

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL 308
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Short Title: Guardianship Rights/Modify Firearms Retrieval.

(Public)

Sponsors:

Referred to:

March 15, 2023

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE GUARDIANSHIP ACCOUNTING STATUTE TO ALLOW FOR CERTAIN TIMING ELECTIONS AND EXTENSIONS, TO AMEND THE GENERAL STATUTES TO PREVENT THE ABUSE OR MISUSE OF AUTHORITY GRANTED TO AN AGENT IN A POWER OF ATTORNEY, AND TO PROMOTE THE RIGHTS AND INDEPENDENCE OF PERSONS SUBJECT TO THE GUARDIANSHIP PROCESS AND TO IMPROVE JUDICIAL OVERSIGHT AND ACCOUNTABILITY FOR GUARDIANS OF THE PERSON, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION, TO MODIFY AND CLARIFY PROVISIONS RELATED TO THE RETRIEVAL OF FIREARMS, AMMUNITION, AND PERMITS SURRENDERED PURSUANT TO AN EX PARTE, EMERGENCY, OR PERMANENT DOMESTIC VIOLENCE PROTECTIVE ORDER, AND TO PROTECT MINOR VICTIMS OF AND WITNESSES TO CRIME.

The General Assembly of North Carolina enacts:

PART I. GUARDIANSHIP ANNUAL ACCOUNTING CHANGES

SECTION 1.1. G.S. 35A-1264 reads as rewritten:

"§ 35A-1264. **Annual accounts.**

~~Every~~ Unless the time for filing the annual account has been extended by the clerk, every guardian shall, ~~within 30 days after the expiration of one year from the date of his qualification or appointment, and annually,~~ for so long as any of the estate remains in his the guardian's control, file annually in the office of the clerk an inventory and account, under oath, of the amount of property the guardian received by him, or invested by him, and invested, including the manner and nature of such investment, and his all receipts and disbursements for the past year in the form of debit and credit. All accounts shall be due within 30 days after the close of the fiscal year selected by the guardian, and annually thereafter. The election of a fiscal year shall be made by the guardian upon filing of the first annual account; or, if made in a subsequent year, with the permission of the clerk. In no event may a guardian select a fiscal year-end that is fewer than 11 months nor more than 12 months from the date of the guardian's qualification or appointment. The guardian shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. The clerk may examine on oath ~~such the~~ the accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the ~~estate; and having~~ estate. The clerk shall carefully revised-review and audited-such-audit the account, and, if he



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1 ~~approve the same, he approved,~~ must endorse his the approval thereon, on the account and cause
2 the account to be recorded, which shall be deemed prima facie evidence of correctness."

3 **SECTION 1.2.** This Part is effective January 1, 2024, and applies to annual account
4 filings made on or after that date.

5
6 **PART II. PREVENT ABUSE OF AUTHORITY IN POWERS OF ATTORNEY**

7 **SECTION 2.1.** G.S. 32C-1-116 reads as rewritten:

8 "**§ 32C-1-116. Judicial relief.**

9 (a) The clerks of superior court of this State shall have original jurisdiction of
10 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk
11 of superior court's jurisdiction is exclusive. The following proceedings are included:

- 12 (1) To compel an accounting by the agent, including the power to compel the
13 production of evidence substantiating any expenditure made by the agent from
14 the principal's assets.
- 15 (2) To terminate a power of attorney or to suspend or terminate the authority of
16 an agent where a guardian of the estate or a general guardian has been
17 appointed.
- 18 (3) To determine compensation and expenses for an agent under
19 G.S. 32C-1-112(b) and G.S. 32C-1-112(c).
- 20 (4) To determine an agent's authority and powers, to construe the terms of a power
21 of attorney created or governed by this Chapter, and to determine any question
22 arising in the performance by an agent of the agent's powers and authority
23 under a power of attorney governed by this Chapter, including, but not limited
24 to, the following proceedings:
 - 25 a. To determine whether and to what extent an agent holds a specific
26 grant of authority under G.S. 32C-2-201.
 - 27 b. To approve an agent's ability to make a gift on behalf of the principal
28 where the gift is governed by G.S. 32C-2-217 because the power of
29 attorney grants the agent only general authority with respect to gifts.
 - 30 c. To authorize the agent to make a gift of the principal's property under
31 G.S. 32C-2-218.
 - 32 d. To authorize the agent to do an act described in G.S. 32C-2-201(a),
33 other than the act to make a gift, under G.S. 32C-2-219.
 - 34 e. To determine whether and to what extent acceptance of a power of
35 attorney shall be mandated under G.S. 32C-1-120(f).

