

CHAPTER 147
(CORRECTED COPY 2)

AN ACT concerning certain protective orders, amending N.J.S.2C:29-9 and supplementing Title 2C of the New Jersey Statutes.

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

C.2C:14-13 Short title.

1. P.L.2015, c.147 (C.2C:14-13 et al.) shall be known and may be cited as the “Sexual Assault Survivor Protection Act of 2015.”

C.2C:14-14 Application for temporary protective order.

2. Application for Temporary Protective Order.

a. (1) Any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a “victim of domestic violence” as defined by the provisions of subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-19), may, except as provided in subsection c. of this section, file an application with the Superior Court pursuant to the Rules of Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order.

As used in this section and in sections 3, 4, and 8 of P.L.2015, c.147 (C.2C:14-15, C.2C:14-16, and 2C:14-20):

“Sexual contact” means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.

“Sexual penetration” means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction.

“Lewdness” means the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

“Intimate parts” means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

(2) An application for relief under P.L.2015, c.147 (C.2C:14-13 et al.) may be filed by the alleged victim's parent or guardian on behalf of the alleged victim in any case in which the alleged victim:

(a) is less than 18 years of age; or

(b) has a developmental disability as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim's conduct, including, but not limited to, being incapable of providing consent.

b. When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, has been committed by an unemancipated minor, an applicant seeking a protective order shall not proceed under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but may seek a protective order and other relief under the New Jersey Code of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) by filing a complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

c. (1) An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and the court may issue such an order regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges.

(2) The filing of an application pursuant to this section shall not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

d. The court shall waive any requirement that the applicant's or alleged victim's place of residence appear on the application.

e. An applicant may seek a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) in a court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the respondent resides, or where the alleged victim resides or is sheltered.

f. No fees or other costs shall be assessed against an applicant for seeking a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.).

C.2C:14-15 Temporary protective order.

3. Temporary Protective Order.

a. An applicant may seek emergency, ex parte relief in the nature of a temporary protective order. A judge of the Superior Court may enter an emergency ex parte order when necessary to protect the safety and well-being of an alleged victim on whose behalf the relief is sought. The court may grant any relief necessary to protect the safety and well-being of an alleged victim.

b. The court shall, upon consideration of the application, order emergency ex parte relief in the nature of a temporary protective order if the court determines that the applicant is a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and qualifies for such relief pursuant to section 2 of P.L.2015, c.147 (C.2C:14-14). The court shall render a decision on the application and issue a temporary protective order, where appropriate, in an expedited manner.

c. The court may issue a temporary protective order, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is not physically present, pursuant to court rules, or by a person who represents an alleged victim who is physically or mentally incapable of filing personally. A temporary restraining order may be issued if the judge is satisfied that exigent circumstances exist sufficient to excuse the failure of the applicant to appear personally and that sufficient grounds for granting the application have been shown.

d. An order for emergency, ex parte relief shall be granted upon good cause shown and shall remain in effect until a judge of the Superior Court issues a further order. Any temporary protective order issued pursuant to this section is immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the temporary protective order and sets forth in the record the reasons for the modification or dismissal.

e. A temporary protective order issued pursuant to this section may include, but is not limited to, the following emergency relief:

(1) an order prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim;

(2) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

(3) an order prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

(4) an order prohibiting the respondent from stalking or following, or threatening to harm, stalk, or follow, the alleged victim;

(5) an order prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the alleged victim; and

(6) any other relief that the court deems appropriate.

f. A copy of the temporary protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the alleged victim resides or is sheltered. A copy of the temporary protective order shall also be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the temporary protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall the alleged victim be asked or required to serve any order on the respondent.

g. Notice of temporary protective orders issued pursuant to this section shall be sent by the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

C.2C:14-16 Final protective order.

4. Final Protective Order.

a. A hearing shall be held in the Superior Court within 10 days of the filing of an application pursuant to section 3 of P.L.2015, c.147 (C.2C:14-15) in the county where the temporary protective order was ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the application shall be served on the respondent in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent in accordance with an application filed pursuant to this section shall not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence. The court shall consider but not be limited to the following factors:

(1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and

(2) the possibility of future risk to the safety or well-being of the alleged victim.

b. The court shall not deny relief under this section due to: the applicant's or alleged victim's failure to report the incident to law enforcement; the alleged victim's or the respondent's alleged intoxication; whether the alleged victim did or did not leave the

premises to avoid nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct; or the absence of signs of physical injury to the alleged victim.

c. In any proceeding involving an application for a protective order pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), evidence of the alleged victim's previous sexual conduct or manner of dress at the time of the incident shall not be admitted nor shall any reference made to such conduct or manner or dress, except as provided in N.J.S.2C:14-7.

d. The issue of whether an act alleged in the application for a protective order occurred, or whether an act of contempt under paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not be subject to mediation or negotiation in any form.

