

ASSEMBLY, No. 1426

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

Concerns counseling for children who were either physically present or who may have seen or heard act of domestic violence.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/17/2019)

1 AN ACT concerning domestic violence and children and amending
2 P.L.1991, c.261.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to
8 read as follows:

9 12. a. A victim may file a complaint alleging the commission of
10 an act of domestic violence with the Family Part of the Chancery
11 Division of the Superior Court in conformity with the Rules of
12 Court. The court shall not dismiss any complaint or delay
13 disposition of a case because the victim has left the residence to
14 avoid further incidents of domestic violence. Filing a complaint
15 pursuant to this section shall not prevent the filing of a criminal
16 complaint for the same act.

17 On weekends, holidays and other times when the court is closed,
18 a victim may file a complaint before a judge of the Family Part of
19 the Chancery Division of the Superior Court or a municipal court
20 judge who shall be assigned to accept complaints and issue
21 emergency, ex parte relief in the form of temporary restraining
22 orders pursuant to this act.

23 A plaintiff may apply for relief under this section in a court
24 having jurisdiction over the place where the alleged act of domestic
25 violence occurred, where the defendant resides, or where the
26 plaintiff resides or is sheltered, and the court shall follow the same
27 procedures applicable to other emergency applications. Criminal
28 complaints filed pursuant to this act shall be investigated and
29 prosecuted in the jurisdiction where the offense is alleged to have
30 occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9
31 shall be prosecuted in the county where the contempt is alleged to
32 have been committed and a copy of the contempt complaint shall be
33 forwarded to the court that issued the order alleged to have been
34 violated.

35 b. The court shall waive any requirement that the petitioner's
36 place of residence appear on the complaint.

37 c. (1) The clerk of the court, or other person designated by the
38 court, shall assist the parties in completing any forms necessary for
39 the filing of a summons, complaint, answer or other pleading.

40 (2) The plaintiff may provide information concerning firearms
41 to which the defendant has access, including the location of these
42 firearms, if known, on a form to be prescribed by the
43 Administrative Director of the Courts.

44 (3) Information provided by the plaintiff concerning firearms to
45 which the defendant has access shall be kept confidential and shall

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 not be disseminated or disclosed, provided that nothing in this
2 subsection shall prohibit dissemination or disclosure of this
3 information in a manner consistent with and in furtherance of the
4 purpose for which the information was provided.

5 d. Summons and complaint forms shall be readily available at
6 the clerk's office, at the municipal courts and at municipal and State
7 police stations.

8 e. As soon as the domestic violence complaint is filed, both the
9 victim and the abuser shall be advised of any programs or services
10 available for advice and counseling as well as any programs or
11 services available for counseling for any minor children who were
12 either physically present at the time of the alleged act of domestic
13 violence or who may have seen or heard the alleged act of domestic
14 violence.

15 f. A plaintiff may seek emergency, ex parte relief in the nature
16 of a temporary restraining order. A municipal court judge or a
17 judge of the Family Part of the Chancery Division of the Superior
18 Court may enter an ex parte order when necessary to protect the
19 life, health or well-being of a victim on whose behalf the relief is
20 sought.

21 g. If it appears that the plaintiff is in danger of domestic
22 violence, the judge shall, upon consideration of the plaintiff's
23 domestic violence complaint, order emergency ex parte relief, in the
24 nature of a temporary restraining order. A decision shall be made
25 by the judge regarding the emergency relief forthwith.

26 h. A judge may issue a temporary restraining order upon sworn
27 testimony or complaint of an applicant who is not physically
28 present, pursuant to court rules, or by a person who represents a
29 person who is physically or mentally incapable of filing personally.
30 A temporary restraining order may be issued if the judge is satisfied
31 that exigent circumstances exist sufficient to excuse the failure of
32 the applicant to appear personally and that sufficient grounds for
33 granting the application have been shown.

