

ASSEMBLY, No. 4244

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 13, 2013

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

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Assemblywoman Handlin

SYNOPSIS

Authorizes court to include in domestic violence restraining orders a provision making the order applicable to a pregnant victim's child upon birth of the child.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/18/2013)

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2

1 AN ACT concerning domestic violence and amending P.L.1991,
2 c.261.

3

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

6

7 1. Section 10 of P.L.1991, c.261 (C.2C:25-26) is amended to
8 read as follows:

9 10. a. When a defendant charged with a crime or offense
10 involving domestic violence is released from custody before trial on
11 bail or personal recognizance, the court authorizing the release may
12 as a condition of release issue an order prohibiting the defendant
13 from having any contact with the victim including, but not limited
14 to, restraining the defendant from entering the victim's residence,
15 place of employment or business, or school, and from harassing or
16 stalking the victim or the victim's friends, co-workers, or relatives
17 in any way. If the victim is pregnant the court may order that the
18 victim's child shall, immediately upon birth, be included in the
19 order. The court may also enter an order prohibiting the defendant
20 from having any contact with any animal owned, possessed, leased,
21 kept, or held by either party or a minor child residing in the
22 household. In addition, the court may enter an order directing the
23 possession of the animal and providing that the animal shall not be
24 disposed of prior to the disposition of the crime or offense. The
25 court may enter an order prohibiting the defendant from possessing
26 any firearm or other weapon enumerated in subsection r. of
27 N.J.S.2C:39-1 and ordering the search for and seizure of any such
28 weapon at any location where the judge has reasonable cause to
29 believe the weapon is located. The judge shall state with specificity
30 the reasons for and scope of the search and seizure authorized by
31 the order.

32 b. The written court order releasing the defendant shall contain
33 the court's directives specifically restricting the defendant's ability
34 to have contact with the victim, the victim's friends, co-workers, or
35 relatives, or any animal owned, possessed, leased, kept, or held by
36 either party or a minor child residing in the household. The clerk of
37 the court or other person designated by the court shall provide a
38 copy of this order to the victim forthwith.

39 c. The victim's location shall remain confidential and shall not
40 appear on any documents or records to which the defendant has
41 access.

42 d. Before bail is set, the defendant's prior record shall be
43 considered by the court. The court shall also conduct a search of
44 the domestic violence central registry. Bail shall be set as soon as
45 is feasible, but in all cases within 24 hours of arrest.

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.

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1 e. Once bail is set it shall not be reduced without prior notice
2 to the county prosecutor and the victim. Bail shall not be reduced
3 by a judge other than the judge who originally ordered bail, unless
4 the reasons for the amount of the original bail are available to the
5 judge who reduces the bail and are set forth in the record.

6 f. A victim shall not be prohibited from applying for, and a
7 court shall not be prohibited from issuing, temporary restraints
8 pursuant to this act because the victim has charged any person with
9 commission of a criminal act.
10 (cf: P.L.2011, c.213, s.1)

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

14 11. a. When a defendant is found guilty of a crime or offense
15 involving domestic violence and a condition of sentence restricts
16 the defendant's ability to have contact with the victim, the victim's
17 friends, co-workers, or relatives, or an animal owned, possessed,
18 leased, kept, or held by either party or a minor child residing in the
19 household, that condition shall be recorded in an order of the court
20 and a written copy of that order shall be provided to the victim by
21 the clerk of the court or other person designated by the court. If the
22 victim is pregnant the court may order that the victim's child shall,
23 immediately upon birth, be included in the order. In addition to
24 restricting a defendant's ability to have contact with the victim, the
25 victim's friends, co-workers, or relatives, or an animal owned,
26 possessed, leased, kept, or held by either party or a minor child
27 residing in the household, the court may require the defendant to
28 receive professional counseling from either a private source or a
29 source appointed by the court, and if the court so orders, the court
30 shall require the defendant to provide documentation of attendance
31 at the professional counseling. In any case where the court order
32 contains a requirement that the defendant receive professional
33 counseling, no application by the defendant to dissolve the
34 restraining order shall be granted unless, in addition to any other
35 provisions required by law or conditions ordered by the court, the
36 defendant has completed all required attendance at such counseling.

37 b. In addition the court may enter an order directing the
38 possession of an animal owned, possessed, leased, kept, or held by
39 either party or a minor child residing in the household. Where a
40 person has abused or threatened to abuse such animal, there shall be
41 a presumption that possession of the animal shall be awarded to the
42 non-abusive party.
43 (cf: P.L.2011, c.213, s.2)

44
45 3. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to
46 read as follows:

47 13. a. A hearing shall be held in the Family Part of the Chancery
48 Division of the Superior Court within 10 days of the filing of a

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

- 17 (1) The previous history of domestic violence between the
18 plaintiff and defendant, including threats, harassment and physical
19 abuse;
- 20 (2) The existence of immediate danger to person or property;
- 21 (3) The financial circumstances of the plaintiff and defendant;
- 22 (4) The best interests of the victim and any child;
- 23 (5) In determining custody and parenting time the protection of
24 the victim's safety; and
- 25 (6) The existence of a verifiable order of protection from
26 another jurisdiction.

