

SENATE, No. 2686

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 22, 2014

Sponsored by:

Senator NELLIE POU
District 35 (Bergen and Passaic)
Senator JENNIFER BECK
District 11 (Monmouth)

Co-Sponsored by:

Senator Van Drew

SYNOPSIS

“Sexual Assault Survivor Protection Act of 2015”; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2015)

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

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

7
8 1. (New section) P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 “Sexual Assault Survivor Protection Act of 2015.”

11
12 2. (New section) Application for Temporary Protective Order.

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

22 (2) An application for relief under P.L. , c. (C.)
23 (pending before the Legislature as this bill) may be filed by the
24 alleged victim's parent or guardian on behalf of the alleged victim
25 in any case in which the alleged victim:

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

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

32 b. When it is alleged that nonconsensual sexual contact, sexual
33 penetration, or lewdness, or any attempt at such conduct, has been
34 committed by an unemancipated minor, an applicant seeking a
35 protective order shall not proceed under the provisions of P.L. ,
36 c. (C.) (pending before the Legislature as this bill), but may
37 seek a protective order and other relief under the New Jersey Code
38 of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) by filing a
39 complaint pursuant to the provisions of section 11 of P.L.1982, c.77
40 (C.2A:4A-30).

41 c. (1) An applicant may seek a protective order pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 and the court may issue such an order regardless of whether
44 criminal charges based on the incident were filed and regardless of
45 the disposition of any such charges.

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

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

6 e. An applicant may seek a protective order pursuant to P.L. ,
7 c. (C.) (pending before the Legislature as this bill) in a court
8 having jurisdiction over the place where the alleged conduct or
9 attempted conduct occurred, where the respondent resides, or where
10 the alleged victim resides or is sheltered.

11 f. No fees or other costs shall be assessed against an applicant for
12 seeking a protective order pursuant to P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14

15 3. (New section) Temporary Protective Order.

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

22 b. The court shall, upon consideration of the application, order
23 emergency ex parte relief in the nature of a temporary protective
24 order if the court determines that the applicant is a victim of
25 nonconsensual sexual contact, sexual penetration, or lewdness, or
26 any attempt at such conduct, and qualifies for such relief pursuant
27 to section 2 of P.L. , c. (C.) (pending before the Legislature
28 as this bill). The court shall render a decision on the application and
29 issue a temporary protective order, where appropriate, in an
30 expedited manner.

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

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

1 protective order and sets forth in the record the reasons for the
2 modification or dismissal.

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

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

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

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

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

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

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

33 f. A temporary protective order issued pursuant to this section
34 shall be immediately forwarded to the police of the municipality in
35 which the alleged victim resides or is sheltered, and to the police of
36 the municipality in which the respondent resides for immediate
37 service on the respondent in accordance with the Rules of Court. If
38 personal service cannot be effected upon the respondent, the court
39 may order other appropriate substituted service. At no time shall the
40 alleged victim be asked or required to serve any order on the
41 respondent.

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

47

48 4. (New section) Final Protective Order.

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

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

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

24 b. The court shall not deny relief under this section due to: the
25 applicant's or alleged victim's failure to report the incident to law
26 enforcement; the alleged victim's or the respondent's alleged
27 intoxication; whether the alleged victim did or did not leave the
28 premises to avoid nonconsensual sexual contact, sexual penetration,
29 or lewdness, or an attempt at such conduct; or the absence of signs
30 of physical injury to the alleged victim.

31 c. In any proceeding involving an application for a protective
32 order pursuant to P.L. , c. (C.) (pending before the
33 Legislature as this bill), evidence of the alleged victim's previous
34 sexual conduct or manner of dress at the time of the incident shall
35 not be admitted nor shall any reference made to such conduct or
36 manner or dress, except as provided in N.J.S.2C:14-7.

