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## Family Matters E-Newsletter May 2018

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### **Domestic Violence Protective Orders in North Carolina**

By Amy A. Edwards

*Judges Have Ways  
to Protect Victims*

According to the NC Coalition Against Violence, there were 79 domestic violence homicides in NC in 2017. "On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to more than 10 million people."

People with certain personal relationships may seek domestic violence protective orders (DVPOs). These include household members, parents of a child in common, spouses and former spouses, and others. DVPOs give law enforcement the ability to arrest a defendant if they have probable cause to believe he or she violated the order. Intentionally making a false statement to law enforcement that there is a DVPO when there isn't one is a crime. NC Gen. Stat. §50B-4.2.

### **What Counts as Domestic Violence?**

North Carolina law specifies three types of domestic violence which are summarized here. One is intentionally causing (or attempting to cause) bodily injury. Another is committing rape and/or sexual assault. The third type of domestic violence is placing a person in fear of imminent serious bodily injury, or continued harassment. As used here, harassment means it reaches a level so bad that it inflicts substantial emotional distress. This definition applies not only the victim, but also the victim's family or household in some circumstances. Criminal statutes detail the harassment as conduct that is "directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." NC Gen. Stat. §14-277.3A.

### **What is a DVPO?**

A domestic violence protective order is awarded by a judge to protect a victim by prohibiting the defendant from assaulting, threatening, abusing, following, harassing (by telephone, visiting the home or workplace, or other means), or interfering with the victim and/or children who live with the victim. DVPOs can also order a defendant to stay away from the victim's residence, school, place of employment and anywhere else that would be applicable. These are civil cases, not criminal in nature although the violation of a DVPO is a crime. As a separate matter, a defendant might also face criminal charges for assault on a female, battery, interference with a 911 call, child abuse or other charges.

## Are There Other Remedies?

DVPOs can also require the defendant to attend and complete an abuser treatment program or prohibit him or her from purchasing a firearm for a period of time. The court has the authority to award temporary possession of personal property, including a family pet. An emergency DVPO might be awarded before the defendant has the opportunity to appear in court.

If a child is exposed to a substantial risk of physical or emotional injury, or sexual abuse, the court might award emergency temporary child custody. The court may require the defendant stay away from the child, to return the child to the other parent, or prohibit him or her from removing a child from someone's care. The office of the NC Attorney General offers an [Address Confidentiality Program](#), which is a mail forwarding program that adds another layer to the protections of domestic violence victims.

### Help and Resources:

[Information on Available Resources in North Carolina](#)

[Personalized Domestic Violence Safety Plan](#) (checklist of things to do when facing violence in a relationship) from NC Dept of Social Services.

[Real Crisis Intervention](#) in Greenville offers counseling, advocacy, information and referrals.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of May 2018. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com)© 2018.

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## **Contempt of Court in North Carolina**

By Amy A. Edwards

When someone violates a court order, the other person can file a motion asking the court to hold him or her in contempt. In family law, judges enter orders for child custody and support, alimony and marital property division, among others. Our statutes define the way a judge can require people to obey court orders, up to and including incarceration. There are two kinds of contempt, civil or criminal.

### **Civil Contempt**

After the judge determines the order is valid and still in effect, a judge must be certain the "purpose of the order may still be served by compliance with the order." NC Gen. Stat. §5-21(a). To enforce an order by civil contempt, someone must willfully fail to comply with the order. He or she must have the ability to comply or take reasonable measures that would enable the person to comply. For instance, if you are required to pay child support by court order but you are in a bad vehicle accident and unable to work some period of time because you were in the hospital for a month, you might be able to prove you were unable to comply with the order. That doesn't mean the judge will cancel or reduce the child support

obligation. It just means that the order is not being enforced by holding you in contempt and incarcerating you. There are other ways people can enforce orders.

## **Incarceration For Civil Contempt**

The purpose of civil contempt is not to punish someone as is the case with criminal contempt. Instead, the purpose of incarceration is to force the person to comply with the order. If a parent owes back child support, he or she is taken into the custody of the sheriff until the payments are made. The judge must order certain release conditions called "purge conditions" because doing those things will allow the person to purge or rid himself or herself of contempt.

It is said that in civil contempt, the person incarcerated holds the keys to the jail because all he or she has to do is comply with the order. The person refusing to comply with an order of the court may be initially incarcerated up to 90 days. If there is no compliance, the judge will have another hearing at the end of the 90 days. The maximum time of incarceration for civil contempt is one year. NC Gen. Stat. §5A-21(b2). Because the violator faces incarceration, the court will usually offer to appoint an attorney if the person can't afford one.

## **Criminal Contempt**

Instead of holding the keys to the jail, the purpose of criminal contempt is punishment. This is what people usually think of when contempt comes to mind. NC statutes list plenty examples of bad behavior, all of which must be willful and usually in the courtroom. These include interrupting court proceedings, disrespecting the judge, disobedience or interference with a court's order or directive, refusing to answer a question on the witness stand or refusing to be sworn in (of affirmed) to testify.

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# What Do Judges Consider in Alimony Cases?

By Amy A. Edwards

*The factors guide judges in reminding them of the most important things*

Either spouse may seek alimony if he or she earns less than the other in North Carolina, although there's no specific dollar amount that determines by how much less. While we have guidelines in child support cases that compute an amount based on incomes and certain child-related expenses, we don't have anything of that nature for alimony. Each party prepares a budget as a trial exhibit, which includes income and living expenses. If the judge awards it, the amount of alimony and how long it will be paid is discretionary.

## **Alimony Factors: Incomes/Benefits**

NC judges must consider a list of factors in alimony cases. The first factor to consider is how much income each spouse has, and sometimes what a spouse has the capacity to earn. Also considered is unearned income, which is not shown on a W-2 statement, such as dividends, rents, retirement payments, disability, social security payments and employment benefits such as medical insurance (and/or dental and vision insurance), retirement benefits, and marital property and debts.

## **Alimony Factors: Each Person's Situation**

The court takes into account each spouse's individual circumstance, education, age, physical and mental abilities, and emotional conditions. For example, a 25-year-old spouse and a 60-year-old spouse will be treated differently based on medical conditions and the ability to work. Their needs and expectations, such as the anticipated date of retirement or going back to school, also vary. Marital misconduct of either spouse may also be considered.

## **Alimony Factors: History of the Marriage**

The court also looks at the standard of living that the parties established during the marriage. How long the parties were married and the contribution by one spouse to the education, training, or increased earning power of the other spouse

are other factors. One party might have kept the home-fires burning for the last ten years, caring for the children while the other devoted his or her energy to obtaining a degree or advance in a profession, improving the family income. In fact, the statute also requires the judge to consider the "extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child."

### **Alimony Factors: Miscellaneous**

The court looks at family obligations, such as paying child support for children with another parent, or alimony to a former spouse. Courts usually have the trial for equitable distribution (the division of marital property and debt) before the alimony trial. This is because the judge will look at who kept which assets, and who is responsible for various marital bills, which is important when determining each party's reasonable expenses. If someone brought assets into the marriage, the court has the right to consider. The federal, state, and local tax ramifications of the alimony award are legitimate factors for the judge to weigh in making an alimony award.

The factors are meant to guide judges in reminding them of the most important things to think about when deciding what to order in alimony cases. The flexibility is there but just in case, the statute also tells judges that they are free to consider "Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper." NC Gen. Stat. §50-16.3A.

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