

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 145

Short Title: Property Protection Act/DVPO. (Public)

Sponsors: Representatives Adams, Kidwell, McNeill, and Turner (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

February 25, 2021

A BILL TO BE ENTITLED

AN ACT TO PROTECT THE PROPERTY RIGHTS OF PERSONS SUBJECT TO A
DOMESTIC VIOLENCE PROTECTIVE ORDER BY ALLOWING THEM TO STORE
THEIR FIREARMS WITH OR SELL THEIR FIREARMS TO OR THROUGH A
FEDERALLY LICENSED FIREARMS DEALER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3.1 reads as rewritten:

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

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

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

...

(c1) Notice on Order. – If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from possessing, purchasing, or receiving or attempting to possess, purchase, or receive a firearm for the duration of the protective order or any successive protective order in effect. The terms of the order shall include instructions on how the defendant may request retrieval of any firearms, ammunition, and permits surrendered when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(d) Surrender. – ~~Upon~~ Except as otherwise authorized in subsection (d1) of this section, upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the



1 defendant shall surrender the firearms, ammunitions, and permits to the sheriff within ~~24 hours~~
2 two business days of service at a time and place specified by the sheriff. The sheriff shall store
3 the firearms or contract with a licensed firearms dealer to provide storage.

4 (1) ~~If the court orders the defendant to surrender firearms, ammunition, and~~
5 ~~permits, the court shall inform the plaintiff and the defendant of the terms of~~
6 ~~the protective order and include these terms on the face of the order, including~~
7 ~~that the defendant is prohibited from possessing, purchasing, or receiving or~~
8 ~~attempting to possess, purchase, or receive a firearm for so long as the~~
9 ~~protective order or any successive protective order is in effect. The terms of~~
10 ~~the order shall include instructions as to how the defendant may request~~
11 ~~retrieval of any firearms, ammunition, and permits surrendered to the sheriff~~
12 ~~when the protective order is no longer in effect. The terms shall also include~~
13 ~~notice of the penalty for violation of G.S. 14-269.8.~~

14 (2) The sheriff may charge the defendant a reasonable fee for the storage of any
15 firearms and ammunition taken pursuant to a protective ~~order.~~ order, not to
16 exceed the sum of ten dollars (\$10.00) per month. The fees are payable to the
17 ~~sheriff.~~ sheriff, and the sheriff shall provide the defendant with a receipt that
18 details the cost incurred by the sheriff for storing the firearms and ammunition.
19 The sheriff shall transmit the proceeds of these fees to the county finance
20 officer. The fees shall be used by the sheriff to pay the costs of administering
21 this section and for other law enforcement purposes. The county shall expend
22 the restricted funds for these purposes only. The sheriff shall not release
23 firearms, ammunition, or permits without a court order granting the release.
24 The defendant must remit all fees owed prior to the authorized return of any
25 firearms, ammunition, or permits. The sheriff shall not incur any civil or
26 criminal liability for alleged damage or deterioration due to storage or
27 transportation of any firearms or ammunition held pursuant to this
28 ~~section.~~ section, but the sheriff shall store the firearms or ammunition in a
29 manner designed to reasonably ensure against any deterioration or damage to
30 the firearms or ammunition.

31 (d1) Surrender or Sale to Dealer. – Upon service of the order, the defendant may choose
32 to (i) enter into an agreement with a licensed firearms dealer to surrender possession of all
33 firearms, machine guns, and ammunition that are in the care, custody, possession, ownership, or
34 control of the defendant directly to the dealer or (ii) sell the firearms, machine guns, and
35 ammunition to or through a licensed firearms dealer if the defendant is the owner of the firearms,
36 machine guns, and ammunition. If the defendant intends to surrender or sell the firearms, machine
37 guns, and ammunition pursuant to this subsection, at the time of service of the order, the
38 defendant shall notify the sheriff of that intent, and the firearms, machine guns, and ammunition
39 must be surrendered to or sold to or through a licensed firearms dealer within two business days
40 of service of the order. Any funds received from the sale of a firearm, machine gun, or
41 ammunition by a defendant pursuant to this subsection are the property of the defendant. A
42 defendant surrendering or selling firearms, machine guns, and ammunition pursuant to this
43 subsection shall surrender all permits to purchase firearms and permits to carry concealed
44 firearms to the sheriff as provided in subsection (d) of this section.

45 A licensed firearms dealer receiving possession of firearms, machine guns, and ammunition
46 pursuant to this subsection must, within 24 hours of receipt of the firearms, machine guns, and
47 ammunition, submit to the sheriff a copy of the record required to be maintained under federal
48 law upon the receipt or disposition of the firearm, machine gun, or ammunition.

