

ASSEMBLY, No. 1149

STATE OF NEW JERSEY 217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman BRIAN E. RUMPF

District 9 (Atlantic, Burlington and Ocean)

Assemblywoman DIANNE C. GOVE

District 9 (Atlantic, Burlington and Ocean)

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Requires court to consider results of domestic violence assessment before dissolving certain domestic violence restraining orders.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 7/22/2016)

1 AN ACT concerning domestic violence assessments, and
2 supplementing and amending P.L.1991, c.421 (C.2C:25-29).

3

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

6

7 1. (New section) a. Upon good cause shown, any final order
8 issued pursuant to P.L.1991, c.261 (C.2C:25-29) may be dissolved
9 or 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 b. When the defendant applies to the court to dissolve a final
15 order, the court shall consider, but not be limited to, the following
16 factors in determining whether good cause has been shown that the
17 final order should be dissolved:

18 (1) whether the victim voluntarily consents to dissolve the final
19 order;

20 (2) whether the victim fears the defendant;

21 (3) the nature of the current relationship between the victim and
22 defendant;

23 (4) the number of times the defendant has been convicted of
24 contempt for violating the final order;

25 (5) whether the defendant has a continuing involvement with
26 drug or alcohol abuse;

27 (6) whether the defendant has been involved in other violent
28 acts with other persons;

29 (7) whether the defendant has engaged in counseling;

30 (8) the age and health of the defendant;

31 (9) whether the victim is acting in good faith in opposing the
32 defendant's request for dissolution; and

33 (10) whether another jurisdiction has entered a restraining order
34 protecting the victim from the defendant.

35 c. If the defendant is subject to two or more final orders issued
36 pursuant to P.L.1991, c.261 (C.2C:25-29), the defendant shall be
37 required to undergo a domestic violence assessment as defined in
38 paragraph (18) of subsection b. of P.L.1991, c.261 (C.2C:25-29). In
39 addition to the factors specified in subsection b. of this section, the
40 court shall consider the findings of the assessment in determining
41 whether good cause has been shown that the final order should be
42 dissolved. The defendant shall bear the costs of the assessment.
43 The findings of the assessment shall be forwarded to the court that
44 ordered the assessment and shall be considered confidential.

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

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

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

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

40 b. In proceedings in which complaints for restraining orders
41 have been filed, the court shall grant any relief necessary to prevent
42 further abuse. In addition to any other provisions, any restraining
43 order issued by the court shall bar the defendant from purchasing,
44 owning, possessing or controlling a firearm and from receiving or
45 retaining a firearms purchaser identification card or permit to
46 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
47 which the restraining order is in effect or two years whichever is
48 greater, except that this provision shall not apply to any law

1 enforcement officer while actually on duty, or to any member of the
2 Armed Forces of the United States or member of the National
3 Guard while actually on duty or traveling to or from an authorized
4 place of duty. At the hearing the judge of the Family Part of the
5 Chancery Division of the Superior Court may issue an order
6 granting any or all of the following relief:

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

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

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

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

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

40 (4) An order requiring the defendant to pay to the victim
41 monetary compensation for losses suffered as a direct result of the
42 act of domestic violence. The order may require the defendant to
43 pay the victim directly, to reimburse the Victims of Crime
44 Compensation Board for any and all compensation paid by the
45 Victims of Crime Compensation Board directly to or on behalf of
46 the victim, and may require that the defendant reimburse any parties
47 that may have compensated the victim, as the court may determine.
48 Compensatory losses shall include, but not be limited to, loss of

1 earnings or other support, including child or spousal support, out-
2 of-pocket losses for injuries sustained, cost of repair or replacement
3 of real or personal property damaged or destroyed or taken by the
4 defendant, cost of counseling for the victim, moving or other travel
5 expenses, reasonable attorney's fees, court costs, and compensation
6 for pain and suffering. Where appropriate, punitive damages may be
7 awarded in addition to compensatory damages.

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

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

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

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

40 (9) An order granting either party temporary possession of
41 specified personal property, such as an automobile, checkbook,
42 documentation of health insurance, an identification document, a
43 key, and other personal effects.