36 Any party may file a notice of transfer of a proceeding pursuant to this
37 subdivision to the superior court division of the General Court of Justice as
38 provided in G.S. 28A-2-6(h). In the absence of a removal to superior court,
39 Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding
40 commenced under this Chapter to the extent consistent with this subsection.

41 ...

42 (f) Upon motion by the ~~principal,~~ principal individually and not through an agent, the
43 clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless
44 the clerk of superior court determines the principal is incapacitated within the meaning of
45 G.S. 32C-1-102(6).

46 (g) Any party adversely affected by an order of the clerk of superior court in a proceeding
47 commenced under subsection (a) of this section may appeal the clerk's order as provided in
48 G.S. 1-301.3."

49 **SECTION 2.2.** This Part is effective when it becomes law and applies to proceedings
50 filed on or after that date.

PART III. CHANGES TO GUARDIANSHIP STATUTES

SECTION 3.1. G.S. 35A-1101 reads as rewritten:

"§ 35A-1101. Definitions.

The following definitions apply in this Subchapter:

...

(7) Incompetent adult. – An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition. An adult or emancipated minor does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property.

(8) Incompetent child. – A minor who is at least 17 1/2 years of age and who, other than by reason of minority, lacks sufficient capacity to make or communicate important decisions concerning the child's person, family, or property whether the lack of capacity is due to mental illness, intellectual disability, epilepsy, cerebral palsy, autism, inebriety, disease, injury, or similar cause or condition. An incompetent child does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property.

(9) Indigent. – Unable to pay for legal representation and other necessary expenses of a proceeding brought under this Subchapter.

(10) Inebriety. – The habitual use of alcohol or drugs rendering a person incompetent to transact ordinary business concerning the person's estate, dangerous to person or property, cruel and intolerable to family, or unable to provide for family.

(10a) Intellectual disability. – Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(11) Interim guardian. – A guardian, appointed prior to adjudication of incompetence and for a temporary period, for a person who requires immediate intervention to address conditions that constitute imminent or foreseeable risk of harm to the person's physical well-being or to the person's estate.

(11a) Less restrictive alternative. – An arrangement enabling a respondent to manage his or her affairs or to make or communicate important decisions concerning his or her person, property, and family that restricts fewer rights of the respondent than would the adjudication of incompetency and appointment of a guardian. The term includes supported decision making, appropriate and available technological assistance, appointment of a representative payee, and appointment of an agent by the respondent, including appointment under a power of attorney for health care or power of attorney for finances.

...."

SECTION 3.2. G.S. 35A-1106 reads as rewritten:

"§ 35A-1106. Contents of petition.

The petition shall set forth, to the extent ~~known~~known, all of the following:

(1) The name, age, address, and county of residence of the ~~respondent~~respondent.

- 1 (2) The name, address, and county of residence of the petitioner, and ~~his~~the
2 petitioner's interest in the ~~proceeding~~proceeding.
- 3 (3) A general statement of the respondent's assets and liabilities with an estimate
4 of the value of any property, including any compensation, insurance, pension,
5 or allowance to which ~~he~~the respondent is ~~entitled~~entitled.
- 6 (4) A statement of the facts tending to show that the respondent is incompetent
7 and the reason or reasons why the adjudication of incompetence is
8 ~~sought~~sought.
- 9 (4a) A statement identifying what less restrictive alternatives have been considered
10 prior to seeking adjudication and why those less restrictive alternatives are
11 insufficient to meet the needs of the respondent.
- 12 (5) The name, address, and county of residence of the respondent's next of kin
13 and other persons known to have an interest in the ~~proceeding~~proceeding.
- 14 (6) Facts regarding the adjudication of respondent's incompetence by a court of
15 another state, if an adjudication is sought on that basis pursuant to
16 G.S. 35A-1113(1)."

17 **SECTION 3.3.** G.S. 35A-1107 reads as rewritten:

18 **"§ 35A-1107. Right to counsel or guardian ad litem.**

19 (a) The respondent is entitled to be represented by counsel of the respondent's own choice
20 or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be appointed
21 as guardian ad litem to represent the respondent unless the respondent retains counsel, in which
22 event the guardian ad litem may be discharged. Appointment and discharge of an appointed
23 guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense
24 Services.

25 (b) An attorney appointed as a guardian ad litem under this section shall represent the
26 respondent until any of the following occurs:

- 27 (1) The petition is dismissed.
28 (2) A guardian is appointed under Subchapter II of this Chapter.
29 (3) Other relief is granted under Article 2 of this Subchapter.

