

SENATE, No. 3105

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

Requires certain family or household members and victims be notified when firearms are returned to persons charged with domestic violence or subject to extreme risk protection order.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2020)

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1 AN ACT concerning certain returned and seized weapons and
2 amending P.L.1991, c.261 and P.L.2018, c.35.

3

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

6

7 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to
8 read as follows:

9 5. a. When a person claims to be a victim of domestic
10 violence, and where a law enforcement officer responding to the
11 incident finds probable cause to believe that domestic violence has
12 occurred, the law enforcement officer shall arrest the person who is
13 alleged to be the person who subjected the victim to domestic
14 violence and shall sign a criminal complaint if:

15 (1) The victim exhibits signs of injury caused by an act of
16 domestic violence;

17 (2) A warrant is in effect;

18 (3) There is probable cause to believe that the person has
19 violated N.J.S.2C:29-9, and there is probable cause to believe that
20 the person has been served with the order alleged to have been
21 violated. If the victim does not have a copy of a purported order,
22 the officer may verify the existence of an order with the appropriate
23 law enforcement agency; or

24 (4) There is probable cause to believe that a weapon as defined
25 in N.J.S.2C:39-1 has been involved in the commission of an act of
26 domestic violence.

27 b. A law enforcement officer may arrest a person; or may sign
28 a criminal complaint against that person, or may do both, where
29 there is probable cause to believe that an act of domestic violence
30 has been committed, but where none of the conditions in subsection
31 a. of this section applies.

32 c. (1) As used in this section, the word "exhibits" is to be
33 liberally construed to mean any indication that a victim has suffered
34 bodily injury, which shall include physical pain or any impairment
35 of physical condition. Where the victim exhibits no visible sign of
36 injury, but states that an injury has occurred, the officer should
37 consider other relevant factors in determining whether there is
38 probable cause to make an arrest.

39 (2) In determining which party in a domestic violence incident
40 is the victim where both parties exhibit signs of injury, the officer
41 should consider the comparative extent of the injuries, the history of
42 domestic violence between the parties, if any, and any other
43 relevant factors.

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 (3) No victim shall be denied relief or arrested or charged under
2 this act with an offense because the victim used reasonable force in
3 self defense against domestic violence by an attacker.

4 d. (1) In addition to a law enforcement officer's authority to
5 seize any weapon that is contraband, evidence or an instrumentality
6 of crime, a law enforcement officer who has probable cause to
7 believe that an act of domestic violence has been committed shall:

8 (a) question persons present to determine whether there are
9 weapons on the premises; and

10 (b) upon observing or learning that a weapon is present on the
11 premises, seize any weapon that the officer reasonably believes
12 would expose the victim to a risk of serious bodily injury. If a law
13 enforcement officer seizes any firearm pursuant to this paragraph,
14 the officer shall also seize any firearm purchaser identification card
15 or permit to purchase a handgun issued to the person accused of the
16 act of domestic violence.

17 (2) A law enforcement officer shall deliver all weapons,
18 firearms purchaser identification cards and permits to purchase a
19 handgun seized pursuant to this section to the county prosecutor and
20 shall append an inventory of all seized items to the domestic
21 violence report.

22 (3) Weapons seized in accordance with the "Prevention of
23 Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et
24 seq.) shall be returned to the owner except upon order of the
25 Superior Court. The prosecutor who has possession of the seized
26 weapons may, upon notice to the owner, petition a judge of the
27 Family Part of the Superior Court, Chancery Division, within 45
28 days of seizure, to obtain title to the seized weapons, or to revoke
29 any and all permits, licenses and other authorizations for the use,
30 possession, or ownership of such weapons pursuant to the law
31 governing such use, possession, or ownership, or may object to the
32 return of the weapons on such grounds as are provided for the initial
33 rejection or later revocation of the authorizations, or on the grounds
34 that the owner is unfit or that the owner poses a threat to the public
35 in general or a person or persons in particular.

36 A hearing shall be held and a record made thereof within 45 days
37 of the notice provided above. No formal pleading and no filing fee
38 shall be required as a preliminary to such hearing. The hearing
39 shall be summary in nature. Appeals from the results of the hearing
40 shall be to the Superior Court, Appellate Division, in accordance
41 with the law.

42 If the prosecutor does not institute an action within 45 days of
43 seizure, the seized weapons shall be returned to the owner.

