

**ASSEMBLY, No. 1736**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblywoman ANGELA V. MCKNIGHT**

**District 31 (Hudson)**

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**District 33 (Hudson)**

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**District 4 (Camden and Gloucester)**

**Co-Sponsored by:**

**Assemblywomen Speight, Reynolds-Jackson and Vainieri Huttie**

**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: 3/15/2021)**

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 psychological  
28 or psychiatric 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 counseling for any minor children who  
35 were either physically present at the time of the act of domestic  
36 violence or who may have seen or heard the act of domestic  
37 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 victim of an act of domestic violence  
12 and the abuser will be advised of any programs or services available  
13 for counseling for any minor children who were either physically  
14 present at the time of the alleged act of domestic violence or who may  
15 have seen or heard the alleged act of domestic violence set forth in the  
16 complaint. Current law provides that pursuant to section 1 of  
17 P.L.1991, c.261 (C.2C:25-28), once a domestic violence complaint is  
18 filed, the victim and the abuser should be advised of any programs or  
19 services available for advice and counseling.

20 The bill also provides that the court consider a request by a  
21 custodial parent who has been subjected to domestic violence by a  
22 person with parenting time rights to a child in the parent's custody for  
23 an investigation or evaluation to assess the risk of harm to the child  
24 prior to entering a parenting time order. Currently, the provisions of  
25 section 2 of P.L.1991, c.261 (C.2C:25-29) specify that the  
26 investigation or evaluation would be conducted by an appropriate  
27 agency.

28 Once a final hearing is held pursuant to section 2 of P.L.1991, c.261  
29 (C.2C:25-29), the court may issue an order granting any relief  
30 including, but not limited to, restraining the defendant in a domestic  
31 violence matter from subjecting the victim to domestic violence,  
32 requiring the defendant to pay to the victim monetary compensation  
33 for losses suffered as a result of the domestic violence, and restraining  
34 the defendant from making contact with the plaintiff and others. The  
35 bill expands the list of relief that the court may order to include  
36 requiring the defendant to undergo a psychological evaluation and  
37 requiring counseling for any minor children who were either  
38 physically present at the time of the act of domestic violence or who  
39 may have seen or heard the act of domestic violence.