

[Third Reprint]

ASSEMBLY, No. 3730

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MAY 2, 2022

Sponsored by:

Assemblyman STERLEY S. STANLEY

District 18 (Middlesex)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

SYNOPSIS

Permits court to order counseling for children in households with domestic violence in appropriate cases; establishes presumption of award of custody to domestic violence victim in appropriate cases.

CURRENT VERSION OF TEXT

As reported by the Assembly Health Committee on March 20, 2023, with amendments.



(Sponsorship Updated As Of: 3/23/2023)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted February 16, 2023.

²Assembly AJU committee amendments adopted March 9, 2023.

³Assembly AHE committee amendments adopted March 20, 2023.

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

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

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

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

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

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

1 (6) The existence of a verifiable order of protection from another
2 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 act
8 of contempt under this act, shall not be subject to mediation or
9 negotiation in any form. In addition, where a temporary or final order
10 has been issued pursuant to this act, no party shall be ordered to
11 participate in mediation on the issue of custody or parenting time.

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

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

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

45 (2) An order granting exclusive possession to the plaintiff of the
46 residence or household regardless of whether the residence or
47 household is jointly or solely owned by the parties or jointly or solely
48 leased by the parties. This order shall not in any manner affect title or

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

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

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

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

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

43 (5) An order requiring the defendant to receive professional
44 domestic violence counseling from either a private source or a source
45 appointed by the court and, in that event, requiring the defendant to
46 provide the court at specified intervals with documentation of
47 attendance at the professional counseling. The court may order the
48 defendant to pay for the professional counseling. No application by

1 the defendant to dissolve a final order which contains a requirement
2 for attendance at professional counseling pursuant to this paragraph
3 shall be granted by the court unless, in addition to any other provisions
4 required by law or conditions ordered by the court, the defendant has
5 completed all required attendance at such counseling.

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

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

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

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

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

34 (11) An order awarding temporary custody of a minor child. The
35 court shall presume that the best interests of the child are served by an
36 award of custody to the non-abusive parent. ³Upon entry of a final
37 restraining order pursuant to section 12 of P.L.1991, c.261 (C.2C:25-
38 28), there shall be a presumption that legal and physical custody shall
39 be awarded to the non-abusive parent. A denial of legal or physical
40 custody or visitation pursuant to this paragraph shall not by itself
41 terminate the parental rights of the person denied custody, nor shall it
42 affect the obligation of the person to support the minor child. The
43 court may provide for appropriate parenting time for the noncustodial
44 parent where the court deems appropriate.

45 In any proceeding for the establishment or enforcement of an
46 obligation of support, the victim shall not be required to appear in the
47 presence of the person found by the court to have committed an act of

1 domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.),
2 and the victim's and child's whereabouts shall be kept confidential.³

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

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

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

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

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

25 (17) An order prohibiting the defendant from stalking or
26 following, or threatening to harm, to stalk or to follow, the
27 complainant or any other person named in the order in a manner that,
28 taken in the context of past actions of the defendant, would put the
29 complainant in reasonable fear that the defendant would cause the
30 death or injury of the complainant or any other person. Behavior
31 prohibited under this act includes, but is not limited to, behavior
32 prohibited under the provisions of P.L.1992, c.209 (C.2C:12-10).

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

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

40 (20) An order requiring the defendant to pay for a child to receive
41 professional domestic violence counseling at the plaintiff's request,
42 and, in that event, requiring the defendant to provide the court with
43 documentation of payment to the professional counseling entity.
44 Further, the court may order a defendant to provide reimbursement for
45 costs incurred by the plaintiff associated with providing counseling for
46 a child. ²The order may require the defendant to pay the victim
47 directly, to reimburse the Victims of Crime Compensation Office for
48 any and all compensation paid by the Victims of Crime Compensation

1 Office directly to or on behalf of the victim, and may require that the
2 defendant reimburse any parties that may have compensated the
3 victim, as the court may determine.² ¹The court may enter such order
4 upon evaluating and determining the defendant's ability to pay for
5 such services, either in whole or in part.

6 ³[(21) If the court finds that an award of permanent sole custody
7 to the plaintiff serves the best interests of the child, the court shall
8 order permanent sole custody of the minor child to the plaintiff with
9 appropriate parenting time for the defendant in accordance with
10 section 3 of P.L. , c. (C.) (pending before the Legislature as this
11 bill).]³

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

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

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

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

27
28 ³13. (New section) a. Notwithstanding any provision of
29 law to the contrary, a person found by the court to have committed
30 domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.)
31 shall not be awarded custody of any minor child, except upon a
32 showing of clear and convincing evidence that it is in the best
33 interest of the child for custody to be awarded to that person. A
34 court that awards such custody to a person found by the court to
35 have committed domestic violence pursuant to P.L.1991, c.261
36 (C.2C:25-17 et seq.) shall stay enforcement of the order or
37 judgment for at least 10 days in order to permit the appeal of the
38 order or judgment and application for a stay in accordance with
39 Rules of Court.

40 b. A denial of custody or visitation under this section shall not
41 by itself terminate the parental rights of the person denied custody,
42 nor shall it affect the obligation of the person to support the minor
43 child. The court may provide for appropriate parenting time for the
44 noncustodial parent where the court deems appropriate.

45 c. In any proceeding for the establishment or enforcement of
46 such an obligation of support the victim shall not be required to
47 appear in the presence of the person found by the court to have
48 committed domestic violence pursuant to P.L.1991, c.261 (C.2C:25-

1 17 et seq.), and the victim's and child's whereabouts shall be kept
2 confidential.¹³

3

4 ¹[3.]³[4.]¹ 3.³ This act shall take effect immediately.