

ASSEMBLY, No. 3497

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman GREGORY P. MCGUCKIN

District 10 (Ocean)

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District 10 (Ocean)

SYNOPSIS

Expands statute authorizing temporary restraining orders for certain alleged stalking victims to include victims of any age or mental capacity.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning stalking and amending P.L.1999, c.47.

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

5

6 1. Section 2 of P.L.1999, c.47 (C.2C:12-10.2) is amended to
7 read as follows:

8 2. a. In any case involving an allegation of stalking **【**where the
9 victim is a child under the age of 18 years or is developmentally
10 disabled as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4) or
11 where the victim is 18 years of age or older and has a mental
12 disease or defect which renders the victim temporarily or
13 permanently incapable of understanding the nature of his conduct,
14 including, but not limited to, being incapable of providing consent,**】**
15 the court may issue a temporary restraining order against the
16 defendant which limits the contact of the defendant and the alleged
17 victim.

18 b. The provisions of subsection a. of this section are in addition
19 to, and not in lieu of, the provisions of section 3 of P.L.1996, c.39
20 (C.2C:12-10.1) which provide that a judgment of conviction for
21 stalking shall operate as an application for a permanent restraining
22 order limiting the contact of the defendant and the victim.

23 c. The **【**parent or guardian of the child or the person described
24 in subsection a. of this section**】** alleged victim, or the parent or
25 guardian of an alleged victim who is under the age of 18 years or
26 has a developmental disability as defined in section 3 of P.L.1977,
27 c.200 (C.5:5-44.4), or the parent or guardian of an alleged victim
28 who is 18 years of age or older and has a mental disease or defect
29 which renders the alleged victim temporarily or permanently
30 incapable of understanding the nature of his conduct, including, but
31 not limited to, being incapable of providing consent, may file a
32 complaint with the Superior Court in conformity with the rules of
33 court seeking a temporary restraining order against a person alleged
34 to have committed stalking against the **【**child or the person
35 described in subsection a. of this section. The parent or guardian**】**
36 alleged victim and may seek emergency, ex parte relief. A decision
37 shall be made by the judge regarding the emergency relief
38 forthwith. If it appears that the **【**child or the person described in
39 subsection a. of this section**】** alleged victim is in danger of being
40 stalked by the defendant, the judge shall issue a temporary
41 restraining order pursuant to subsection e. of this section.

42 d. A conviction of stalking shall not be a prerequisite for the
43 grant of a temporary restraining order under this act.

44 e. A temporary restraining order issued under this act 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 limit the contact of the defendant and the [child or the person
2 described in subsection a. of this section who was stalked] alleged
3 victim and in addition may grant all other relief specified in section
4 3 of P.L.1996, c.39 (C.2C:12-10.1).

5 f. A hearing shall be held in the Superior Court within 10 days
6 of the issuance of any temporary restraining order which was issued
7 on an emergency, ex parte basis. A copy of the complaint shall be
8 served on the defendant in conformity with the rules of court. At
9 the hearing the standard for continuing the temporary restraining
10 order shall be by a preponderance of the evidence.

11 g. If the court rules that the temporary restraining order shall
12 be continued, the order shall remain in effect until either:

13 (1) the defendant is convicted of stalking, in which case the
14 court shall hold a hearing on the issue of whether a permanent
15 restraining order shall be entered pursuant to section 3 of P.L.1996,
16 c.39 (C.2C:12-10.1); or

17 (2) the victim's parent or guardian or, in the case of a victim
18 who has reached the age of 18, the victim, requests that the
19 restraining order be dismissed and the court finds just cause to do
20 so.

21 (cf: P.L.2011, c.232, s.1)

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23 2. This act shall take effect immediately.
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26 STATEMENT

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28 This bill would allow any person who alleges that he is a victim
29 of stalking to apply for a temporary restraining order against the
30 defendant. Under current law, where there is an allegation that a
31 person has stalked a child under the age of 18, a developmentally
32 disabled person or a person with a mental disease or defect which
33 renders the person temporarily or permanently incapable of
34 understanding the nature of his conduct, the parent or guardian of
35 the alleged victim may apply for a temporary restraining order
36 limiting the contact of the defendant and the alleged victim. This
37 bill would expand these provisions to allow alleged victims of any
38 age or mental capacity to apply for these orders.

39 Current law provides that a conviction of stalking operates as an
40 automatic application for a permanent restraining order limiting the
41 contact of the defendant and the victim. (See N.J.S.A.2C:12-10.1).
42 However, it may take several years before a defendant charged with
43 stalking is convicted of the crime. Under the bill, a person could
44 apply for a temporary restraining order against the defendant on an
45 emergency basis, before the defendant is convicted.

46 The bill provides that if the hearing is held on an emergency, ex
47 parte basis, without the presence of the defendant, the court issuing
48 the temporary restraining order would be required to hold a hearing

1 within 10 days after notice to the defendant. At the hearing, the
2 court would decide whether the temporary restraining order should
3 be continued. The standard for continuing the temporary order
4 would be by a preponderance of the evidence.

5 If continued, the temporary restraining order would be in effect
6 until either (1) the defendant is convicted, in which case the court
7 would hold a hearing on the issue of whether a permanent
8 restraining order would be entered (pursuant to current law), or (2)
9 the victim, or a parent or guardian acting on the victim's behalf,
10 requests that the temporary restraining order be dismissed.