34 i. An order for emergency, ex parte relief shall be granted
35 upon good cause shown and shall remain in effect until a judge of
36 the Family Part issues a further order. Any temporary order
37 hereunder is immediately appealable for a plenary hearing de novo
38 not on the record before any judge of the Family Part of the county
39 in which the plaintiff resides or is sheltered if that judge issued the
40 temporary order or has access to the reasons for the issuance of the
41 temporary order and sets forth in the record the reasons for the
42 modification or dissolution. The denial of a temporary restraining
43 order by a municipal court judge and subsequent administrative
44 dismissal of the complaint shall not bar the victim from refiling a
45 complaint in the Family Part based on the same incident and
46 receiving an emergency, ex parte hearing de novo not on the record
47 before a Family Part judge, and every denial of relief by a
48 municipal court judge shall so state.

1 j. Emergency relief may include forbidding the defendant from
2 returning to the scene of the domestic violence, forbidding the
3 defendant from possessing any firearm or other weapon enumerated
4 in subsection r. of N.J.S.2C:39-1, ordering the search for and
5 seizure of any firearm or other weapon at any location where the
6 judge has reasonable cause to believe the weapon is located and the
7 seizure of any firearms purchaser identification card or permit to
8 purchase a handgun issued to the defendant and any other
9 appropriate relief.

10 If the order requires the surrender of any firearm or other
11 weapon, a law enforcement officer shall accompany the defendant,
12 or may proceed without the defendant if necessary, to the scene of
13 the domestic violence or any other location where the judge has
14 reasonable cause to believe any firearm or other weapon belonging
15 to the defendant is located, to ensure that the defendant does not
16 gain access to any firearm or other weapon, and that the firearm or
17 other weapon is appropriately surrendered in accordance with the
18 order. If the order prohibits the defendant from returning to the
19 scene of domestic violence or any other location where the judge
20 has reasonable cause to believe any firearm or other weapon
21 belonging to the defendant is located, any firearm or other weapon
22 located there shall be seized by a law enforcement officer. The
23 order shall include notice to the defendant of the penalties for a
24 violation of any provision of the order, including but not limited to
25 the penalties for contempt of court and unlawful possession of a
26 firearm or other weapon pursuant to N.J.S.2C:39-5. Other
27 appropriate relief may include but is not limited to an order
28 directing the possession of any animal owned, possessed, leased,
29 kept, or held by either party or a minor child residing in the
30 household and providing that the animal shall not be disposed of
31 prior to entry of a final order pursuant to section 13 of P.L.1991,
32 c.261 (C.2C:25-29).

33 The judge shall state with specificity the reasons for and scope of
34 any search and seizure authorized by the order. The provisions of
35 this subsection prohibiting a defendant from possessing a firearm or
36 other weapon shall not apply to any law enforcement officer while
37 actually on duty, or to any member of the Armed Forces of the
38 United States or member of the National Guard while actually on
39 duty or traveling to or from an authorized place of duty.

40 k. The judge may permit the defendant to return to the scene of
41 the domestic violence to pick up personal belongings and effects
42 but shall, in the order granting relief, restrict the time and duration
43 of such permission and provide for police supervision of such visit.

44 l. An order granting emergency relief, together with the
45 complaint or complaints, shall immediately be forwarded to the
46 appropriate law enforcement agency for service on the defendant,
47 and to the police of the municipality in which the plaintiff resides or
48 is sheltered, and shall immediately be served upon the defendant by

1 the police, except that an order issued during regular court hours
2 may be forwarded to the sheriff for immediate service upon the
3 defendant in accordance with the Rules of Court. If personal
4 service cannot be effected upon the defendant, the court may order
5 other appropriate substituted service. At no time shall the plaintiff
6 be asked or required to serve any order on the defendant.

7 m. (Deleted by amendment, P.L.1994, c.94.)

8 n. Notice of temporary restraining orders issued pursuant to
9 this section shall be sent by the clerk of the court or other person
10 designated by the court to the appropriate chiefs of police, members
11 of the State Police and any other appropriate law enforcement
12 agency or court.

13 o. (Deleted by amendment, P.L.1994, c.94.)

14 p. Any temporary or final restraining order issued pursuant to
15 this act shall be in effect throughout the State, and shall be enforced
16 by all law enforcement officers.

17 q. Prior to the issuance of any temporary or final restraining
18 order issued pursuant to this section, the court shall order that a
19 search be made of the domestic violence central registry with regard
20 to the defendant's record.

