

Agenda for Prevention: White Paper on Proposed Legislative and Policy Changes to Prevent Domestic Violence, Sexual Violence, and Child Maltreatment in Western North Carolina

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Laws and policies at the federal, state and local level impact the acceptance and prevalence of family violence. The following proposed changes to some of the laws and policies that most directly affect the prevalence of family violence may prevent and reduce family violence in Western North Carolina.

Visit www.ncleg.gov to find local contact information for representatives in the North Carolina General Assembly.

**Note that Covid-19 has significantly impacted survivors, as well as their needs and priorities. The impact of Covid-19 continues to evolve and its effect on this agenda will be reviewed accordingly.*

State Legislation

Codify Equal Access to DVPOs in North Carolina

- The legal issue: The North Carolina Court of Appeals issued a ruling in *M.E. v. T.J.*¹ stating that the unequal application of Domestic Violence Protective Orders (DVPOs) to LGBTQ applicants is unconstitutional. Some members of the North Carolina Legislature then proposed to codify this ruling in the 50B statute so that application of the ruling is not subject to judicial discretion. Unfortunately, other legislators sought to use this proposed legislation to otherwise limit access to DVPOs for many survivors who need them, including many vulnerable and underserved victims.² Ultimately the bill did not pass. This was a win for survivors whose access would have been undermined by the additional provisions attached to the proposed legislation, but a loss to those seeking security to equal access to DVPOs for the LGBTQ community.
- Moving forward: The North Carolina Legislature should re-consider codifying equal access to DVPOs for all survivors without undermining general access to DVPOs.

Remove 1-year separation requirement for divorces in North Carolina

- North Carolina is the only state in the country that requires all divorce complainants to be separated for an entire year before obtaining a divorce regardless of whether domestic violence is a factor in the marriage.³ We know that litigation is the most dangerous time for survivors seeking to leave abusive partners. Forcing domestic violence survivors to remain married to their abusive spouse for a year unnecessarily prolongs the length of time that survivors are litigating with their abusers, thereby increasing the safety risk of leaving their abuser and adds unnecessary trauma for survivors.

¹ *M.E. v. T.J.*, 854 S.E.2d 74 (N.C. Ct. App. 2020)

² NC H.B.33 (2021)

³ N.C.G.A. Chapter 50A, Section 50-6

- Moving forward: North Carolina should amend the divorce statute to remove the one-year separation requirement or, in the alternative, waive the one-year requirement for survivors seeking a divorce upon the survivor’s declaration that they experienced domestic violence at the hands of their spouse.

Streamline the process for Counties to create Domestic Violence Fatality Review Teams

- The legal issue: Domestic Violence (DV) Fatality Review Teams (FRTs) are a tool for community partners to provide thorough and confidential reviews of DV-related fatalities in order to identify opportunities to strengthen systems and safety measures that could prevent future fatalities. North Carolina has a statutory process for creating county-specific FRTs, and that process currently requires local and regional political support.⁴ Because not all communities desiring to create a FRT have adequate access to the requisite political support, the ability to create a FRT may be threatened in some areas. However, communities should be encouraged to create FRTs that otherwise meet the statutory standards. Ultimately, the strength of regional partnerships affects the strength of the entire community.
- Moving forward: North Carolina should amend the statute to remove political barriers to creating a FRT.

Codify judicial discretion for firearms removal in Domestic Violence Protection Order cases

- The legal issue: North Carolina judges that hear civil domestic violence matters should have the discretion to remove firearms from a defendant where a judge believes such an order would reduce the safety risk to the plaintiff. A recent case limited a judge’s ability to require a defendant in a domestic violence matter to surrender firearms only after finding the plaintiff’s safety is at “high risk”.⁵
- Moving forward: North Carolina should amend the civil statute addressing Domestic Violence Protections Orders (N.C.G.S. § 50B) to codify judges’ authority to order a perpetrator to surrender firearms where a victim and/or child’s safety is at risk, as proposed by the North Carolina Coalition Against Domestic Violence.⁶

Amend “Assault on a Female” criminal charge definition to qualify as a misdemeanor crime of domestic violence

- The legal issue: North Carolina law bars individuals convicted of felonies or misdemeanor domestic violence matters from possessing firearms. “Assault on a Female” is the most prevalent crime charged against offenders in domestic violence cases, but the elements required for conviction of “Assault on a Female” currently do not trigger the ban from possession of firearms.⁷ Therefore, the ban on gun possession does not apply to most offenders convicted of domestic violence crimes.