49 A dealer who accepts firearms, machine guns, and ammunition pursuant to this subsection
50 shall (i) not release the firearms, machine guns, or ammunition to the defendant without a court
51 order granting the release or (ii) not transfer possession of the firearms, machine guns, or

1 ammunition to any person the dealer knows or reasonably should know will allow the defendant
2 to exercise care, custody, possession, ownership, or control of the firearms, machine guns, or
3 ammunition.

4 (e) Retrieval. – If the court does not enter a protective order when the ex parte or
5 emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff or a
6 licensed firearms dealer unless the court finds that the defendant is precluded from owning or
7 possessing a firearm pursuant to State or federal law or final disposition of any pending criminal
8 charges committed against the person that is the subject of the current protective order.

9 (f) Motion for Return. – The defendant may request the return of any firearms,
10 ammunition, or permits surrendered by filing a motion with the court at the expiration of the
11 current order or final disposition of any pending criminal charges committed against the person
12 that is the subject of the current protective order and not later than 90 days after the expiration of
13 the current order or final disposition of any pending criminal charges committed against the
14 person that is the subject of the current protective order. Upon receipt of the motion, the court
15 shall schedule a hearing and provide written notice to the plaintiff who shall have the right to
16 appear and be heard and to the sheriff or licensed firearms dealer who has control of the firearms,
17 ammunition, or permits. The court shall determine whether the defendant is subject to any State
18 or federal law or court order that precludes the defendant from owning or possessing a firearm.
19 The inquiry shall include:

- 20 (1) Whether the protective order has been renewed.
- 21 (2) Whether the defendant is subject to any other protective orders.
- 22 (3) Whether the defendant is disqualified from owning or possessing a firearm
23 pursuant to 18 U.S.C. § 922 or any State law.
- 24 (4) Whether the defendant has any pending criminal charges, in either State or
25 federal court, committed against the person that is the subject of the current
26 protective order.

27 The court shall deny the return of firearms, ammunition, or permits if the court finds that the
28 defendant is precluded from owning or possessing a firearm pursuant to State or federal law or
29 if the defendant has any pending criminal charges, in either State or federal court, committed
30 against the person that is the subject of the current protective order until the final disposition of
31 those charges.

32 (g) Motion for Return by Third-Party Owner. – A third-party owner of firearms,
33 ammunition, or permits who is otherwise eligible to possess such items may file a motion
34 requesting the return to said third party of any such items in the possession of the sheriff or a
35 licensed firearms dealer seized as a result of the entry of a domestic violence protective order.
36 The motion must be filed not later than 30 days after the seizure of the items by the ~~sheriff~~ sheriff
37 or surrender to the licensed firearms dealer. Upon receipt of the third party's motion, the court
38 shall schedule a hearing and provide written notice to all parties and the ~~sheriff~~ sheriff or licensed
39 firearms dealer. The court shall order return of the items to the third party unless the court
40 determines that the third party is disqualified from owning or possessing said items pursuant to
41 State or federal law. If the court denies the return of said items to the third party, the items shall
42 be disposed of by the sheriff or licensed firearms dealer as provided in subsection (h) of this
43 section.

44 (h) Disposal of Firearms. – If the defendant does not file a motion requesting the return
45 of any firearms, ammunition, or permits surrendered within the time period prescribed by this
46 section, if the court determines that the defendant is precluded from regaining possession of any
47 firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to
48 remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of
49 the order granting the return of the firearms, ammunition, or permits, the sheriff or licensed
50 firearms dealer who has control of the firearms, ammunition, or permits shall give notice to the
51 defendant, and the sheriff or licensed firearms dealer shall apply to the court for an order of

1 disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the
2 disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law,
3 including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. Additionally, for firearms and
4 ammunition surrendered to a licensed firearms dealer under subsection (d1) of this section, the
5 judge may order the firearms and ammunition disposed of by sale by the licensed firearms dealer.
6 If a sale by the sheriff or a licensed firearms dealer does occur, occur pursuant to this subsection,
7 any proceeds from the sale after deducting any costs associated with the sale, and in accordance
8 with all applicable State and federal law, shall be provided to the defendant, if requested by the
9 defendant by motion made before the hearing or at the hearing and if ordered by the
10 judge-defendant.

11 (i) Failure to Surrender or Disclose. – It is unlawful for any person subject to a protective
12 order prohibiting the possession or purchase of firearms ~~to do any of the following:~~

13 (1) Fail to sell all firearms and ammunition, or fail to surrender all firearms,
14 ammunition, permits to purchase firearms, and permits to carry concealed
15 firearms to the sheriff as ordered by the court; firearms, in accordance with the
16 requirements of this section.

17 (2) Fail to disclose all information pertaining to the possession of firearms,
18 ammunition, and permits to purchase and permits to carry concealed firearms
19 as requested by the court; or court.

20 (3) Provide false information to the court pertaining to any of these items.

21 ...

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

24 **SECTION 2.** This act is effective when it becomes law and applies to orders issued
25 on or after that date.