ASSEMBLY, No. 1732

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Authorizes protective order for certain witnesses or victims against actor who attempted to prevent or obstruct them from reporting crime to police.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning certain protective orders, supplementing P.L.1985, c.250 (C.2C:28-5.1 et seq.), and amending N.J.S.2C:29-9.

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

1. (New section) Application for Temporary Protective Order.

a. Any witness or victim of any crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), who an actor has attempted to prevent or obstruct by means of force or intimidation from reporting the crime to a law enforcement agency with the purpose to hinder the actor's own or another's detention, apprehension, investigation, prosecution, conviction, or punishment in violation of N.J.S.2C:29-3, and who is not eligible for a restraining order as a "victim of domestic violence" as defined by the provisions of subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-19), may file an application with the Superior Court pursuant to the Rules of Court alleging such conduct or attempted conduct and seeking a temporary protective order.

b. An application filed or a protective order issued pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) shall not prevent the filing of a motion or issuance of a protective order under the provisions of P.L.1985, c.250 (C.2C:28-5.1 et seq.).

c. An applicant may seek a protective order and the court may issue such an order regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any charges.

d. The filing of an application pursuant to this section shall not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

e. The court shall waive any requirement that the applicant's or alleged victim's place of residence appear on the application.

f. An applicant may seek a protection order in a court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the respondent resides, or where the alleged victim resides or is sheltered.

2. (New section) Temporary Protective Order.

a. The alleged victim may seek emergency, ex parte relief in the nature of a temporary protective order. A judge of the Superior Court may enter an emergency, ex parte order when necessary to protect the safety and well-being of an alleged victim on whose

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 <u>thus</u> is new matter.

behalf the relief is being sought. The court may grant any relief necessary to protect the safety and well-being of an alleged victim.

b. On weekends, holidays and other times when the court is closed, an alleged victim may file an application before a judge of the Superior Court or a municipal court judge who shall be assigned to accept applications and issue emergency, ex parte relief in the form of temporary protective orders pursuant to this act.

c. The court may, pursuant to court rules, issue a temporary protective order upon sworn testimony or an application of an alleged victim who is not physically present or by a person who represents an alleged victim who is physically or mentally incapable of filing personally. A temporary protective order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

d. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Superior Court issues a further order. Any temporary protective order issued pursuant to this section is immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the temporary protective order and sets forth in the record the reasons for the modification or dismissal.

e. The denial of a temporary restraining order by a municipal court judge and subsequent administrative dismissal of the complaint shall not bar the victim from refiling a complaint in Superior Court based on the same incident and receiving an emergency ex parte hearing de novo not on the record before a Superior Court judge, and every denial of relief by a municipal court judge shall so state.

f. A temporary protective order issued pursuant to this section may include, but is not limited to, the following emergency relief:

(1) That the respondent maintain a prescribed geographic distance from any alleged victim;

(2) That the respondent have no communication with any alleged victim; and

(3) Any other relief that the court deems appropriate.

g. A copy of the temporary protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the alleged victim resides or is sheltered. A copy of the temporary protective order shall also be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the temporary protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be

effected upon the respondent, the court may order other appropriate substituted service. At no time shall the alleged victim be asked or required to serve any order on the respondent.

h. Notice of temporary protective orders issued pursuant to this section shall 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.

3. (New section) Final Protective Order.

a. A hearing shall be held in the Superior Court within 10 days of the filing of an application in the county where the temporary protective order was ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the application shall be served on the respondent in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent in accordance with an application filed pursuant to this section shall not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the Rules of Evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application for a protective order shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) the occurrence of one or more acts of attempting to prevent or obstruct by means of force or intimidation from reporting the crime to a law enforcement agency with the purpose to hinder the actor's own or another's detention, apprehension, investigation, prosecution, conviction, or punishment in violation of N.J.S.2C:29-3; and

(2) the possibility of future risk to the safety or well-being of the alleged victim.

b. A final protective order issued pursuant to this section shall be issued only after a finding or an admission is made that the respondent committed an act of attempting to prevent or obstruct by means of force or intimidation against the alleged victim. A final protective order may include, but is not limited to:

(1) That the respondent maintain a prescribed geographic distance from any alleged victim;

(2) That the respondent have no communication with any alleged victim; and

(3) Any other relief that the court deems appropriate.

c. Notice of a final protective order issued pursuant to this section shall be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor,

the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

d. A final protective order issued pursuant to this section shall remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification of a final protective order, the court shall conduct a hearing to consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent's violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

4. (New section) Protective order, enforcement.

a. Any temporary or final protective order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

b. A violation by the respondent of any protective order shall constitute an offense under subsection a. of N.J.S.2C:29-9 and each order shall so state. Violations of these orders may be enforced in a civil or criminal action initiated by the alleged victim or by the court, on its own motion, pursuant to applicable court rules. Nothing in this act shall preclude the filing of a criminal complaint based on the same act which is the basis for the violation of the final protective order.

5. (New section) Attorney General, guidelines or directives.

The Attorney General shall issue guidelines or directives for police officers as he deems necessary to promote compliance with this act.

6. (New section) Administrative Office of the Courts, procedures.

The Administrative Office of the Courts shall establish procedures to ensure implementation with this act.

