

SENATE, No. 3708

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED MARCH 9, 2023

Sponsored by:

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Senator ANTHONY M. BUCCO

District 25 (Morris and Somerset)

Co-Sponsored by:

Senators Gopal and O'Scanlon

SYNOPSIS

Requires copies of certain law enforcement records to be provided to victims of domestic violence upon request.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/18/2023)

1 AN ACT concerning victims of domestic violence and
2 supplementing 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. (New section) a. Within 10 calendar days of the request of a
8 victim of domestic violence or the victim's legal representative, a
9 law enforcement agency shall provide at no cost to the victim or
10 victim's legal representative copies of law enforcement records
11 relating to an act of domestic violence reported to the law
12 enforcement agency. If the law enforcement agency is unable to
13 produce a copy of a requested record within the 10-day-period, a
14 copy of the record shall be provided to the victim or victim's
15 representative within 24 hours after the record becomes available.
16 The record shall be provided electronically or in hard copy paper
17 form, in accordance with the request of the victim or victim's
18 representative. The records shall be certified pursuant to New
19 Jersey Rules of Evidence.

20 A request may be made for a copy of any of the following records
21 related to an act of domestic violence:

22 (1) photographs taken by a law enforcement officer;

23 (2) law enforcement officer body camera or dashboard camera
24 footage, provided the footage does not implicate the identity or
25 statements of a third-party witness;

26 (3) 9-1-1 transcript or recording, provided the transcript or
27 recording does not implicate the identity or statements of a third-
28 party witness; and

29 (4) contents of the police report, as deemed appropriate by the
30 law enforcement agency, provided the contents of the report do not
31 implicate or contain the identity or statements of a third-party
32 witness or jeopardize an ongoing criminal investigation.

33 In providing copies of the requested law enforcement records,
34 the law enforcement agency may redact the statements of third-
35 party witnesses if production of the information would either
36 jeopardize an ongoing criminal investigation or could jeopardize the
37 safety of any third-party. If the law enforcement agency is unable
38 to produce a copy of a requested record within the 10-day-period,
39 the law enforcement agency may request additional time from the
40 court to redact the documents. A request for additional time to
41 produce the records shall be made in writing to the court with notice
42 to the victim or victim's legal representative. If granted additional
43 time by the court, the law enforcement agency shall provide a copy
44 of the records to the victim or victim's legal representative within
45 24 hours after the record becomes available.

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 b. The Family Part of the Chancery Division of the Superior
2 Court shall have jurisdiction to enforce the victim or victim's legal
3 representative's request for copies of law enforcement records
4 pursuant to this section, and to compel production of the requested
5 records from the law enforcement agency by issuing an order to
6 show cause to the law enforcement agency.

7 c. Nothing in this section shall be construed as superseding the
8 right of a victim to access records pursuant to the provisions of
9 P.L.1963, c.73 (C.47:1A-1 et seq.), commonly known as the open
10 public records act.

11 d. A victim of domestic violence who is seeking to access law
12 enforcement agency records but who is not seeking other relief in
13 the Family Part of the Chancery Division of the Superior Court may
14 enforce their right of access pursuant to P.L.1963, c.73 (C.47:1A-1
15 et seq.) on an expedited basis. The victim shall not be required to
16 complete a formal open public records act request form to access
17 the records.

18

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

21 13. a. **[A]** Except as otherwise provided in this subsection, a
22 hearing shall be held in the Family Part of the Chancery Division of
23 the Superior Court within 10 days of the filing of a complaint
24 pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in the
25 county where the ex parte restraints were ordered, unless good
26 cause is shown for the hearing to be held elsewhere. A copy of the
27 complaint shall be served on the defendant in conformity with the
28 Rules of Court. If a criminal complaint arising out of the same
29 incident which is the subject matter of a complaint brought under
30 P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17
31 et seq.) has been filed, testimony given by the plaintiff or defendant
32 in the domestic violence matter shall not be used in the
33 simultaneous or subsequent criminal proceeding against the
34 defendant, other than domestic violence contempt matters and
35 where it would otherwise be admissible hearsay under the rules of
36 evidence that govern where a party is unavailable. If there are law
37 enforcement records related to an incident which is the subject of a
38 complaint or the domestic violence history described in the
39 complaint, and the plaintiff has requested the records, the court
40 shall grant plaintiff's request for an adjournment if reasonably
41 needed to collect evidence contained in the law enforcement
42 records. The court may grant the plaintiff's request for an
43 adjournment of up to 14 calendar days to provide the plaintiff
44 additional time to seek production of records from a law
45 enforcement agency pursuant to section 1 of P.L. , c. (C.)
46 (pending before the Legislature as this bill). If the plaintiff has
47 requested records from a law enforcement agency pursuant to
48 section 1 of P.L. , c. (C.) (pending before the Legislature

