

# ASSEMBLY, No. 1772

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

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**District 21 (Morris, Somerset and Union)**

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**District 12 (Burlington, Middlesex, Monmouth and Ocean)**

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**SYNOPSIS**

Establishes standards for Batterers' Intervention Programs in domestic violence cases.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning domestic violence, amending and  
2 supplementing 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 13 of P.L.1991, c.261 (C.2C:25-29) is amended to  
8 read as follows:

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

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

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

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

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

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

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

39 An order issued under this act shall only restrain or provide  
40 damages payable from a person against whom a complaint has been  
41 filed under this act and only after a finding or an admission is made  
42 that an act of domestic violence was committed by that person. The  
43 issue of whether or not a violation of this act occurred, including an  
44 act of contempt under this act, shall not be subject to mediation or  
45 negotiation in any form. In addition, where a temporary or final

**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 order has been issued pursuant to this act, no party shall be ordered  
2 to participate in mediation on the issue of custody or parenting time.

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

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

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

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

47 (3) An order providing for parenting time. The order shall  
48 protect the safety and well-being of the plaintiff and minor children

1 and shall specify the place and frequency of parenting time.  
2 Parenting time arrangements shall not compromise any other  
3 remedy provided by the court by requiring or encouraging contact  
4 between the plaintiff and defendant. Orders for parenting time may  
5 include a designation of a place of parenting time away from the  
6 plaintiff, the participation of a third party, or supervised parenting  
7 time.

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

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

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

36 (5) An order requiring the defendant to receive professional  
37 domestic violence counseling, including but not limited to a  
38 Batterers' Intervention Program as set forth in section 2 of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill), from  
40 either a private source or a source appointed by the court and, in  
41 that event, requiring the defendant to provide the court at specified  
42 intervals with documentation of attendance at the professional  
43 counseling. The court may order the defendant to pay for the  
44 professional counseling. No application by the defendant to  
45 dissolve a final order which contains a requirement for attendance  
46 at professional counseling pursuant to this paragraph shall be  
47 granted by the court unless, in addition to any other provisions

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

3 (6) An order restraining the defendant from entering the  
4 residence, property, school, or place of employment of the victim or  
5 of other family or household members of the victim and requiring  
6 the defendant to stay away from any specified place that is named  
7 in the order and is frequented regularly by the victim or other  
8 family or 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  
14 family members, or their employers, employees, or fellow workers,  
15 or others with whom communication would be likely to cause  
16 annoyance or 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  
20 or other dependent household members; provided that this issue has  
21 not been resolved or is not being litigated between the parties in  
22 another 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  
26 key, 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.  
32 The court shall presume that the best interests of the child are  
33 served by an award of custody to the non-abusive parent.

34 (12) An order requiring that a law enforcement officer  
35 accompany either party to the residence or any shared business  
36 premises to supervise the removal of personal belongings in order  
37 to ensure the personal safety of the plaintiff when a restraining  
38 order has been 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  
41 plaintiff and dependent children, provided that the plaintiff consents  
42 to such relief, including relief requested by the plaintiff at the final  
43 hearing, whether or not the plaintiff requested such relief at the time  
44 of the granting of the initial emergency order.

45 (15) An order that requires that the defendant report to the  
46 intake unit of the Family Part of the Chancery Division of the  
47 Superior Court 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  
3 may also issue an order prohibiting the defendant from possessing  
4 any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and  
5 ordering the search for and seizure of any firearm or other weapon  
6 at any location where the judge has reasonable cause to believe the  
7 weapon is located. The judge shall state with specificity the reasons  
8 for and scope of the 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  
12 that, taken in the context of past actions of the defendant, would put  
13 the complainant in reasonable fear that the defendant would cause  
14 the death or injury of the complainant or any other person.  
15 Behavior prohibited under this act includes, but is not limited to,  
16 behavior prohibited under the provisions of P.L.1992,  
17 c.209 (C.2C:12-10).

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

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

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

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

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

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

40  
41 2. (New section) Any Batterers' Intervention Program in which  
42 a defendant participates based on a court order issued pursuant to  
43 paragraph (5) of subsection b. of section 13 of P.L.1991,  
44 c.261 (C.2C:25-29) shall contain the following components:

45 a. Periodic, ongoing risk assessments to protect the safety of  
46 the victim and any children;

47 b. Offender accountability for their acts of domestic violence  
48 as a central component of the program, requiring that offenders be

- 1 held accountable for their behavior, and provided with services  
2 geared towards behavioral change;
- 3 c. Information and education concerning the tactics of power  
4 and control and the understanding of domestic violence as a  
5 domination and control issue;
- 6 d. A swift and certain compliance protocol, including a prompt  
7 and effective review by the court for noncompliance; and
- 8 e. Regular reviews of the program and compliance audits by  
9 the courts and designated domestic violence advocacy groups.

10

11 3. This act shall take effect immediately.

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#### STATEMENT

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16 Under current law, as part of a final restraining order issued by  
17 the court in a domestic violence matter, the court may order the  
18 defendant to receive professional domestic violence counseling  
19 from either a private source or a source appointed by the court and,  
20 in that event, require the defendant to provide the court with  
21 documentation of attendance. This bill specifies that the  
22 professional domestic violence counseling ordered by the court may  
23 consist of a Batterers' Intervention Program, and the bill establishes  
24 standards for such programs.

25 Under the bill, any Batterers' Intervention Program in which a  
26 defendant participates based on a court order issued in a domestic  
27 violence matter would be required to have the following  
28 components:

29 (1) Periodic, ongoing risk assessments to protect the safety of  
30 the victim and any children;

31 (2) Offender accountability for their acts of domestic violence  
32 as a central component of the program, requiring that offenders be  
33 held accountable for their behavior, and provided with services  
34 geared towards behavioral change;

35 (3) Information and education concerning the tactics of power  
36 and control and the understanding of domestic violence as a  
37 domination and control issue;

38 (4) A swift and certain compliance protocol, including a prompt  
39 and effective review by the court for noncompliance; and

40 (5) Regular reviews of the program and compliance audits by  
41 the courts and designated domestic violence advocacy groups.

42 This bill embodies recommendation 18 of the Report of the  
43 Supreme Court Ad Hoc Committee on Domestic Violence issued  
44 June 2016.