

ASSEMBLY, No. 2517

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Authorizes court to include in domestic violence restraining orders a provision making the order applicable to a pregnant victim's child upon birth of the child.

CURRENT VERSION OF TEXT

As introduced.



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

3

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

6

7 1. Section 10 of P.L.1991, c.261 (C.2C:25-26) is amended to
8 read as follows:

9 10. a. When a defendant charged with a crime or offense
10 involving domestic violence is released from custody before trial on
11 bail or personal recognizance, the court authorizing the release may
12 as a condition of release issue an order prohibiting the defendant
13 from having any contact with the victim including, but not limited
14 to, restraining the defendant from entering the victim's residence,
15 place of employment or business, or school, and from harassing or
16 stalking the victim or the victim's friends, co-workers, or relatives
17 in any way. If the victim is pregnant the court may order that the
18 victim's child shall, immediately upon birth, be included in the
19 order. The court may also enter an order prohibiting the defendant
20 from having any contact with any animal owned, possessed, leased,
21 kept, or held by either party or a minor child residing in the
22 household. In addition, the court may enter an order directing the
23 possession of the animal and providing that the animal shall not be
24 disposed of prior to the disposition of the crime or offense. The
25 court may enter an order prohibiting the defendant from possessing
26 any firearm or other weapon enumerated in subsection r. of
27 N.J.S.2C:39-1 and ordering the search for and seizure of any such
28 weapon at any location where the judge has reasonable cause to
29 believe the weapon is located. The judge shall state with specificity
30 the reasons for and scope of the search and seizure authorized by
31 the order.

32 b. The written court order releasing the defendant shall contain
33 the court's directives specifically restricting the defendant's ability
34 to have contact with the victim, the victim's friends, co-workers, or
35 relatives, or any animal owned, possessed, leased, kept, or held by
36 either party or a minor child residing in the household. The clerk of
37 the court or other person designated by the court shall provide a
38 copy of this order to the victim forthwith.

39 c. The victim's location shall remain confidential and shall not
40 appear on any documents or records to which the defendant has
41 access.

42 d. Before bail is set, the defendant's prior record shall be
43 considered by the court. The court shall also conduct a search of
44 the domestic violence central registry. Bail shall be set as soon as
45 is feasible, but in all cases within 24 hours of arrest.

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 e. Once bail is set it shall not be reduced without prior notice to
2 the county prosecutor and the victim. Bail shall not be reduced by a
3 judge other than the judge who originally ordered bail, unless the
4 reasons for the amount of the original bail are available to the judge
5 who reduces the bail and are set forth in the record.

6 f. A victim shall not be prohibited from applying for, and a
7 court shall not be prohibited from issuing, temporary restraints
8 pursuant to this act because the victim has charged any person with
9 commission of a criminal act.

10 (cf: P.L.2011, c.213, s.1)

11
12 2. Section 11 of P.L.1991, c.261 (C.2C:25-27) is amended to
13 read as follows:

14 11. a. When a defendant is found guilty of a crime or offense
15 involving domestic violence and a condition of sentence restricts
16 the defendant's ability to have contact with the victim, the victim's
17 friends, co-workers, or relatives, or an animal owned, possessed,
18 leased, kept, or held by either party or a minor child residing in the
19 household, that condition shall be recorded in an order of the court
20 and a written copy of that order shall be provided to the victim by
21 the clerk of the court or other person designated by the court. If the
22 victim is pregnant the court may order that the victim's child shall,
23 immediately upon birth, be included in the order. In addition to
24 restricting a defendant's ability to have contact with the victim, the
25 victim's friends, co-workers, or relatives, or an animal owned,
26 possessed, leased, kept, or held by either party or a minor child
27 residing in the household, the court may require the defendant to
28 receive professional counseling from either a private source or a
29 source appointed by the court, and if the court so orders, the court
30 shall require the defendant to provide documentation of attendance
31 at the professional counseling. In any case where the court order
32 contains a requirement that the defendant receive professional
33 counseling, no application by the defendant to dissolve the
34 restraining order shall be granted unless, in addition to any other
35 provisions required by law or conditions ordered by the court, the
36 defendant has completed all required attendance at such counseling.

37 b. In addition the court may enter an order directing the
38 possession of an animal owned, possessed, leased, kept, or held by
39 either party or a minor child residing in the household. Where a
40 person has abused or threatened to abuse such animal, there shall be
41 a presumption that possession of the animal shall be awarded to the
42 non-abusive party.