1 as this bill), but has not received the records as of the date of the
2 original or rescheduled hearing, the law enforcement agency's
3 failure to provide the requested records shall be noted on the record
4 prior to the court making a final determination on the request for
5 restraints. The court shall not draw a negative inference if: a
6 plaintiff has requested, but not received, records pursuant to this
7 section; the production of records is incomplete; or the plaintiff did
8 not report an act of domestic violence to law enforcement. At the
9 hearing the standard for proving the allegations in the complaint
10 shall be by a preponderance of the evidence.

11 The court shall consider but not be limited to the following
12 factors:

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

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

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

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

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

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

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

32 b. In proceedings in which complaints for restraining orders
33 have been filed, the court shall grant any relief necessary to prevent
34 further abuse. In addition to any other provisions, any restraining
35 order issued by the court shall bar the defendant from purchasing,
36 owning, possessing or controlling a firearm and from receiving or
37 retaining a firearms purchaser identification card or permit to
38 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
39 which the restraining order is in effect or two years, whichever is
40 greater. The order shall require the immediate surrender of any
41 firearm or other weapon belonging to the defendant. The order
42 shall include notice to the defendant of the penalties for a violation
43 of any provision of the order, including but not limited to the
44 penalties for contempt of court and unlawful possession of a firearm
45 or other weapon pursuant to N.J.S.2C:39-5.

46 A law enforcement officer shall accompany the defendant, or
47 may proceed without the defendant if necessary, to any place where
48 any firearm or other weapon belonging to the defendant is located

1 to ensure that the defendant does not gain access to any firearm or
2 other weapon, and a law enforcement officer shall take custody of
3 any firearm or other weapon belonging to the defendant. If the
4 order prohibits the defendant from returning to the scene of
5 domestic violence or other place where firearms or other weapons
6 belonging to the defendant are located, any firearm or other weapon
7 located there shall be seized by a law enforcement officer. The
8 provisions of this subsection requiring the surrender or removal of a
9 firearm, card, or permit shall not apply to any law enforcement
10 officer while actually on duty, or to any member of the Armed
11 Forces of the United States or member of the National Guard while
12 actually on duty or traveling to or from an authorized place of duty.
13 At the hearing the judge of the Family Part of the Chancery
14 Division of the Superior Court may issue an order granting any or
15 all of the following relief:

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

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

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

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

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

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

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

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

35 (7) An order restraining the defendant from making contact with
36 the plaintiff or others, including an order forbidding the defendant
37 from personally or through an agent initiating any communication
38 likely to cause annoyance or alarm including, but not limited to,
39 personal, written, or telephone contact with the victim or other
40 family members, or their employers, employees, or fellow workers,
41 or others with whom communication would be likely to cause
42 annoyance or alarm to the victim.

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

- 1 (9) An order granting either party temporary possession of
2 specified personal property, such as an automobile, checkbook,
3 documentation of health insurance, an identification document, a
4 key, and other personal effects.
- 5 (10) An order awarding emergency monetary relief, including
6 emergency support for minor children, to the victim and other
7 dependents, if any. An ongoing obligation of support shall be
8 determined at a later date pursuant to applicable law.
- 9 (11) An order awarding temporary custody of a minor child. The
10 court shall presume that the best interests of the child are served by
11 an award of custody to the non-abusive parent.
- 12 (12) An order requiring that a law enforcement officer
13 accompany either party to the residence or any shared business
14 premises to supervise the removal of personal belongings in order
15 to ensure the personal safety of the plaintiff when a restraining
16 order has been issued. This order shall be restricted in duration.
- 17 (13) (Deleted by amendment, P.L.1995, c.242).
- 18 (14) An order granting any other appropriate relief for the
19 plaintiff and dependent children, provided that the plaintiff consents
20 to such relief, including relief requested by the plaintiff at the final
21 hearing, whether or not the plaintiff requested such relief at the time
22 of the granting of the initial emergency order.
- 23 (15) An order that requires that the defendant report to the intake
24 unit of the Family Part of the Chancery Division of the Superior
25 Court for monitoring of any other provision of the order.
- 26 (16) In addition to the order required by this subsection
27 prohibiting the defendant from possessing any firearm, the court
28 may also issue an order prohibiting the defendant from possessing
29 any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and
30 ordering the search for and seizure of any firearm or other weapon
31 at any location where the judge has reasonable cause to believe the
32 weapon is located. The judge shall state with specificity the reasons
33 for and scope of the search and seizure authorized by the order.
- 34 (17) An order prohibiting the defendant from stalking or
35 following, or threatening to harm, to stalk or to follow, the
36 complainant or any other person named in the order in a manner
37 that, taken in the context of past actions of the defendant, would put
38 the complainant in reasonable fear that the defendant would cause
39 the death or injury of the complainant or any other person.
40 Behavior prohibited under this act includes, but is not limited to,
41 behavior prohibited under the provisions of
42 P.L.1992, c.209 (C.2C:12-10).
- 43 (18) An order requiring the defendant to undergo a psychiatric
44 evaluation.
- 45 (19) An order directing the possession of any animal owned,
46 possessed, leased, kept, or held by either party or a minor child
47 residing in the household. Where a person has abused or threatened