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

- 1 (11) An order awarding temporary custody of a minor child.
2 The court shall presume that the best interests of the child are
3 served by an award of custody to the non-abusive parent.
- 4 (12) An order requiring that a law enforcement officer
5 accompany either party to the residence or any shared business
6 premises to supervise the removal of personal belongings in order
7 to ensure the personal safety of the plaintiff when a restraining
8 order has been issued. This order shall be restricted in duration.
- 9 (13) (Deleted by amendment, P.L.1995, c.242).
- 10 (14) An order granting any other appropriate relief for the
11 plaintiff and dependent children, provided that the plaintiff consents
12 to such relief, including relief requested by the plaintiff at the final
13 hearing, whether or not the plaintiff requested such relief at the time
14 of the granting of the initial emergency order.
- 15 (15) An order that requires that the defendant report to the
16 intake unit of the Family Part of the Chancery Division of the
17 Superior Court for monitoring of any other provision of the order.
- 18 (16) In addition to the order required by this subsection
19 prohibiting the defendant from possessing any firearm, the court
20 may also issue an order prohibiting the defendant from possessing
21 any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and
22 ordering the search for and seizure of any firearm or other weapon
23 at any location where the judge has reasonable cause to believe the
24 weapon is located. The judge shall state with specificity the reasons
25 for and scope of the search and seizure authorized by the order.
- 26 (17) An order prohibiting the defendant from stalking or
27 following, or threatening to harm, to stalk or to follow, the
28 complainant or any other person named in the order in a manner
29 that, taken in the context of past actions of the defendant, would put
30 the complainant in reasonable fear that the defendant would cause
31 the death or injury of the complainant or any other person.
32 Behavior prohibited under this act includes, but is not limited to,
33 behavior prohibited under the provisions of P.L.1992,
34 c.209 (C.2C:12-10).
- 35 (18) An order requiring the defendant to undergo a **【psychiatric**
36 **evaluation】** domestic violence assessment. For the purposes of this
37 section, a “domestic violence assessment” means an assessment
38 performed by a psychiatrist, licensed psychologist, licensed clinical
39 social worker, or licensed professional counselor with the goal of
40 determining the likelihood that the offender will commit future acts
41 of violence, abuse or other unacceptable behavior that could pose a
42 threat to the victim, the victim’s family, the victim’s property, or
43 other person identified as being at risk. The defendant shall bear
44 the costs of the assessment. The findings of the assessment shall be
45 forwarded to the court that ordered the assessment and shall be
46 considered confidential. The Administrative Office of the Courts
47 shall develop standards for persons who are eligible to conduct
48 domestic violence assessments pursuant to this subsection.

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
7 or 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**】 Deleted by amendment, P.L. , c.).**

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 3. This act shall take effect on the first day of the seventh
18 month after enactment.

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STATEMENT

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23 This bill requires the court to consider the results of a domestic
24 violence assessment before dissolving a final restraining order when
25 the defendant has two or more restraining orders against him. The
26 defendant would be responsible for the costs of the assessment and
27 the assessment would be considered confidential.

28 The bill defines a “domestic violence assessment” as an
29 assessment performed by a psychiatrist, licensed psychologist,
30 licensed clinical social worker, or licensed professional counselor
31 with the goal of determining the likelihood that the offender will
32 commit future acts of violence, abuse or other unacceptable
33 behavior that could pose a threat to the victim, the victim’s family,
34 the victim’s property, or other person identified as being at risk.
35 The substitute requires the Administrative Office of the Courts to
36 develop standards for persons who are eligible to conduct the
37 assessments.

38 The bill also codifies the factors currently considered by the
39 court in determining whether a defendant who has applied to
40 dissolve a final order has established requisite good cause. Those
41 factors, as set forth in Carfagno v. Carfagno, 288 N.J.Super. 424
42 (Ch. Div. 1995), are:

43 (1) whether the victim voluntarily consents to dissolve the final
44 order;

45 (2) whether the victim fears the defendant;

46 (3) the nature of the current relationship between the victim and
47 defendant;

- 1 (4) the number of times the defendant has been convicted of
 - 2 contempt for violating the final order;
 - 3 (5) whether the defendant has a continuing involvement with
 - 4 drug or alcohol abuse;
 - 5 (6) whether the defendant has been involved in other violent
 - 6 acts with other persons;
 - 7 (7) whether the defendant has engaged in counseling;
 - 8 (8) the age and health of the defendant;
 - 9 (9) whether the victim is acting in good faith in opposing the
 - 10 defendant's request for dissolution; and
 - 11 (10) whether another jurisdiction has entered a restraining order
 - 12 protecting the victim from the defendant.
- 13 Finally, the bill clarifies that when there is a complaint for a
- 14 restraining order, the court may order a domestic violence
- 15 assessment. Current law authorizes the court to order a psychiatric
- 16 evaluation.