7. N.J.S.2C:29-9 is amended to read as follows:

2C:29-9. Contempt.

a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1) <u>or any provisions of P.L. , c. (C.) (pending before the Legislature as this bill)</u>, or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over

any person, thing or controversy by a court, administrative body or investigative entity.

b. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

c. A person is guilty of a crime of the third degree if that person purposely or knowingly violates any provision in an order entered under the provisions of section 3 of P.L.1996, c.39 (C.2C:12-10.1) or section 2 of P.L.1999, c.47 (C.2C:12-10.2) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

d. A person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.).

As used in this section, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by a federal law or formally acknowledged by a state.

(cf: P.L.2015, c.147, s.10)

8. This act shall take effect immediately.

STATEMENT

This bill would authorize protective orders for witnesses and victims of various first and second degree crimes if an actor attempted to prevent or obstruct them from reporting, through the means of force or intimidation, the crime to a law enforcement agency.

Under P.L.1985, c.250 (C.2C:28-5.1 et seq.), a court may issue a protective order for a witness or victim if the defendant in the criminal action or any other person connected with the action has violated or is likely to violate N.J.S.2C:28-5, N.J.S.2C:29-3 or N.J.S.2C:29-4, or if that person has threatened to injure or intimidate any witness in the pending offense or a member of the witness' family with purpose to affect the testimony of the witness.

The bill would establish a similar form of protective order to protect any witness or victim of a first or second degree crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), including but limited to murder, kidnapping, and sexual assault, if an actor has attempted to prevent or obstruct through means of force or intimidation the alleged victim from reporting the crime to a law enforcement agency, and if the alleged victim is not eligible for a restraining order as a “victim of domestic violence” under the domestic violence statutes.

A protective order may be sought, and may be issued by the court, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges.

The court would waive any requirement that the applicant’s or alleged victim’s place of residence appear on the application.

An applicant may seek a protective order in a court having jurisdiction where the alleged conduct or attempted conduct occurred, where the respondent resides, or where the alleged victim resides or is sheltered.

Under the bill, a judge of the Superior Court may enter an emergency, ex parte order when necessary to protect the safety and well-being of an alleged victim on whose behalf the relief is sought. The court would grant any relief necessary to protect the safety and well-being of the alleged victim.

If the court is closed, such as on weekends, holidays and other times, an alleged victim may file an application before a judge of the Superior Court or a municipal court judge who shall be assigned to accept applications and issue emergency, ex parte relief in the form of temporary protective orders.

If the court is satisfied that exigent circumstances exist the would excuse the alleged victim from having to appear personally, and sufficient grounds for granting the application have been shown, the temporary protective order would be issued, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is

not physically present, or by a person who represents an alleged victim who is physically or mentally incapable of filing personally.

An order for emergency, ex parte relief pursuant to the bill would be granted upon good cause shown and would remain in effect until a judge of the Superior Court issues a further order.

Temporary protective orders would be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the final protective order upon the respondent through the police in appropriate circumstances.

A temporary protective order issued would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the modification or dissolution.

A temporary protective order issued by the court may include but not be limited to: the respondent maintaining a certain geographic distance from the alleged victim, no communication between the respondent and the alleged victim, and any other relief that the court deems appropriate.

The bill would require that a hearing be held on a final protective order in the Superior Court within 10 days of the filing of an application where the temporary protective order was granted. The bill provides that if a criminal complaint arising out of the same incident which is the subject matter of the application for a protective order has been filed, testimony given by the applicant in accordance with an application filed pursuant to this bill would not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the Rules of Evidence that govern when a party is unavailable. At the hearing, the standard for providing the allegations made in the application for a final protective order would be a preponderance of the evidence. The court would consider but not be limited to the following factors: the occurrence of one or more acts of attempting to prevent or obstruct by means of force or intimidation from reporting the crime to a law enforcement agency with the purpose to hinder the actor's own or another's detention, apprehension, investigation, prosecution, conviction, or punishment in violation of N.J.S.2C:29-3; and the possibility of future risk to the safety or well-being of the alleged victim.

A final protective order would be issued only after a finding or an admission is made that the respondent committed an act of attempting to prevent or obstruct by means of force or intimidation against the alleged victim. A final protective order may include but not be limited to: the respondent maintaining a certain geographic

distance from the alleged victim, no communication between the respondent and the alleged victim, and any other relief that the court deems appropriate.

Notice of a final protective order issued would be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency.

A final protective order issued would remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification of a final protective order, the court would conduct a hearing to consider whether a material change in circumstances has occurred since the issuance of the protective order.

Any temporary or final protective order issued pursuant to this act would be in effect throughout the State and enforced by all law enforcement officers.

A violation by the respondent of any protective order would constitute an offense under subsection a. of N.J.S.2C:29-9. Violations of these orders may be enforced in a civil or criminal action initiated by the alleged victim or by the court, on its own motion, pursuant to applicable court rules.

The Attorney General would issue directives or guidelines for police officers to promote compliance with this act. The Administrative Office of the Courts would establish procedures to ensure implementation of this act.

It is the sponsor’s view that many witnesses or victims of violent crimes are scared to report crimes to the police because a person has attempted to prevent or obstruct them through means of force or intimidation. This bill would permit the alleged victim to obtain a protective order from the court when they report the crime to the police.