21 (cf: P.L.2016, c.91, s.2)

22
23 2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to
24 read as follows:

25 13. a. A hearing shall be held in the Family Part of the
26 Chancery Division of the Superior Court within 10 days of the
27 filing of a complaint pursuant to section 12 of P.L.1991, c.261
28 (C.2C:25-28) in the county where the ex parte restraints were
29 ordered, unless good cause is shown for the hearing to be held
30 elsewhere. A copy of the complaint shall be served on the
31 defendant in conformity with the Rules of Court. If a criminal
32 complaint arising out of the same incident which is the subject
33 matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et
34 seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed,
35 testimony given by the plaintiff or defendant in the domestic
36 violence matter shall not be used in the simultaneous or subsequent
37 criminal proceeding against the defendant, other than domestic
38 violence contempt matters and where it would otherwise be
39 admissible hearsay under the rules of evidence that govern where a
40 party is unavailable. At the hearing the standard for proving the
41 allegations in the complaint shall be by a preponderance of the
42 evidence. The court shall consider but not be limited to the
43 following factors:

44 (1) The previous history of domestic violence between the
45 plaintiff and defendant, including threats, harassment and physical
46 abuse;

47 (2) The existence of immediate danger to person or property;

48 (3) The financial circumstances of the plaintiff and defendant;

1 (4) The best interests of the victim and any child;

2 (5) In determining custody and parenting time the protection of
3 the victim's safety; and

4 (6) The existence of a verifiable order of protection from
5 another jurisdiction.

6 An order issued under this act shall only restrain or provide
7 damages payable from a person against whom a complaint has been
8 filed under this act and only after a finding or an admission is made
9 that an act of domestic violence was committed by that person. The
10 issue of whether or not a violation of this act occurred, including an
11 act of contempt under this act, shall not be subject to mediation or
12 negotiation in any form. In addition, where a temporary or final
13 order has been issued pursuant to this act, no party shall be ordered
14 to participate in mediation on the issue of custody or parenting time.

15 b. In proceedings in which complaints for restraining orders
16 have been filed, the court shall grant any relief necessary to prevent
17 further abuse. In addition to any other provisions, any restraining
18 order issued by the court shall bar the defendant from purchasing,
19 owning, possessing or controlling a firearm and from receiving or
20 retaining a firearms purchaser identification card or permit to
21 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
22 which the restraining order is in effect or two years, whichever is
23 greater. The order shall require the immediate surrender of any
24 firearm or other weapon belonging to the defendant. The order
25 shall include notice to the defendant of the penalties for a violation
26 of any provision of the order, including but not limited to the
27 penalties for contempt of court and unlawful possession of a firearm
28 or other weapon pursuant to N.J.S.2C:39-5.

29 A law enforcement officer shall accompany the defendant, or
30 may proceed without the defendant if necessary, to any place where
31 any firearm or other weapon belonging to the defendant is located
32 to ensure that the defendant does not gain access to any firearm or
33 other weapon, and a law enforcement officer shall take custody of
34 any firearm or other weapon belonging to the defendant. If the
35 order prohibits the defendant from returning to the scene of
36 domestic violence or other place where firearms or other weapons
37 belonging to the defendant are located, any firearm or other weapon
38 located there shall be seized by a law enforcement officer. The
39 provisions of this subsection requiring the surrender or removal of a
40 firearm, card, or permit shall not apply to any law enforcement
41 officer while actually on duty, or to any member of the Armed
42 Forces of the United States or member of the National Guard while
43 actually on duty or traveling to or from an authorized place of duty.
44 At the hearing the judge of the Family Part of the Chancery
45 Division of the Superior Court may issue an order granting any or
46 all of the following relief:

47 (1) An order restraining the defendant from subjecting the
48 victim to domestic violence, as defined in this act.

1 (2) An order granting exclusive possession to the plaintiff of the
2 residence or household regardless of whether the residence or
3 household is jointly or solely owned by the parties or jointly or
4 solely leased by the parties. This order shall not in any manner
5 affect title or interest to any real property held by either party or
6 both jointly. If it is not possible for the victim to remain in the
7 residence, the court may order the defendant to pay the victim's rent
8 at a residence other than the one previously shared by the parties if
9 the defendant is found to have a duty to support the victim and the
10 victim requires alternative housing.

