

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 145
Committee Substitute Favorable 4/14/21
Third Edition Engrossed 4/20/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H145-PCS10513-CE-25

Short Title: Property Protection Act/DVPO.

(Public)

Sponsors:

Referred to:

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 THROUGH A QUALIFIED
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 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.

...

(d1) Transfer to Licensed Firearms Dealer. – After the defendant surrenders possession of all firearms, machine guns, ammunition, and permits to the sheriff pursuant to subsection (d) of this section, the defendant may enter into an agreement with a qualified licensed firearms dealer to take possession of the surrendered items from the custody of the sheriff if (i) the defendant is the owner of the items and (ii) the items have been in the custody of the sheriff at least 15 days. The defendant shall authorize the qualified licensed firearms dealer to submit the form provided for in this subsection requesting the transfer of the firearms, machine guns, and ammunition to the sheriff currently storing the items. The qualified licensed firearms dealer must present the completed form and a copy of the dealer's valid federal firearms license to the sheriff, who shall have 24 hours to facilitate the transfer of the firearms, machine guns, and ammunition to the dealer. Any funds received from the sale of a firearm, machine gun, or ammunition by a defendant pursuant to this subsection are the property of the defendant. The defendant's permits



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1 to purchase firearms and permits to carry concealed firearms shall remain in the care and custody
2 of the sheriff as provided in subsection (d) of this section.

3 At the time a qualified licensed firearms dealer takes possession of the firearms, machine
4 guns, and ammunition, the dealer shall provide a copy of the record required to be maintained
5 under federal law upon the receipt or disposition of the firearm, machine gun, or ammunition to
6 both the sheriff and the owner of the firearms, machine guns, and ammunition.

7 A qualified licensed firearms dealer that accepts firearms, machine guns, and ammunition
8 pursuant to this subsection shall not (i) release the firearms, machine guns, or ammunition to the
9 defendant unless the motion for a protective order is dismissed or any order of surrender has
10 expired or (ii) transfer possession of the firearms, machine guns, or ammunition to any person
11 the dealer knows or reasonably should know will allow the defendant to exercise care, custody,
12 possession, ownership, or control of the firearms, machine guns, or ammunition, and any
13 violation of this prohibition is a Class 2 misdemeanor.

14 The Administrative Office of the Courts shall create a form for use in transferring firearms,
15 machine guns, and ammunition from the custody of the sheriff to a qualified licensed firearms
16 dealer pursuant to this subsection. The form shall require the notarized signatures of both the
17 defendant and the qualified licensed firearms dealer and shall allow for either the storage or sale
18 of the firearms, machine guns, and ammunition by the qualified licensed firearms dealer. The
19 form shall also include information concerning the defendant's rights to recover the surrendered
20 firearms, machine guns, or ammunition.

21 The sheriff shall not charge a fee for the first 15 days of storage for any items transferred to
22 a qualified licensed firearms dealer pursuant to this subsection.

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

28 (f) Motion-Request for Return. – The defendant may request the return of any firearms,
29 ammunition, or permits surrendered by ~~filing a motion with the court~~ submitting a written request
30 with the sheriff or the qualified licensed firearms dealer who has control of the firearms,
31 ammunition, or permits at the expiration of the current order or final disposition of any pending
32 criminal charges committed against the person that is the subject of the current protective order
33 and not later than ~~90 days~~ 30 days after the expiration of the current order or final disposition of
34 any pending criminal charges committed against the person that is the subject of the current
35 protective order. Upon receipt of the ~~motion, request,~~ the sheriff or the qualified licensed firearms
36 dealer shall conduct a check through the National Instant Criminal Background Check System
37 (NICS). If the results of the NICS check provide grounds that preclude the defendant from
38 owning or possessing a firearm under State or federal law, the sheriff or the qualified licensed
39 firearms dealer shall file a motion with the court on a form created by the Administrative Office
40 of the Courts and shall not return the firearms, ammunition, or permits until the court has ruled
41 on the motion. Upon receipt of the motion, the court shall schedule a hearing and provide written
42 notice to the plaintiff who shall have the right to appear and be heard and to the sheriff or the
43 qualified licensed firearms dealer who has control of the firearms, ammunition, or permits. The
44 court shall determine whether the defendant is subject to any State or federal law or court order
45 that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

- 46 (1) Whether the protective order has been renewed.
- 47 (2) Whether the defendant is subject to any other protective orders.
- 48 (3) Whether the defendant is disqualified from owning or possessing a firearm
49 pursuant to 18 U.S.C. § 922 or any State law.

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

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

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

20 (h) Disposal of Firearms. – If the defendant does not ~~file a motion requesting~~ submit a
21 written request for the return of any firearms, ammunition, or permits surrendered within the time
22 period prescribed by this section, if the court determines that the defendant is precluded from
23 regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or
24 third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within
25 30 days of the request for the return of firearms, ammunition, or permits or entry of the an order
26 granting the return of the firearms, ammunition, or permits, the sheriff or the qualified licensed
27 firearms dealer who has control of the firearms, ammunition, or permits shall give notice to the
28 defendant, and the sheriff or the qualified licensed firearms dealer shall apply to the court for an
29 order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may
30 order the disposition of the firearms, ammunition, or permits in one or more of the ways
31 authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. Additionally, for
32 firearms and ammunition surrendered to a qualified licensed firearms dealer under subsection
33 (d1) of this section, the judge may order the firearms and ammunition disposed of by sale by the
34 qualified licensed firearms dealer. If a sale by the sheriff or a qualified licensed firearms dealer
35 does occur, occur pursuant to this subsection, any proceeds from the sale after deducting any
36 costs associated with the sale, sale and any storage fees owed to the sheriff or the qualified
37 licensed firearms dealer, and in accordance with all applicable State and federal law, shall be
38 provided to the defendant, if requested by the defendant by motion made before the hearing or at
39 the hearing and if ordered by the judge. ~~defendant.~~

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

- 42 (1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and
43 permits to carry concealed firearms to the sheriff as ordered by the ~~court;~~ court.
44 (2) Fail to disclose all information pertaining to the possession of firearms,
45 ammunition, and permits to purchase and permits to carry concealed firearms
46 as requested by the ~~court;~~ or court.
47 (3) Provide false information to the court pertaining to any of these items.

48 ...

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

1 (m) Qualified Licensed Firearms Dealer. – For purposes of this section, the term
2 "qualified licensed firearms dealer" shall mean a federally licensed firearms dealer that meets all
3 of the following requirements:

- 4 (1) Operates a business in a commercial building located in the State.
5 (2) Is open to the public.
6 (3) Regularly engages in the purchase and sale of firearms with members of the
7 public."

8 **SECTION 2.** This act becomes effective December 1, 2021, and applies to orders
9 issued on or after that date.