30 (c) After being appointed, the guardian ad litem shall personally visit the respondent as
31 soon as possible and shall make every reasonable effort to determine the respondent's wishes
32 regarding the incompetency proceeding and any proposed guardianship. During the personal
33 visit, and at any time upon request by the respondent, the guardian ad litem shall explain the
34 notice of rights required under G.S. 35A-1117 to the respondent. The guardian ad litem shall
35 present to the clerk the respondent's express wishes at all relevant stages of the proceedings. The
36 guardian ad litem also may make recommendations to the clerk concerning the respondent's best
37 interests if those interests differ from the respondent's express wishes. In appropriate cases, the
38 guardian ad litem shall consider the possibility of a limited guardianship and shall make
39 recommendations to the clerk concerning the rights, powers, and privileges that the respondent
40 should retain under a limited guardianship."

41 **SECTION 3.4.** G.S. 35A-1108 reads as rewritten:

42 **"§ 35A-1108. Issuance of notice.**

43 (a) Within five days after filing of the petition, the clerk shall issue a written notice of the
44 date, time, and place for a hearing on the petition, which shall be held not less than 10 days nor
45 more than 30 days after service of the notice of rights required under G.S. 35A-1117 and the
46 petition and initial notice of hearing on the respondent, unless the clerk extends the time for good
47 cause, for preparation of a multidisciplinary evaluation as provided in G.S. 35A-1111, or for the
48 completion of a mediation.

49 (b) If a multidisciplinary evaluation or mediation is ordered after a notice of hearing has
50 been issued, the clerk may extend the time for hearing and issue a notice to the parties that the
51 hearing has been continued, the reason therefor, and the date, time, and place of the new hearing,

1 which shall not be less than 10 days nor more than 30 days after service of such notice on the
2 respondent.

3 (c) Subsequent notices to the parties shall be served as provided by G.S. 1A-1, Rule 5,
4 Rules of Civil Procedure, unless the clerk orders otherwise."

5 **SECTION 3.5.** G.S. 35A-1109 reads as rewritten:

6 "**§ 35A-1109. Service of notice and petition.**

7 (a) Copies of the notice of rights required under G.S. 35A-1117 and the petition and
8 initial notice of hearing shall be personally served on the respondent. Respondent's counsel or
9 guardian ad litem shall be served pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. A
10 sheriff who serves the notice and petition shall do so without demanding his fees in advance. The
11 petitioner, within five days after filing the petition, shall mail or cause to be mailed, by first-class
12 mail, copies of the notice of rights and the petition and initial notice of hearing to the respondent's
13 next of kin alleged in the petition and any other persons the clerk may designate, unless such
14 person has accepted notice. Proof of such mailing or acceptance shall be by affidavit or certificate
15 of acceptance of notice filed with the clerk. The clerk shall mail, by first-class mail, copies of
16 subsequent notices to the next of kin alleged in the petition and to such other persons as the clerk
17 deems appropriate.

18 (b) Expired August 1, 2020, pursuant to Session Laws 2020-3, s. 4.11(b)."

19 **SECTION 3.6.** G.S. 35A-1116 reads as rewritten:

20 "**§ 35A-1116. Costs and fees.**

21 (a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special
22 proceedings. Costs, including any reasonable fees and expenses of ~~counsel for the petitioner~~
23 ~~which the clerk, in his discretion, may allow, may be taxed against either party counsel, shall be~~
24 ~~taxed against any party or apportioned among the parties, in the discretion of the court~~
25 ~~unless:~~court. In exercising such discretion, the court shall tax costs incurred by any party against
26 the respondent if the court finds that such costs were incurred for the benefit of the respondent,
27 unless doing so would be inequitable. If the clerk finds that the petitioner did not have reasonable
28 grounds to bring the proceeding, costs shall be taxed to the petitioner. In the event that

29 (1) ~~The clerk finds that the petitioner did not have reasonable grounds to bring the~~
30 ~~proceeding, in which case costs shall be taxed to the petitioner; or~~

31 (2) ~~The the respondent is indigent, in which case the costs shall be waived by the~~
32 ~~clerk if not taxed against the petitioner a party other than the respondent as~~
33 ~~provided above in this subsection or otherwise paid as provided in subsection~~
34 ~~(b) or (e);(c) of this section.~~

35 (b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order
36 pursuant to G.S. 35A-1111 shall be assessed as follows:

37 (1) If the respondent is adjudicated incompetent and is not indigent, the cost shall
38 be assessed against the respondent;

39 (2) If the respondent is adjudicated incompetent and is indigent, the cost shall be
40 borne by the Department of Health and Human Services;

41 (3) If the respondent is not adjudicated incompetent, the cost may be taxed against
42 either party, apportioned among the parties, or borne by the Department of
43 Health and Human Services, in the discretion of the court.

