

[First Reprint]

ASSEMBLY, No. 1078

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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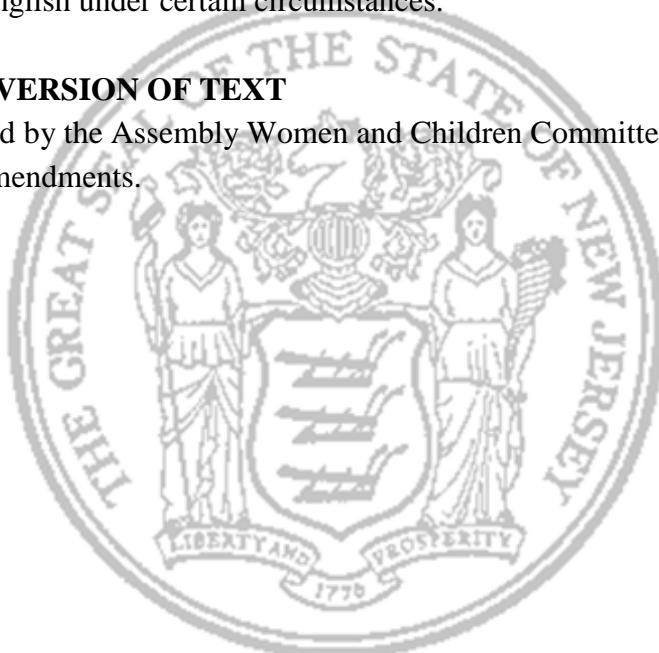
Assemblywoman Downey, Assemblyman Houghtaling, Assemblywomen Timberlake, Jimenez, Vainieri Huttle and Lopez

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Women and Children Committee on March 15, 2021, with amendments.



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】, by the Administrative Office of the Courts,
12 in English, Spanish, and up to 10 additional languages commonly
13 spoken in the State:

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

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

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

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

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

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

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

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

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

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

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

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

41

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

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AWC committee amendments adopted March 15, 2021.

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 Court.
4 The court shall not dismiss any complaint or delay disposition of a
5 case because the victim has left the residence to avoid further incidents
6 of domestic violence. Filing a complaint pursuant to this section shall
7 not prevent the filing of a criminal complaint for the same act.

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

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

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

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

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

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

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

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

46 f. A plaintiff may seek emergency, ex parte relief in the nature of
47 a temporary restraining order. A municipal court judge or a judge of
48 the Family Part of the Chancery Division of the Superior Court may

1 enter an ex parte order when necessary to protect the life, health or
2 well-being of a victim on whose behalf the relief is sought.

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

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

16 (2) Any temporary restraining order¹【issued by a municipal court
17 judge】¹ shall be issued in the primary language or languages used by
18 both the plaintiff and the defendant. The Administrative Office of the
19 Courts shall prepare standard temporary restraining order forms in
20 English, Spanish, and up to 10 additional languages commonly spoken
21 in the State, for use by¹【municipal court】¹ judges in complying with
22 the provisions of this paragraph.

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

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

45 If the order requires the surrender of any firearm or other weapon,
46 a law enforcement officer shall accompany the defendant, or may
47 proceed without the defendant if necessary, to the scene of the
48 domestic violence or any other location where the judge has

1 reasonable cause to believe any firearm or other weapon belonging to
2 the defendant is located, to ensure that the defendant does not gain
3 access to any firearm or other weapon, and that the firearm or other
4 weapon is appropriately surrendered in accordance with the order. If
5 the order prohibits the defendant from returning to the scene of
6 domestic violence or any other location where the judge has
7 reasonable cause to believe any firearm or other weapon belonging to
8 the defendant is located, any firearm or other weapon located there
9 shall be seized by a law enforcement officer. The order shall include
10 notice to the defendant of the penalties for a violation of any provision
11 of the order, including but not limited to the penalties for contempt of
12 court and unlawful possession of a firearm or other weapon pursuant
13 to N.J.S.2C:39-5. Other appropriate relief may include but is not
14 limited to an order directing the possession of any animal owned,
15 possessed, leased, kept, or held by either party or a minor child
16 residing in the household and providing that the animal shall not be
17 disposed of prior to entry of a final order pursuant to section 13 of
18 P.L.1991, c.261 (C.2C:25-29).

19 The judge shall state with specificity the reasons for and scope of
20 any search and seizure authorized by the order. The provisions of this
21 subsection prohibiting a defendant from possessing a firearm or other
22 weapon shall not apply to any law enforcement officer while actually
23 on duty, or to any member of the Armed Forces of the United States or
24 member of the National Guard while actually on duty or traveling to or
25 from an authorized place of duty.

