

[Second Reprint]

ASSEMBLY, No. 1078

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex)

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

Co-Sponsored by:

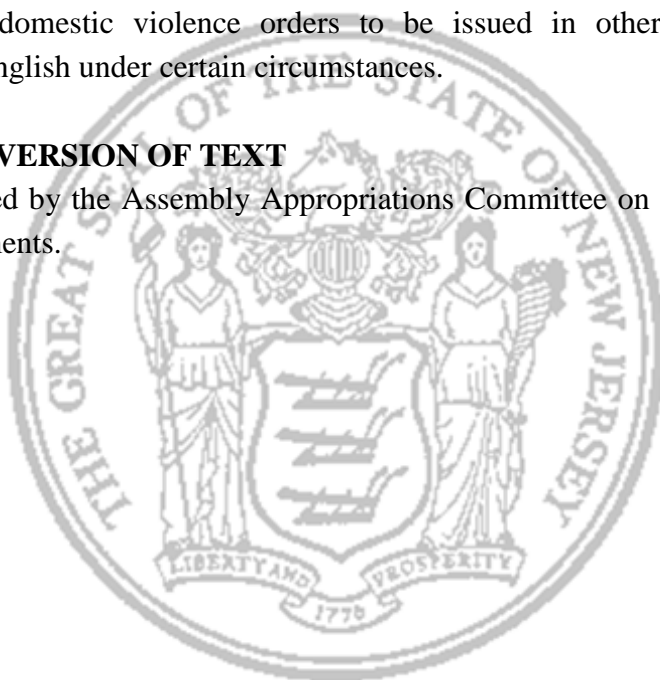
Assemblywoman Downey, Assemblyman Houghtaling, Assemblywomen Timberlake, Jimenez, Vainieri Huttle, Lopez, Tucker, Assemblyman Mejia, Assemblywomen Chaparro and Jasey

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 Appropriations Committee on May 18, 2021, with amendments.



(Sponsorship Updated As Of: 5/20/2021)

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 ²[up to]² 10 additional languages
13 commonly 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
43 read 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.

²Assembly AAP committee amendments adopted May 18, 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
4 Court. The court shall not dismiss any complaint or delay
5 disposition of a case because the victim has left the residence to
6 avoid further incidents of domestic violence. Filing a complaint
7 pursuant to this section shall not prevent the filing of a criminal
8 complaint for the same act.

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

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

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

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

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

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

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

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

1 f. A plaintiff may seek emergency, ex parte relief in the nature
2 of a temporary restraining order. A municipal court judge or a
3 judge of the Family Part of the Chancery Division of the Superior
4 Court may enter an ex parte order when necessary to protect the
5 life, health or well-being of a victim on whose behalf the relief is
6 sought.

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

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

20 (2) Any temporary restraining order¹ issued by a municipal
21 court judge¹ shall be issued in the primary language or languages
22 used by both the plaintiff and the defendant. ²The Administrative
23 Office of the Courts shall prepare standard temporary restraining
24 order forms in English, Spanish, and up to 10 additional languages
25 commonly spoken in the State, for use by¹ municipal court¹
26 judges in complying with the provisions of this paragraph.]²

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

42 j. Emergency relief may include forbidding the defendant from
43 returning to the scene of the domestic violence, forbidding the
44 defendant from possessing any firearm or other weapon enumerated
45 in subsection r. of N.J.S.2C:39-1, ordering the search for and
46 seizure of any firearm or other weapon at any location where the
47 judge has reasonable cause to believe the weapon is located and the

1 seizure of any firearms purchaser identification card or permit to
2 purchase a handgun issued to the defendant and any other
3 appropriate relief.

4 If the order requires the surrender of any firearm or other
5 weapon, a law enforcement officer shall accompany the defendant,
6 or may proceed without the defendant if necessary, to the scene of
7 the domestic violence or any other location where the judge has
8 reasonable cause to believe any firearm or other weapon belonging
9 to the defendant is located, to ensure that the defendant does not
10 gain access to any firearm or other weapon, and that the firearm or
11 other weapon is appropriately surrendered in accordance with the
12 order. If the order prohibits the defendant from returning to the
13 scene of domestic violence or any other location where the judge
14 has reasonable cause to believe any firearm or other weapon
15 belonging to the defendant is located, any firearm or other weapon
16 located there shall be seized by a law enforcement officer. The
17 order shall include notice to the defendant of the penalties for a
18 violation of any provision of the order, including but not limited to
19 the penalties for contempt of court and unlawful possession of a
20 firearm or other weapon pursuant to N.J.S.2C:39-5. Other
21 appropriate relief may include but is not limited to an order
22 directing the possession of any animal owned, possessed, leased,
23 kept, or held by either party or a minor child residing in the
24 household and providing that the animal shall not be disposed of
25 prior to entry of a final order pursuant to section 13 of P.L.1991,
26 c.261 (C.2C:25-29).

27 The judge shall state with specificity the reasons for and scope of
28 any search and seizure authorized by the order. The provisions of
29 this subsection prohibiting a defendant from possessing a firearm or
30 other weapon shall not apply to any law enforcement officer while
31 actually on duty, or to any member of the Armed Forces of the
32 United States or member of the National Guard while actually on
33 duty or traveling to or from an authorized place of duty.

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

38 l. An order granting emergency relief, together with the
39 complaint or complaints, shall immediately be forwarded to the
40 appropriate law enforcement agency for service on the defendant,
41 and to the police of the municipality in which the plaintiff resides or
42 is sheltered, and shall immediately be served upon the defendant
43 ¹along with a copy of the translated order, if applicable,¹ by the
44 police, except that an order issued during regular court hours may
45 be forwarded to the sheriff for immediate service upon the
46 defendant in accordance with the Rules of Court. If personal
47 service cannot be effected upon the defendant, the court may order

1 other appropriate substituted service. At no time shall the plaintiff
2 be asked or required to serve any order on the defendant.

