

ASSEMBLY, No. 5860

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 14, 2019

Sponsored by:

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District 29 (Essex)

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District 29 (Essex)

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District 31 (Hudson)

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Assemblywoman Downey and Assemblyman Houghtaling

SYNOPSIS

Requires domestic violence orders to be issued in other languages in addition to English under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2019)

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

3

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

6

7 1. Section 7 of P.L.1991, c.261 (C.2C:25-23) is amended to
8 read as follows:

9 7. A law enforcement officer shall disseminate and explain to
10 the victim the following notice, which shall be written in both
11 English and Spanish, and, in addition, in a municipality in which
12 the primary language of 10 percent or more of the population is a
13 language other than English or Spanish, in that other language or
14 languages:

15 "You have the right to go to court to get an order called a
16 temporary restraining order, also called a TRO, which may protect
17 you from more abuse by your attacker. The officer who handed you
18 this card can tell you how to get a TRO.

19 The kinds of things a judge can order in a TRO may include:

20 (1) That your attacker is temporarily forbidden from entering
21 the home you live in;

22 (2) That your attacker is temporarily forbidden from having
23 contact with you or your relatives;

24 (3) That your attacker is temporarily forbidden from bothering
25 you at work;

26 (4) That your attacker has to pay temporary child support or
27 support for you;

28 (5) That you be given temporary custody of your children;

29 (6) That your attacker pay you back any money you have to
30 spend for medical treatment or repairs because of the violence.

31 There are other things the court can order, and the court clerk will
32 explain the procedure to you and will help you fill out the papers
33 for a TRO.

34 You also have the right to file a criminal complaint against your
35 attacker. The police officer who gave you this paper will tell you
36 how to file a criminal complaint.

37 On weekends, holidays and other times when the courts are
38 closed, you still have a right to get a TRO. The police officer who
39 gave you this paper can help you get in touch with a judge who can
40 give you a TRO."

41 (cf: P.L.1991, c.261, s.7)

42

43 2. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to
44 read as follows:

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 12. a. A victim may file a complaint alleging the commission of
2 an act of domestic violence with the Family Part of the Chancery
3 Division of the Superior Court in conformity with the Rules of
4 Court. The court shall not dismiss any complaint or delay
5 disposition of a case because the victim has left the residence to
6 avoid further incidents of domestic violence. Filing a complaint
7 pursuant to this section shall not prevent the filing of a criminal
8 complaint for the same act.

9 On weekends, holidays and other times when the court is closed,
10 a victim may file a complaint before a judge of the Family Part of
11 the Chancery Division of the Superior Court or a municipal court
12 judge who shall be assigned to accept complaints and issue
13 emergency, ex parte relief in the form of temporary restraining
14 orders pursuant to this act.

15 A plaintiff may apply for relief under this section in a court
16 having jurisdiction over the place where the alleged act of domestic
17 violence occurred, where the defendant resides, or where the
18 plaintiff resides or is sheltered, and the court shall follow the same
19 procedures applicable to other emergency applications. Criminal
20 complaints filed pursuant to this act shall be investigated and
21 prosecuted in the jurisdiction where the offense is alleged to have
22 occurred. Contempt complaints filed pursuant to N.J.S.2C:29-9
23 shall be prosecuted in the county where the contempt is alleged to
24 have been committed and a copy of the contempt complaint shall be
25 forwarded to the court that issued the order alleged to have been
26 violated.

27 b. The court shall waive any requirement that the petitioner's
28 place of residence appear on the complaint.

29 c. (1) The clerk of the court, or other person designated by the
30 court, shall assist the parties in completing any forms necessary for
31 the filing of a summons, complaint, answer or other pleading.

32 (2) The plaintiff may provide information concerning firearms
33 to which the defendant has access, including the location of these
34 firearms, if known, on a form to be prescribed by the
35 Administrative Director of the Courts.

36 (3) Information provided by the plaintiff concerning firearms to
37 which the defendant has access shall be kept confidential and shall
38 not be disseminated or disclosed, provided that nothing in this
39 subsection shall prohibit dissemination or disclosure of this
40 information in a manner consistent with and in furtherance of the
41 purpose for which the information was provided.

42 d. Summons and complaint forms shall be readily available at
43 the clerk's office, at the municipal courts and at municipal and State
44 police stations.

45 e. As soon as the domestic violence complaint is filed, both the
46 victim and the abuser shall be advised of any programs or services
47 available for advice and counseling.

1 f. A plaintiff may seek emergency, ex parte relief in the nature
2 of a temporary restraining order. A municipal court judge or a
3 judge of the Family Part of the Chancery Division of the Superior
4 Court may enter an ex parte order when necessary to protect the
5 life, health or well-being of a victim on whose behalf the relief is
6 sought.