44 After the hearing the court shall order the return of the firearms,
45 weapons and any authorization papers relating to the seized
46 weapons to the owner if the court determines the owner is not
47 subject to any of the disabilities set forth in **[N.J.S.2C:58-3c.]**
48 subsection c. of N.J.S.2C:58-3 and finds that the complaint has been

1 dismissed at the request of the complainant and the prosecutor
2 determines that there is insufficient probable cause to indict; or if
3 the defendant is found not guilty of the charges; or if the court
4 determines that the domestic violence situation no longer exists. At
5 least 10 days prior to returning the seized weapons, the prosecutor
6 shall notify each claimant or victim that the weapons will be
7 returned to the owner.

8 Nothing in this act shall impair the right of the State to retain
9 evidence pending a criminal prosecution. Nor shall any provision
10 of this act be construed to limit the authority of the State or a law
11 enforcement officer to seize, retain or forfeit property pursuant to
12 chapter 64 of Title 2C of the New Jersey Statutes.

13 If, after the hearing, the court determines that the weapons are
14 not to be returned to the owner, the court may:

15 (a) With respect to weapons other than firearms, order the
16 prosecutor to dispose of the weapons if the owner does not arrange
17 for the transfer or sale of the weapons to an appropriate person
18 within 60 days; or

19 (b) Order the revocation of the owner's firearms purchaser
20 identification card or any permit, license or authorization, in which
21 case the court shall order the owner to surrender any firearm seized
22 and all other firearms possessed to the prosecutor and shall order
23 the prosecutor to dispose of the firearms if the owner does not
24 arrange for the sale of the firearms to a registered dealer of the
25 firearms within 60 days; or

26 (c) Order such other relief as it may deem appropriate. When
27 the court orders the weapons forfeited to the State or the prosecutor
28 is required to dispose of the weapons, the prosecutor shall dispose
29 of the property as provided in N.J.S.2C:64-6.

30 (4) A civil suit may be brought to enjoin a wrongful failure to
31 return a seized firearm where the prosecutor refuses to return the
32 weapon after receiving a written request to do so and notice of the
33 owner's intent to bring a civil action pursuant to this section.
34 Failure of the prosecutor to comply with the provisions of this act
35 shall entitle the prevailing party in the civil suit to reasonable costs,
36 including attorney's fees, provided that the court finds that the
37 prosecutor failed to act in good faith in retaining the seized weapon.

38 (5) No law enforcement officer or agency shall be held liable in
39 any civil action brought by any person for failing to learn of, locate
40 or seize a weapon pursuant to this act, or for returning a seized
41 weapon to its owner.

42 (cf: P.L.2003, c.277, s.1)

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44 2. Section 7 of P.L.2018, c.35 (C.2C:58-26) is amended to read
45 as follows:

46 7. a. When a temporary or final extreme risk protective order
47 is issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23
48 or C.2C:58-24), the court shall order the respondent to surrender to

1 the local law enforcement agency all firearms and ammunition in
2 the respondent's custody or control, or which the respondent owns
3 or possesses, and any firearms purchaser identification card, permit
4 to purchase a handgun, or permit to carry a handgun held by the
5 respondent. The court also shall notify the respondent that the
6 respondent is prohibited from purchasing firearms or ammunition or
7 applying for a firearms purchaser identification card, permit to
8 purchase a handgun, or permit to carry a handgun.

9 b. If the petition for the temporary extreme risk protective
10 order indicates that the respondent owns or possesses any firearms
11 or ammunition, the court shall issue a search warrant with the
12 temporary or final extreme risk protective order and the law
13 enforcement officer who serves the order shall request that all
14 firearms and ammunition immediately be surrendered.

15 (1) The respondent immediately shall surrender, in a safe
16 manner, all firearms and ammunition in the respondent's custody or
17 control, or which the respondent owns or possesses, and any
18 firearms purchaser identification card, permit to purchase a
19 handgun, or permit to carry a handgun held by the respondent to the
20 control of the law enforcement officer.

21 (2) The respondent may request that the law enforcement
22 agency sell all firearms and ammunition in a safe manner to a
23 federally licensed firearms dealer pursuant to section 8 of P.L.2018,
24 c.35 (C.2C:58-27).

25 (3) The law enforcement officer or licensed firearms dealer
26 taking possession of any firearms or ammunition pursuant to this
27 subsection shall issue a receipt identifying all firearms and
28 ammunition that have been surrendered by the respondent. The
29 officer or dealer shall provide a copy of the receipt to the
30 respondent at the time of surrender.

