

## More on Law Enforcement Involvement in Custody Cases

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In my earlier blog post, [Ordering Law Enforcement Officers to Enforce a Child Custody Order, Jan. 15, 2016](#), I discussed North Carolina case law indicating that a trial court's authority to order law enforcement to assist in the enforcement of a child custody order is very limited. The General Assembly recently enacted legislation to clarify that the warrant provision in [GS 50A-311](#) is a tool available to trial court judges seeking to enforce North Carolina custody orders as well as orders issued in other states and countries.

#### NC Case Law

*In re Bhatti*, 98 NC App 493 (1990) and *Chick v Chick*, 164 NC App 444 (2004), both reversed trial court orders requiring that law enforcement officers "assist" in the enforcement of a custody order. In both of those situations, the custody orders being enforced were issued by courts in other states. The court of appeals held in both cases that the trial court had no authority to order law enforcement to assist, noting that GS 50-13.3 provides that custody orders are enforceable through "traditional contempt proceedings." The court in *Chick* acknowledged [GS 50A-311](#), a provision in the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA) which allows a court to issue a warrant directing law enforcement to take physical custody of a child when a child is in imminent danger or likely to be removed from the state, but held that the trial court in that case had not made the findings of fact required to invoke the authority in that statute. In both *Bhatti* and *Chick* the court of appeals stated "we [are] unaware of any statutory basis for invoking the participation of law enforcement officers in producing the children."

#### [GS 50A-311](#) Warrant for Physical Custody

In that earlier blog post, I suggested that the warrant provision in [GS 50A-311](#) could be interpreted to apply to cases involving North Carolina custody orders rather than limited to the enforcement of out of state orders. However, many attorneys, judges, and law enforcement officers remained uncertain that this provision in Part 3 of the UCCJEA, the part of the UCCJEA clearly addressing primarily the enforcement of custody orders from other states and countries, could be read broadly to apply to North Carolina orders. This lack of clarity was especially troubling to law enforcement officers, who need to know their authority to act in these cases is unambiguous and firmly grounded in the law. The recent legislative amendment appears to resolve the issue.

#### The Legislative Amendment

[S.L. 2017-22 \(S53\)](#) applies to orders entered on or after Oct. 1, 2017 and amends [GS 50-13.5\(d\)\(3\)](#) to state that:

“A temporary custody order that requires a law enforcement officer to take physical custody of a minor child shall be accompanied by a warrant to take physical custody of the child as set forth in [GS 50A-311](#).”

In addition, the legislation also amends [GS 50A-311](#) to clarify that:

“An officer executing a warrant to take physical custody of the child, that is complete and regular on its face, is not required to inquire into the regularity and continued validity of the order. An officer executing the warrant pursuant to this section shall not incur criminal or civil liability for its due service.”

### **The process for issuing a [GS 50A-311](#) warrant**

The amendment appears to provide that a trial court can order law enforcement to take physical custody of a child to enforce a temporary custody order if the court issues a warrant pursuant to the provisions in [GS 50A-311](#). That statute provides that a petitioner seeking enforcement of a child custody determination “may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.” The warrant may be issued “[i]f the court, **upon the testimony** of the petitioner or other witness, finds that ***the child is imminently likely to suffer serious physical harm or be removed from this State***”.

So the statute does not allow the warrant to be issued upon affidavits or verified pleadings alone. Instead, the court must receive actual testimony about the need for the warrant and the warrant may issue only if the court concludes the child is in imminent danger of serious physical harm or removal from the state.

If the warrant is issued, [GS 50A-311](#) appears to require an expedited hearing. The statute states that upon issuance of the warrant, the petition seeking enforcement of the custody order “must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.”

The warrant itself must:

- “(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- (2) Direct law enforcement officers to take physical custody of the child immediately; and
- (3) Provide for the placement of the child pending final relief.”

In addition, the warrant can order “conditions upon placement of a child to ensure the appearance

of the child and the child's custodian.”

The statute provides that a warrant to take physical custody of a child is enforceable throughout this State and specifies that “[i]f the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.”