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

30 l. An order granting emergency relief, together with the
31 complaint or complaints, shall immediately be forwarded to the
32 appropriate law enforcement agency for service on the defendant, and
33 to the police of the municipality in which the plaintiff resides or is
34 sheltered, and shall immediately be served upon the defendant ¹along
35 with a copy of the translated order, if applicable.¹ by the police, except
36 that an order issued during regular court hours may be forwarded to
37 the sheriff for immediate service upon the defendant in accordance
38 with the Rules of Court. If personal service cannot be effected upon
39 the defendant, the court may order other appropriate substituted
40 service. At no time shall the plaintiff be asked or required to serve any
41 order on the defendant.

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

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

1 o. (Deleted by amendment, P.L.1994, c.94.)
2 p. Any temporary or final restraining order issued pursuant to this
3 act shall be in effect throughout the State, and shall be enforced by all
4 law enforcement officers.

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

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

10

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

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

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

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

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

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

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

38 (6) The existence of a verifiable order of protection from another
39 jurisdiction.

40 An order issued under this act shall only restrain or provide
41 damages payable from a person against whom a complaint has been
42 filed under this act and only after a finding or an admission is made
43 that an act of domestic violence was committed by that person. The
44 issue of whether or not a violation of this act occurred, including an act
45 of contempt under this act, shall not be subject to mediation or
46 negotiation in any form. In addition, where a temporary or final order
47 has been issued pursuant to this act, no party shall be ordered to
48 participate in mediation on the issue of custody or parenting time.

1 An order issued under this section shall be issued in the primary
2 language or languages used by both the plaintiff and the defendant.
3 The Administrative Office of the Courts shall prepare standard forms
4 in English, Spanish, and up to 10 additional languages commonly
5 spoken in the State, for use by courts in complying with the provisions
6 of this subsection.

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

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

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

40 (2) An order granting exclusive possession to the plaintiff of the
41 residence or household regardless of whether the residence or
42 household is jointly or solely owned by the parties or jointly or solely
43 leased by the parties. This order shall not in any manner affect title or
44 interest to any real property held by either party or both jointly. If it is
45 not possible for the victim to remain in the residence, the court may
46 order the defendant to pay the victim's rent at a residence other than
47 the one previously shared by the parties if the defendant is found to

1 have a duty to support the victim and the victim requires alternative
2 housing.

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

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

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

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

39 (5) An order requiring the defendant to receive professional
40 domestic violence counseling from either a private source or a source
41 appointed by the court and, in that event, requiring the defendant to
42 provide the court at specified intervals with documentation of
43 attendance at the professional counseling. The court may order the
44 defendant to pay for the professional counseling. No application by
45 the defendant to dissolve a final order which contains a requirement
46 for attendance at professional counseling pursuant to this paragraph
47 shall be granted by the court unless, in addition to any other provisions

1 required by law or conditions ordered by the court, the defendant has
2 completed all required attendance at such counseling.

3 (6) An order restraining the defendant from entering the residence,
4 property, school, or place of employment of the victim or of other
5 family or household members of the victim and requiring the
6 defendant to stay away from any specified place that is named in the
7 order and is frequented regularly by the victim or other family or
8 household members.

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

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

23 (9) An order granting either party temporary possession of
24 specified personal property, such as an automobile, checkbook,
25 documentation of health insurance, an identification document, a key,
26 and other personal effects.

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

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

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

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

40 (14) An order granting any other appropriate relief for the plaintiff
41 and dependent children, provided that the plaintiff consents to such
42 relief, including relief requested by the plaintiff at the final hearing,
43 whether or not the plaintiff requested such relief at the time of the
44 granting of the initial emergency order.

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

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

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

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

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

24 c. Notice of orders issued pursuant to this section shall be sent by
25 the clerk of the Family Part of the Chancery Division of the Superior
26 Court or other person designated by the court to the appropriate chiefs
27 of police, members of the State Police and any other appropriate law
28 enforcement agency.

29 d. Upon good cause shown, any final order may be dissolved or
30 modified upon application to the Family Part of the Chancery Division
31 of the Superior Court, but only if the judge who dissolves or modifies
32 the order is the same judge who entered the order, or has available a
33 complete record of the hearing or hearings on which the order was
34 based.

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

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

39

40 4. This act shall take effect on the 120th day following
41 enactment.