

ASSEMBLY, No. 3687

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman ANTHONY S. VERRELLI

District 15 (Hunterdon and Mercer)

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman McKnight

SYNOPSIS

Requires certain family or household members and victims be notified when firearms are returned to persons charged with domestic violence or subject to extreme risk protection order.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/22/2021)

1 AN ACT concerning certain returned and seized weapons and
2 amending P.L.1991, c.261 and P.L.2018, c.35.

3

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

6

7 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to
8 read as follows:

9 5. a. When a person claims to be a victim of domestic
10 violence, and where a law enforcement officer responding to the
11 incident finds probable cause to believe that domestic violence has
12 occurred, the law enforcement officer shall arrest the person who is
13 alleged to be the person who subjected the victim to domestic
14 violence and shall sign a criminal complaint if:

15 (1) The victim exhibits signs of injury caused by an act of
16 domestic violence;

17 (2) A warrant is in effect;

18 (3) There is probable cause to believe that the person has
19 violated N.J.S.2C:29-9, and there is probable cause to believe that
20 the person has been served with the order alleged to have been
21 violated. If the victim does not have a copy of a purported order,
22 the officer may verify the existence of an order with the appropriate
23 law enforcement agency; or

24 (4) There is probable cause to believe that a weapon as defined
25 in N.J.S.2C:39-1 has been involved in the commission of an act of
26 domestic violence.

27 b. A law enforcement officer may arrest a person; or may sign
28 a criminal complaint against that person, or may do both, where
29 there is probable cause to believe that an act of domestic violence
30 has been committed, but where none of the conditions in subsection
31 a. of this section applies.

32 c. (1) As used in this section, the word "exhibits" is to be
33 liberally construed to mean any indication that a victim has suffered
34 bodily injury, which shall include physical pain or any impairment
35 of physical condition. Where the victim exhibits no visible sign of
36 injury, but states that an injury has occurred, the officer should
37 consider other relevant factors in determining whether there is
38 probable cause to make an arrest.

39 (2) In determining which party in a domestic violence incident
40 is the victim where both parties exhibit signs of injury, the officer
41 should consider the comparative extent of the injuries, the history of
42 domestic violence between the parties, if any, and any other
43 relevant factors.

44 (3) No victim shall be denied relief or arrested or charged under
45 this act with an offense because the victim used reasonable force in
46 self defense against domestic violence by an attacker.

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 d. (1) In addition to a law enforcement officer's authority to
2 seize any weapon that is contraband, evidence or an instrumentality
3 of crime, a law enforcement officer who has probable cause to
4 believe that an act of domestic violence has been committed shall:

5 (a) question persons present to determine whether there are
6 weapons on the premises; and

7 (b) upon observing or learning that a weapon is present on the
8 premises, seize any weapon that the officer reasonably believes
9 would expose the victim to a risk of serious bodily injury. If a law
10 enforcement officer seizes any firearm pursuant to this paragraph,
11 the officer shall also seize any firearm purchaser identification card
12 or permit to purchase a handgun issued to the person accused of the
13 act of domestic violence.

14 (2) A law enforcement officer shall deliver all weapons,
15 firearms purchaser identification cards and permits to purchase a
16 handgun seized pursuant to this section to the county prosecutor and
17 shall append an inventory of all seized items to the domestic
18 violence report.

19 (3) Weapons seized in accordance with the "Prevention of
20 Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et
21 seq.) shall be returned to the owner except upon order of the
22 Superior Court. The prosecutor who has possession of the seized
23 weapons may, upon notice to the owner, petition a judge of the
24 Family Part of the Superior Court, Chancery Division, within 45
25 days of seizure, to obtain title to the seized weapons, or to revoke
26 any and all permits, licenses and other authorizations for the use,
27 possession, or ownership of such weapons pursuant to the law
28 governing such use, possession, or ownership, or may object to the
29 return of the weapons on such grounds as are provided for the initial
30 rejection or later revocation of the authorizations, or on the grounds
31 that the owner is unfit or that the owner poses a threat to the public
32 in general or a person or persons in particular.

33 A hearing shall be held and a record made thereof within 45 days
34 of the notice provided above. No formal pleading and no filing fee
35 shall be required as a preliminary to such hearing. The hearing
36 shall be summary in nature. Appeals from the results of the hearing
37 shall be to the Superior Court, Appellate Division, in accordance
38 with the law.

39 If the prosecutor does not institute an action within 45 days of
40 seizure, the seized weapons shall be returned to the owner.

