

HOUSE SELECT COMMITTEE ON DOMESTIC VIOLENCE

Recommendations April 20, 2004

Prepared by the North Carolina Coalition Against Domestic Violence

Criminal Law Issues Sub-Committee

1. Revision of Assault Offenses

(NCCADV recommendation to review and revise classifications and sentencing of assault crimes)

Status: Full committee has approved.

- directive to the NC Sentencing and Policy Advisory Commission to study misdemeanor assault offenses and make recommendations for reclassifications
- new crime of non-fatal strangulation classified as class H felony
(NCCADV recommendation to create felony crime of strangulation)
- felony crime of "habitual misdemeanor assault" changed to only require 2 or more prior convictions for either misdemeanor or felony assault (rather than requiring 5 prior convictions, 2 of which have to be assaults)
- require the court to determine if the parties have a personal relationship for all assault crimes and indicate that the case is domestic violence on the judgment
- provide for an aggravating factor for felony sentencing if the defendant took advantage of a position of trust, including a domestic relationship

2. Federal Firearms Conformity

(NCCADV recommendation to repeal exceptions for felons to possess firearms)

Status: Full committee has approved.

- remove exception that allows felons to possess firearms within their own homes or places of business
- conform firearms definition to the federal definition

3. Violation of Pretrial Release Order

(NCCADV recommendation to provide for warrantless arrest for violation of pretrial release conditions)

Status: Full committee has approved.

- violation of a pretrial release order entered under GS 15A-534.1 (domestic violence bond law) added to the list of offenses that allow for arrest without a warrant when the offense occurs out of the presence of the officer

4. Clarify Arrest Policy

Status: Full committee has approved.

- judicial official may not refuse to issue a warrant *solely* because a prior warrant was already issued against a person involved in the same incident
- purpose is to prevent policies that prohibit the issuance of a cross warrant in cases where the perpetrator gets to the magistrate's office first and obtains a warrant against the victim

5. Clarify Nurse's Privilege

Status: Full committee has approved.

- written or printed medical records that would otherwise be admissible in court are still admissible

Civil Law and Judicial Administration Sub-Committee

1. Temporary Custody

(NCCADV recommendation to create a rebuttable presumption against awarding custody to a perpetrator of domestic violence)

Status: Full committee has approved.

- standard at ex parte stage of DVPO changed from "child exposed to a substantial risk of bodily injury or sexual abuse" to "child exposed to a substantial risk of physical or emotional injury or sexual abuse"
- court required to consider custody at ten-day hearing and must consider factors listed
- if court grants visitation, court must provide for the safety of the child and the aggrieved party and specify dates and times in the order

- custody order entered under 50B may not last for more than one year even if order is renewed
- court must follow provisions in 50B when determining general custody cases if the court finds that domestic violence has occurred

2. Employment Discrimination

(NCCADV recommendation to protect victims from losing their jobs when having to appear in court to address domestic violence)

Status: Full committee has approved.

- employer may not discharge, demote, or deny a promotion or other benefit of employment to any employee for taking time off from work to obtain relief provided in Chapter 50B

3. Training for Court Personnel

Status: Full committee has approved.

- request to the 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
- AOC to study the issue of training for court personnel in the area of domestic violence

4. Privacy for 50B Intake

Status: Full committee has approved.

- clerk required to provide a private area for plaintiffs to fill out forms and make inquiries, whenever feasible

Treatment, Prevention, Education, & Juvenile Issues Sub-Committee

1. Anti-Violence Education Program in Schools (study bill)

Status: Full committee has approved.

- NC Department of Public Instruction in collaboration with the State Board of Education to study the issue of anti-violence programs in schools, including looking at curriculums that address physical violence and mental or verbal abuse, and domestic and relationship violence
- Agencies also to study training for school personnel, including who should be trained and what type of training they should receive

2. Mandatory Training for Law Enforcement Officers

Status: Full committee has approved.

- increases BLET training on domestic violence from 12 to 16 hours and mandates by statute
- mandates in-service training on domestic violence for 2 hours every other year
- provides that instructors must be certified to teach domestic violence
- training must include investigation for evidence based prosecutions

3. Offender Treatment

Status: Full committee has approved.

- moves offender treatment as a condition of probation from the permissive section of the statute to the mandatory section
- all defendants convicted of domestic violence and placed on probation must attend and complete an abuser treatment program approved by the Domestic Violence Commission

Victim Services Sub-Committee

1. Funding for Domestic Violence Programs

(NCCADV recommendation to increase funding for domestic violence programs)

Status: Full committee has approved.

- defendant to pay a \$100 fee upon the issuance of a domestic violence protective order
- \$2 million appropriated from the General Fund to the Department of Administration to be credited to the Domestic Violence Center Fund established under GS 50B-9

2. Funding for Legal Services to Domestic Violence Victims

Status: Full committee has approved.

- funding to be provided to established legal services programs to provide legal representation for victims of domestic violence in protective order proceedings, as well as custody proceedings and services which ensure the safety of the client and the client's children

- fee of \$100 will be collected from out-of-state attorneys who appear in NC on a particular case and shall be remitted to the NC State Bar to fund this proposal

3. CLE Credit for Pro Bono Work (study bill)

Status: Full committee has approved.

- NC State Bar in cooperation with NC Bar Association to study the issue of providing CLE credit to active attorneys for providing pro bono legal representation

4. Child Fatality Task Force

Status: Full committee has approved.

- add 2 positions to the Child Fatality Task Force, including a representative from NCCADV and a representative from the Council for Women/DV Commission

5. Mental Health and Substance Abuse (study bill)

Status: Full committee has approved.

- DHHS to study and develop a plan for serving clients of domestic violence programs with mental health and substance abuse service needs, including service delivery to children

This is a summary of the final recommendations of the House Select Committee on Domestic Violence. The recommendations are expected to be rolled into one bill that will be eligible in the short session which begins May 10th.

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