⁴ 2009 N.C. Sess. Laws 52 (creating the first Domestic Violence Fatality Review Team in Mecklenburg County); 2018 N.C. Sess. Laws 116 (amending S.L. 2009-52 to authorize Buncombe County to establish a Domestic Violence Fatality Review Team).

⁵ *Stancill v. Stancill*, 241 N.C. App. 529, 544 (2015).

⁶ *Legal & Policy Work*, North Carolina Coalition Against Domestic Violence, <https://nccadv.org/our-work/legal-policy-work> (last visited May 23, 2019).

⁷ *United States v. Vinson*, 805 F.3d 120, 125 (4th Cir. 2015).

- Moving forward: Expand the definition of “Assault on a Female” to prevent convicted offenders from possessing firearms. For example, one proposed definition is: “Assault on a female occurs when (1) a male (2) at least 18 years of age (3) uses or attempts to use force or threatens to use a deadly weapon (4) against a female.”

Develop best practices for sex offender management with a unified State-wide commission

- The legal issue: Sex offender management is addressed differently in each county, creating a discrepancy that leaves some counties with outdated and ineffective sex offender treatment. Some states have developed state-wide best-practices to ensure a minimum standard in all counties for sex offender management.⁸
- Moving forward: The North Carolina legislature should task a state-wide commission with developing best practices for sex offender management and treatment to create minimum standards and ultimately raise the bar for all counties.

Fully-fund Erin’s Law to expand mandated educational programs about safety, abuse, and prevention

- The legal issue: Education about child sexual abuse can help prevent acts from occurring, but education about child sexual abuse is not mandated in North Carolina. Erin’s Law, already adopted by 34 states,⁹ mandates that public schools provide education to students, school personnel, and parents on how to identify and report child sexual abuse.
- Moving forward: North Carolina should adopt Erin’s law to mandate that public schools provide child sexual abuse education to help prevent the abuse from occurring, and to help identify perpetrators and hold them accountable.

Funding cuts to NC budget for administrative support to domestic violence and sexual assault agencies

- The legal issue: Victimization increased substantially during the pandemic. The State legislature passed a one-time budget appropriation for coronavirus relief funding which included some additional funds for domestic violence and sexual assault programs; however, these funds were non-recurring. Recurring funds to these programs have not increased in a decade. Current budget drafts include a \$15M appropriation to sustain victim services. Simultaneously, the funding available to NC through the Victims of Crime Act (VOCA) has decreased from \$108M/year in 2018 to \$34M/year for 2021. The substantial VOCA reduction underscores the importance of NC allocating additional state funds to help support victim services programming statewide.
- Moving forward: Action may be required to educate legislators on the impact of victim services funding.

Local Policies

⁸ *50-State Comparison: Relief from Sex Offender Registration Obligations*, COLLATERAL CONSEQUENCES RESOURCE CENTER (Nov. 1, 2017), <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>.

⁹ *What is Erin’s Law?*, ERIN’S LAW, <http://www.erinslaw.org/erins-law/> (last visited May 23, 2019).

