SENATE, No. 1438

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Senator JAMES W. HOLZAPFEL
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.

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

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

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

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

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

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

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

e. A temporary restraining order issued under this act shall limit the contact of the defendant and the **[**child or the person

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.

described in subsection a. of this section who was stalked] alleged victim and in addition may grant all other relief specified in section 3 of P.L.1996, c.39 (C.2C:12-10.1).

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

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

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

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

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

2. This act shall take effect immediately.

STATEMENT

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

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

The bill provides that if the hearing is held on an emergency, ex parte basis, without the presence of the defendant, the court issuing the temporary restraining order would be required to hold a hearing within 10 days after notice to the defendant. At the hearing, the

court would decide whether the temporary restraining order should be continued. The standard for continuing the temporary order would be by a preponderance of the evidence.

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