

ASSEMBLY, No. 1957

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 13 (Monmouth)

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SYNOPSIS

Authorizes award of monetary compensation, including attorney fees, to persons who obtain final orders under the “Sexual Assault Survivor Protection Act of 2015.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning protective orders for survivors of sexual assault
2 and other offenses and amending P.L.2015, c.147.

3

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

6

7 1. Section 4 of P.L.2015, c.147 (C.2C:14-16) is amended to
8 read as follows:

9 4. Final Protective Order.

10 a. A hearing shall be held in the Superior Court within 10 days
11 of the filing of an application pursuant to section 3 of P.L.2015,
12 c.147 (C.2C:14-15) in the county where the temporary protective
13 order was ordered, unless good cause is shown for the hearing to be
14 held elsewhere. A copy of the application shall be served on the
15 respondent in conformity with the Rules of Court. If a criminal
16 complaint arising out of the same incident which is the subject
17 matter of an application for a protective order has been filed,
18 testimony given by the applicant, the alleged victim, or the
19 respondent in accordance with an application filed pursuant to this
20 section shall not be used in the criminal proceeding against the
21 respondent, other than contempt matters, and where it would
22 otherwise be admissible hearsay under the rules of evidence that
23 govern when a party is unavailable. At the hearing, the standard for
24 proving the allegations made in the application for a protective
25 order shall be a preponderance of the evidence. The court shall
26 consider but not be limited to the following factors:

27 (1) the occurrence of one or more acts of nonconsensual sexual
28 contact, sexual penetration, or lewdness, or any attempt at such
29 conduct, against the alleged victim; and

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

32 b. The court shall not deny relief under this section due to: the
33 applicant's or alleged victim's failure to report the incident to law
34 enforcement; the alleged victim's or the respondent's alleged
35 intoxication; whether the alleged victim did or did not leave the
36 premises to avoid nonconsensual sexual contact, sexual penetration,
37 or lewdness, or an attempt at such conduct; or the absence of signs
38 of physical injury to the alleged victim.

39 c. In any proceeding involving an application for a protective
40 order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), evidence of
41 the alleged victim's previous sexual conduct or manner of dress at
42 the time of the incident shall not be admitted nor shall any reference
43 made to such conduct or manner or dress, except as provided in
44 N.J.S.2C:14-7.

45 d. The issue of whether an act alleged in the application for a

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 protective order occurred, or whether an act of contempt under
2 paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not
3 be subject to mediation or negotiation in any form.

4 e. A final protective order issued pursuant to this section shall
5 be issued only after a finding or an admission is made that the
6 respondent committed an act of nonconsensual sexual contact,
7 sexual penetration, or lewdness, or any attempt at such conduct,
8 against the alleged victim. A final protective order shall:

9 (1) prohibit the respondent from having contact with the victim;
10 and

11 (2) prohibit the respondent from committing any future act of
12 nonconsensual sexual contact, sexual penetration, or lewdness, or
13 any attempt at such conduct, against the victim.

14 f. In addition to any relief provided to the victim under
15 subsection e. of this section, a final protective order issued pursuant
16 to this section may include, but is not limited to, the following
17 relief:

18 (1) an order prohibiting the respondent from entering the
19 residence, property, school, or place of employment of the victim or
20 the victim's family or household members, and requiring the
21 respondent to stay away from any specified place that is named in
22 the order and is frequented regularly by the victim or the victim's
23 family or household members;

24 (2) an order prohibiting the respondent from having any contact
25 with the victim or others, including an order forbidding the
26 respondent from personally or through an agent initiating any
27 communication likely to cause annoyance or alarm including, but
28 not limited to, personal, written, or telephone contact, or contact via
29 electronic device, with the victim or the victim's family members or
30 their employers, employees, or fellow workers; an employee or
31 volunteer of a sexual assault response entity that is providing
32 services to a victim; or others with whom communication would be
33 likely to cause annoyance or alarm to the victim;

34 (3) an order prohibiting the respondent from stalking or
35 following, or threatening to harm, stalk or follow, the victim;

36 (4) an order prohibiting the respondent from committing or
37 attempting to commit an act of harassment, including an act of
38 cyber-harassment, against the victim; **and**

39 (5) an order requiring the respondent to pay to the victim
40 monetary compensation for losses suffered as a direct result of the
41 act of nonconsensual sexual contact, sexual penetration, or
42 lewdness, or attempt at such conduct as set forth in section 2 of
43 P.L.2015, c.147 (C.2C:14-14). The order may require the
44 respondent to pay the victim directly, to reimburse the Victims of
45 Crime Compensation Office for any and all compensation paid by
46 the Victims of Crime Compensation Office directly to or on behalf

1 of the victim, and may require that the respondent reimburse any
2 parties that may have compensated the victim, as the court may
3 determine. Compensatory losses shall include, but not be limited to,
4 loss of earnings or other support, out-of-pocket losses for injuries
5 sustained, cost of counseling for the victim, reasonable attorney's
6 fees, court costs, and compensation for pain and suffering. Where
7 appropriate, punitive damages may be awarded in addition to
8 compensatory damages; and

9 (6) any other relief that the court deems appropriate.

10 g. A copy of the final protective order issued pursuant to this
11 section shall be immediately forwarded to the police of the
12 municipality in which the victim resides or is sheltered. A copy of
13 the final protective order shall be forwarded to the sheriff of the
14 county in which the respondent resides for immediate service upon
15 the respondent in accordance with the Rules of Court. The court or
16 the sheriff may coordinate service of the final protective order upon
17 the respondent through the police in appropriate circumstances. If
18 personal service cannot be effected upon the respondent, the court
19 may order other appropriate substituted service. At no time shall the
20 victim be asked or required to serve any order on the respondent.

21 h. Notice of a final protective order issued pursuant to this
22 section shall be sent by the clerk of the Superior Court or other
23 person designated by the court to the appropriate county prosecutor,
24 the appropriate chiefs of police, members of the State Police and
25 any other appropriate law enforcement agency. Notice of the
26 issuance of a final protective order shall also be provided to the
27 Division of Child Protection and Permanency in the Department of
28 Children and Families where the victim is less than 18 years of age.

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

43 (cf: P.L.2015, c.147, s.4)

44
45 2. This act shall take effect on the 90th day following
46 enactment.

STATEMENT

This bill would authorize the court to order persons subject to final orders under the “Sexual Assault Survivor Protection Act of 2015” to pay monetary compensation to the victims.

Under the act, a person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, may file an application with the Superior Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order. If granted by the court after a hearing, a temporary protective order may, among other provisions, prohibit the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; prohibit the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members; and prohibit the respondent from having any contact with the alleged victim or others.

Within 10 days of the issuance of the temporary protective order, the Superior Court will hold a second hearing to determine whether to issue a final protective order. At the hearing, the standard for proving the allegations is a preponderance of the evidence. A final order, if issued, will remain in effect until further order of the Superior Court.

This bill provides that a final order may also require the respondent to pay the victim monetary compensation for losses suffered as a direct result of the act of nonconsensual sexual contact, sexual penetration, or lewdness, or attempt at such conduct. The final order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Office (VCCO) for any and all compensation paid by the VCCO directly to or on behalf of the victim, and require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses would include, but not be limited to, loss of earnings or other support, out-of-pocket losses for injuries sustained, cost of counseling for the victim, reasonable attorney's fees, court costs, and compensation for pain and suffering. The bill also provides that where appropriate, punitive damages may be awarded.