



SENATE BILL 53: Law Enforcement Authority/Custody of Child.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 26, 2017
Introduced by:	Sen. J. Davis	Prepared by:	Augustus D. Willis Staff Attorney
Analysis of:	Second Edition		

OVERVIEW: *Senate Bill 53 would modify the laws pertaining to warrants to take physical custody of children in child-custody matters to (i) require a warrant to take physical custody of a minor child to accompany any temporary custody order that orders a law enforcement officer to take physical custody of a child, (ii) allow any court with jurisdiction to make an award of custody of a minor child to issue a warrant to take physical custody of a minor child if an application for such a warrant alleges the child is in imminent danger of suffering serious physical harm or of being removed from the State, and (iii) allow courts to rely on a petition and request for custody in authorizing a law enforcement officer to enter private property to take custody of a child, and expressly allow the court to authorize the use of reasonably necessary force, and provide protections for law enforcement officers who duly serve such warrants.*

CURRENT LAW: G.S. 50A-311 sets forth the procedure and requirements for obtaining a warrant to take physical custody of a child in child-custody matters. Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner 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 the State. Upon a finding that either of these two events are likely to occur, a court may issue a warrant to take physical custody of the child and, if it finds on the basis of testimony from the petitioner or other witness that a less intrusive remedy is not effective, the court may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances, the court may authorize law enforcement officers to make forcible entry at any hour.

BILL ANALYSIS:

Section 1 would require that any temporary custody order that requires a law enforcement officer to take physical custody of a minor child be accompanied by a warrant to take physical custody of a minor child pursuant to G.S. 50A-311.

Section 2 would provide that, upon the filing of a verified application for a warrant to take physical custody of a minor child that alleges the child is in imminent danger of suffering serious physical harm or of being removed from the State, any court of the State with jurisdiction to make an award of custody of a minor child may issue a warrant to take physical custody of a minor child pursuant to G.S. 50A-311.

Section 3 would modify the provisions of G.S. 50A-311 pertaining to authorization for law enforcement officers to enter private property and/or make forcible entry in order to take custody of a child. The bill would allow for a court to base its finding of the need to authorize law enforcement to enter private property on the petition and request for custody, in addition to the testimony of the petitioner or other witness. It would also expressly allow the court to authorize the use of "such reasonable force as is necessary" if required by exigent circumstances of the case. Finally, the bill would provide that law

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enforcement officers are not required to inquire into the regularity or continued validity of the order and specify that they are not criminally or civilly liable for duly serving such an order.

EFFECTIVE DATE: This act would become effective October 1, 2017 and apply to orders for temporary custody on or after that date.