7 g. If it appears that the plaintiff is in danger of domestic
8 violence, the judge shall, upon consideration of the plaintiff's
9 domestic violence complaint, order emergency ex parte relief, in the
10 nature of a temporary restraining order. A decision shall be made
11 by the judge regarding the emergency relief forthwith.

12 h. (1) A judge may issue a temporary restraining order upon
13 sworn testimony or complaint of an applicant who is not physically
14 present, pursuant to court rules, or by a person who represents a
15 person who is physically or mentally incapable of filing personally.
16 A temporary restraining order may be issued if the judge is satisfied
17 that exigent circumstances exist sufficient to excuse the failure of
18 the applicant to appear personally and that sufficient grounds for
19 granting the application have been shown.

20 (2) Any temporary restraining order issued by a municipal court
21 judge in a municipality in which the primary language of 10 percent
22 or more of the population is a language other than English, and any
23 temporary restraining order issued by a judge of the Family Part in
24 a vicinage in which the primary language of 10 percent or more of
25 the population is a language other than English, shall be issued in
26 that other language or languages as well as in English.

27 i. An order for emergency, ex parte relief shall be granted
28 upon good cause shown and shall remain in effect until a judge of
29 the Family Part issues a further order. Any temporary order
30 hereunder is immediately appealable for a plenary hearing de novo
31 not on the record before any judge of the Family Part of the county
32 in which the plaintiff resides or is sheltered if that judge issued the
33 temporary order or has access to the reasons for the issuance of the
34 temporary order and sets forth in the record the reasons for the
35 modification or dissolution. The denial of a temporary restraining
36 order by a municipal court judge and subsequent administrative
37 dismissal of the complaint shall not bar the victim from refileing a
38 complaint in the Family Part based on the same incident and
39 receiving an emergency, ex parte hearing de novo not on the record
40 before a Family Part judge, and every denial of relief by a
41 municipal court judge shall so state.

42 j. Emergency relief may include forbidding the defendant from
43 returning to the scene of the domestic violence, forbidding the
44 defendant from possessing any firearm or other weapon enumerated
45 in subsection r. of N.J.S.2C:39-1, ordering the search for and
46 seizure of any firearm or other weapon at any location where the
47 judge has reasonable cause to believe the weapon is located and the
48 seizure of any firearms purchaser identification card or permit to

1 purchase a handgun issued to the defendant and any other
2 appropriate relief.

3 If the order requires the surrender of any firearm or other
4 weapon, a law enforcement officer shall accompany the defendant,
5 or may proceed without the defendant if necessary, to the scene of
6 the domestic violence or any other location where the judge has
7 reasonable cause to believe any firearm or other weapon belonging
8 to the defendant is located, to ensure that the defendant does not
9 gain access to any firearm or other weapon, and that the firearm or
10 other weapon is appropriately surrendered in accordance with the
11 order. If the order prohibits the defendant from returning to the
12 scene of domestic violence or any other location where the judge
13 has reasonable cause to believe any firearm or other weapon
14 belonging to the defendant is located, any firearm or other weapon
15 located there shall be seized by a law enforcement officer. The
16 order shall include notice to the defendant of the penalties for a
17 violation of any provision of the order, including but not limited to
18 the penalties for contempt of court and unlawful possession of a
19 firearm or other weapon pursuant to N.J.S.2C:39-5. Other
20 appropriate relief may include but is not limited to an order
21 directing the possession of any animal owned, possessed, leased,
22 kept, or held by either party or a minor child residing in the
23 household and providing that the animal shall not be disposed of
24 prior to entry of a final order pursuant to section 13 of P.L.1991,
25 c.261 (C.2C:25-29).

26 The judge shall state with specificity the reasons for and scope of
27 any search and seizure authorized by the order. The provisions of
28 this subsection prohibiting a defendant from possessing a firearm or
29 other weapon shall not apply to any law enforcement officer while
30 actually on duty, or to any member of the Armed Forces of the
31 United States or member of the National Guard while actually on
32 duty or traveling to or from an authorized place of duty.

33 k. The judge may permit the defendant to return to the scene of
34 the domestic violence to pick up personal belongings and effects
35 but shall, in the order granting relief, restrict the time and duration
36 of such permission and provide for police supervision of such visit.

37 l. An order granting emergency relief, together with the
38 complaint or complaints, shall immediately be forwarded to the
39 appropriate law enforcement agency for service on the defendant,
40 and to the police of the municipality in which the plaintiff resides or
41 is sheltered, and shall immediately be served upon the defendant by
42 the police, except that an order issued during regular court hours
43 may be forwarded to the sheriff for immediate service upon the
44 defendant in accordance with the Rules of Court. If personal
45 service cannot be effected upon the defendant, the court may order
46 other appropriate substituted service. At no time shall the plaintiff
47 be asked or required to serve any order on the defendant.

