

ASSEMBLY, No. 3730

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 2, 2022

Sponsored by:
Assemblyman STERLEY S. STANLEY
District 18 (Middlesex)

SYNOPSIS

Permits court to order counseling for children in households with domestic violence in appropriate cases.

CURRENT VERSION OF TEXT

As introduced.



A3730 STANLEY

2

1 AN ACT concerning counseling for a child in certain domestic
2 violence situations and amending P.L.1991, c.261.

3

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

6

7 1. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to
8 read as follows:

9 12. a. A victim may file a complaint alleging the commission of
10 an act of domestic violence with the Family Part of the Chancery
11 Division of the Superior Court in conformity with the Rules of
12 Court. The court shall not dismiss any complaint or delay
13 disposition of a case because the victim has left the residence to
14 avoid further incidents of domestic violence. Filing a complaint
15 pursuant to this section shall not prevent the filing of a criminal
16 complaint for the same act.

17 On weekends, holidays and other times when the court is closed,
18 a victim may file a complaint before a judge of the Family Part of
19 the Chancery Division of the Superior Court or a municipal court
20 judge who shall be assigned to accept complaints and issue
21 emergency, ex parte relief in the form of temporary restraining
22 orders pursuant to this act.

23 A plaintiff may apply for relief under this section in a court
24 having jurisdiction over the place where the alleged act of domestic
25 violence occurred, where the defendant resides, or where the
26 plaintiff resides or is sheltered, and the court shall follow the same
27 procedures applicable to other emergency applications. Criminal
28 complaints filed pursuant to this act shall be investigated and
29 prosecuted in the jurisdiction where the offense is alleged to have
30 occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9
31 shall be prosecuted in the county where the contempt is alleged to
32 have been committed and a copy of the contempt complaint shall be
33 forwarded to the court that issued the order alleged to have been
34 violated.

35 b. The court shall waive any requirement that the petitioner's
36 place of residence appear on the complaint.

37 c. (1) The clerk of the court, or other person designated by the
38 court, shall assist the parties in completing any forms necessary for
39 the filing of a summons, complaint, answer or other pleading.

40 (2) The plaintiff may provide information concerning firearms
41 to which the defendant has access, including the location of these
42 firearms, if known, on a form to be prescribed by the
43 Administrative Director of the Courts.

44 (3) Information provided by the plaintiff concerning firearms to
45 which the defendant has access shall be kept confidential and 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 not be disseminated or disclosed, provided that nothing in this
2 subsection shall prohibit dissemination or disclosure of this
3 information in a manner consistent with and in furtherance of the
4 purpose for which the information was provided.

5 d. Summons and complaint forms shall be readily available at
6 the clerk's office, at the municipal courts and at municipal and State
7 police stations.

8 e. As soon as the domestic violence complaint is filed, both the
9 victim and the abuser shall be advised of any programs or services
10 available for advice and counseling, including services available for
11 children who may have witnessed or been exposed to domestic
12 violence while residing in the household.

13 f. A plaintiff may seek emergency, ex parte relief in the nature
14 of a temporary restraining order. A municipal court judge or a
15 judge of the Family Part of the Chancery Division of the Superior
16 Court may enter an ex parte order when necessary to protect the
17 life, health or well-being of a victim on whose behalf the relief is
18 sought.

19 g. If it appears that the plaintiff is in danger of domestic
20 violence, the judge shall, upon consideration of the plaintiff's
21 domestic violence complaint, order emergency ex parte relief, in the
22 nature of a temporary restraining order. A decision shall be made
23 by the judge regarding the emergency relief forthwith.

24 h. A judge may issue a temporary restraining order upon sworn
25 testimony or complaint of an applicant who is not physically
26 present, pursuant to court rules, or by a person who represents a
27 person who is physically or mentally incapable of filing personally.
28 A temporary restraining order may be issued if the judge is satisfied
29 that exigent circumstances exist sufficient to excuse the failure of
30 the applicant to appear personally and that sufficient grounds for
31 granting the application have been shown.

