defendant is prohibited from possessing, purchasing, or receiving or  
48 attempting to possess, purchase, or receive a firearm for so long as the  
49 protective order or any successive protective order is in effect. The terms of  
50 the order shall include instructions as to how the defendant may request  
51 retrieval of any firearms, ammunition, and permits surrendered to the sheriff

1 when the protective order is no longer in effect. The terms shall also include  
2 notice of the penalty for violation of G.S. 14-269.8.

- 3 (2) The sheriff may charge the defendant a reasonable fee for the storage of any  
4 firearms and ammunition taken pursuant to a protective order. The fees are  
5 payable to the sheriff. The sheriff shall transmit the proceeds of these fees to  
6 the county finance officer. The fees shall be used by the sheriff to pay the costs  
7 of administering this section and for other law enforcement purposes. The  
8 county shall expend the restricted funds for these purposes only. The sheriff  
9 shall not release firearms, ammunition, or permits without a court order  
10 granting the release, unless release without a court order is authorized  
11 pursuant to subsection (e) of this section. The defendant must remit all fees  
12 owed prior to the authorized return of any firearms, ammunition, or permits.  
13 The sheriff shall not incur any civil or criminal liability for alleged damage or  
14 deterioration due to storage or transportation of any firearms or ammunition  
15 held pursuant to this section.

16 (e) Retrieval. – ~~If the court does not enter a protective order when the ex parte or~~  
17 ~~emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff~~  
18 ~~unless~~ Unless the court finds that the defendant is precluded from owning or possessing a firearm  
19 pursuant to State or federal law or final disposition of any pending criminal charges committed  
20 against the person that is the subject of the current protective order, the defendant may  
21 retrieve any weapons surrendered to the sheriff without additional order of the court upon the  
22 occurrence of one of the following conditions:

23 (1) The court does not enter a protective order when the ex parte or emergency  
24 order expires.

25 (2) The protective order is denied by the court following a hearing.

26 Prior to release of any firearms to the defendant pursuant to this subsection, the sheriff shall  
27 verify through a criminal history check conducted through the National Instant Criminal  
28 Background Check System (NICS) that the defendant is not prohibited by law from possessing  
29 a firearm.

30 (f) Motion for ~~Return.~~ Return by Defendant. – The defendant may request the return of  
31 any firearms, ammunition, or permits surrendered by filing a motion with the court at the  
32 expiration of the current order or final disposition of any pending criminal charges committed  
33 against the person that is the subject of the current protective order and not later than 90 days  
34 after the expiration of the current order or final disposition of any pending criminal charges  
35 committed against the person that is the subject of the current protective order. Upon receipt of  
36 the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall  
37 have the right to appear and be heard and to the sheriff who has control of the firearms,  
38 ammunition, or permits. The court shall determine whether the defendant is subject to any State  
39 or federal law or court order that precludes the defendant from owning or possessing a firearm.  
40 The inquiry shall include:

41 (1) Whether the protective order has been renewed.

42 (2) Whether the defendant is subject to any other protective orders.

43 (3) Whether the defendant is disqualified from owning or possessing a firearm  
44 pursuant to 18 U.S.C. § 922 or any State law.

45 (4) Whether the defendant has any pending criminal charges, in either State or  
46 federal court, committed against the person that is the subject of the current  
47 protective order.

48 The court shall deny the return of firearms, ammunition, or permits if the court finds that the  
49 defendant is precluded from owning or possessing a firearm pursuant to State or federal law or  
50 if the defendant has any pending criminal charges, in either State or federal court, committed

1 against the person that is the subject of the current protective order until the final disposition of  
2 those charges.

3 (g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,  
4 ammunition, or permits who is otherwise eligible to possess such items may file a motion  
5 requesting the return to said third party of any such items in the possession of the sheriff seized  
6 as a result of the entry of a domestic violence protective order. The motion ~~must~~ may be filed ~~not~~  
7 ~~later than 30 days after the~~ at any time following seizure of the items by the ~~sheriff.~~ sheriff prior  
8 to their disposal pursuant to subsection (h) of this section. Upon receipt of the third party's  
9 motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff.  
10 The court shall order return of the items to the third party unless the court determines that the  
11 third party is disqualified from owning or possessing said items pursuant to State or federal law.  
12 If the court denies the return of said items to the third party, the items shall be disposed of by the  
13 sheriff as provided in subsection (h) of this section.