1 to abuse such animal, there shall be a presumption that possession
2 of the animal shall be awarded to the non-abusive party.

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

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

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

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

18

19 3. This act shall take effect immediately.

20

21

22

STATEMENT

23

24 This bill requires copies of certain law enforcement records to be
25 provided, upon request, to victims of domestic violence.

26 Under the bill, a domestic violence victim, or their legal
27 representative, may request copies of the following law
28 enforcement records relating to an act of domestic violence reported
29 to the law enforcement agency:

- 30 • photographs taken by a law enforcement officer;
- 31 • law enforcement officer body camera or dashboard camera
32 footage, provided the footage does not implicate the identity
33 or statements of a third-party witness;
- 34 • 9-1-1 transcript or recording, provided the transcript or
35 recording does not implicate the identity or statements of a
36 third-party witness; or
- 37 • contents of the police report, as deemed appropriate by the
38 law enforcement agency, provided the contents of the report
39 do not implicate or contain the identity or statements of a
40 third-party witness or jeopardize an ongoing criminal
41 investigation.

42 The records are to be provided at no charge to the requester
43 within 10 calendar days of the request. In providing copies of the
44 requested law enforcement records, the law enforcement agency
45 may redact the statements of third-party witnesses if production of
46 the information would either jeopardize an ongoing criminal
47 investigation or could jeopardize the safety of any third party. If
48 the law enforcement agency is unable to produce a copy of a

1 requested record within the 10-day period, the law enforcement
2 agency may request additional time from the court to redact the
3 documents. A request for additional time to produce the records is
4 to be made in writing to the court with notice to the victim or
5 victim's legal representative. If granted additional time by the
6 court, the law enforcement agency is to provide a copy of the
7 records to the victim or victim's legal representative within 24
8 hours after the record becomes available. A record is to be
9 provided electronically or in hard copy paper form, in accordance
10 with the request of the victim or victim's representative.

11 The Family Part of the Chancery Division of the Superior Court
12 may enforce the victim or representative's request for records under
13 the bill and compel production by issuing an order to show cause to
14 the law enforcement agency.

15 The provisions of the bill are not to be construed as superseding
16 the right of a victim to access records under current law pursuant to
17 the open public records act (OPRA). A victim of domestic violence
18 who is seeking to access law enforcement agency records but who
19 is not seeking other relief in the Family Part of the Chancery
20 Division of the Superior Court may enforce their right of access
21 pursuant to OPRA on an expedited basis. The victim shall not be
22 required to complete a formal OPRA request form to access the
23 records.

24 Under current law, a hearing is to be held in the family part
25 within 10 days of the filing of a complaint of domestic violence.
26 Under the bill, if there are law enforcement records related to an
27 incident which is the subject of a complaint or the domestic
28 violence history described in the complaint, and the plaintiff has
29 requested the records, the court is required to grant plaintiff's
30 request for an adjournment if reasonably needed to collect evidence
31 contained in the records. The court may grant the plaintiff's request
32 for an adjournment of up to 14 calendar days to provide the plaintiff
33 additional time to seek production of the records. If a plaintiff has
34 requested records from a law enforcement agency pursuant to
35 provisions of the bill but has not received the records as of the date
36 of the original or rescheduled hearing, the law enforcement
37 agency's failure to provide the requested records is to be noted on
38 the record prior to the court making a final determination on the
39 request for restraints. The court is not permitted to draw a negative
40 inference if: a plaintiff has requested, but not received, records
41 pursuant to the bill; the production of records is incomplete; or the
42 plaintiff did not report an act of domestic violence to law
43 enforcement.