11 (3) An order providing for parenting time. The order shall
12 protect the safety and well-being of the plaintiff and minor children
13 and shall specify the place and frequency of parenting time.
14 Parenting time arrangements shall not compromise any other
15 remedy provided by the court by requiring or encouraging contact
16 between the plaintiff and defendant. Orders for parenting time may
17 include a designation of a place of parenting time away from the
18 plaintiff, the participation of a third party, or supervised parenting
19 time.

20 (a) The court shall consider a request by a custodial parent who
21 has been subjected to domestic violence by a person with parenting
22 time rights to a child in the parent's custody for an investigation or
23 evaluation by the appropriate agency to assess the risk of harm to
24 the child prior to the entry of a parenting time order. Any denial of
25 such a request must be on the record and shall only be made if the
26 judge finds the request to be arbitrary or capricious.

27 (b) The court shall consider suspension of the parenting time
28 order and hold an emergency hearing upon an application made by
29 the plaintiff certifying under oath that the defendant's access to the
30 child pursuant to the parenting time order has threatened the safety
31 and well-being of the child.

32 (4) An order requiring the defendant to pay to the victim
33 monetary compensation for losses suffered as a direct result of the
34 act of domestic violence. The order may require the defendant to
35 pay the victim directly, to reimburse the Victims of Crime
36 Compensation Office for any and all compensation paid by the
37 Victims of Crime Compensation Office directly to or on behalf of
38 the victim, and may require that the defendant reimburse any parties
39 that may have compensated the victim, as the court may determine.
40 Compensatory losses shall include, but not be limited to, loss of
41 earnings or other support, including child or spousal support, out-
42 of-pocket losses for injuries sustained, cost of repair or replacement
43 of real or personal property damaged or destroyed or taken by the
44 defendant, cost of counseling for the victim, moving or other travel
45 expenses, reasonable attorney's fees, court costs, and compensation
46 for pain and suffering. Where appropriate, punitive damages may be
47 awarded in addition to compensatory damages.

1 (5) An order requiring the defendant to receive professional
2 domestic violence counseling from either a private source or a
3 source appointed by the court and, in that event, requiring the
4 defendant to provide the court at specified intervals with
5 documentation of attendance at the professional counseling. The
6 court may order the defendant to pay for the professional
7 counseling. No application by the defendant to dissolve a final
8 order which contains a requirement for attendance at professional
9 counseling pursuant to this paragraph shall be granted by the court
10 unless, in addition to any other provisions required by law or
11 conditions ordered by the court, the defendant has completed all
12 required attendance at such counseling.

13 (6) An order restraining the defendant from entering the
14 residence, property, school, or place of employment of the victim or
15 of other family or household members of the victim and requiring
16 the defendant to stay away from any specified place that is named
17 in the order and is frequented regularly by the victim or other
18 family or household members.

19 (7) An order restraining the defendant from making contact with
20 the plaintiff or others, including an order forbidding the defendant
21 from personally or through an agent initiating any communication
22 likely to cause annoyance or alarm including, but not limited to,
23 personal, written, or telephone contact with the victim or other
24 family members, or their employers, employees, or fellow workers,
25 or others with whom communication would be likely to cause
26 annoyance or alarm to the victim.

27 (8) An order requiring that the defendant make or continue to
28 make rent or mortgage payments on the residence occupied by the
29 victim if the defendant is found to have a duty to support the victim
30 or other dependent household members; provided that this issue has
31 not been resolved or is not being litigated between the parties in
32 another action.

33 (9) An order granting either party temporary possession of
34 specified personal property, such as an automobile, checkbook,
35 documentation of health insurance, an identification document, a
36 key, and other personal effects.

37 (10) An order awarding emergency monetary relief, including
38 emergency support for minor children, to the victim and other
39 dependents, if any. An ongoing obligation of support shall be
40 determined at a later date pursuant to applicable law.

41 (11) An order awarding temporary custody of a minor child. The
42 court shall presume that the best interests of the child are served by
43 an award of custody to the non-abusive parent.

