

Amendments to Chapter 50B and to the Child Support Guidelines

Today's post describes two unrelated but important developments in the area of family law. The first section of the post discusses legislative amendments to [Chapter 50B](#) regarding Domestic Violence Protection Orders that became effective December 1, 2019. The second section of the post discusses amendments to the Child Support Guidelines adopted by the Conference of Chief District Court Judges effective March 1, 2020 to bring North Carolina into conformity with federal child support regulations.

Chapter 50B Domestic Violence Protective Orders

[S.L. 2019-168 \(S 493\)](#) became effective December 1, 2019 and applies to orders in effect on or after that date. The legislation made the following three changes to [Chapter 50B](#).

Abuser treatment program. [GS 50B-3](#) was amended to add new sections (a2) and (a3) to provide that if the court orders defendant to attend an abuser treatment program, the defendant must begin the program within 60 days of the entry of the order. At the time the court enters the DVPO, the court must set a date and time for a review hearing for the court to assess whether defendant has complied with the order.

At any time after entry of the order and before the review hearing, the defendant may present to the court a written statement from an abuser treatment program showing defendant has enrolled and begun regular attendance in the program. Upon receipt of the statement, the clerk shall remove the review hearing from the docket and inform both parties that no hearing is required.

The legislation does not address the authority of the court to act should the defendant not appear at the review hearing or if court determines at this review hearing that the defendant has not complied with the order to attend abuser treatment.

It is clear that the court does not have authority to immediately issue an order for arrest for the defendant's failure to appear at the review hearing. See [GS 15A-305](#) (exclusive list of the court's authority to issue an order for arrest).

However, the court can initiate criminal contempt proceedings, [GS 5A-15](#), or civil contempt proceedings if the court finds probable cause to believe defendant willfully violated the DVPO. [GS 5A-23\(a\)](#). See *also* [GS 50B-4](#) (DVPOs are enforceable by and violations can be punished by contempt). Similarly, plaintiff can initiate criminal proceedings for the violation of the DVPO if there is probable cause to believe the defendant knowingly violated the order and/or move to modify the provisions of the DVPO in response to the violation. [GS 50B-4.1](#).

Expiration of DVPO. The legislation also amended [GS 50B-3\(b\)](#) to state that “Protective orders entered pursuant to this Chapter expire at 11:59 P.M. on the indicated expiration date, unless specifically stated otherwise in the order.”

Relationship of DVPO to other court orders. Finally, [GS 50B-7](#) was amended to provide that “any subsequent court order entered supersedes similar provisions in protective orders issued pursuant to this Chapter.” Before this change, [GS 50B-3\(a1\)\(4\)](#) stated:

“Any subsequent custody order issued under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.”

The recent legislation deletes this provision and replaces it with the new section in [GS 50B-7](#) significantly broadening the types of orders that will supersede the provisions of an existing DVPO.

It is not uncommon for two people in a personal relationship to obtain conflicting DVPOs arising out of the same incident or based on different incidences. This change to the statute now makes it clear that provisions in the second order will supersede any similar provision in the first order.

I am certain there already has been and will continue to be a significant number of situations where the appropriate application of this new provision will be unclear. Unfortunately, the new law creates a significant challenge for law enforcement officers responding to allegations of violations of protective orders because there currently is no mechanism to assure them that the terms of any particular order have not been replaced by a subsequent order of some type. Regarding the enforcement of orders issued in other states, [GS 50B-4\(d\)](#) states:

“In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect.”

The statute contains no similar statement regarding orders issues in North Carolina.

Amendment to the Child Support Guidelines Regarding Child’s Health Care Coverage

[45 CFR sec. 302.56](#) requires that states adopt mandatory child support guidelines as a condition of receiving federal funds for programs such as TANF and child support services. That regulation also sets out the requirements for state guidelines. Similarly, [45 CFR sec. 303.8](#) prescribes the circumstances under which state child support orders must be reviewed and modified. Effective January 19, 2017, the federal Department of Health and Human Services (DHHS) adopted a final rule titled [“Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs.”](#) [81](#)

[Federal Register 93492 \(Dec. 20, 2016\)](#) which, among many other things, modified both [45 CFR sec. 302.56](#) and [303.8](#) relating to health care coverage for children who are the subject of child support orders. [For a discussion of the provisions of this final rule dealing with the enforcement of child support obligations by contempt, see blog post from June 30, 2017, [New Regulations Regarding Contempt in IV-D Child Support Cases](#)].

The Conference of Chief District Court Judges recently amended the North Carolina Child Support Guidelines to bring the provisions in the guidelines relating to health care coverage into compliance with the amended federal child support agency regulations.

The modified Guidelines are effective March 1, 2020 and apply to child support actions heard on or after that date. The newly amended Guidelines will be available on the website of the [Administrative Office of the Courts](#) on that effective date.

Definition of Health Care Coverage includes Medicaid

While child support guidelines have long been required to address how parents will provide for the medical needs of their child, until the 2017 amendment, a child's eligibility for Medicaid could not be considered sufficient to meet the child's health care needs. Following amendment, [45 CFR sec. 302.56](#) now requires that state child support guidelines "[a]ddress how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support." Health care coverage is defined in [45 CFR 303.31\(2\)\(2\)](#) to include "public health care coverage, such as Medicaid."

The "Health Insurance and Health Care Costs" section of the North Carolina Guidelines therefore were amended to provide:

"The court must order either parent to obtain and maintain medical health care coverage for a child if it is actually and currently available to the parent at a reasonable cost. Health care coverage includes fee for service, health maintenance organization, preferred provider organization, and other kinds of private health insurance and public health care coverage, such as Medicaid, under which medical services can be provided to the dependent child."

Modification of support orders

Amended [45 CFR sec. 303.8\(d\)](#) now provides:

"Health care needs must be an adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary."

Therefore, the “Modification” section of the North Carolina Guidelines has been amended to provide:

“In compliance with [45 C.F.R. section 303.8\(d\)](#), the need to provide for the child’s health care needs in a support order, through health insurance or other means, is a substantial change in circumstances warranting modification of a child support order, regardless of whether an adjustment in the amount of support is necessary.”