44 (c) Witness. – Witness fees shall be paid by:

45 (1) The respondent, if the respondent is adjudicated incompetent and is not
46 indigent;

47 (2) The petitioner, if the respondent is not adjudicated incompetent and the clerk
48 finds that there were not reasonable grounds to bring the proceeding;

49 (2a) The petitioner for any of the petitioner's witnesses, and the respondent for any
50 of the respondent's witnesses, when the clerk finds all of the following:

51 a. There were reasonable grounds to bring the proceeding.

- 1 b. The respondent was not adjudicated incompetent.
2 c. The respondent is not indigent.
3 (3) The Administrative Office of the Courts for witness fees for the respondent,
4 if the respondent is indigent.
5 (c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed
6 in accordance with G.S. 7A-38.3B.
7 (c2) Guardian Ad Litem. – The fees of an appointed guardian ad litem shall be paid by:
8 (1) The respondent, if:
9 a. The respondent is adjudicated incompetent; and
10 b. The respondent is not indigent.
11 (2) The respondent, if:
12 a. The respondent is not adjudicated incompetent;
13 b. The clerk finds that there were reasonable grounds to bring the
14 proceeding; and
15 c. The respondent is not indigent.
16 (3) The petitioner, if:
17 a. The respondent is not adjudicated incompetent; and
18 b. The clerk finds that there were not reasonable grounds to bring the
19 proceedings.
20 (4) The Office of Indigent Defense Services in all other cases.
21 (d) The provisions of this section shall also apply to all parties to any proceedings under
22 this Chapter, including a guardian who has been removed from office and the sureties on the
23 guardian's bond."

24 **SECTION 3.7.** Article 1 of Subchapter 1 of Chapter 35A of the General Statutes is
25 amended by adding a new section to read:

26 "**§ 35A-1117. Notice of rights of respondent.**

27 (a) Notice of Rights. – Every respondent in a proceeding under this Chapter shall be given
28 a notice of his or her rights which shall be set forth in a conspicuous manner and substantially
29 similar to the following language:
30

31 **"THE LAWS GOVERNING INCOMPETENCY AND GUARDIANSHIP ARE**
32 **COMPLEX. THIS IS A SUMMARY OF RIGHTS FOR INFORMATIONAL PURPOSES**
33 **ONLY. IT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OF ALL RIGHTS.**
34 **THE RIGHTS LISTED MAY NOT APPLY IN ALL CASES AND SHOULD NOT BE**
35 **CITED AS LAW IN A COURT PROCEEDING. YOU SHOULD CONSULT WITH AN**
36 **ATTORNEY OF YOUR CHOOSING IF YOU HAVE ANY QUESTIONS ABOUT YOUR**
37 **RIGHTS.**
38

39 a. Rights of Respondents Before Adjudication of Incompetence:

40
41 1. **Right to Notice** – You have a right to receive a copy of the petition, the initial notice
42 of hearing, and this notice of rights before the hearing. You also have the right at any time to
43 request a copy of this notice of rights from your court-appointed guardian ad litem or the court.

44 2. **Right to an Attorney** – You have the right to hire an attorney of your choice to
45 represent you in the proceeding. If you do not hire your own attorney, you will be represented by
46 an attorney called a guardian ad litem. If you do hire an attorney, the court may require the
47 guardian ad litem to continue to be involved in your case. The guardian ad litem will present your
48 express wishes to the court and consider the possibility of a limited guardianship, making
49 recommendations to the court regarding the rights that you should keep if the guardianship is
50 limited. The guardian ad litem may also make recommendations to the court that the guardian ad

1 litem feels are in your best interest, even if those recommendations differ from your express
2 wishes.

3 3. **Right to Gather Evidence** – You have a right to require witnesses to appear and to
4 gather documents concerning your ability to make decisions. You have a right to request an
5 evaluation (called a multidisciplinary evaluation) to assist the court in determining the extent of
6 your ability to make decisions and to assist in making an appropriate guardianship plan. You or
7 your attorney must request a multidisciplinary evaluation in writing no later than 10 days after
8 you are served with the petition.