Increase Access to the Courts for Vulnerable Survivors

- The issue: Buncombe County District Court changed its protocol on January 8, 2019 to limit the hours available for temporary ex parte relief hearings requested by plaintiff survivors in Domestic Violence Protection Order matters.¹⁰ It used to be that the ex parte orders were heard at 9:00 a.m. and at 2:00 p.m. until all complaints were processed; the January Order limited hearings to 9:00 a.m. and only for those complaints completed by that time. The courthouse opens at 8:00 a.m. Partner agencies advocated with local leaders to reverse the limited hours. The Court amended the Order to hear complaints filed until 9:30 a.m. or at the discretion of the sitting Judge.¹¹ The reduced hours are a significant barrier for survivors seeking the emergency relief that they are entitled to under the 50B statute; the change particularly affects survivors with limited transportation options, language barriers, childcare, employment, and other acute needs. Based on an analysis from Helpmate, many survivors who would have otherwise sought a protection order find the process too burdensome due to the limited hours.¹²
- Moving forward: Re-instate afternoon hours for ex parte hearings in Buncombe County to ensure survivors can access the court system for emergency relief.

Mandated training for law enforcement on responding to sexual violence calls

- The legal issue: Acts of sexual violence are estimated to be grossly under-reported by survivors due to fear of how law enforcement and the community might respond.¹³ Though Buncombe County trains all law enforcement to screen reports for domestic violence,¹⁴ many of North Carolina's law enforcement officers who respond to reports of sexual violence are not mandated to complete training on a trauma-informed response approach and best practices for responding to reports of sexual violence.
- Moving forward: Require law enforcement to complete training on responding to reports of sexual violence in order to aid responders in identifying and preventing further acts of sexual violence.

Local government information and support for potential perpetrators of sexual and physical violence

- The legal issue: There is insufficient information and support for potential perpetrators of domestic or sexual violence who need help. For individuals who have had thoughts of committing such violence but have not done so, directed information and support could ultimately prevent perpetration.

¹⁰ Administrative Order on Ex Parte' 50B Domestic Violence (Jan. 8, 2019).

¹¹ Administrative Order on Ex Parte' 50B Domestic Violence (amended on Nov. 27, 2019).

¹² Helpmate, Effects of Administrative Order on Ex Parte' 50B Domestic Violence in Buncombe County (attached for reference).

¹³ U.S. Dep't of Justice, Off. of Justice Programs, Bureau of Justice Stat., *Criminal Victimization, 2005 O, 10* (June 16, 2011) (over 60% of rapes and sexual assaults are not reported to the police).

¹⁴ *eNOugh*, BUNCOMBE COUNTY GOVERNMENT, <https://www.buncombecounty.org/law-safety/family-justice-center/enough.aspx> (last visited May 23, 2019).

- Moving forward: The local government should fund directed public service announcements and other programs in order to reach potential perpetrators of sexual and physical violence with information and support before violent thoughts are acted upon.

Title IX education and enforcement for college campuses and K-12 schools

- The legal issue: Title IX includes a mechanism for reporting and addressing sexual violence at school campuses and functions.¹⁵ The current federal administration wrote new rules effective August 14, 2020,¹⁶ which substantially alter how federally-funded schools are to address these reports. Among others, significant changes include requiring survivors to meet a higher burden of proof in order to bring a claim against an abuser, and requiring cross-examinations during hearings. These changes may cause a chilling effect on survivor reports. While each school develops its protocols for implementation, it is crucial that school officials are transparent and proactive in informing parents, students, and educators on how they plan to implement and enforce the new rules.
- Moving forward: Schools should make their Title IX Coordinator's information and protocols easily accessible to all parents, students, and educators. Schools should also be incentivized to directly share information about student rights and reporting.

Affordable daycare for all

- The legal issue: Without affordable daycare options for working parents, survivors of domestic or sexual violence often feel unable to leave a violent relationship for fear of losing a job necessary to support themselves and their children. Additionally, the risk of child abuse is elevated when children are left with insufficient care or inappropriate caretakers.
- Moving forward: The local government should implement policies and provide funding for the development and sustainability of affordable daycare options for working fa

¹⁵ Education Amendments of 1972, 20 U.S.C. § 1681 (2018).

¹⁶ Nondiscrimination on the Basis of Sex in Education Programs, 85 Fed. Reg. 30026 (proposed May 19, 2020) (to be codified at 34 C.F.R. 106).