31 (4) If the respondent surrenders firearms and ammunition to a
32 law enforcement officer pursuant to paragraph (1) of this subsection
33 or surrenders or sells firearms and ammunition to a licensed dealer
34 pursuant to paragraph (2) of this subsection, the respondent shall,
35 within 48 hours after being served with the order, file the receipt
36 with the county prosecutor. Failure to timely file the receipt or
37 copy of the receipt shall constitute contempt of the order.

38 c. The court which issued the protective order may issue a
39 search warrant for a firearm or ammunition that is in the custody or
40 control of, owned, or possessed by a respondent who is subject to a
41 temporary or final protective order issued pursuant to section 4 or 5
42 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24) if the respondent has
43 lawfully been served with that order and has failed to surrender the
44 firearm or ammunition as required by this section.

45 d. The respondent may petition the agency for the return of any
46 surrendered firearms or ammunition upon termination of an order
47 pursuant to section 6 of P.L.2018, c.35 (C.2C:58-25). Within 30
48 days of receiving a petition for the return of surrendered firearms or

1 ammunition and after the termination of the order, the agency shall
2 return the firearm or ammunition unless:

- 3 (1) the firearm has been reported as stolen; or
4 (2) the respondent is prohibited from possessing a firearm under
5 State or federal law.

6 At least 10 days prior to returning the firearms or ammunition,
7 the local law enforcement agency shall notify the family or
8 household member that the firearms or ammunition will be returned
9 to the owner. Nothing in this act shall prohibit revocation and
10 seizure of a person's firearms purchaser identification card, permit
11 to purchase a handgun, permit to carry a handgun, and weapons as
12 authorized pursuant to applicable law.

13 e. If a person other than the respondent claims title to any
14 firearm or ammunition surrendered pursuant to this section, and the
15 law enforcement agency determines that the person is the lawful
16 owner of the firearm or ammunition, the firearm or ammunition
17 shall be returned to that person.

18 f. If the respondent has surrendered a firearm or ammunition to
19 a federally licensed firearms dealer, after termination of the order,
20 the respondent may request the law enforcement agency, in writing,
21 to authorize the return of the firearm or ammunition from the
22 dealer. The dealer shall transfer the firearm or ammunition to the
23 respondent in accordance with procedures required when a firearm
24 or ammunition is being sold from the dealer's inventory in
25 accordance with N.J.S.2C:58-2.

26 (cf: P.L.2018, c.35, s.7)

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28 3. This act shall take effect on the first day of the seventh
29 month following the date of enactment.

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32 STATEMENT

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34 This bill requires notification to be provided to victims when
35 seized or surrendered weapons are returned to a person charged
36 with domestic violence. The bill also requires notification to be
37 provided to family or household members who petitioned for an
38 extreme risk protection order when a seized firearm is returned to
39 the person after the order is terminated.

40 Under the "Prevention of Domestic Violence Act of 1991",
41 P.L.1991, c.261 (C.2C:25-17 et seq.), a law enforcement officer
42 may take possession of any weapons owned by a person charged
43 with domestic violence. The weapons are transferred to the county
44 prosecutor's office, which is required to determine within 45 days
45 whether to file for forfeiture of the weapons. The weapons are
46 returned if the forfeiture action is not filed within 45 days. A court
47 hearing a domestic violence case also is required to order the return
48 of the weapons when: 1) the complaint has been dismissed at the

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1 request of the complainant and the prosecutor determines that there
2 is insufficient probable cause to indict; 2) the defendant is found not
3 guilty of the charges; or 3) the court determines that the domestic
4 violence situation no longer exists. This bill requires the prosecutor
5 to notify each claimant or victim that the seized or surrendered
6 weapons are to be returned to the defendant.

7 The “Extreme Risk Protective Order Act of 2018”, P.L.2018,
8 c.35 (C.2C:58-20 et seq.), allows a family or household member to
9 petition the Superior Court for an extreme risk protective order
10 (ERPO) against persons who pose a significant danger of bodily
11 injury to themselves or others by possessing or purchasing a
12 firearm. The ERPO prohibits the subject from possessing or
13 purchasing a firearm or ammunition and from holding a firearms
14 purchaser identification card, permit to purchase a handgun, and
15 permit to carry a handgun. A person who is subject to the order is
16 required to surrender his or her firearms or ammunition to a law
17 enforcement agency but may petition the agency for the return of
18 any surrendered firearms or ammunition upon termination of the
19 order. This bill requires the law enforcement agency to notify the
20 family or household members who petitioned for the ERPO that the
21 firearms or ammunition are to be returned.

22 The bill requires the notification to be provided at least 10 days
23 prior to returning the weapons or ammunition to persons who were
24 charged with domestic violence or subject to an ERPO.