41 After the hearing the court shall order the return of the firearms,
42 weapons and any authorization papers relating to the seized
43 weapons to the owner if the court determines the owner is not
44 subject to any of the disabilities set forth in **[N.J.S.2C:58-3c.]**
45 subsection c. of N.J.S.2C:58-3 and finds that the complaint has been
46 dismissed at the request of the complainant and the prosecutor
47 determines that there is insufficient probable cause to indict; or if
48 the defendant is found not guilty of the charges; or if the court

1 determines that the domestic violence situation no longer exists. At
2 least 10 days prior to returning the seized weapons, the prosecutor
3 shall notify each claimant or victim that the weapons will be
4 returned to the owner.

5 Nothing in this act shall impair the right of the State to retain
6 evidence pending a criminal prosecution. Nor shall any provision
7 of this act be construed to limit the authority of the State or a law
8 enforcement officer to seize, retain or forfeit property pursuant to
9 chapter 64 of Title 2C of the New Jersey Statutes.

10 If, after the hearing, the court determines that the weapons are
11 not to be returned to the owner, the court may:

12 (a) With respect to weapons other than firearms, order the
13 prosecutor to dispose of the weapons if the owner does not arrange
14 for the transfer or sale of the weapons to an appropriate person
15 within 60 days; or

16 (b) Order the revocation of the owner's firearms purchaser
17 identification card or any permit, license or authorization, in which
18 case the court shall order the owner to surrender any firearm seized
19 and all other firearms possessed to the prosecutor and shall order
20 the prosecutor to dispose of the firearms if the owner does not
21 arrange for the sale of the firearms to a registered dealer of the
22 firearms within 60 days; or

23 (c) Order such other relief as it may deem appropriate. When
24 the court orders the weapons forfeited to the State or the prosecutor
25 is required to dispose of the weapons, the prosecutor shall dispose
26 of the property as provided in N.J.S.2C:64-6.

27 (4) A civil suit may be brought to enjoin a wrongful failure to
28 return a seized firearm where the prosecutor refuses to return the
29 weapon after receiving a written request to do so and notice of the
30 owner's intent to bring a civil action pursuant to this section.
31 Failure of the prosecutor to comply with the provisions of this act
32 shall entitle the prevailing party in the civil suit to reasonable costs,
33 including attorney's fees, provided that the court finds that the
34 prosecutor failed to act in good faith in retaining the seized weapon.

35 (5) No law enforcement officer or agency shall be held liable in
36 any civil action brought by any person for failing to learn of, locate
37 or seize a weapon pursuant to this act, or for returning a seized
38 weapon to its owner.

39 (cf: P.L.2003, c.277, s.1)

40

41 2. Section 7 of P.L.2018, c.35 (C.2C:58-26) is amended to read
42 as follows:

43 7. a. When a temporary or final extreme risk protective order
44 is issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23
45 or C.2C:58-24), the court shall order the respondent to surrender to
46 the local law enforcement agency all firearms and ammunition in
47 the respondent's custody or control, or which the respondent owns
48 or possesses, and any firearms purchaser identification card, permit

1 to purchase a handgun, or permit to carry a handgun held by the
2 respondent. The court also shall notify the respondent that the
3 respondent is prohibited from purchasing firearms or ammunition or
4 applying for a firearms purchaser identification card, permit to
5 purchase a handgun, or permit to carry a handgun.

6 b. If the petition for the temporary extreme risk protective
7 order indicates that the respondent owns or possesses any firearms
8 or ammunition, the court shall issue a search warrant with the
9 temporary or final extreme risk protective order and the law
10 enforcement officer who serves the order shall request that all
11 firearms and ammunition immediately be surrendered.

12 (1) The respondent immediately shall surrender, in a safe
13 manner, all firearms and ammunition in the respondent's custody or
14 control, or which the respondent owns or possesses, and any
15 firearms purchaser identification card, permit to purchase a
16 handgun, or permit to carry a handgun held by the respondent to the
17 control of the law enforcement officer.

18 (2) The respondent may request that the law enforcement
19 agency sell all firearms and ammunition in a safe manner to a
20 federally licensed firearms dealer pursuant to section 8 of
21 P.L.2018, c.35 (C.2C:58-27).

22 (3) The law enforcement officer or licensed firearms dealer
23 taking possession of any firearms or ammunition pursuant to this
24 subsection shall issue a receipt identifying all firearms and
25 ammunition that have been surrendered by the respondent. The
26 officer or dealer shall provide a copy of the receipt to the
27 respondent at the time of surrender.

