

# ASSEMBLY, No. 3082

## STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 15, 2006

**Sponsored by:**

**Assemblyman DOUGLAS H. FISHER**

**District 3 (Salem, Cumberland and Gloucester)**

**Assemblyman JOHN J. BURZICHELLI**

**District 3 (Salem, Cumberland and Gloucester)**

**SYNOPSIS**

Authorizes courts to include animals in domestic violence restraining orders.

**CURRENT VERSION OF TEXT**

As introduced.



A3082 FISHER, BURZICHELLI

2

1 AN ACT concerning domestic violence involving animals and  
2 amending P.L.1991, s.261.

3

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

6

7 1. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to  
8 reads as follows:

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

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

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

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

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

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

35 (6) The existence of a verifiable order of protection from  
36 another jurisdiction.

37 An order issued under this act shall only restrain or provide  
38 damages payable from a person against whom a complaint has been  
39 filed under this act and only after a finding or an admission is made  
40 that an act of domestic violence was committed by that person. The  
41 issue of whether or not a violation of this act occurred, including an  
42 act of contempt under this act, shall not be subject to mediation or  
43 negotiation in any form. In addition, where a temporary or final  
44 order has been issued pursuant to this act, no party shall be ordered  
45 to participate in mediation on the issue of custody or parenting time.

**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. In proceedings in which complaints for restraining orders  
2 have been filed, the court shall grant any relief necessary to prevent  
3 further abuse. In addition to any other provisions, any restraining  
4 order issued by the court shall bar the defendant from purchasing,  
5 owning, possessing or controlling a firearm and from receiving or  
6 retaining a firearms purchaser identification card or permit to  
7 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in  
8 which the restraining order is in effect or two years whichever is  
9 greater, except that this provision shall not apply to any law  
10 enforcement officer while actually on duty, or to any member of the  
11 Armed Forces of the United States or member of the National  
12 Guard while actually on duty or traveling to or from an authorized  
13 place of duty. At the hearing the judge of the Family Part of the  
14 Chancery Division of the Superior Court may issue an order  
15 granting any or 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 Board for any and all compensation paid by the  
6 Victims of Crime Compensation Board 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 P.L.1992, c.209  
42 (C.2C:12-10).

43 (18) An order requiring the defendant to undergo a psychiatric  
44 evaluation.

45 (19) An order directing the care, custody, or control of any  
46 animal owned, possessed, leased, kept, or held by either party or a  
47 minor residing in the household.

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

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

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

15 (cf: P.L.2003, c.277, s.2)

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17 2. This act shall take effect immediately.

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#### STATEMENT

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22 This bill authorizes a court to issue an order directing the care,  
23 custody, or control of any animal owned, possessed, leased, kept, or  
24 held by either party or a minor residing in the household. Animals  
25 are not directly addressed by current domestic violence law.

26 The purpose of the bill is to provide specific statutory  
27 authorization for courts to issue orders covering animals in  
28 situations where a person abuses or threatens to abuse an animal as  
29 part of a domestic dispute.

30 The bill is modeled on a recently enacted Maine law.