

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2770

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 9, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2770.

As amended, this bill 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 amended 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.

As amended and reported by the committee, Senate Bill No. 1517(1R) is identical to the Assembly Bill No. 2770, which was also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS

The Committee amended the bill to:

(1) reduce the types of offenses for which a temporary or permanent protective order may be issued to: stalking; cyber-harassment; sexual assault; and criminal sexual contact;

(2) provide that an alleged victim's parent or guardian may file an application for a protective order on behalf of an alleged victim who is less than 18 years of age, or who has a developmental disability, or mental disease or defect;

(3) establish alternate means to seek a protective order through the juvenile justice system when an offense is allegedly committed or attempted *by* an unemancipated minor, and for reporting an alleged offense to the Division of Child Protection and Permanency when it is committed or attempted *against* an unemancipated minor by a parent, guardian, or other person having custody of the minor;

(4) express that an applicant may seek a protective order regardless of whether criminal charges based on the incident were filed and the disposition of any charges, and that the filing of a complaint would not prevent the prosecution of a criminal case;

(5) indicate that applications may be filed in the Superior Court of the county in which the alleged conduct occurred, the alleged actor resides, or the alleged victim resides or is sheltered;

(6) incorporate "good cause shown" as the legal standard of proof for issuing a temporary protective order, and establishes the "preponderance of the evidence" standard for issuing a permanent protective order;

(7) provide for the immediate appeal of a temporary order in accordance with the procedure set forth in the bill;

(8) set forth the process for serving a temporary order on the

actor (referred to as the respondent in further proceedings), and for giving notice of both temporary and permanent orders to appropriate law enforcement personnel, agencies, and, as appropriate, county prosecutors;

(9) clarify that a permanent protective order remains in effect until further order of a judge of the Superior Court, and provide that either the victim, or victim's parent or guardian, if applicable, or respondent may file a petition to dissolve or modify a permanent order, for which the court would conduct a hearing to make a determination on the petition;

(10) require that a permanent protective order prohibit the respondent from having any contact with the victim, and from committing or attempting any future act of stalking, cyber-harassment, sexual assault, or criminal sexual conduct against the victim;

(11) expand the optional forms of protection to include prohibiting the respondent from following, harassing, or threatening to harm, follow, or harass the victim;

(12) apply the bill's existing victim protections to the victim's family or household members, which include prohibiting the respondent's entrance in a residence or other setting and from having any contact with such persons;

(13) establish that the respondent would be arrested and taken into custody if a law enforcement officer found probable cause that the respondent has committed contempt of a temporary or permanent protective order (a fourth-degree crime), for which the respondent could be subject to pretrial detention pending a future trial;

(14) expand the scope of the existing central registry containing information on all protective orders issued under the "Sexual Assault Survivor Protection Act of 2015," P.L.2015, c.147 (C.2C:14-13 et seq.), to include information on all protective orders issued pursuant to the bill;

(15) remove reference to Division of Children Protection and Permanency from section 1 of the bill;

(16) clarify role of Division of Children and Families when an unemancipated minor reports an incident under the bill;

(17) change the effective date from the first day of the third month next following enactment to the first day of the sixth month next following; and

(18) update the bill's title and synopsis to reflect the amendments incorporated into the bill.