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

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

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

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

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

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

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

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

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

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

30 g. A final protective order issued pursuant to this section shall be
31 immediately forwarded to the police of the municipality in which
32 the victim resides or is sheltered, and to the police of the
33 municipality in which the respondent resides for immediate service
34 on the respondent in accordance with the Rules of Court. If personal
35 service cannot be effected upon the respondent, the court may order
36 other appropriate substituted service. At no time shall the victim be
37 asked or required to serve any order on the respondent.

38 h. Notice of a final protective order issued pursuant to this
39 section shall be sent by the clerk of the Superior Court or other
40 person designated by the court to the appropriate county prosecutor,
41 the appropriate chiefs of police, members of the State Police and
42 any other appropriate law enforcement agency. Notice of the
43 issuance of a final protective order shall also be provided to the
44 Division of Child Protection and Permanency in the Department of
45 Children and Families where the victim is less than 18 years of age.

46 i. A final protective order issued pursuant to this section shall
47 remain in effect until further order of a judge of the Superior Court.
48 Either party may file a petition with the court to dissolve or modify

1 a final protective order. When considering a petition for dissolution
2 or modification of a final protective order, the court shall conduct a
3 hearing to consider whether a material change in circumstances has
4 occurred since the issuance of the protective order which would
5 make its continued enforcement inequitable, oppressive or unjust
6 taking into account the current status of the parties, including the
7 desire of the victim for the continuation of the protective order, the
8 potential for contact between the parties, the history of the
9 respondent's violations of the protective order or criminal
10 convictions, and any other factors that the court may find relevant
11 to protecting the safety and well-being of the victim.

12

13 5. (New section) Any temporary or final protective order issued
14 pursuant to P.L. , c. (C.) (pending before the Legislature as
15 this bill) shall be in effect throughout the State, and shall be
16 enforced by all law enforcement officers.

17

18 6. (New section) a. A respondent's violation of any protective
19 order issued pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall constitute an offense under subsection
21 b. of N.J.S.2C:29-9 and each order shall so state. All contempt
22 proceedings brought pursuant to paragraph (2) of subsection b. of
23 N.J.S.2C:29-9 shall be subject to any rules or guidelines established
24 by the Supreme Court to promote the prompt disposition of criminal
25 matters. Additionally, and notwithstanding the term of
26 imprisonment provided in N.J.S.2C:43-8, any person convicted of a
27 second or subsequent nonindictable offense involving the contempt
28 of a protective order issued pursuant to P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall serve a minimum
30 term of not less than 30 days.

31 b. Where a victim alleges that a respondent has committed
32 contempt of a protective order entered pursuant to the provisions of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 but a law enforcement officer has found that the facts are
35 insufficient to establish probable cause to arrest the respondent, the
36 law enforcement officer shall advise the victim of the procedure for
37 completing and signing a criminal complaint alleging a violation of
38 N.J.S.2C:29-9 through the municipal court. Nothing in this section
39 shall be construed to prevent the court from granting any other
40 emergency relief it deems necessary.

41

42 7. (New section) a. All records maintained pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill) shall be
44 confidential and shall not be made available to any individual or
45 institution except as otherwise provided by law.

46 b. A victim shall be provided with copies of all protective orders
47 issued pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) and other relevant documents upon request
2 at no cost.

3

4 8. (New section) The Administrative Office of the Courts shall
5 establish and maintain a central registry of all protective orders
6 issued pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill) and all persons who have been charged with
8 a violation of such a protective order. All records made pursuant to
9 this section shall be kept confidential and shall be released only to:

10 a. A public agency authorized to investigate a report of
11 nonconsensual sexual contact, sexual penetration, or lewdness, or
12 any attempt at such conduct, or domestic violence;

13 b. A police or other law enforcement agency for official
14 purposes;

15 c. A court, upon its finding that access to such records may be
16 necessary for determination of an issue before the court;

17 d. A surrogate, in that person's official capacity as deputy clerk
18 of the Superior Court, in order to prepare documents that may be
19 necessary for a court to determine an issue in an adoption
20 proceeding; or

21 e. The Division of Child Protection and Permanency in the
22 Department of Children and Families when the division is
23 conducting a background investigation involving:

24 (1) an allegation of child abuse or neglect, to include any adult
25 member of the same household as the individual who is the subject
26 of the abuse or neglect allegation; or

27 (2) an out-of-home placement for a child being placed by the
28 Division of Child Protection and Permanency, to include any adult
29 member of the prospective placement household.