28 (4) If the respondent surrenders firearms and ammunition to a
29 law enforcement officer pursuant to paragraph (1) of this subsection
30 or surrenders or sells firearms and ammunition to a licensed dealer
31 pursuant to paragraph (2) of this subsection, the respondent shall,
32 within 48 hours after being served with the order, file the receipt
33 with the county prosecutor. Failure to timely file the receipt or
34 copy of the receipt shall constitute contempt of the order.

35 c. The court which issued the protective order may issue a
36 search warrant for a firearm or ammunition that is in the custody or
37 control of, owned, or possessed by a respondent who is subject to a
38 temporary or final protective order issued pursuant to section 4 or 5
39 of P.L.2018, c.35 (C.2C:58-23 or C.2C:58-24) if the respondent has
40 lawfully been served with that order and has failed to surrender the
41 firearm or ammunition as required by this section.

42 d. The respondent may petition the agency for the return of any
43 surrendered firearms or ammunition upon termination of an order
44 pursuant to section 6 of P.L.2018, c.35 (C.2C:58-25). Within 30
45 days of receiving a petition for the return of surrendered firearms or
46 ammunition and after the termination of the order, the agency shall
47 return the firearm or ammunition unless:

- 1 (1) the firearm has been reported as stolen; or
2 (2) the respondent is prohibited from possessing a firearm under
3 State or federal law.

4 At least 10 days prior to returning the firearms or ammunition,
5 the local law enforcement agency shall notify the family or
6 household member that the firearms or ammunition will be returned
7 to the owner. Nothing in this act shall prohibit revocation and
8 seizure of a person's firearms purchaser identification card, permit
9 to purchase a handgun, permit to carry a handgun, and weapons as
10 authorized pursuant to applicable law.

11 e. If a person other than the respondent claims title to any
12 firearm or ammunition surrendered pursuant to this section, and the
13 law enforcement agency determines that the person is the lawful
14 owner of the firearm or ammunition, the firearm or ammunition
15 shall be returned to that person.

16 f. If the respondent has surrendered a firearm or ammunition to
17 a federally licensed firearms dealer, after termination of the order,
18 the respondent may request the law enforcement agency, in writing,
19 to authorize the return of the firearm or ammunition from the
20 dealer. The dealer shall transfer the firearm or ammunition to the
21 respondent in accordance with procedures required when a firearm
22 or ammunition is being sold from the dealer's inventory in
23 accordance with N.J.S.2C:58-2.

24 (cf: P.L.2018, c.35, s.7)

25

26 3. This act shall take effect on the first day of the seventh
27 month following the date of enactment.

28

29

30

STATEMENT

31

32 This bill requires notification to be provided to victims when
33 seized or surrendered weapons are returned to a person charged
34 with domestic violence. The bill also requires notification to be
35 provided to family or household members who petitioned for an
36 extreme risk protection order when a seized firearm is returned to
37 the person after the order is terminated.

38 Under the "Prevention of Domestic Violence Act of 1991",
39 P.L.1991, c.261 (C.2C:25-17 et seq.), a law enforcement officer
40 may take possession of any weapons owned by a person charged
41 with domestic violence. The weapons are transferred to the county
42 prosecutor's office, which is required to determine within 45 days
43 whether to file for forfeiture of the weapons. The weapons are
44 returned if the forfeiture action is not filed within 45 days. A court
45 hearing a domestic violence case also is required to order the return
46 of the weapons when: 1) the complaint has been dismissed at the
47 request of the complainant and the prosecutor determines that there
48 is insufficient probable cause to indict; 2) the defendant is found not

1 guilty of the charges; or 3) the court determines that the domestic
2 violence situation no longer exists. This bill requires the prosecutor
3 to notify each claimant or victim that the seized or surrendered
4 weapons are to be returned to the defendant.

5 The “Extreme Risk Protective Order Act of 2018”,
6 P.L.2018, c.35 (C.2C:58-20 et seq.), allows a family or household
7 member to petition the Superior Court for an extreme risk
8 protective order (ERPO) against persons who pose a significant
9 danger of bodily injury to themselves or others by possessing or
10 purchasing a firearm. The ERPO prohibits the subject from
11 possessing or purchasing a firearm or ammunition and from holding
12 a firearms purchaser identification card, permit to purchase a
13 handgun, and permit to carry a handgun. A person who is subject to
14 the order is required to surrender his or her firearms or ammunition
15 to a law enforcement agency but may petition the agency for the
16 return of any surrendered firearms or ammunition upon termination
17 of the order. This bill requires the law enforcement agency to
18 notify the family or household members who petitioned for the
19 ERPO that the firearms or ammunition are to be returned.

20 The bill requires the notification to be provided at least 10 days
21 prior to returning the weapons or ammunition to persons who were
22 charged with domestic violence or subject to an ERPO.