

SENATE, No. 2270

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 12, 2018

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Authorizes the court to issue restraining orders to defendants charged with a crime as a condition of release on bail.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain restraining orders and supplementing
2 Title 2A of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 a. "Person" means any person charged with or convicted of a
9 crime or any juvenile charged with delinquency or adjudicated
10 delinquent for an act which, if committed by an adult, would be a
11 crime.

12 b. "Place" includes any premises, residence, business
13 establishment, location or specified area including all buildings and
14 all appurtenant land, in which or at which a crime occurred or is
15 alleged to have occurred or is affected by the crime with which the
16 person is charged or where a witness to the crime or a member of
17 the family of the witness resides, is employed, or attends school.
18 "Place" does not include public rail, bus, or air transportation lines
19 or limited access highways which do not allow pedestrian access.
20

21 2. a. When a person is charged with a crime on a warrant and
22 the person is released from custody before trial on bail, appearance
23 bond, personal recognizance, or a non-monetary condition or
24 conditions pursuant to P.L.2014, c.31 (C.2A:162-15 et seq.), the
25 court, upon application of a law enforcement officer or prosecuting
26 attorney pursuant to section 4 of P.L. , c. (C.) (pending
27 before the Legislature as this bill) and except as provided in
28 subsection e. of this section, shall as a condition of release issue an
29 order prohibiting the person from entering any place defined by
30 section 1 of P.L. , c. (C.) (pending before the Legislature
31 as this bill), including a buffer zone surrounding the place or
32 modifications as provided by subsection f. of this section.

33 b. When a person is charged with a crime on a summons, the
34 court, upon application of a law enforcement officer or prosecuting
35 attorney pursuant to section 4 of P.L. , c. (C.) (pending
36 before the Legislature as this bill) and except as provided in
37 subsection e. of this section, shall, at the time of the defendant's
38 first appearance, issue an order prohibiting the person from entering
39 any place defined by section 1 of P.L. , c. (C.) (pending
40 before the Legislature as this bill), including a buffer zone
41 surrounding the place or modifications as provided by subsection f.
42 of this section.

43 c. When a person is charged with a crime on a juvenile
44 delinquency complaint and is released from custody at a detention
45 hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the
46 court, upon application of a law enforcement officer or prosecuting
47 attorney pursuant to section 4 of P.L. , c. (C.) (pending
48 before the Legislature as this bill) and except as provided in

1 subsection e. of this section, shall issue an order prohibiting the
2 person from entering any place defined by section 1 of
3 P.L. , c. (C.) (pending before the Legislature as this bill),
4 including a buffer zone surrounding the place or modifications as
5 provided by subsection f. of this section.

6 d. When a person is charged with a crime on a juvenile
7 delinquency complaint and is released without being detained
8 pursuant to section 15 or 16 of P.L.1982, c.77 (C.2A:4A-34 or
9 C.2A:4A-35), the law enforcement officer or prosecuting attorney
10 shall prepare an application pursuant to section 4 of
11 P.L. , c. (C.) (pending before the Legislature as this bill)
12 for filing on the next court day.

13 The law enforcement officer releasing the juvenile shall serve the
14 juvenile and his parent or guardian with written notice that an order
15 shall be issued by the Family Part of the Superior Court on the next
16 court day prohibiting the juvenile from entering any place defined
17 by section 1 of P.L. , c. (C.) (pending before the
18 Legislature as this bill), including a buffer zone surrounding the
19 place or modifications as provided by subsection f. of this section.

20 The court shall issue such order on the first court day following
21 the release of the juvenile. If the restraints contained in the court
22 order differ from the restraints contained in the notice, the order
23 shall not be effective until the third court day following the issuance
24 of the order. The juvenile may apply to the court to stay or modify
25 the order on the grounds set forth in subsection e. of this section.

26 e. The court may forego issuing a restraining order for which
27 application has been made pursuant to this act only if the defendant
28 establishes by clear and convincing evidence that:

29 (1) the defendant lawfully resides at or has legitimate business
30 on or near the place, or otherwise legitimately needs to enter the
31 place. In such an event, the court shall not issue an order pursuant
32 to this section unless the court is clearly convinced that the need to
33 bar the person from the place in order to protect the public safety
34 and the rights, safety and health of the residents and persons
35 working in the place outweighs the person's interest in returning to
36 the place. If the balance of the interests of the person and the public
37 so warrants, the court may issue an order imposing conditions upon
38 the person's entry at, upon or near the place; or

39 (2) the issuance of an order would cause undue hardship to
40 innocent persons and would constitute a serious injustice which
41 overrides the need to protect the rights, safety and health of persons
42 residing in or having business in the place.