44 (12) An order requiring that a law enforcement officer
45 accompany either party to the residence or any shared business
46 premises to supervise the removal of personal belongings in order
47 to ensure the personal safety of the plaintiff when a restraining
48 order has been issued. This order shall be restricted in duration.

1 (13) (Deleted by amendment, P.L.1995, c.242).

2 (14) An order granting any other appropriate relief for the
3 plaintiff and dependent children, provided that the plaintiff consents
4 to such relief, including relief requested by the plaintiff at the final
5 hearing, whether or not the plaintiff requested such relief at the time
6 of the granting of the initial emergency order.

7 (15) An order that requires that the defendant report to the intake
8 unit of the Family Part of the Chancery Division of the Superior
9 Court for monitoring of any other provision of the order.

10 (16) In addition to the order required by this subsection
11 prohibiting the defendant from possessing any firearm, the court
12 may also issue an order prohibiting the defendant from possessing
13 any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and
14 ordering the search for and seizure of any firearm or other weapon
15 at any location where the judge has reasonable cause to believe the
16 weapon is located. The judge shall state with specificity the reasons
17 for and scope of the search and seizure authorized by the order.

18 (17) An order prohibiting the defendant from stalking or
19 following, or threatening to harm, to stalk or to follow, the
20 complainant or any other person named in the order in a manner
21 that, taken in the context of past actions of the defendant, would put
22 the complainant in reasonable fear that the defendant would cause
23 the death or injury of the complainant or any other person.
24 Behavior prohibited under this act includes, but is not limited to,
25 behavior prohibited under the provisions of P.L.1992, c.209
26 (C.2C:12-10).

27 (18) An order requiring the defendant to undergo a psychiatric
28 evaluation.

29 (19) An order directing the possession of any animal owned,
30 possessed, leased, kept, or held by either party or a minor child
31 residing in the household. Where a person has abused or threatened
32 to abuse such animal, there shall be a presumption that possession
33 of the animal shall be awarded to the non-abusive party.

34 (20) An order requiring the appropriate agency to provide for
35 counseling for any minor children who were either physically
36 present at the time of the act of domestic violence or who may have
37 seen or heard the act of domestic violence.

38 c. Notice of orders issued pursuant to this section shall be sent
39 by the clerk of the Family Part of the Chancery Division of the
40 Superior Court or other person designated by the court to the
41 appropriate chiefs of police, members of the State Police and any
42 other appropriate law enforcement agency.

43 d. Upon good cause shown, any final order may be dissolved or
44 modified upon application to the Family Part of the Chancery
45 Division of the Superior Court, but only if the judge who dissolves
46 or modifies the order is the same judge who entered the order, or
47 has available a complete record of the hearing or hearings on which
48 the order was based.

1 e. Prior to the issuance of any order pursuant to this section,
2 the court shall order that a search be made of the domestic violence
3 central registry.
4 (cf: P.L.2016, c.91, s.3)

5
6 3. This act shall take effect immediately.
7
8

9 STATEMENT
10

11 This bill provides that the court may require the appropriate
12 agency to provide counseling to children who were either physically
13 present at the time of an act of domestic violence or who may have
14 seen or heard an act of domestic violence.

15 Current law provides that pursuant to P.L.1991, c.261 (C.2C:25-
16 28), once a domestic violence complaint is filed, the victim and the
17 abuser should be advised of any programs or services available for
18 advice and counseling. The bill provides that in addition the victim
19 and the abuser will be advised of any programs or services available
20 for counseling for any minor children who were either physically
21 present at the time of the alleged act of domestic violence or who
22 may have seen or heard the alleged act of domestic violence set
23 forth in the complaint.

24 Once a final hearing is held pursuant to P.L.1991, c.261
25 (C.2C:25-29), the court may issue an order granting any or all of the
26 relief set forth in subsection b., which includes, but is not limited to,
27 restraining the defendant from subjecting the victim to domestic
28 violence, requiring the defendant to pay to the victim monetary
29 compensation for losses suffered as a result of the domestic
30 violence, and restraining the defendant from making contact with
31 the plaintiff and others. The bill expands the list of relief that the
32 court may order by requiring the appropriate agency to provide
33 counseling for any minor children who were either physically
34 present at the time of the act of domestic violence or who may have
35 seen or heard the act of domestic violence.