SENATE, No. 2265

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:
Senator JOSEPH P. CRYAN
District 20 (Union)

SYNOPSIS

Establishes the authority of the court to order electronic monitoring of certain convicted domestic violence offenders.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning domestic violence offenders and amending and supplementing P.L.1991, c.261, and making an appropriation.

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

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

11. a. When a defendant is found guilty of a crime or offense involving domestic violence and a condition of sentence restricts the defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or an animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household, that condition shall be recorded in an order of the court and a written copy of that order shall be provided to the victim by the clerk of the court or other person designated by the court. In addition to restricting a defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or an animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household, the court may require the defendant to receive professional counseling from either a private source or a source appointed by the court, and if the court so orders, the court shall require the defendant to provide documentation of attendance at the professional counseling. In any case where the court order contains a requirement that the defendant receive professional counseling, no application by the defendant to dissolve the restraining order shall be granted unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling.

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

c. (1) When a defendant is found guilty of a crime or offense involving domestic violence, the court shall inform the defendant that the defendant is prohibited from purchasing, owning, possessing, or controlling a firearm pursuant to section 6 of P.L.1979, c.179 (C.2C:39-7) and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3. The court shall order the defendant to arrange for the immediate surrender to a law enforcement officer of any firearm that has not already been seized or surrendered and any firearms purchaser identification card or

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 <u>thus</u> is new matter.

permit to purchase a handgun possessed by the defendant. No later than five business days after the order is entered, however, the defendant may arrange to sell any surrendered firearm to a licensed retail dealer of firearms who shall be authorized to take possession of that purchased firearm from the law enforcement agency to which it was surrendered no later than 10 business days after the order is entered. Any card or permit issued to the defendant shall be deemed immediately revoked. The court shall establish a process for notifying the appropriate authorities of the conviction requiring the revocation of the card or permit. A law enforcement officer accepting a surrendered firearm shall provide the defendant with a receipt listing the date of surrender, the name of the defendant, and any item that has been surrendered, including the serial number, manufacturer, and model of the surrendered firearm. The defendant shall provide a copy of this receipt to the prosecutor within 48 hours of service of the order, and shall attest under penalty that any firearms owned or possessed at the time of the order have been transferred in accordance with this section and that the defendant currently does not possess any firearms. The defendant alternatively may attest under penalty that he did not own or possess a firearm at the time of the order and currently does not possess a firearm. If the court, upon motion of the prosecutor, finds probable cause that the defendant has failed to surrender any firearm, card, or permit, the court may order a search for and removal of these items at any location where the judge has reasonable cause to believe these items are located. The judge shall state with specificity the reasons for and the scope of the search and seizure authorized by the order.

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

<u>d. (1) In addition, the court may order the electronic monitoring, utilizing global positioning system technology, of a convicted defendant referred to in subsection a. of this section who is deemed to present a serious risk of re-offense.</u>

<u>(2) In exercising judicial discretion in determining subjects to monitor electronically, the court shall consider the risks posed by the subject, based on relevant risk factors such as the seriousness of the offense upon which the conviction was based and any other factors the court deems appropriate.</u>

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

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

13. a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the complaint shall be served on the defendant in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the rules of evidence that govern where a party is unavailable. At the hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

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

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

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

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

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

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

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

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years, whichever is greater. The order shall require the immediate surrender of any firearm or other weapon belonging to the defendant. The order

shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

A law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to any place where any firearm or other weapon belonging to the defendant is located to ensure that the defendant does not gain access to any firearm or other weapon, and a law enforcement officer shall take custody of any firearm or other weapon belonging to the defendant. If the order prohibits the defendant from returning to the scene of domestic violence or other place where firearms or other weapons belonging to the defendant are located, any firearm or other weapon located there shall be seized by a law enforcement officer. The provisions of this subsection requiring the surrender or removal of a firearm, card, or permit shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

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

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

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

(a) The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of

such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious.

(b) The court shall consider suspension of the parenting time order and hold an emergency hearing upon an application made by the plaintiff certifying under oath that the defendant's access to the child pursuant to the parenting time order has threatened the safety and well-being of the child.

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

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

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

(7) An order restraining the defendant from making contact with the plaintiff or others, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the victim or other family members, or their employers, employees, or fellow workers,

or others with whom communication would be likely to cause annoyance or alarm to the victim.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members; provided that this issue has not been resolved or is not being litigated between the parties in another action.

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

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

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

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

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

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

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

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

(17) An order prohibiting the defendant from stalking or following, or threatening to harm, to stalk or to follow, the complainant or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the complainant in reasonable fear that the defendant would cause the death or injury of the complainant or any other person. Behavior prohibited under this act includes, but is not limited to,

behavior prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

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

(19) An order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.

(20) An order requiring electronic monitoring of the defendant pursuant to the provisions of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

In exercising judicial discretion in determining subjects to monitor electronically, the court shall consider the risks posed by the subject, based on relevant risk factors such as the seriousness of the offense upon which the allegation was based and any other factors the court deems appropriate.

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

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

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

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

3. (New section) a. The director of the Administrative Office of the Courts, in consultation with the Attorney General, shall establish a program for the continuous, satellite-based monitoring of eligible defendants convicted of domestic violence offenses and defendants against whom a final restraining order has been issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29). The system shall provide for the capability of active and passive monitoring, or a combination of both.

b. The monitoring system, at a minimum, shall provide:

(1) Time-correlated or continuous tracking of the geographic location of the monitored subject using a global positioning system based on satellite and other location technology; and

(2) An automated monitoring system that can be used to permit law enforcement agencies to compare the geographic positions of monitored subjects with reported crime incidents and whether the

subject was in the proximity of such reported crime incidents.

c. The Administrative Office of the Courts shall develop procedures to determine, investigate, and report on a 24 hours per day basis a monitored subject's noncompliance with the terms and conditions of the monitoring program. All reports of noncompliance shall be investigated immediately by a parole or law enforcement officer.

d. The director may promulgate guidelines to effectuate the provisions of this act.

4. (New section) Notwithstanding any provision of law, rule or regulation to the contrary, the director, Attorney General, Superintendent of State Police and county and municipal law enforcement agencies may share criminal incident information with each other and the vendor selected by the director to provide the monitoring equipment for the program. The director may direct the vendor to use data obtained pursuant to this act in preparing correlation reports for distribution and use by State, county and municipal law enforcement agencies.

5. (New section) a. A person who is monitored under the program established pursuant to this act shall be assessed the cost of the monitoring device.

b. A person who tampers with, removes or vandalizes a device worn or utilized by a monitored subject pursuant to this act is guilty of a crime of the third degree.

c. A person who is monitored under the program established pursuant to this act and fails to comply with its requirements is guilty of a crime of the third degree.

6. There is appropriated $500,000 from the General Fund to the Administrative Office of the Courts for the purposes of implementing the program established pursuant to this act.

7. This act shall take effect immediately.

STATEMENT

This bill establishes the authority of the court to order electronic monitoring of a defendant found guilty of a crime or offense involving domestic violence when a condition of sentence restricts the defendant's ability to have contact with the victim. The bill would further authorize the court to order electronic monitoring for a defendant following the issuance of a final restraining order issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29), to address the heightened risk of injury to a victim during this period.

Under the bill, the Administrative Office of the Courts in

consultation with the Attorney General is directed to establish a program for the continuous, satellite-based monitoring of domestic violence defendants deemed to present a serious risk of re-offense based upon relevant risk factors such as the seriousness of the offense which is the basis of the conviction and any other factors the court deems relevant. The monitoring system would use global positioning system (GPS) technology.