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

39 Any individual who disseminates or discloses a record or report,
40 or parts thereof, of the central registry, other than for an official
41 purpose authorized by this section, for the investigation of an
42 alleged violation of a protective order issued pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill),
44 conducting a background investigation involving a person's
45 application for employment at a police or law enforcement agency,
46 making a determination of an issue before the court, conducting a
47 background investigation as specified in subsection e. of this
48 section, or for any other purpose other than that which is authorized

1 by law, the Rules of Court or court order, shall be guilty of a crime
2 of the fourth degree.

3

4 9. (New section) The Supreme Court may promulgate Rules of
5 Court to effectuate the purposes of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7

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

9 2C:29-9. Contempt.

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

16 b. (1) (a) Except as provided [below] in subparagraphs (b) and
17 (c) of this paragraph, a person is guilty of a crime of the fourth
18 degree if that person purposely or knowingly violates any provision
19 in an order entered under the provisions of the "Prevention of
20 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
21 al.) or an order entered under the provisions of a substantially
22 similar statute under the laws of another state or the United States
23 when the conduct which constitutes the violation could also
24 constitute a crime or a disorderly persons offense.

25 (b) [In all other cases a] A person is guilty of a disorderly
26 persons offense if that person purposely or knowingly violates an
27 order entered under the provisions of [this act] the "Prevention of
28 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
29 al.) or an order entered under the provisions of a substantially
30 similar statute under the laws of another state or the United States
31 when the conduct which constitutes the violation would not also
32 constitute a crime or a disorderly persons offense.

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

38 (2) A person is guilty of a crime of the fourth degree if that
39 person purposely or knowingly violates any provision in an order
40 entered under the provisions of P.L. , c. (C.) (pending
41 before the Legislature as this bill).

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

48 (cf: P.L.2008, c.81, s.3)

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

3
4
5 STATEMENT

6
7 This bill, titled the “Sexual Assault Survivor Protection Act of
8 2015,” would authorize protective orders for victims of
9 nonconsensual sexual contact, sexual penetration, or lewdness, or
10 attempts at such conduct.

11 Under the bill, any person alleging to be a victim of
12 nonconsensual sexual contact, sexual penetration, or lewdness, or
13 any attempt at such conduct, and who is not eligible for a
14 restraining order as a “victim of domestic violence” under the
15 domestic violence statutes may file an application with the Superior
16 Court alleging the commission of such conduct or attempted
17 conduct and seeking a temporary protective order.

18 A parent or guardian could file the application on behalf of the
19 alleged victim if the alleged victim is less than 18 years of age, or
20 has a developmental disability as defined in section 3 of P.L.1977,
21 c.200 (C.5:5-44.4), or has a mental disease or defect that renders the
22 alleged victim temporarily or permanently incapable of
23 understanding the nature of the alleged victim’s conduct, including,
24 but not limited to, being incapable of providing consent.

25 If it is alleged that the act or attempt is committed by an
26 unemancipated minor, an applicant would seek relief pursuant to the
27 provisions of the New Jersey Code of Juvenile Justice, P.L.1982, c.
28 77 (C.2A:4A-20 et seq.) and would not proceed under the bill.

29 A protective order may be sought, and may be issued by the
30 court, regardless of whether criminal charges based on the incident
31 were filed and regardless of the disposition of any such charges. An
32 application filed in accordance with the provisions of the bill would
33 not prevent the filing of a criminal complaint, or the institution or
34 maintenance of a criminal prosecution based on the same act.

35 The court would waive any requirement that the applicant’s or
36 alleged victim’s place of residence appear on the application. No
37 fees or other costs would be assessed against an applicant for
38 seeking a protective order.