48 m. (Deleted by amendment, P.L.1994, c.94.)

1 n. Notice of temporary restraining orders issued pursuant to
2 this section shall be sent by the clerk of the court or other person
3 designated by the court to the appropriate chiefs of police, members
4 of the State Police and any other appropriate law enforcement
5 agency or court.

6 o. (Deleted by amendment, P.L.1994, c.94.)

7 p. Any temporary or final restraining order issued pursuant to
8 this act shall be in effect throughout the State, and shall be enforced
9 by all law enforcement officers.

10 q. Prior to the issuance of any temporary or final restraining
11 order issued pursuant to this section, the court shall order that a
12 search be made of the domestic violence central registry with regard
13 to the defendant's record.

14 (cf: P.L.2016, c.91, s.2)

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

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

37 (1) The previous history of domestic violence between the
38 plaintiff and defendant, including threats, harassment and physical
39 abuse;

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

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

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

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

45 (6) The existence of a verifiable order of protection from
46 another jurisdiction.

47 An order issued under this act shall only restrain or provide
48 damages payable from a person against whom a complaint has been

1 filed under this act and only after a finding or an admission is made
2 that an act of domestic violence was committed by that person. The
3 issue of whether or not a violation of this act occurred, including an
4 act of contempt under this act, shall not be subject to mediation or
5 negotiation in any form. In addition, where a temporary or final
6 order has been issued pursuant to this act, no party shall be ordered
7 to participate in mediation on the issue of custody or parenting time.

8 In any vicinage in which the primary language of 10 percent or
9 more of the population is a language other than English, any order
10 issued pursuant to this section shall be issued in that other language
11 or languages as well as in English.

12 b. In proceedings in which complaints for restraining orders
13 have been filed, the court shall grant any relief necessary to prevent
14 further abuse. In addition to any other provisions, any restraining
15 order issued by the court shall bar the defendant from purchasing,
16 owning, possessing or controlling a firearm and from receiving or
17 retaining a firearms purchaser identification card or permit to
18 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
19 which the restraining order is in effect or two years, whichever is
20 greater. The order shall require the immediate surrender of any
21 firearm or other weapon belonging to the defendant. The order
22 shall include notice to the defendant of the penalties for a violation
23 of any provision of the order, including but not limited to the
24 penalties for contempt of court and unlawful possession of a firearm
25 or other weapon pursuant to N.J.S.2C:39-5.

26 A law enforcement officer shall accompany the defendant, or
27 may proceed without the defendant if necessary, to any place where
28 any firearm or other weapon belonging to the defendant is located
29 to ensure that the defendant does not gain access to any firearm or
30 other weapon, and a law enforcement officer shall take custody of
31 any firearm or other weapon belonging to the defendant. If the
32 order prohibits the defendant from returning to the scene of
33 domestic violence or other place where firearms or other weapons
34 belonging to the defendant are located, any firearm or other weapon
35 located there shall be seized by a law enforcement officer. The
36 provisions of this subsection requiring the surrender or removal of a
37 firearm, card, or permit shall not apply to any law enforcement
38 officer while actually on duty, or to any member of the Armed
39 Forces of the United States or member of the National Guard while
40 actually on duty or traveling to or from an authorized place of duty.
41 At the hearing the judge of the Family Part of the Chancery
42 Division of the Superior Court may issue an order granting any or
43 all of the following relief:

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

46 (2) An order granting exclusive possession to the plaintiff of the
47 residence or household regardless of whether the residence or
48 household is jointly or solely owned by the parties or jointly or

1 solely leased by the parties. This order shall not in any manner
2 affect title or interest to any real property held by either party or
3 both jointly. If it is not possible for the victim to remain in the
4 residence, the court may order the defendant to pay the victim's rent
5 at a residence other than the one previously shared by the parties if
6 the defendant is found to have a duty to support the victim and the
7 victim requires alternative housing.

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

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

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

29 (4) An order requiring the defendant to pay to the victim
30 monetary compensation for losses suffered as a direct result of the
31 act of domestic violence. The order may require the defendant to
32 pay the victim directly, to reimburse the Victims of Crime
33 Compensation Office for any and all compensation paid by the
34 Victims of Crime Compensation Office directly to or on behalf of
35 the victim, and may require that the defendant reimburse any parties
36 that may have compensated the victim, as the court may determine.
37 Compensatory losses shall include, but not be limited to, loss of
38 earnings or other support, including child or spousal support, out-
39 of-pocket losses for injuries sustained, cost of repair or replacement
40 of real or personal property damaged or destroyed or taken by the
41 defendant, cost of counseling for the victim, moving or other travel
42 expenses, reasonable attorney's fees, court costs, and compensation
43 for pain and suffering. Where appropriate, punitive damages may be
44 awarded in addition to compensatory damages.

