

SENATE, No. 383

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Senator Corrado

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, c.261
12 (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, c.261
20 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff
21 or defendant in the domestic violence matter shall not be used in the
22 simultaneous or subsequent criminal proceeding against the
23 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. The order shall require the immediate surrender of any
12 firearm or other weapon belonging to the defendant. The order
13 shall include notice to the defendant of the penalties for a violation
14 of any provision of the order, including but not limited to the
15 penalties for contempt of court and unlawful possession of a firearm
16 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
39 P.L. , c. (C.) (pending before the Legislature as this bill),
40 from either a private source or a source appointed by the court and,
41 in that event, requiring the defendant to provide the court at
42 specified intervals with documentation of attendance at the
43 professional counseling. The court may order the defendant to pay
44 for the 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. The
32 court shall presume that the best interests of the child are served by
33 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, c.209
17 (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)

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

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

- 1 b. Offender accountability for their acts of domestic violence
2 as a central component of the program, requiring that offenders be
3 held accountable for their behavior, and provided with services
4 geared towards behavioral change;
- 5 c. Information and education concerning the tactics of power
6 and control and the understanding of domestic violence as a
7 domination and control issue;
- 8 d. A swift and certain compliance protocol, including a prompt
9 and effective review by the court for noncompliance; and
- 10 e. Regular reviews of the program and compliance audits by
11 the courts and designated domestic violence advocacy groups.
12
- 13 3. This act shall take effect immediately.
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16 STATEMENT
17

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

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

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

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

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

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

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

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