

copy of the order with you at all times, because if it is violated by the other party, the police will need to see or verify the order quickly to be able to protect your rights. Additional remedies may be available to you under North Carolina marital and tort laws.

50B is a domestic violence protective order, and the 50B pro se forms are available through the clerk's office. They will help you proceed without an attorney. Nevertheless, because child custody, support rights and possession of assets are often integrally involved, you should strongly consider talking to an attorney.

What if There is an Emergency That Cannot Wait for Several Weeks or Months Until the Civil Trial?

If you feel that you or your child may be in danger of serious and immediate injury before a trial can be held, you can ask for emergency relief. In such a case, the court has the power to grant immediate temporary relief if sufficient reason exists. Then, the court can hold a hearing within 10 days of the filing of the request for relief (a motion or a complaint) and may enter temporary orders just like the ones which can be ordered at the trial. The Clerk of Court's Office has forms available to file for civil emergency relief.

What Can I Do if My Spouse Violates a Protective Court Order

If the abuser is present, you can call the police to arrest the violator. There may be grounds for an arrest for criminal domestic trespass or violation of the court order.

If the abuser has left the premises, you should contact your attorney or the police.

You should always keep a copy of the protective order with you. It is also a good idea to take a copy of the order to your local law enforcement office.

Spouses can make voluntary separation agreements which include promises to stay away from each other. Such agreements are contracts which are enforceable in civil court.

Conclusion

Sometimes legal intervention and/or counseling can help a couple solve the problems which led to abuse. If not, one or both parties may wish to end the marriage through a divorce. In the case of a legal separation or divorce, an attorney should be consulted to be sure that child custody, child support, alimony and property rights are protected. You should not hesitate to call or contact the police, the local mental health center or an attorney if you are involved in a violent relationship.

THIS *is the* LAW



This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, toll free: 1-800-662-7660. (Wake County residents call: 677-8574.)

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Family Violence

**NORTH CAROLINA
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Family Violence

Family violence is one of the most frequent and unreported crimes in our country and state. The laws that protect spouses from abuse also apply to people who have been in a dating relationship or who have a familial relationship with one another, including people of the opposite sex who live together but are not married, as well as people who have a child in common, whether or not they live together. Children are also protected against abuse from parents, the live-in partners of parents, or other individuals who act as parents. Threatening injury to another party may also be illegal if the words cause actual fear of bodily injury.

The law is a tool to help prevent family violence. Everyone has a duty to report any suspected physical or sexual abuse of children to the local Department of Social Services. Other forms of assistance, such as counseling for one or both parties, are sometimes needed in addition to or instead of legal intervention. Your local mental health center can give advice on counseling, shelters, etc.

What Type of Family Violence Does the Law Protect Me From?

North Carolina criminal and civil law prohibits anyone—married or not—from attempting to hurt another, actually causing bodily injury, or placing another in fear of immediate injury by threat or force.

The domestic criminal trespass law prohibits separated spouses, ex-spouses and former unmarried live-in partners from entering each other's residences or from staying after being told to leave. To use this law, you must be able to prove that you are physically separated and have separate residences.

How Can I Get Legal Help?

If you feel you have been abused, or your child has been abused, you can seek legal assistance to stop the assaults and get other legal relief by charging the abuser with a crime, filing a lawsuit or both. If you choose to press criminal charges, the district attorney will represent you and the state. The accused abuser will need to hire a defense attorney or will be appointed one. If you choose to file a lawsuit, you may hire an attorney to file a civil action for domestic violence relief or seek assistance from your local clerk of court and proceed without an attorney.

What Precautions Should I Take to Protect Myself and My Children?

Report criminal acts of abuse to legal authorities and plan to follow through. If you drop charges, you may not be taken seriously if you must go to court again.

If at all possible, consult with an attorney at your earliest opportunity; if an attorney is unavailable and you are in danger, leave home if necessary for your own safety. If you feel you are in real physical danger, seek a safe shelter. Many communities have sheltered homes for battered victims. You can call the local mental health center for information about the availability of a sheltered home.

Do not leave children alone with the abuser unless it is completely unavoidable. They may be in danger also. Leaving them may appear to be abandonment or neglect and could harm your future chances of getting custody of the children or getting child support in a separation or divorce.

Save evidence. As soon as possible after the incident, try to have photographs taken of injuries. Save torn or bloodied clothing. Get copies of medical reports of treatment for injuries. See if witnesses will testify if necessary.

How Can the Criminal Legal System Help Me?

It is important to report an assault as soon as possible. The police must respond to requests for emergency assistance in domestic violence cases as soon as possible (unless there have been a number of complaints from the same person within two days and there is good reason to believe there is not really an emergency). If the police witness the assault, they can arrest the abuser immediately.

Law enforcement officers can also take other steps to assist you. They can protect you from immediate harm; advise you of local assistance, counseling and shelters; transport you to the hospital, magistrate's office or shelter; and accompany you to your home to get temporary clothing and necessary personal items for you and your children.

If the police do not witness the assault, you will have to go to the magistrate's office if you wish to press charges.

What Will Happen if I Want to Press Charges?

The magistrate will listen to the facts and issue a criminal summons or warrant if convinced a crime has been committed. A summons orders the alleged abuser to appear in court on a particular date. A warrant requires law enforcement officers to arrest and take the suspect before the magistrate or judge for a bond hearing to set bond and a trial date. If bond is posted, the suspect will be released until trial.

How Can I be Protected Before Trial?

If you are afraid that the abuser will harm you, you may request that a protective order be a condition of the bond. Or you should ask the magistrate when and where the bond hearing will be held and attend it. You may not be routinely notified of this hearing and do not have to attend. At the hearing, you should ask the magistrate or judge for special protective orders which can prohibit the suspect from assaulting you, coming to your home, school or office, and damaging your property.

What Will Happen at the Trial?

You should contact the district attorney's office a few days before the trial date for instructions and to advise the prosecutor of any evidence which is available. You must be sure to be present in court at the correct time and be prepared to wait. There are frequent delays and postponements in court, but your absence can result in dismissal of the case for that reason alone.

You will probably have to testify and should be prepared to do so. The maximum sentence for misdemeanor assault is two years imprisonment and a fine. The maximum sentence for felony assault is up to 20 years imprisonment and a fine. But often the guilty abuser will be given a suspended sentence and probation. Repeat convicted offenders may receive a more severe sentence.

You can request the district attorney to ask the judge to order the abuser to stay away from you or not to beat or harass you again as a condition of probation.

What Should I Do if the Abuser Makes Another Attack?

You should take out another warrant, and if the abuser is on probation, you should call the probation officer. Breaking a condition of probation can result in imprisonment.

How Do I Use the Civil Legal System?

You may have your attorney file a civil complaint against the abuser claiming abuse under the civil domestic violence law. The Clerk of Court's Office also has forms for you to file a civil complaint without an attorney. There will be a trial where you and any other witnesses will need to testify as to the evidence. If the court finds that there has been abuse, it can enter protective orders to protect you and the children from the abuser.

This kind of order may be valid for up to one year. Each person is given a copy of the order and one is filed with local law enforcement. It is important to keep a