9 4. **Right to a Hearing** – A hearing must be held before you can be adjudicated to be
10 incompetent. The hearing will be held between 10 and 30 days after you receive a copy of the
11 petition, notice of hearing, and this notice of rights unless the court delays the hearing for a good
12 reason. You have the right to ask the court to change the date of the hearing for a good reason,
13 and the court will decide whether or not to change the hearing date. You have a right to attend
14 the hearing if you choose to do so. You can give up your right to attend the hearing. You have a
15 right to have your express wishes communicated to the court by the court-appointed guardian ad
16 litem at all relevant stages of the proceedings.

17 5. **Right to a Jury** – You have the right to request that a jury hear your case. You lose
18 that right to a jury if you wait too long to ask.

19 6. **Right to a Closed Hearing** – The hearing is open to the public unless you or your
20 attorney ask for it to be private. You or your attorney have the right to ask the court to close the
21 hearing and exclude anyone who is not directly involved or testifying at the hearing.

22 7. **Right to Present Evidence and Testimony** – You have a right to present evidence
23 at the hearing. You have a right to testify at the hearing.

24 8. **Right to Call Witnesses and Right to Question Witnesses** – You have the right to
25 call and question witnesses at the hearing, including family members and medical providers. You
26 have the right to question witnesses anyone else calls at the hearing.

27 9. **Right to Express Wishes Regarding Your Rights** – If you are adjudicated to be
28 incompetent, you will lose the right to direct your healthcare, employment, interpersonal
29 relationships, and religious, social, and community activities unless the court specifically agrees
30 to allow you to keep those rights. You have the right to tell the court what rights you would like
31 to keep. The court will consider your wishes, but the court is not required to follow your wishes.

32 10. **Right to Express Wishes as to Who Serves as Your Guardian** – If the court decides
33 that you need a guardian, you have the right to tell the court who you want to be your guardian.
34 The court will consider your wishes, but the court is not required to follow your wishes.

35 11. **Right to Appeal** – If you have a good reason to believe that your case was wrongly
36 decided, (i) you have the right to appeal the decision adjudicating you to be incompetent by filing
37 a written notice of appeal with the clerk within 10 days of the clerk entering the order and (ii)
38 you have the right to appeal the clerk's decision about who is appointed as your guardian by filing
39 a written notice of appeal with the clerk within 10 days of the order being served on you. You
40 lose your rights to appeal any decision made by the clerk if you do not file a written notice of
41 appeal in time.

42
43 b. **Rights of Wards After Adjudication of Incompetence:**

44
45 1. **Right to a Qualified, Responsible Guardian** – You have the right to a qualified,
46 responsible guardian.

47 2. **Right to Request Transfer to Another County** – If you have a good reason to
48 believe that your guardianship should be administered in a different county, you have the right
49 to request that your guardianship be transferred to another county.

50 3. **Right to Request Restoration of Competency** – If there has been a change in your
51 circumstances and you believe that you can show to the court that you have regained your

1 competency, you have the right to request that the court restore your competency and end your
2 guardianship.

3 4. **Right to Request a Review or Modification of Your Guardianship** – If there has
4 been a change in your circumstances and you believe that your guardianship should be modified
5 or reviewed, you have the right to file a motion to request that the court review or modify your
6 guardianship.

7 5. **Right to Vote** – You have a right to register to vote and vote in elections if you are
8 otherwise qualified.

9 6. **Right to Request a Hearing in a Petition for Procedure to Permit Sterilization** –
10 If your guardian asks the court for an order to sterilize you, you have the right to know about it,
11 to participate in the hearing, to have an attorney at the hearing, and to appeal the court's decision
12 by filing a written notice of appeal with the clerk within 10 days of the clerk entering the order.

13 7. **Ability to Drive** – You may lose your ability to drive a car or other vehicle. The clerk
14 must notify the Department of Motor Vehicles (DMV) that you have been adjudicated
15 incompetent, and the clerk will make a recommendation on whether you should keep your
16 driver's license. The DMV will contact you and you may get a letter from the DMV revoking
17 your license. You have the right to make a written request to the DMV to review a decision to
18 revoke your license.

19 8. **Additional Rights** – *Some rights depend on whether you have the capacity to*
20 *exercise the right. Different rights have different tests for capacity. Examples of rights where*
21 *you need to demonstrate you have the required capacity are the right to marry, make a last will*
22 *and testament, and testify as a witness. You should consult with an attorney of your choosing*
23 *to discuss whether you have the capacity to exercise these rights.*

24
25 (b) The Administrative Office of the Courts shall develop a form notice as set forth in
26 subsection (a) of this section and shall make a Spanish translation of the form available."