39 Under the bill, a judge of the Superior Court may enter an
40 emergency, ex parte order when necessary to protect the safety and
41 well-being of an alleged victim on whose behalf the relief is sought.
42 The court would grant any relief necessary to protect the safety and
43 well-being of the alleged victim.

44 The temporary protective order would be issued if the court
45 determines that the applicant is a victim of nonconsensual sexual
46 contact, sexual penetration, or lewdness, or any attempt at such
47 conduct. The court would render a decision on the application and
48 issue the order, where appropriate, in an expedited manner. If the

1 court is satisfied that exigent circumstances exist that would excuse
2 the alleged victim from having to appear personally, and sufficient
3 grounds for granting the application have been shown, the
4 temporary protective order would be issued, pursuant to court rules,
5 upon sworn testimony or an application of an alleged victim who is
6 not physically present, or by a person authorized to file an
7 application on behalf of an alleged victim.

8 An order for emergency, ex parte relief pursuant to the bill
9 would be granted upon good cause shown and would remain in
10 effect until a judge of the Superior Court issues a further order. A
11 temporary protective order issued would be immediately appealable
12 for a plenary hearing de novo not on the record before any judge of
13 Superior Court of the county in which the alleged victim resides or
14 is sheltered if that judge issued the temporary protective order or
15 has access to the reasons for the issuance of the order and sets forth
16 in the record the reasons for the modification or dissolution.

17 A temporary protective order may include, but would not be
18 limited to, the following emergency relief:

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

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

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

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

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

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

46 The bill would require that a hearing be held in the Superior
47 Court within 10 days of the filing of an application. The bill
48 provides that if a criminal complaint arising out of the same

1 incident which is the subject matter of the application for a
2 protective order has been filed, testimony given by the applicant in
3 accordance with an application filed pursuant to the bill would not
4 be used in the criminal proceeding against the respondent, other
5 than contempt matters, and where it would otherwise be admissible
6 hearsay under the rules of evidence that govern when a party is
7 unavailable. At the hearing, the standard for proving the allegations
8 made in the application would be a preponderance of the evidence.
9 The court would consider but not be limited to the following
10 factors: (1) the occurrence of one or more acts of nonconsensual
11 sexual contact, sexual penetration, or lewdness, or any attempt at
12 such conduct, against the alleged victim; and (2) the possibility of
13 future risk to the safety or well-being of the alleged victim.

14 A court could not deny relief due to: the petitioner's or alleged
15 victim's failure to report the incident to law enforcement; the
16 alleged victim's or the respondent's alleged intoxication; whether
17 the alleged victim did or did not leave the premises to avoid
18 nonconsensual sexual contact, sexual penetration, or lewdness, or
19 an attempt at such conduct; or the absence of signs of physical
20 injury to the alleged victim.

21 In any proceeding involving an application for a protective order
22 pursuant to the bill, evidence of the alleged victim's previous sexual
23 conduct or manner of dress at the time of the incident would not be
24 admissible nor would the bill permit any reference to such conduct
25 or manner of dress, except as provided in N.J.S.2C:14-7.

26 The issue of whether an act alleged in the application for a
27 protective order occurred, or whether an act of contempt under the
28 bill occurred, would not be subject to mediation or negotiation in
29 any form.

30 A final protective order would be issued only after a finding or
31 admission that the respondent committed an act of nonconsensual
32 sexual contact, sexual penetration, or lewdness, or any attempt at
33 such conduct, against the alleged victim. A final protective order
34 would:

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

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

40 A final order may also include the following relief:

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

47 (2) prohibiting the respondent from having any contact with the
48 victim or others, including an order forbidding the respondent from

1 personally or through an agent initiating any communication likely
2 to cause annoyance or alarm including, but not limited to, personal,
3 written, or telephone contact, or contact via electronic device, with
4 the victim or the victim's family members or their employers,
5 employees, or fellow workers; an employee or volunteer of a sexual
6 assault response entity that is providing services to a victim; or
7 others with whom communication would be likely to cause
8 annoyance or alarm to the victim;

