

**ROLL CALL TRAINING**  
**FROM NORTH CAROLINA'S 24/7 POLICE**  
**ATTORNEY LAW FIRM**

MARCH 17, 2003  
VOLUMN II NUMBER 7

**TOPIC: WHEN A MANDATORY ARREST IS REQUIRED IN DOMESTIC VIOLENCE SITUATIONS**

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**MANDATORY ARREST – DOMESTIC VIOLENCE:**

Mandatory arrests are mandated by statute *only* when a valid 50B domestic violence order is in effect, and the defendant violates one of two narrowly drawn prohibitions. Let's look at the statute for the actual wording.

**The Statute – NCGS 50B-4.1 (b):** *A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9) [threatening, abusing, or following the other party; harassing the other party, including by telephone, visiting the home or workplace, or other means; or otherwise interfering with the other party].*

**No Discretion on Your Part:** This is a very special section of the DV statute. Whereas you have absolute discretion in almost every other misdemeanor whether to charge or not a person for whom you have probable cause, here the statute takes that discretion from you and orders you to make an arrest for the aforementioned violations.

**An Example of a Mandatory Arrest:** You must arrest and take into custody a defendant who has been ordered in a DV order not to threaten, abuse, follow, interfere or harass the defendant, but for whom there is probable cause that he did just that. Such behavior would be in violation of G.S. 50B-3(a)(9).

**Another Example:** Also, you must arrest and take into custody a defendant who has been ordered in a DV order not to return to a residence or household occupied by an aggrieved party or minor child, but for whom there is probable cause that he did just that. Such behavior would be a violation of G.S. 50B-3(a)(2).

## YOU HAVE NO DISCRETION FOR THESE VIOLATIONS:

1. It does not matter whether or not the plaintiff/victim wants him arrested for these offenses; the North Carolina General Assembly has ordered you to do so. And that is as valid an order as any your Sheriff or Chief will ever give you.
2. You cannot write the defendant a citation or merely give him a warning. You **shall** arrest him.
3. If he is in your presence you **shall** arrest him then and there, without a warrant.
4. You cannot send or drive the plaintiff to the magistrate to have her get the warrant. **You shall arrest him.**
5. If time, circumstances and the danger the defendant poses to the plaintiff permit, and he is not in your presence, you may proceed to the magistrate to get the warrant. But your agency must make a concerted effort to serve it.

**Your Duty and Obligation:** You are under a duty and it is your responsibility to arrest him, warrantless or not, as soon as is reasonably practical. Actively look for him (unless you are very certain he is out-of-jurisdiction), find him, arrest him and transport him to the magistrate. You have no option to do otherwise.

**Why There is Confusion:** Generally speaking, when a misdemeanor is committed out of your presence where no 50B domestic violence order exists, and no warrant or order for arrest has been issued for that crime, you may not arrest the defendant. You would need an arrest warrant. There are limited circumstances where you **may** arrest him, and they are found in NCGS 15A-401. Let's look at that part of the statute directed toward domestic violence misdemeanors for the actual wording.

**NCGS 15A-401(2)(b)(2):** *Offense Out of Presence of Officer. - An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a misdemeanor under G.S. 14-33(a) [Simple assault], 14-33(c)(1) [Assault inflicting serious injury upon another person or uses a deadly weapon], 14-33(c)(2) [Assaults a female by a male 18 years of age or older], or 14-34 [assault by pointing a gun] when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1.*

## WHAT IS IMPORTANT TO NOTE:

The pertinent part of GS 15A previously quoted is merely written to allow you to make a warrantless arrest for the violation of only four misdemeanor assault statutes where the defendant and victim had a personal relationship as defined in GS 50B-1, which I will quote for your edification (just a fancy word for instruction, but I get paid to use the big words, folks.)

## MY QUESTION TO YOU:

Does your agency have a pro arrest policy in DV situations? Are you required by policy to make an arrest, even though one is not mandated, in every domestic violence situation where you have probable cause? If so, follow your policy.

## **NCGS 50B-1(b):**

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

## **It Might Be Helpful to Remember:**

Any violation of a 50B domestic violence order is a criminal misdemeanor for which you **may** make a warrantless arrest, whether committed in your presence or not. GS 50B-4.1(a) says so. Unless the violation is of 50B-3(a)(2) or (9), you have the discretion to arrest or not, or have the plaintiff/victim apply for the warrant. When either 50B-3(a)(2) or (9) are violated, you **shall** arrest. If there is no 50B domestic violence order in effect, but the parties have a personal relationship as defined in GS 50B-1(a), then you may make a warrantless arrest for the violation of four specific statutes as set out in GS 15A-401.

## **NOTE FROM KEVIN:**

Here is a tip. The mandatory arrest situations follow two general themes: harassment, and trespass. What do both have in common? That's right, an "ass." So if your defendant is being an "ass," so to speak, pay particular attention to whether you are in a mandatory arrest situation.

**SR&S DOMESTIC VIOLENCE  
MANDATORY ARREST  
QUICK REFERENCE GUIDE**

MARCH 17, 2003

- **If a valid 50B domestic violence protective order exists ordering the defendant not to violate provisions 50B-3(a)(2) excluding him from the residence or household occupied by a victim of domestic violence, or the provisions of 50B-3(a)(9) not to threaten, abuse, or follow the other party, or harass the other party (including by telephone, visiting the home or workplace, or other means), or to otherwise interfere with the other party and you have probable cause to believe that the defendant has violated either provision, you shall arrest him. TIP: when securing information from the victim, get as much specific information as you can. You will be approaching the magistrate and convincing him that probable cause to arrest the defendant exists and you will have already made the arrest, in most cases, when you speak to the magistrate.**
- **If a valid 50B domestic violence protective order exists ordering the defendant not to violate any provisions of Chapter 50B, and you have probable cause to believe the defendant has violated any provision other than 50B-3(a)(2) or (9), you are under no obligation or duty by statute to make the arrest. You may make a warrantless arrest, or seek a warrant prior to the arrest, or have the victim seek the warrant. If, however, your agency has a pro arrest policy in domestic violence situations, you should follow it.**
- **If no 50B domestic violence protective order applies to your domestic violence situation, you may make a warrantless arrest where you have probable cause to believe that a violation of G.S. 14-33(a) [Simple assault], 14-33(c)(1) [Assault inflicting serious injury upon another person or uses a deadly weapon], 14-33(c)(2) [Assaults a female by a male 18 years of age or older], or 14-34 [assault by pointing a gun] when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1. If, however, your agency has a pro arrest policy in domestic violence situations, you should follow it.**