27 **SECTION 3.8.** G.S. 35A-1201 reads as rewritten:

28 "**§ 35A-1201. Purpose.**

29 (a) The General Assembly of North Carolina recognizes that:

- 30 (1) Some minors and incompetent persons, regardless of where they are living,
31 require the assistance of a guardian in order to help them exercise their rights,
32 including the management of their property and personal affairs.
- 33 (2) Incompetent persons who are not able to act effectively on their own behalf
34 have a right to a qualified, responsible guardian.
- 35 (3) The essential purpose of guardianship for an incompetent person is to replace
36 the individual's authority to make decisions with the authority of a guardian
37 when the individual does not have adequate capacity to make such decisions.
- 38 (4) Limiting the rights of an incompetent person by appointing a guardian for him
39 should not be undertaken unless it is clear that a guardian will give the
40 individual a fuller capacity for exercising his rights.
- 41 (5) Guardianship should seek to preserve for the incompetent person the
42 opportunity to exercise those rights that are within his comprehension and
43 judgment, allowing for the possibility of error to the same degree as is allowed
44 to persons who are not incompetent. To the maximum extent of his
45 capabilities, an incompetent person should be permitted to participate as fully
46 as possible in all decisions that will affect him.
- 47 (6) Minors, because they are legally incompetent to transact business or give
48 consent for most purposes, need responsible, accountable adults to handle
49 property or benefits to which they are entitled. Parents are the natural
50 guardians of the person of their minor children, but unemancipated minors,
51 when they do not have natural guardians, need some other responsible,

1 accountable adult to be responsible for their personal welfare and for personal
2 decision-making on their behalf.

3 (7) For adults, guardianship should always be a last resort and should only be
4 imposed after less restrictive alternatives have been considered and found to
5 be insufficient to meet the adult's needs.

6 (8) The filing of regular status reports by the guardian of the person or general
7 guardian concerning the conditions and welfare of an incompetent person is
8 encouraged and should be required whenever appropriate.

9"

10 **SECTION 3.9.** G.S. 35A-1207 reads as rewritten:

11 **"§ 35A-1207. Motions in the cause.**

12 (a) Any interested person or the clerk, on the clerk's own motion, may file a motion in
13 the cause with the clerk in the county where a guardianship is docketed to request modification
14 of the order appointing a guardian or guardians or consideration of any matter pertaining to the
15 guardianship.

16 (b) The clerk shall treat all such requests, however labeled, as motions in the cause.

17 (c) A movant under this section shall obtain from the clerk a time, date, and place for a
18 hearing on the motion, and shall serve the motion and notice of hearing on all other parties and
19 such other persons as the clerk directs as provided by G.S. 1A-1, Rule 5 of the Rules of Civil
20 Procedure, unless the clerk orders otherwise.

21 (d) If the clerk finds reasonable cause to believe that an emergency exists that threatens
22 the physical well-being of the ward or constitutes a risk of substantial injury to the ward's estate,
23 the clerk may enter an appropriate ex parte order to address the emergency pending disposition
24 of the matter at the hearing."

25 **SECTION 3.10.** G.S. 35A-1214 reads as rewritten:

26 **"§ 35A-1214. Priorities for appointment.**

27 The clerk shall consider appointing a guardian according to the following order of priority:
28 (i) an individual or entity nominated under G.S. 32C-1-108(a) or G.S. 32A-22(b), as applicable;
29 (ii) an individual recommended under G.S. 35A-1212.1; (iii) an individual; (iv) a corporation; or
30 (v) a disinterested public agent. No public agent shall be appointed guardian until diligent efforts
31 have been made to find an appropriate individual or corporation to serve as guardian, but in every
32 instance the clerk shall base the appointment of a guardian or guardians on the best interest of
33 the ward."

34 **SECTION 3.11.** G.S. 35A-1217 reads as rewritten:

35 **"§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

36 The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this
37 Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk
38 determines that the ward's interests are not adequately represented. Appointment and discharge
39 of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent
40 Defense Services. The guardian ad litem shall explain the notice of rights under G.S. 35A-1117
41 as part of the guardian ad litem's representation of the ward in connection with all proceedings
42 under this Subchapter. Nothing herein shall affect the ward's right to retain counsel of his or her
43 own choice."

44 **SECTION 3.12.** G.S. 35A-1242 reads as rewritten:

45 **"§ 35A-1242. Status reports for incompetent wards.**

46 (a) Any corporation or disinterested public agent that is guardian of the person for an
47 incompetent person, within six months after being appointed, shall file an initial status report
48 with the clerk and submit a copy of the initial status report to the designated agency, if there is
49 one. Such guardian shall file a second status report with the clerk one year after being appointed,
50 and subsequent reports annually thereafter. The clerk may order any other guardian of the person
51 to file status reports. If a guardian required by this section to file a status report is employed by

1 the designated agency, the guardian shall file any required status report with the clerk and submit
2 a copy of the status report to the designated agency.

