

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

2

HOUSE BILL 145
Committee Substitute Favorable 4/14/21

Short Title: Property Protection Act/DVPO.

(Public)

Sponsors:

Referred to:

February 25, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE PROPERTY RIGHTS OF PERSONS SUBJECT TO A
3 DOMESTIC VIOLENCE PROTECTIVE ORDER BY ALLOWING THEM TO STORE
4 THEIR FIREARMS WITH OR SELL THEIR FIREARMS THROUGH A QUALIFIED
5 LICENSED FIREARMS DEALER.

6 The General Assembly of North Carolina enacts:

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

8 "§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

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

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

22 ...

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



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

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

12 The Administrative Office of the Courts shall create a form for use in transferring firearms,
13 machine guns, and ammunition from the custody of the sheriff to a qualified licensed firearms
14 dealer pursuant to this subsection. The form shall require the notarized signatures of both the
15 defendant and the qualified licensed firearms dealer and shall allow for either the storage or
16 immediate sale of the firearms, machine guns, and ammunition by the qualified licensed firearms
17 dealer.

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

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

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

- 43 (1) Whether the protective order has been renewed.
- 44 (2) Whether the defendant is subject to any other protective orders.
- 45 (3) Whether the defendant is disqualified from owning or possessing a firearm
46 pursuant to 18 U.S.C. § 922 or any State law.
- 47 (4) Whether the defendant has any pending criminal charges, in either State or
48 federal court, committed against the person that is the subject of the current
49 protective order.

50 The court shall deny the return of firearms, ammunition, or permits if the court finds that the
51 defendant is precluded from owning or possessing a firearm pursuant to State or federal law or

1 if the defendant has any pending criminal charges, in either State or federal court, committed
2 against the person that is the subject of the current protective order until the final disposition of
3 those charges.

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

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

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

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

43 ...

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

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

- 49 (1) Operates a business in a commercial building located in the State.
- 50 (2) Is open to the public.

1 (3) Regularly engages in the purchase and sale of firearms with members of the
2 public."
3 **SECTION 2.** This act is effective when it becomes law and applies to orders issued
4 on or after that date.