32 i. An order for emergency, ex parte relief shall be granted
33 upon good cause shown and shall remain in effect until a judge of
34 the Family Part issues a further order. Any temporary order
35 hereunder is immediately appealable for a plenary hearing de novo
36 not on the record before any judge of the Family Part of the county
37 in which the plaintiff resides or is sheltered if that judge issued the
38 temporary order or has access to the reasons for the issuance of the
39 temporary order and sets forth in the record the reasons for the
40 modification or dissolution. The denial of a temporary restraining
41 order by a municipal court judge and subsequent administrative
42 dismissal of the complaint shall not bar the victim from refileing a
43 complaint in the Family Part based on the same incident and
44 receiving an emergency, ex parte hearing de novo not on the record
45 before a Family Part judge, and every denial of relief by a
46 municipal court judge shall so state.

47 j. Emergency relief may include forbidding the defendant from
48 returning to the scene of the domestic violence, forbidding the

1 defendant from possessing any firearm or other weapon enumerated
2 in subsection r. of N.J.S.2C:39-1, ordering the search for and
3 seizure of any firearm or other weapon at any location where the
4 judge has reasonable cause to believe the weapon is located and the
5 seizure of any firearms purchaser identification card or permit to
6 purchase a handgun issued to the defendant and any other
7 appropriate relief.

8 If the order requires the surrender of any firearm or other
9 weapon, a law enforcement officer shall accompany the defendant,
10 or may proceed without the defendant if necessary, to the scene of
11 the domestic violence or any other location where the judge has
12 reasonable cause to believe any firearm or other weapon belonging
13 to the defendant is located, to ensure that the defendant does not
14 gain access to any firearm or other weapon, and that the firearm or
15 other weapon is appropriately surrendered in accordance with the
16 order. If the order prohibits the defendant from returning to the
17 scene of domestic violence or any other location where the judge
18 has reasonable cause to believe any firearm or other weapon
19 belonging to the defendant is located, any firearm or other weapon
20 located there shall be seized by a law enforcement officer. The
21 order shall include notice to the defendant of the penalties for a
22 violation of any provision of the order, including but not limited to
23 the penalties for contempt of court and unlawful possession of a
24 firearm or other weapon pursuant to N.J.S.2C:39-5. Other
25 appropriate relief may include but is not limited to an order
26 directing the possession of any animal owned, possessed, leased,
27 kept, or held by either party or a minor child residing in the
28 household and providing that the animal shall not be disposed of
29 prior to entry of a final order pursuant to section 13 of P.L.1991,
30 c.261 (C.2C:25-29).

31 The judge shall state with specificity the reasons for and scope of
32 any search and seizure authorized by the order. The provisions of
33 this subsection prohibiting a defendant from possessing a firearm or
34 other weapon shall not apply to any law enforcement officer while
35 actually on duty, or to any member of the Armed Forces of the
36 United States or member of the National Guard while actually on
37 duty or traveling to or from an authorized place of duty.

38 k. The judge may permit the defendant to return to the scene of
39 the domestic violence to pick up personal belongings and effects
40 but shall, in the order granting relief, restrict the time and duration
41 of such permission and provide for police supervision of such visit.

42 l. An order granting emergency relief, together with the
43 complaint or complaints, shall immediately be forwarded to the
44 appropriate law enforcement agency for service on the defendant,
45 and to the police of the municipality in which the plaintiff resides or
46 is sheltered, and shall immediately be served upon the defendant by
47 the police, except that an order issued during regular court hours
48 may be forwarded to the sheriff for immediate service upon the

1 defendant in accordance with the Rules of Court. If personal
2 service cannot be effected upon the defendant, the court may order
3 other appropriate substituted service. At no time shall the plaintiff
4 be asked or required to serve any order on the defendant.

5 m. (Deleted by amendment, P.L.1994, c.94.)

6 n. Notice of temporary restraining orders issued pursuant to
7 this section shall be sent by the clerk of the court or other person
8 designated by the court to the appropriate chiefs of police, members
9 of the State Police and any other appropriate law enforcement
10 agency or court.

11 o. (Deleted by amendment, P.L.1994, c.94.)

12 p. Any temporary or final restraining order issued pursuant to
13 this act shall be in effect throughout the State, and shall be enforced
14 by all law enforcement officers.

15 q. Prior to the issuance of any temporary or final restraining
16 order issued pursuant to this section, the court shall order that a
17 search be made of the domestic violence central registry with regard
18 to the defendant's record.