e. A final protective order issued pursuant to this section shall be issued only after a finding or an admission is made that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim. A final protective order shall:

(1) prohibit the respondent from having contact with the victim; and

(2) prohibit the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim.

f. In addition to any relief provided to the victim under subsection e. of this section, a final protective order issued pursuant to this section may include, but is not limited to, the following relief:

(1) an order prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim's family or household members;

(2) an order prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim's family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

(3) an order prohibiting the respondent from stalking or following, or threatening to harm, stalk or follow, the victim;

(4) an order prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(5) any other relief that the court deems appropriate.

g. A copy of the final protective order issued pursuant to this section shall be immediately forwarded to the police of the municipality in which the victim resides or is sheltered. A copy of the final protective order shall be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff may coordinate service of the final protective order upon the respondent through the police in appropriate circumstances. If personal service cannot be effected upon the respondent, the court may order other appropriate substituted service. At no time shall the victim be asked or required to serve any order on the respondent.

h. Notice of a final protective order issued pursuant to this section shall be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency. Notice of the issuance of a final protective order shall

also be provided to the Division of Child Protection and Permanency in the Department of Children and Families where the victim is less than 18 years of age.

i. A final protective order issued pursuant to this section shall remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification of a final protective order, the court shall conduct a hearing to consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent's violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

C.2C:14-17 Protective order, enforcement.

5. a. Any temporary or final protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

b. When a law enforcement officer finds probable cause that a respondent has committed contempt of an order entered pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), the respondent shall be arrested and taken into custody. The court shall determine whether the respondent shall be released pending trial or detained pending a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules.

C.2C:14-18 Contempt proceedings.

6. a. A respondent's violation of any protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) shall constitute an offense under subsection d. of N.J.S.2C:29-9 and each order shall so state. All contempt proceedings brought pursuant to subsection d. of N.J.S.2C:29-9 shall be subject to any rules or guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

b. Where a victim alleges that a respondent has committed contempt of a protective order entered pursuant to the provisions of P.L.2015, c.147 (C.2C:14-13 et al.), but a law enforcement officer has found that the facts are insufficient to establish probable cause to arrest the respondent, the law enforcement officer shall advise the victim of the procedure for completing and signing a criminal complaint alleging a violation of subsection d. of N.J.S.2C:29-9 through the municipal court. Nothing in this section shall be construed to prevent the court from granting any other emergency relief it deems necessary.

C.2C:14-19 Records, copies of protective orders.

7. a. All records maintained pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.

b. A victim shall be provided with copies of all protective orders issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and other relevant documents upon request at no cost.

C.2C:14-20 Central registry of protective orders.

8. The Administrative Office of the Courts shall establish and maintain a central registry of all protective orders issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.) and all persons

who have been charged with a violation of such a protective order. All records made pursuant to this section shall be kept confidential and shall be released only to:

- a. A public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
- b. A police or other law enforcement agency for official purposes;
- c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;
- d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or
- e. The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving:
 - (1) an allegation of child abuse or neglect, to include any adult member of the same household as the individual who is the subject of the abuse or neglect allegation; or
 - (2) an out-of-home placement for a child being placed by the Division of Child Protection and Permanency, to include any adult member of the prospective placement household.

Any individual, agency, or court which receives from the Administrative Office of the Courts the records referred to in this section shall keep the records and reports, or parts thereof, confidential and shall not disseminate or disclose such records and reports, or parts thereof; provided that nothing in this section shall prohibit a receiving individual, agency, surrogate or court from disclosing records and reports, or parts thereof, in a manner consistent with and in furtherance of the purpose for which the records and reports or parts thereof were received.

Any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, other than for an official purpose authorized by this section, for the investigation of an alleged violation of a protective order issued pursuant to P.L.2015, c.147 (C.2C:14-13 et al.), conducting a background investigation involving a person's application for employment at a police or law enforcement agency, making a determination of an issue before the court, conducting a background investigation as specified in subsection e. of this section, or for any other purpose other than that which is authorized by law, the Rules of Court or court order, shall be guilty of a crime of the fourth degree.

C.2C:14-21 Rules of Court.

9. The Supreme Court may promulgate Rules of Court to effectuate the purposes of P.L.2015, c.147 (C.2C:14-13 et al.).

10. N.J.S.2C:29-9 is amended to read as follows:

Contempt.

2C:29-9. Contempt.

a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

b. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991,"

P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this paragraph.

c. A person is guilty of a crime of the third degree if that person purposely or knowingly violates any provision in an order entered under the provisions of section 3 of P.L.1996, c.39 (C.2C:12-10.1) or section 2 of P.L.1999, c.47 (C.2C:12-10.2) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

d. A person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.).

As used in this section, "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by a federal law or formally acknowledged by a state.

11. This act shall take effect on the 180th day following enactment.

Approved November 9, 2015.