43 c. (1) When a defendant is found guilty of a crime or offense
44 involving domestic violence, the court shall inform the defendant
45 that the defendant is prohibited from purchasing, owning,
46 possessing, or controlling a firearm pursuant to section 6 of
47 P.L.1979, c.179 (C.2C:39-7) and from receiving or retaining a
48 firearms purchaser identification card or permit to purchase a

1 handgun pursuant to N.J.S.2C:58-3. The court shall order the
2 defendant to arrange for the immediate surrender to a law
3 enforcement officer of any firearm that has not already been seized
4 or surrendered and any firearms purchaser identification card or
5 permit to purchase a handgun possessed by the defendant. No later
6 than five business days after the order is entered, however, the
7 defendant may arrange to sell any surrendered firearm to a licensed
8 retail dealer of firearms who shall be authorized to take possession
9 of that purchased firearm from the law enforcement agency to
10 which it was surrendered no later than 10 business days after the
11 order is entered. Any card or permit issued to the defendant shall be
12 deemed immediately revoked. The court shall establish a process
13 for notifying the appropriate authorities of the conviction requiring
14 the revocation of the card or permit. A law enforcement officer
15 accepting a surrendered firearm shall provide the defendant with a
16 receipt listing the date of surrender, the name of the defendant, and
17 any item that has been surrendered, including the serial number,
18 manufacturer, and model of the surrendered firearm. The defendant
19 shall provide a copy of this receipt to the prosecutor within 48 hours
20 of service of the order, and shall attest under penalty that any
21 firearms owned or possessed at the time of the order have been
22 transferred in accordance with this section and that the defendant
23 currently does not possess any firearms. The defendant alternatively
24 may attest under penalty that he did not own or possess a firearm at
25 the time of the order and currently does not possess a firearm. If
26 the court, upon motion of the prosecutor, finds probable cause that
27 the defendant has failed to surrender any firearm, card, or permit,
28 the court may order a search for and removal of these items at any
29 location where the judge has reasonable cause to believe these items
30 are located. The judge shall state with specificity the reasons for
31 and the scope of the search and seizure authorized by the order.

32 (2) A law enforcement officer who receives a firearm that is
33 surrendered, but not purchased and taken possession of by a
34 licensed retail dealer of firearms within 10 business days of when
35 the order is entered pursuant to paragraph (1) of this subsection,
36 may dispose of the surrendered firearm in accordance with the
37 provisions of N.J.S.2C:64-6. A firearm purchased by a licensed
38 retail dealer from a defendant shall become part of the inventory of
39 the dealer.

40 (cf: P.L.2016, c.91, s.1)

41

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

44 13. a. A hearing shall be held in the Family Part of the Chancery
45 Division of the Superior Court within 10 days of the filing of a
46 complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28)
47 in the county where the ex parte restraints were ordered, unless
48 good cause is shown for the hearing to be held elsewhere. A copy

1 of the complaint shall be served on the defendant in conformity
2 with the Rules of Court. If a criminal complaint arising out of the
3 same incident which is the subject matter of a complaint brought
4 under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261
5 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff
6 or defendant in the domestic violence matter shall not be used in the
7 simultaneous or subsequent criminal proceeding against the
8 defendant, other than domestic violence contempt matters and
9 where it would otherwise be admissible hearsay under the rules of
10 evidence that govern where a party is unavailable. At the hearing
11 the standard for proving the allegations in the complaint shall be by
12 a preponderance of the evidence. The court shall consider but not
13 be limited to the following factors:

14 (1) The previous history of domestic violence between the
15 plaintiff and defendant, including threats, harassment and physical
16 abuse;

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

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

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

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

22 (6) The existence of a verifiable order of protection from
23 another jurisdiction.

24 An order issued under this act shall only restrain or provide
25 damages payable from a person against whom a complaint has been
26 filed under this act and only after a finding or an admission is made
27 that an act of domestic violence was committed by that person. The
28 issue of whether or not a violation of this act occurred, including an
29 act of contempt under this act, shall not be subject to mediation or
30 negotiation in any form. In addition, where a temporary or final
31 order has been issued pursuant to this act, no party shall be ordered
32 to participate in mediation on the issue of custody or parenting time.