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

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

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

15 A final protective order would be immediately forwarded to the
16 police for immediate service on the respondent in accordance with
17 the Rules of Court. Notice of a final protective order would be sent
18 by the clerk of the Superior Court or other person designated by the
19 court to the appropriate county prosecutor, chiefs of police,
20 members of the State Police and any other appropriate law
21 enforcement agency. Notice would also be provided to the Division
22 of Child Protection and Permanency in the Department of Children
23 and Families where the victim is less than 18 years of age.

24 A final protective order issued under the bill would remain in
25 effect until further order of a judge of the Superior Court. Either
26 party may file a petition with the court to dissolve or modify a final
27 protective order. When considering a petition for dissolution or
28 modification, the court would consider whether a material change in
29 circumstances has occurred since the issuance of the protective
30 order which would make its continued enforcement inequitable,
31 oppressive or unjust taking into account the current status of the
32 parties, including the desire of the victim for the continuation of the
33 protective order, the potential for contact between the parties, the
34 history of the respondent's violations of the protective order or
35 criminal convictions, and any other factors that the court may find
36 relevant to protecting the safety and well-being of the victim.

37 A respondent's violation of any protective order issued under the
38 bill would constitute an offense under subsection b. of N.J.S.
39 2C:29-9. Under current law, N.J.S.2C:29-9 governs contempt
40 proceedings for a violation of an order entered under the provisions
41 of the "Prevention of Domestic Violence Act of 1991," P.L.1991,
42 c.261 (C.2C:25-17 et al.). The bill would amend N.J.S.2C:29-9 to
43 provide that a person is guilty of a crime of the fourth degree if that
44 person purposely or knowingly violates any provision in an order
45 entered under the provisions of the bill. A person convicted of a
46 second or subsequent nonindictable offense involving the contempt
47 of a protective order would serve a minimum term of not less than
48 30 days.

1 Where a victim alleges that a respondent has committed
2 contempt of a protective order, but a law enforcement officer has
3 found that the facts are insufficient to establish probable cause to
4 arrest the respondent, the law enforcement officer would advise the
5 victim of the procedure for completing and signing a criminal
6 complaint through the municipal court alleging contempt of the
7 order.

8 All records maintained pursuant to the bill would be confidential
9 and not made available to any individual or institution except as
10 otherwise provided by law.

11 A victim would be provided with copies of all protective orders
12 issued pursuant to the bill as well as other relevant documents upon
13 request at no cost.

14 The Administrative Office of the Courts would establish and
15 maintain a central registry of all protective orders and all persons
16 charged with a violation of such orders. All records would be kept
17 confidential and would be released only to:

18 a. A public agency authorized to investigate a report of
19 nonconsensual sexual contact, sexual penetration, or lewdness, or
20 any attempt at such conduct, or domestic violence;

21 b. A police or other law enforcement agency for official
22 purposes;

23 c. A court, upon its finding that access to such records may be
24 necessary for determination of an issue before the court;

25 d. A surrogate, in that person's official capacity as deputy clerk
26 of the Superior Court, in order to prepare documents that may be
27 necessary for a court to determine an issue in an adoption
28 proceeding; or

29 e. The Division of Child Protection and Permanency in the
30 Department of Children and Families when the division is
31 conducting a background investigation involving an allegation of
32 child abuse or neglect, to include any adult member of the same
33 household as the individual who is the subject of the abuse or
34 neglect allegation, or an out-of-home placement for a child being
35 placed by the Division of Child Protection and Permanency, to
36 include any adult member of the prospective placement household.

37 The bill provides that any individual who disseminates or
38 discloses a record or report, or parts thereof, of the central registry,
39 other than for an official purpose authorized by the bill, or for any
40 other purpose other than that authorized by law, the Rules of Court
41 or court order, would be guilty of a crime of the fourth degree.