3 ...

4 (e) Every guardian of the person, upon knowledge of a ward's change of residence, shall
5 file a notice of change of ward's address with the court within 30 days. The notice shall include
6 the ward's previous address, the ward's new address, and the date the ward moved to the new
7 address."

8 **SECTION 3.13.** This Part is effective January 1, 2024, and applies to petitions filed
9 on or after that date.

10
11 **PART IV. RETRIEVAL OF FIREARMS, AMMUNITION, AND PERMITS**
12 **SURRENDERED PURSUANT TO AN EX PARTE, EMERGENCY, OR PERMANENT**
13 **DOMESTIC VIOLENCE PROTECTIVE ORDER**

14 **SECTION 4.1.** G.S. 50B-3.1 reads as rewritten:

15 "**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

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

- 21 (1) The use or threatened use of a deadly weapon by the defendant or a pattern of
22 prior conduct involving the use or threatened use of violence with a firearm
23 against persons.
- 24 (2) Threats to seriously injure or kill the aggrieved party or minor child by the
25 defendant.
- 26 (3) Threats to commit suicide by the defendant.
- 27 (4) Serious injuries inflicted upon the aggrieved party or minor child by the
28 defendant.

29 (b) **Ex Parte or Emergency Hearing.** – The court shall inquire of the plaintiff, at the ex
30 parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the
31 defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed
32 firearms, and include, whenever possible, identifying information regarding the description,
33 number, and location of firearms, ammunition, and permits in the order.

34 (c) **Ten-Day Hearing.** – The court, at the 10-day hearing, shall inquire of the defendant
35 the presence of, ownership of, or otherwise access to firearms by the defendant, as well as
36 ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include,
37 whenever possible, identifying information regarding the description, number, and location of
38 firearms, ammunition, and permits in the order.

39 (d) **Surrender.** – Upon service of the order, the defendant shall immediately surrender to
40 the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms,
41 and permits to carry concealed firearms that are in the care, custody, possession, ownership, or
42 control of the defendant. In the event that weapons cannot be surrendered at the time the order is
43 served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within
44 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms
45 or contract with a licensed firearms dealer to provide storage.

- 46 (1) If the court orders the defendant to surrender firearms, ammunition, and
47 permits, the court shall inform the plaintiff and the defendant of the terms of
48 the protective order and include these terms on the face of the order, including
49 that the defendant is prohibited from possessing, purchasing, or receiving or
50 attempting to possess, purchase, or receive a firearm for so long as the
51 protective order or any successive protective order is in effect. The terms of

1 the order shall include instructions as to how the defendant may request
2 retrieval of any firearms, ammunition, and permits surrendered to the sheriff
3 when the protective order is no longer in effect. The terms shall also include
4 notice of the penalty for violation of G.S. 14-269.8.

- 5 (2) The sheriff may charge the defendant a reasonable fee for the storage of any
6 firearms and ammunition taken pursuant to a protective order. The fees are
7 payable to the sheriff. The sheriff shall transmit the proceeds of these fees to
8 the county finance officer. The fees shall be used by the sheriff to pay the costs
9 of administering this section and for other law enforcement purposes. The
10 county shall expend the restricted funds for these purposes only. The sheriff
11 shall not release firearms, ammunition, or permits without a court order
12 granting the ~~release~~. release, unless release without a court order is authorized
13 pursuant to subsection (e) of this section. The defendant must remit all fees
14 owed prior to the authorized return of any firearms, ammunition, or permits.
15 The sheriff shall not incur any civil or criminal liability for alleged damage or
16 deterioration due to storage or transportation of any firearms or ammunition
17 held pursuant to this section.

18 (e) Retrieval. – ~~If the court does not enter a protective order when the ex parte or~~
19 ~~emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff~~
20 ~~unless~~ Unless the court finds that the defendant is precluded from owning or possessing a firearm
21 pursuant to State or federal law or final disposition of any pending criminal charges committed
22 against the person that is the subject of the current protective order, the defendant may
23 retrieve any weapons surrendered to the sheriff without additional order of the court upon the
24 occurrence of one of the following conditions:

- 25 (1) The court does not enter a protective order when the ex parte or emergency
26 order expires.
27 (2) The protective order is denied by the court following a hearing.

28 Prior to release of any firearms to the defendant pursuant to this subsection, the sheriff shall
29 verify through a criminal history check conducted through the National Instant Criminal
30 Background Check System (NICS) that the defendant is not prohibited by law from possessing
31 a firearm.