33 b. In proceedings in which complaints for restraining orders
34 have been filed, the court shall grant any relief necessary to prevent
35 further abuse. In addition to any other provisions, any restraining
36 order issued by the court shall bar the defendant from purchasing,
37 owning, possessing or controlling a firearm and from receiving or
38 retaining a firearms purchaser identification card or permit to
39 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
40 which the restraining order is in effect or two years, whichever is
41 greater. The order shall require the immediate surrender of any
42 firearm or other weapon belonging to the defendant. The order
43 shall include notice to the defendant of the penalties for a violation
44 of any provision of the order, including but not limited to the
45 penalties for contempt of court and unlawful possession of a firearm
46 or other weapon pursuant to N.J.S.2C:39-5.

47 A law enforcement officer shall accompany the defendant, or
48 may proceed without the defendant if necessary, to any place where

1 any firearm or other weapon belonging to the defendant is located
2 to ensure that the defendant does not gain access to any firearm or
3 other weapon, and a law enforcement officer shall take custody of
4 any firearm or other weapon belonging to the defendant. If the
5 order prohibits the defendant from returning to the scene of
6 domestic violence or other place where firearms or other weapons
7 belonging to the defendant are located, any firearm or other weapon
8 located there shall be seized by a law enforcement officer. The
9 provisions of this subsection requiring the surrender or removal of a
10 firearm, card, or permit shall not apply to any law enforcement
11 officer while actually on duty, or to any member of the Armed
12 Forces of the United States or member of the National Guard while
13 actually on duty or traveling to or from an authorized place of duty.
14 At the hearing the judge of the Family Part of the Chancery
15 Division of the Superior Court may issue an order granting any or
16 all of the following relief:

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

19 (2) An order granting exclusive possession to the plaintiff of the
20 residence or household regardless of whether the residence or
21 household is jointly or solely owned by the parties or jointly or
22 solely leased by the parties. This order shall not in any manner
23 affect title or interest to any real property held by either party or
24 both jointly. If it is not possible for the victim to remain in the
25 residence, the court may order the defendant to pay the victim's rent
26 at a residence other than the one previously shared by the parties if
27 the defendant is found to have a duty to support the victim and the
28 victim requires alternative housing.

29 (3) An order providing for parenting time. The order shall
30 protect the safety and well-being of the plaintiff and minor children
31 and shall specify the place and frequency of parenting time.
32 Parenting time arrangements shall not compromise any other
33 remedy provided by the court by requiring or encouraging contact
34 between the plaintiff and defendant. Orders for parenting time may
35 include a designation of a place of parenting time away from the
36 plaintiff, the participation of a third party, or supervised parenting
37 time.

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

45 (b) The court shall consider suspension of the parenting time
46 order and hold an emergency hearing upon an application made by
47 the plaintiff certifying under oath that the defendant's access to the

1 child pursuant to the parenting time order has threatened the safety
2 and well-being of the child.

3 (4) An order requiring the defendant to pay to the victim
4 monetary compensation for losses suffered as a direct result of the
5 act of domestic violence. The order may require the defendant to
6 pay the victim directly, to reimburse the Victims of Crime
7 Compensation Office for any and all compensation paid by the
8 Victims of Crime Compensation Office directly to or on behalf of
9 the victim, and may require that the defendant reimburse any parties
10 that may have compensated the victim, as the court may determine.
11 Compensatory losses shall include, but not be limited to, loss of
12 earnings or other support, including child or spousal support, out-
13 of-pocket losses for injuries sustained, cost of repair or replacement
14 of real or personal property damaged or destroyed or taken by the
15 defendant, cost of counseling for the victim, moving or other travel
16 expenses, reasonable attorney's fees, court costs, and compensation
17 for pain and suffering. Where appropriate, punitive damages may be
18 awarded in addition to compensatory damages.

19 (5) An order requiring the defendant to receive professional
20 domestic violence counseling from either a private source or a
21 source appointed by the court and, in that event, requiring the
22 defendant to provide the court at specified intervals with
23 documentation of attendance at the professional counseling. The
24 court may order the defendant to pay for the professional
25 counseling. No application by the defendant to dissolve a final
26 order which contains a requirement for attendance at professional
27 counseling pursuant to this paragraph shall be granted by the court
28 unless, in addition to any other provisions required by law or
29 conditions ordered by the court, the defendant has completed all
30 required attendance at such counseling.