43 f. A restraining order issued pursuant to subsection a., b., c., d.
44 or h. of this section shall describe the place from which the person
45 has been barred and any conditions upon the person's entry into the
46 place, with sufficient specificity to enable the person to guide his
47 conduct accordingly and to enable a law enforcement officer to
48 enforce the order. The order shall also prohibit the person from

1 entering an area of up to 500 feet surrounding the place, unless the
2 court rules that a different buffer zone would better effectuate the
3 purposes of this act. In the discretion of the court, the order may
4 contain modifications to permit the person to enter the area during
5 specified times for specified purposes, such as attending school
6 during regular school hours. When appropriate, the court may
7 append to the order a map depicting the place. The person shall be
8 given a copy of the restraining order and any appended map and
9 shall acknowledge in writing the receipt thereof.

10 g. (1) The court shall provide notice of the restraining order to
11 the local law enforcement agency where the arrest occurred and to
12 the county prosecutor.

13 (2) Notwithstanding the provisions of section 1 of P.L.1982,
14 c.79 (C.2A:4A-60), prior to the person's conviction or adjudication
15 of delinquency for a crime, the local law enforcement agency may
16 post a copy of any orders issued pursuant to this section, or an
17 equivalent notice containing the terms of the order, upon one or
18 more of the principal entrances of the place or in any other
19 conspicuous location. Such posting shall be for the purpose of
20 informing the public, and the failure to post a copy of the order
21 shall in no way excuse any violation of the order.

22 (3) Notwithstanding the provisions of section 1 of P.L.1982,
23 c.79 (C.2A:4A-60), prior to the person's conviction or adjudication
24 of delinquency for a crime, any law enforcement agency may
25 publish a copy of any orders issued pursuant to this section, or an
26 equivalent notice containing the terms of the order, in a newspaper
27 circulating in the area of the restraining order. Such publication
28 shall be for the purpose of informing the public, and the failure to
29 publish a copy of the order shall in no way excuse any violation of
30 the order.

31 (4) Notwithstanding the provisions of section 1 of P.L.1982,
32 c.79 (C.2A:4A-60), prior to the person's conviction or adjudication
33 of delinquency for a crime, any law enforcement agency may
34 distribute copies of any orders issued pursuant to this section, or an
35 equivalent notice containing the terms of the order, to residents or
36 businesses located within the area delineated in the order or, in the
37 case of a school or any government-owned property, to the
38 appropriate administrator, or to any tenant association representing
39 the residents of the affected area. Such distribution shall be for the
40 purpose of informing the public, and the failure to publish a copy of
41 the order shall in no way excuse any violation of the order.

42 h. When a person is convicted of or adjudicated delinquent for
43 any crime, the court, upon application of a law enforcement officer
44 or prosecuting attorney pursuant to section 4 of
45 P.L. , c. (C.) (pending before the Legislature as this bill)
46 and except as provided in subsection e. of this section, shall, by
47 separate order or within the judgment of conviction, issue an order
48 prohibiting the person from entering any place defined by section 1

1 of P.L. , c. (C.) (pending before the Legislature as this
2 bill), including a buffer zone surrounding the place or modifications
3 as provided by subsection f. of this section. Upon the person's
4 conviction or adjudication of delinquency for a crime, a law
5 enforcement agency, in addition to posting, publishing, and
6 distributing the order or an equivalent notice pursuant to paragraphs
7 (2), (3) and (4) of subsection g. of this section, may also post,
8 publish and distribute a photograph of the person.

9 i. When a juvenile has been adjudicated delinquent for an act
10 which, if committed by an adult, would be a crime, in addition to an
11 order required by subsection h. of this section or any other
12 disposition authorized by law, the court may order the juvenile and
13 any parent, guardian or any family member over whom the court
14 has jurisdiction to take such actions or obey such restraints as may
15 be necessary to facilitate the rehabilitation of the juvenile or to
16 protect public safety or to safeguard or enforce the rights of
17 residents of the place. The court may commit the juvenile to the
18 care and responsibility of the Department of Human Services until
19 such time as the juvenile reaches the age of 18 or until the order of
20 removal and restraint expires, whichever first occurs, or to such
21 alternative residential placement as is practicable.

22 j. An order issued pursuant to subsection a., b., c. or d. of this
23 section shall remain in effect until the case has been adjudicated or
24 dismissed, or for not less than two years, whichever is less. An
25 order issued pursuant to subsection h. of this section shall remain in
26 effect for such period of time as shall be fixed by the court but not
27 longer than the maximum term of imprisonment or incarceration
28 allowed by law for the underlying offense or offenses. When the
29 court issues a restraining order pursuant to subsection h. of this
30 section and the person is also sentenced to any form of probationary
31 supervision or participation in the Intensive Supervision Program,
32 the court shall make continuing compliance with the order an
33 express condition of probation or the Intensive Supervision
34 Program. When the person has been sentenced to a term of
35 incarceration, continuing compliance with the terms and conditions
36 of the order shall be made an express condition of the person's
37 release from confinement or incarceration on parole. At the time of
38 sentencing or, in the case of a juvenile, at the time of disposition of
39 the juvenile case, the court shall advise the defendant that the
40 restraining order shall include a fixed time period in accordance
41 with this subsection and shall include that provision in the judgment
42 of conviction, dispositional order, separate order or order vacating
43 an existing restraining order, to the law enforcement agency that
44 made the arrest and to the county prosecutor.

