

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2770

STATE OF NEW JERSEY

DATED: MARCH 9, 2023

The Assembly Law and Public Safety Committee reports favorably Assembly Bill No. 2770 (1R).

As reported by the committee, Assembly Bill No. 2770 (1R) would authorize the Superior Court to issue permanent protective orders (PPO) and temporary protective orders (TPO) for persons victimized by acts or attempted acts of stalking, cyber-harassment, sexual assault, and criminal sexual contact in situations for which the domestic violence statutes are inapplicable because the victim lacks a prior or existing spousal, household, or dating relationship, or does not have or anticipate having a child in common with the offender. See The “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et seq.). Because the bill addresses the issuance of TPOs and PPO for stalking, among several other offenses, in a more comprehensive manner than as currently set forth in section 2 of P.L.1999, c.47 (C.2C:12-10.2), which only provides for orders for certain vulnerable victims of stalking in the limited context of a criminal prosecution, the bill would repeal that section of law.

The bill addresses procedural steps for obtaining a TPO or PPO, the standards of proof, and the protections available to victims. The statutory scheme created under this bill permits individuals without the aforementioned types of relationships to obtain TPOs or PPOs through the Superior Court for acts or attempted acts of nonconsensual sexual contact, sexual penetration, or lewdness, known as the “Sexual Assault Survivor Protection Act of 2015,” (SASPA) P.L.2015, c.147 (C.2C:14-13 et seq.).

ELIGIBLE PERSONS

Under the bill, a person not eligible to obtain a domestic violence restraining order may file an application for an initial TPO with the Superior Court alleging the commission or attempted commission of stalking, cyber-harassment, sexual assault, or criminal sexual contact. An alleged victim’s parent or guardian could file the application for relief in any case in which the alleged victim (1) is less than 18 years of age, or (2) has a developmental disability or a mental disease or defect that renders the alleged victim temporarily or permanently

incapable of understanding the nature of the alleged conduct that is the subject of the application.

JUVENILE VICTIMS AND PERPETRATORS

However, when it is alleged that the offense, or any attempt thereof, has been *committed by an unemancipated minor*, an applicant seeking a protective order would not be permitted to proceed under the provisions of the bill, but an applicant may seek a protective order and other relief pursuant to the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.), by filing a complaint pursuant to the provisions of the “New Jersey Code of Juvenile Justice.” Additionally, when it is alleged that the offense, or any attempt thereof, has been *committed against an unemancipated minor* by a parent, guardian, or other person having care, custody and control of that child, an applicant seeking a protective order would not be permitted to proceed under the provisions of the bill, and would be required to report the incident to the Department of Children and Families for appropriate action.

APPLICATION REQUIREMENTS

An applicant could seek a TPO, unless prohibited from doing so as described above, and the court could issue an order, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any charges. Also, the filing of an application would not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

The application could be filed in the Superior Court of the county in which the alleged conduct occurred, in which the alleged actor resides, or in which the alleged victim resides or is sheltered.

TPO RELIEF

The applicant may seek emergency, ex parte relief in order to obtain a TPO, and a decision would be made by a judge of the Superior Court regarding the emergency relief. If, upon good cause shown, it appeared that the alleged victim’s safety or well-being is in danger, the judge would issue the TPO, and this order would remain in effect until a judge of the Superior Court issued a further order. Any such TPO would be immediately appealable for a plenary hearing de novo on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered.

The TPO would limit the contact of the alleged actor (now respondent in further proceedings). In addition, the order could grant relief to the alleged victim in the form of protections enumerated in the bill.

The protections enumerated in the bill are not intended to be the exclusive forms of available relief, as the bill expressly permits the court to grant further forms of relief.

SERVICE OF TPO

A copy of the TPO would be immediately forwarded to the police of the municipality where the alleged victim resides or is sheltered. A copy of the TPO would also be forwarded to the sheriff of the county where the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. In addition, notice of the TPO would be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police, and any other appropriate law enforcement agency or court.

PPO HEARINGS

Following issuance of the TPO, a hearing would be held in the Superior Court within 10 days of the filing of the application therefor in the county where the TPO was issued, unless good cause was shown for the hearing to be held elsewhere. The hearing would concern the possible issuance of a permanent protective order (PPO). A copy of the hearing complaint would be served on the respondent in conformity with the Rules of Court. At the hearing the standard for issuing a permanent protective order would be by a preponderance of the evidence.

CRIMINAL COMPLAINTS

If a criminal complaint arising out of the incident has been filed, testimony given by the applicant, the alleged victim, or the respondent could not be used in the criminal proceeding against the respondent, other than in contempt matters, and when it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable.

PPO RELIEF

If the judge of the Superior Court ruled that a PPO be issued, it would remain in effect until further order of a judge of the Superior Court. The relief provided for in the PPO would be the same as that available in a TPO, plus it would prohibit the respondent from committing any future act of stalking, cyber-harassment, sexual assault, or criminal sexual contact against the victim. Notice of the PPO would be sent by the clerk of the court or other person designated by the court to the appropriate county prosecutor, chiefs of police, members of the State Police, and any other appropriate law enforcement officers.

TPO AND PPO VIOLATIONS

A violation by the respondent of either a TPO or PPO would constitute a fourth-degree contempt offense. If a law enforcement officer found probable cause that a respondent had committed fourth-degree contempt of a TPO or PPO, the respondent would be arrested and taken into custody, and could be subject to pretrial detention while awaiting trial. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

SASPA REGISTRY

Finally, the bill revises the law establishing the central registry, which is maintained by the Administrative Office of the Courts, that contains information on all protective orders issued under SASPA, and all persons who have been charged with violating these protective orders. The revision would expand the SASPA registry to include information on all TPOs and PPOs issued pursuant to the bill and persons charged with violations. Generally, the information in the registry is confidential, but it is released to law enforcement, courts, and various public agencies in order to carry out investigations, proceedings, or for other official purposes.