19 (cf: P.L.2016, c.91, s.2)

20
21 2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to
22 read as follows:

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

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

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

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

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

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

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

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

12 b. In proceedings in which complaints for restraining orders
13 have been filed, the court shall grant any relief necessary to prevent
14 further abuse. In addition to any other provisions, any restraining
15 order issued by the court shall bar the defendant from purchasing,
16 owning, possessing or controlling a firearm and from receiving or
17 retaining a firearms purchaser identification card or permit to
18 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
19 which the restraining order is in effect or two years, whichever is
20 greater. The order shall require the immediate surrender of any
21 firearm or other weapon belonging to the defendant. The order
22 shall include notice to the defendant of the penalties for a violation
23 of any provision of the order, including but not limited to the
24 penalties for contempt of court and unlawful possession of a firearm
25 or other weapon pursuant to N.J.S.2C:39-5.

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

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

46 (2) An order granting exclusive possession to the plaintiff of the
47 residence or household regardless of whether the residence or
48 household is jointly or solely owned by the parties or jointly or

1 solely leased by the parties. This order shall not in any manner
2 affect title or interest to any real property held by either party or
3 both jointly. If it is not possible for the victim to remain in the
4 residence, the court may order the defendant to pay the victim's rent
5 at a residence other than the one previously shared by the parties if
6 the defendant is found to have a duty to support the victim and the
7 victim requires alternative housing.

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

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

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

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

45 (5) An order requiring the defendant to receive professional
46 domestic violence counseling from either a private source or a
47 source appointed by the court and, in that event, requiring the
48 defendant to provide the court at specified intervals with

1 documentation of attendance at the professional counseling. The
2 court may order the defendant to pay for the professional
3 counseling. No application by the defendant to dissolve a final
4 order which contains a requirement for attendance at professional
5 counseling pursuant to this paragraph shall be granted by the court
6 unless, in addition to any other provisions required by law or
7 conditions ordered by the court, the defendant has completed all
8 required attendance at such counseling.

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

15 (7) An order restraining the defendant from making contact with
16 the plaintiff or others, including an order forbidding the defendant
17 from personally or through an agent initiating any communication
18 likely to cause annoyance or alarm including, but not limited to,
19 personal, written, or telephone contact with the victim or other
20 family members, or their employers, employees, or fellow workers,
21 or others with whom communication would be likely to cause
22 annoyance or alarm to the victim.

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

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

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

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

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

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

46 (14) An order granting any other appropriate relief for the
47 plaintiff and dependent children, provided that the plaintiff consents
48 to such relief, including relief requested by the plaintiff at the final

1 hearing, whether or not the plaintiff requested such relief at the time
2 of the granting of the initial emergency order.

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

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

14 (17) An order prohibiting the defendant from stalking or
15 following, or threatening to harm, to stalk or to follow, the
16 complainant or any other person named in the order in a manner
17 that, taken in the context of past actions of the defendant, would put
18 the complainant in reasonable fear that the defendant would cause
19 the death or injury of the complainant or any other person.
20 Behavior prohibited under this act includes, but is not limited to,
21 behavior prohibited under the provisions of P.L.1992, c.209
22 (C.2C:12-10).

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

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

30 (20) An order requiring the defendant to pay for a child to
31 receive professional domestic violence counseling at the plaintiff's
32 request, and, in that event, requiring the defendant to provide the
33 court with documentation of payment to the professional counseling
34 entity. Further, the court may order a defendant to provide
35 reimbursement for costs incurred by the plaintiff associated with
36 providing counseling for a child.

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

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

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

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

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6 3. This act shall take effect immediately.

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STATEMENT

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11 This bill permits the court, in a proceeding involving domestic
12 violence, to order counseling for a child. A court may order
13 counseling in appropriate cases, including when a child witnesses or
14 experiences the domestic violence while residing in the household
15 with the abuser and the victim.

16 Additionally, this bill permits the court to order the defendant,
17 the abusive party, to pay for the domestic violence counseling
18 provided to the child. A defendant ordered to pay for domestic
19 violence counseling is required to show proof of payment of the
20 services to the court. Finally, the bill permits the court to order a
21 defendant to provide reimbursement for costs incurred by the
22 plaintiff associated with providing counseling for a child.