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

36 b. In proceedings in which complaints for restraining orders
37 have been filed, the court shall grant any relief necessary to prevent
38 further abuse. In addition to any other provisions, any restraining
39 order issued by the court shall bar the defendant from purchasing,
40 owning, possessing or controlling a firearm and from receiving or
41 retaining a firearms purchaser identification card or permit to
42 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
43 which the restraining order is in effect or two years whichever is
44 greater, except that this provision shall not apply to any law
45 enforcement officer while actually on duty, or to any member of the
46 Armed Forces of the United States or member of the National
47 Guard while actually on duty or traveling to or from an authorized
48 place of duty. At the hearing the judge of the Family Part of the

1 Chancery Division of the Superior Court may issue an order
2 granting any or all of the following relief:

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

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

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

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

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

36 (4) An order requiring the defendant to pay to the victim
37 monetary compensation for losses suffered as a direct result of the
38 act of domestic violence. The order may require the defendant to
39 pay the victim directly, to reimburse the Victims of Crime
40 Compensation Office for any and all compensation paid by the
41 Victims of Crime Compensation Office directly to or on behalf of
42 the victim, and may require that the defendant reimburse any parties
43 that may have compensated the victim, as the court may determine.
44 Compensatory losses shall include, but not be limited to, loss of
45 earnings or other support, including child or spousal support, out-
46 of-pocket losses for injuries sustained, cost of repair or replacement
47 of real or personal property damaged or destroyed or taken by the
48 defendant, cost of counseling for the victim, moving or other travel

1 expenses, reasonable attorney's fees, court costs, and compensation
2 for pain and suffering. Where appropriate, punitive damages may be
3 awarded in addition to compensatory damages.

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

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

22 (7) An order restraining the defendant from making contact with
23 the plaintiff or others, including an order forbidding the defendant
24 from personally or through an agent initiating any communication
25 likely to cause annoyance or alarm including, but not limited to,
26 personal, written, or telephone contact with the victim or other
27 family members, or their employers, employees, or fellow workers,
28 or others with whom communication would be likely to cause
29 annoyance or alarm to the victim.

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

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

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

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

47 (12) An order requiring that a law enforcement officer
48 accompany either party to the residence or any shared business

1 premises to supervise the removal of personal belongings in order
2 to ensure the personal safety of the plaintiff when a restraining
3 order has been issued. This order shall be restricted in duration.

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

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

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

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

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

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

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

37 (20) An order providing that, if the plaintiff is pregnant, the
38 plaintiff's child shall be included in the restraining order
39 immediately upon birth.

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

45 d. Upon good cause shown, any final order may be dissolved or
46 modified upon application to the Family Part of the Chancery
47 Division of the Superior Court, but only if the judge who dissolves
48 or modifies the order is the same judge who entered the order, or

1 has available a complete record of the hearing or hearings on which
2 the order was based.

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

6 (cf: P.L.2011, c.213, s.4)

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8 4. This act shall take effect immediately.

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STATEMENT

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13 This bill would permit courts to include in domestic violence
14 protection orders a provision indicating that, when a victim is
15 pregnant, the provisions of the protection order will apply to the
16 victim's child immediately upon birth. Such a provision would
17 only apply after the child is born; nothing in the bill is intended to
18 establish a right of personhood in an unborn fetus.

19 This bill is based in part on the holding in B.C. v. T.G., 2013
20 N.J. Super. LEXIS 66 (Ch. Div. January 31, 2013), in which the
21 Family Part of the Chancery Division of the Superior Court held
22 that, when a victim is pregnant, the court may order that any
23 protections ordered under the "Prevention of Domestic Violence
24 Act of 1991," P.L.1991, c.261 (C.2C:25-17 et seq.), will apply to
25 the victim's child upon the birth of the child. The court, noting that
26 the protections in a domestic violence restraining order apply to the
27 victim's immediate family, stated that "there is little sense in
28 requiring the victim to have to return to court again immediately
29 after the birth of the child for an emergent hearing in order to add
30 the baby to her final restraining order." Id. at 16. The court
31 additionally noted that, for various reasons, "a new parent may be
32 either unable or unwilling to immediately return to domestic
33 violence court immediately following childbirth." Id. at 17.