31 (6) An order restraining the defendant from entering the
32 residence, property, school, or place of employment of the victim or
33 of other family or household members of the victim and requiring
34 the defendant to stay away from any specified place that is named
35 in the order and is frequented regularly by the victim or other
36 family or household members.

37 (7) An order restraining the defendant from making contact with
38 the plaintiff or others, including an order forbidding the defendant
39 from personally or through an agent initiating any communication
40 likely to cause annoyance or alarm including, but not limited to,
41 personal, written, or telephone contact with the victim or other
42 family members, or their employers, employees, or fellow workers,
43 or others with whom communication would be likely to cause
44 annoyance or alarm to the victim.

45 (8) An order requiring that the defendant make or continue to
46 make rent or mortgage payments on the residence occupied by the
47 victim if the defendant is found to have a duty to support the victim
48 or other dependent household members; provided that this issue has

1 not been resolved or is not being litigated between the parties in
2 another action.

3 (9) An order granting either party temporary possession of
4 specified personal property, such as an automobile, checkbook,
5 documentation of health insurance, an identification document, a
6 key, and other personal effects.

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

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

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

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

20 (14) An order granting any other appropriate relief for the
21 plaintiff and dependent children, provided that the plaintiff consents
22 to such relief, including relief requested by the plaintiff at the final
23 hearing, whether or not the plaintiff requested such relief at the time
24 of the granting of the initial emergency order.

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

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

36 (17) An order prohibiting the defendant from stalking or
37 following, or threatening to harm, to stalk or to follow, the
38 complainant or any other person named in the order in a manner
39 that, taken in the context of past actions of the defendant, would put
40 the complainant in reasonable fear that the defendant would cause
41 the death or injury of the complainant or any other person.
42 Behavior prohibited under this act includes, but is not limited to,
43 behavior prohibited under the provisions of P.L.1992, c.209
44 (C.2C:12-10).

45 (18) An order requiring the defendant to undergo a psychiatric
46 evaluation.

47 (19) An order directing the possession of any animal owned,
48 possessed, leased, kept, or held by either party or a minor child

1 residing in the household. Where a person has abused or threatened
2 to abuse such animal, there shall be a presumption that possession
3 of the animal shall be awarded to the non-abusive party.

4 (20) An order providing that, if the plaintiff is pregnant, the
5 plaintiff's child shall be included in the restraining order
6 immediately upon birth.

7 c. Notice of orders issued pursuant to this section shall be sent
8 by the clerk of the Family Part of the Chancery Division of the
9 Superior Court or other person designated by the court to the
10 appropriate chiefs of police, members of the State Police and any
11 other appropriate law enforcement agency.

12 d. Upon good cause shown, any final order may be dissolved or
13 modified upon application to the Family Part of the Chancery
14 Division of the Superior Court, but only if the judge who dissolves
15 or modifies the order is the same judge who entered the order, or
16 has available a complete record of the hearing or hearings on which
17 the order was based.

18 e. Prior to the issuance of any order pursuant to this section, the
19 court shall order that a search be made of the domestic violence
20 central registry.

21 (cf: P.L.2016, c.91, s.3)

22
23 4. This act shall take effect immediately.
24
25

26 STATEMENT

27
28 This bill would permit courts to include in domestic violence
29 protection orders a provision indicating that, when a victim is
30 pregnant, the provisions of the protection order will apply to the
31 victim's child immediately upon birth. Such a provision would
32 only apply after the child is born; nothing in the bill is intended to
33 establish a right of personhood in an unborn fetus.

34 This bill is based in part on the holding in B.C. v. T.G., 430 N.J.
35 Super. 455 (Ch. Div. 2013), in which the Family Part of the
36 Chancery Division of the Superior Court held that, when a victim is
37 pregnant, the court may order that any protections ordered under the
38 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
39 (C.2C:25-17 et seq.), will apply to the victim's child upon the birth
40 of the child. The court, noting that the protections in a domestic
41 violence restraining order apply to the victim's immediate family,
42 stated that "there is little sense in requiring the victim to have to
43 return to court again immediately after the birth of the child for an
44 emergent hearing in order to add the baby to her final restraining
45 order." Id. at 466. The court additionally noted that, for various
46 reasons, "a new parent may be either unable or unwilling to
47 immediately return to domestic violence court immediately
48 following childbirth." Id. at 467.