14 (h) Disposal of Firearms. – If the defendant or third-party owner does not file a motion  
15 requesting the return of any firearms, ammunition, or permits surrendered within ~~the time period~~  
16 ~~prescribed by this section,~~ 90 days after the expiration of the current order or final disposition of  
17 any pending criminal charges committed against the person that is the subject of the current  
18 protective order, if the court determines that the defendant or third-party owner is precluded from  
19 regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or  
20 third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within  
21 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the  
22 sheriff who has control of the firearms, ammunition, or permits shall give notice to the ~~defendant,~~  
23 defendant and any known third-party owner, and the sheriff ~~shall~~ may apply to the court for an  
24 order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may  
25 order the disposition of the firearms, ammunition, or permits in one or more of the ways  
26 authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the  
27 sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale,  
28 and in accordance with all applicable State and federal law, shall be provided to the ~~defendant,~~  
29 defendant or any known third-party owner if requested by the defendant or any known third-party  
30 owner by motion made before the hearing or at the hearing and if ordered by the judge.

31 (i) It is unlawful for any person subject to a protective order prohibiting the possession  
32 or purchase of firearms to:

- 33 (1) Fail to surrender all firearms, ammunition, ~~permits to purchase firearms,~~ and  
34 permits to carry concealed firearms to the sheriff as ordered by the court;
- 35 (2) Fail to disclose all information pertaining to the possession of firearms,  
36 ammunition, ~~and permits to purchase~~ and permits to carry concealed firearms  
37 as requested by the court; or
- 38 (3) Provide false information to the court pertaining to any of these items.

39 (j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to  
40 possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in  
41 G.S. 14-409.39(2), machine gun, ammunition, or permits to ~~purchase or~~ carry concealed firearms  
42 if ordered by the court for so long as that protective order or any successive protective order  
43 entered against that person pursuant to this Chapter is in effect. Any defendant violating the  
44 provisions of this section shall be guilty of a Class H felony.

45 (k) Official Use Exemption. – This section shall not prohibit law enforcement officers  
46 and members of any branch of the Armed Forces of the United States, not otherwise prohibited  
47 under federal law, from possessing or using firearms for official use only.

48 (l) Nothing in this section is intended to limit the discretion of the court in granting  
49 additional relief as provided in other sections of this Chapter."

50 **SECTION 4.2.** This Part is effective when it becomes law and applies (i) to firearms,  
51 ammunition, and permits surrendered on or after that date and (ii) beginning 60 days after this

1 act becomes law, to firearms, ammunition, and permits surrendered before the date this act  
2 becomes law.

3  
4 **PART V. PROTECT MINOR VICTIMS OF AND WITNESSES TO CRIME**

5 **SECTION 5.1.** G.S. 132-1.4(c) reads as rewritten:

6 "(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by  
7 law, the following information shall be public records within the meaning of  
8 ~~G.S. 132-1~~G.S. 132-1:

9 ...  
10 (4) The contents of "911" and other emergency telephone calls received by or on  
11 behalf of public law enforcement agencies, except for ~~such contents~~any of the  
12 following:

13 a. Contents of a "911" or other emergency telephone call that reveal  
14 reveals the natural voice, name, address, telephone number, or other  
15 information that may identify the caller, victim, or witness. In order to  
16 protect the identity of the complaining witness, the contents of "911"  
17 and other emergency telephone calls may be released pursuant to this  
18 section in the form of a written transcript or altered voice reproduction;  
19 provided that the original shall be provided under process to be used  
20 as evidence in any relevant civil or criminal proceeding.

21 b. Contents of any "911" or other emergency telephone call where the  
22 caller is less than 18 years of age.

23 ...."

24  
25 **PART VI. EFFECTIVE DATE**

26 **SECTION 6.1.** Except as otherwise provided, this act is effective when it becomes  
27 law.