45 (5) An order requiring the defendant to receive professional
46 domestic violence counseling from either a private source or a
47 source appointed by the court and, in that event, requiring the
48 defendant to provide the court at specified intervals with

1 documentation of attendance at the professional counseling. The
2 court may order the defendant to pay for the professional
3 counseling. No application by the defendant to dissolve a final
4 order which contains a requirement for attendance at professional
5 counseling pursuant to this paragraph shall be granted by the court
6 unless, in addition to any other provisions required by law or
7 conditions ordered by the court, the defendant has completed all
8 required attendance at such counseling.

9 (6) An order restraining the defendant from entering the
10 residence, property, school, or place of employment of the victim or
11 of other family or household members of the victim and requiring
12 the defendant to stay away from any specified place that is named
13 in the order and is frequented regularly by the victim or other
14 family or household members.

15 (7) An order restraining the defendant from making contact with
16 the plaintiff or others, including an order forbidding the defendant
17 from personally or through an agent initiating any communication
18 likely to cause annoyance or alarm including, but not limited to,
19 personal, written, or telephone contact with the victim or other
20 family members, or their employers, employees, or fellow workers,
21 or others with whom communication would be likely to cause
22 annoyance or alarm to the victim.

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

29 (9) An order granting either party temporary possession of
30 specified personal property, such as an automobile, checkbook,
31 documentation of health insurance, an identification document, a
32 key, and other personal effects.

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

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

40 (12) An order requiring that a law enforcement officer
41 accompany either party to the residence or any shared business
42 premises to supervise the removal of personal belongings in order
43 to ensure the personal safety of the plaintiff when a restraining
44 order has been issued. This order shall be restricted in duration.

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

46 (14) An order granting any other appropriate relief for the
47 plaintiff and dependent children, provided that the plaintiff consents
48 to such relief, including relief requested by the plaintiff at the final

1 hearing, whether or not the plaintiff requested such relief at the time
2 of the granting of the initial emergency order.

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

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

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

23 (18) An order requiring the defendant to undergo a psychiatric
24 evaluation.

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

30 c. Notice of orders issued pursuant to this section shall be sent
31 by the clerk of the Family Part of the Chancery Division of the
32 Superior Court or other person designated by the court to the
33 appropriate chiefs of police, members of the State Police and any
34 other appropriate law enforcement agency.

35 d. Upon good cause shown, any final order may be dissolved or
36 modified upon application to the Family Part of the Chancery
37 Division of the Superior Court, but only if the judge who dissolves
38 or modifies the order is the same judge who entered the order, or
39 has available a complete record of the hearing or hearings on which
40 the order was based.

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

44 (cf: P.L.2016, c.91, s.3)

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46 4. This act shall take effect on the 120th day following
47 enactment.

STATEMENT

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This bill requires that certain domestic violence restraining orders and notices to domestic violence victims would be issued in other languages in addition to English.

NOTICE TO VICTIMS

Currently, section 7 of P.L.1991, c.261 (C.2C:25-23) provides that a law enforcement officer must provide a domestic violence victim with a notice of the victim's rights, including the right to go to court to obtain a temporary restraining order and the right to file criminal charges. The statute currently provides that the notice must be written in both English and Spanish. The bill provides that, in any municipality in which the primary language of 10 percent or more of the population is a language other than English or Spanish, the notice must also be provided in that other language or languages.

TEMPORARY RESTRAINING ORDERS

Section 12 of P.L.1991, c.261 (C.2C:25-28) provides that a victim may file a domestic violence complaint with the Family Part or, at times when the Family Part is closed, with a judge of the Family Part or a judge of the municipal court assigned to accept such complaints and issue temporary restraining orders. This statute does not specify whether the order must be issued in a language other than English. The bill provides that any temporary restraining order issued by a municipal court judge in a municipality in which the primary language of 10 percent or more of the population is a language other than English, and any temporary restraining order issued by a judge of the Family Part in a vicinage in which the primary language of 10 percent or more of the population is a language other than English, must be issued in that other language or languages as well as in English.

PERMANENT RESTRAINING ORDERS

Section 13 of P.L.1991, c.261 (C.2C:25-29) provides that within 10 days of the filing of a complaint for a temporary restraining order, the Family Part will conduct a hearing to determine whether to issue a permanent restraining order. The bill provides that in any vicinage in which the primary language of 10 percent or more of the population is a language other than English, any permanent restraining order must be issued in that other language or languages as well as in English.