45 k. All applications to stay or modify an order issued pursuant
46 to this act, including an order originally issued in municipal court,
47 shall be made in the Superior Court. The court shall immediately
48 notify the county prosecutor in writing whenever an application is

1 made to stay or modify an order issued pursuant to this act. If the
2 court does not issue a restraining order, the sentence imposed by the
3 court for a crime as defined in subsection b. of this section shall not
4 become final for ten days in order to permit the appeal of the court's
5 findings by the prosecution.

6 1. Nothing in this section shall be construed in any way to limit
7 the authority of the court to take such other actions or to issue such
8 orders as may be necessary to protect the public safety or to
9 safeguard or enforce the rights of others with respect to the place.

10 m. Notwithstanding any other provision of this section, the
11 court may permit the person to return to the place to obtain personal
12 belongings and effects and, by court order, may restrict the time and
13 duration and provide for police supervision of such a visit.

14
15 3. Violation of any order issued pursuant to this act shall
16 subject the person to civil contempt, criminal contempt, revocation
17 of bail, probation or parole, or any combination of these sanctions
18 and any other sanctions authorized by law. A violation of any order
19 issued pursuant to this act shall not result in the forfeiture of a bond
20 posted for the underlying offense. A law enforcement officer may
21 arrest an adult or take into custody a juvenile when an officer has
22 probable cause to believe that the person has violated the terms of
23 any removal and restraining order issued pursuant to section 2 of
24 P.L. , c. (C.) (pending before the Legislature as this bill).

25
26 4. The court shall issue a restraining order pursuant to this act
27 only upon request by a law enforcement officer or prosecuting
28 attorney and submission of a certification describing the location of
29 the offense.

30
31 5. A law enforcement officer or prosecuting attorney shall have
32 discretion to not seek a restraining order pursuant to this act if the
33 defendant is charged with an offense resulting from the stop of a
34 motor vehicle, if the defendant was using public transportation, or if
35 the provisions of paragraph (1) or (2) of subsection e. of section 2
36 of P.L. , c. (C.) (pending before the Legislature as this
37 bill) are applicable.

38
39 6. This act shall take effect immediately.

40 41 42 STATEMENT

43
44 This bill authorizes the court to issue restraining orders against
45 defendants charged with a crime as a condition of release on bail.
46 Under the bill, when a person is charged with a crime on a warrant
47 and is released from custody before trial on bail, appearance bond,
48 personal recognizance, or a non-monetary condition or conditions

1 pursuant to P.L.2014, c.31 (C.2A:162-15 et seq.), the court, upon
2 application of a law enforcement officer or prosecutor, shall as a
3 condition of release issue an order prohibiting the person from
4 entering a particular place. The bill defines “place” to include any
5 premises, residence, business establishment, location or specified
6 area including all buildings and all appurtenant land, in which or at
7 which a crime occurred or is alleged to have occurred or is affected
8 by the crime with which the person is charged or where a witness to
9 the crime or a member of the family of the witness resides, is
10 employed, or attends school. The definition of “place” does not
11 include public rail, bus or air transportation lines or limited access
12 highways which do not allow pedestrian access.

13 Under the bill, the court may forego issuing a restraining order if
14 the defendant establishes by clear and convincing evidence that:

15 (1) the defendant lawfully resides at or has legitimate business
16 on or near the place, or otherwise legitimately needs to enter the
17 place. In such an event, the bill provides that the court shall not
18 issue an order unless the court is clearly convinced that the need to
19 bar the person from the place in order to protect the public safety
20 and the rights, safety and health of the residents and persons
21 working in the place outweighs the person's interest in returning to
22 the place. If the balance of the interests of the person and the public
23 so warrants, the court may issue an order imposing conditions upon
24 the person's entry at, upon or near the place; or

25 (2) the issuance of an order would cause undue hardship to
26 innocent persons and would constitute a serious injustice which
27 overrides the need to protect the rights, safety and health of persons
28 residing in or having business in the place.

29 Violation of a restraining order under the bill would not result in
30 the forfeiture of a bond posted for the underlying offense.

31 This bill is modeled on the “Drug Offender Restraining Order
32 Act of 1999,” P.L.1999, c.334 (C.2C:35-5.4 et seq.).