32 (f) Motion for ~~Return~~. Return by Defendant. – The defendant may request the return of
33 any firearms, ammunition, or permits surrendered by filing a motion with the court at the
34 expiration of the current order or final disposition of any pending criminal charges committed
35 against the person that is the subject of the current protective order and not later than 90 days
36 after the expiration of the current order or final disposition of any pending criminal charges
37 committed against the person that is the subject of the current protective order. Upon receipt of
38 the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall
39 have the right to appear and be heard and to the sheriff who has control of the firearms,
40 ammunition, or permits. The court shall determine whether the defendant is subject to any State
41 or federal law or court order that precludes the defendant from owning or possessing a firearm.
42 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 seized
7 as a result of the entry of a domestic violence protective order. The motion ~~must~~ may be filed ~~not~~
8 later than 30 days after the at any time following seizure of the items by the sheriff. ~~sheriff prior~~
9 to their disposal pursuant to subsection (h) of this section. Upon receipt of the third party's
10 motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff.
11 The court shall order return of the items to the third party unless the court determines that the
12 third party is disqualified from owning or possessing said items pursuant to State or federal law.
13 If the court denies the return of said items to the third party, the items shall be disposed of by the
14 sheriff as provided in subsection (h) of this section.

15 (h) Disposal of Firearms. – After notice to the defendant and any known third-party
16 owner, the sheriff who has control of the firearms, ammunition, or permits, may apply to the
17 court for an order of disposition of the firearms, ammunition, or permits under any of the
18 following circumstances:

19 (1) Both of the following criteria are met:

20 a. ~~If the~~ The defendant does not file or third-party owner has not filed a
21 motion requesting the return of any firearms, ammunition, or permits
22 surrendered within the time period prescribed by this section, 90 days
23 after the expiration of the current order or final disposition of any
24 pending criminal charges committed against the person that is the
25 subject of the current protective order.

26 b. The defendant has not retrieved the firearms pursuant to subsection (e)
27 of this section within 90 days after the expiration of the current order
28 or final disposition of any pending criminal charges committed against
29 the person that is the subject of the current protective order.

30 (2) The court has determined if the court determines that the defendant or
31 third-party owner is precluded from regaining possession of any firearms,
32 ammunition, or permits surrendered, surrendered.

33 (3) ~~The or if the~~ defendant or third-party owner fails to remit all fees owed for the
34 storage of the firearms or ammunition within 30 days of either (i) the entry of
35 the order granting the return of the firearms, ammunition, or permits, or (ii) a
36 request to retrieve the firearms, ammunition, or permits pursuant to subsection
37 (e) of this section. ~~the sheriff who has control of the firearms, ammunition, or~~
38 ~~permits shall give notice to the defendant, and the sheriff shall apply to the~~
39 ~~court for an order of disposition of the firearms, ammunition, or permits.~~

40 The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits
41 in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of
42 G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any
43 costs associated with the sale, and in accordance with all applicable State and federal law, shall
44 be provided to the ~~defendant,~~ defendant or any known third-party owner if requested by the
45 defendant or any known third-party owner by motion made before the hearing or at the hearing
46 and if ordered by the judge.

47 (i) It is unlawful for any person subject to a protective order prohibiting the possession
48 or purchase of firearms to:

49 (1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and
50 permits to carry concealed firearms to the sheriff as ordered by the court;

(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the Armed Forces of the United States, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

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

SECTION 4.2. This Part becomes effective December 1, 2023, and applies (i) to firearms, ammunition, and permits surrendered on or after that date and (ii) beginning February 1, 2024, to firearms, ammunition, and permits surrendered before December 1, 2023.

PART V. PROTECT MINOR VICTIMS OF AND WITNESSES TO CRIME

SECTION 5.1. G.S. 132-1.4(c) reads as rewritten:

"(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of ~~G.S. 132-1~~G.S. 132-1:

...
 (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for ~~such contents~~any of the following:

a. Contents of a "911" or other emergency telephone call that reveal reveals the natural voice, name, address, telephone number, or other information that may identify the caller, victim, or witness. In order to protect the identity of the complaining witness, the contents of "911" and other emergency telephone calls may be released pursuant to this section in the form of a written transcript or altered voice reproduction; provided that the original shall be provided under process to be used as evidence in any relevant civil or criminal proceeding.

b. Contents of any "911" or other emergency telephone call where the caller is less than 18 years of age.

...."

PART VI. EFFECTIVE DATE

SECTION 6.1. Except as otherwise provided, this act is effective when it becomes law.