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

4 n. Notice of temporary restraining orders issued pursuant to
5 this section shall be sent by the clerk of the court or other person
6 designated by the court to the appropriate chiefs of police, members
7 of the State Police and any other appropriate law enforcement
8 agency or court.

9 o. (Deleted by amendment, P.L.1994, c.94.)

10 p. Any temporary or final restraining order issued pursuant to
11 this act shall be in effect throughout the State, and shall be enforced
12 by all law enforcement officers.

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

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

18

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

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

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

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

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

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

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

47 (6) The existence of a verifiable order of protection from
48 another jurisdiction.

1 An order issued under this act shall only restrain or provide
2 damages payable from a person against whom a complaint has been
3 filed under this act and only after a finding or an admission is made
4 that an act of domestic violence was committed by that person. The
5 issue of whether or not a violation of this act occurred, including an
6 act of contempt under this act, shall not be subject to mediation or
7 negotiation in any form. In addition, where a temporary or final
8 order has been issued pursuant to this act, no party shall be ordered
9 to participate in mediation on the issue of custody or parenting time.

10 An order issued under this section shall be issued in the primary
11 language or languages used by both the plaintiff and the defendant.

12 ²[The Administrative Office of the Courts shall prepare standard
13 forms in English, Spanish, and up to 10 additional languages
14 commonly spoken in the State, for use by courts in complying with
15 the provisions of this subsection.]²

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

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

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

3 (2) An order granting exclusive possession to the plaintiff of the
4 residence or household regardless of whether the residence or
5 household is jointly or solely owned by the parties or jointly or
6 solely leased by the parties. This order shall not in any manner
7 affect title or interest to any real property held by either party or
8 both jointly. If it is not possible for the victim to remain in the
9 residence, the court may order the defendant to pay the victim's rent
10 at a residence other than the one previously shared by the parties if
11 the defendant is found to have a duty to support the victim and the
12 victim requires alternative housing.

13 (3) An order providing for parenting time. The order shall
14 protect the safety and well-being of the plaintiff and minor children
15 and shall specify the place and frequency of parenting time.
16 Parenting time arrangements shall not compromise any other
17 remedy provided by the court by requiring or encouraging contact
18 between the plaintiff and defendant. Orders for parenting time may
19 include a designation of a place of parenting time away from the
20 plaintiff, the participation of a third party, or supervised parenting
21 time.

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

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

34 (4) An order requiring the defendant to pay to the victim
35 monetary compensation for losses suffered as a direct result of the
36 act of domestic violence. The order may require the defendant to
37 pay the victim directly, to reimburse the Victims of Crime
38 Compensation Office for any and all compensation paid by the
39 Victims of Crime Compensation Office directly to or on behalf of
40 the victim, and may require that the defendant reimburse any parties
41 that may have compensated the victim, as the court may determine.
42 Compensatory losses shall include, but not be limited to, loss of
43 earnings or other support, including child or spousal support, out-
44 of-pocket losses for injuries sustained, cost of repair or replacement
45 of real or personal property damaged or destroyed or taken by the
46 defendant, cost of counseling for the victim, moving or other travel
47 expenses, reasonable attorney's fees, court costs, and compensation

1 for pain and suffering. Where appropriate, punitive damages may be
2 awarded in addition to compensatory damages.

3 (5) An order requiring the defendant to receive professional
4 domestic violence counseling from either a private source or a
5 source appointed by the court and, in that event, requiring the
6 defendant to provide the court at specified intervals with
7 documentation of attendance at the professional counseling. The
8 court may order the defendant to pay for the professional
9 counseling. No application by the defendant to dissolve a final
10 order which contains a requirement for attendance at professional
11 counseling pursuant to this paragraph shall be granted by the court
12 unless, in addition to any other provisions required by law or
13 conditions ordered by the court, the defendant has completed all
14 required attendance at such counseling.

15 (6) An order restraining the defendant from entering the
16 residence, property, school, or place of employment of the victim or
17 of other family or household members of the victim and requiring
18 the defendant to stay away from any specified place that is named
19 in the order and is frequented regularly by the victim or other
20 family or household members.

21 (7) An order restraining the defendant from making contact with
22 the plaintiff or others, including an order forbidding the defendant
23 from personally or through an agent initiating any communication
24 likely to cause annoyance or alarm including, but not limited to,
25 personal, written, or telephone contact with the victim or other
26 family members, or their employers, employees, or fellow workers,
27 or others with whom communication would be likely to cause
28 annoyance or alarm to the victim.

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

35 (9) An order granting either party temporary possession of
36 specified personal property, such as an automobile, checkbook,
37 documentation of health insurance, an identification document, a
38 key, and other personal effects.

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

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

46 (12) An order requiring that a law enforcement officer
47 accompany either party to the residence or any shared business
48 premises to supervise the removal of personal belongings in order

1 to ensure the personal safety of the plaintiff when a restraining
2 order has been issued. This order shall be restricted in duration.

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

4 (14) An order granting any other appropriate relief for the
5 plaintiff and dependent children, provided that the plaintiff consents
6 to such relief, including relief requested by the plaintiff at the final
7 hearing, whether or not the plaintiff requested such relief at the time
8 of the granting of the initial emergency order.

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

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

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

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

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

36 c. Notice of orders issued pursuant to this section shall be sent
37 by the clerk of the Family Part of the Chancery Division of the
38 Superior Court or other person designated by the court to the
39 appropriate chiefs of police, members of the State Police and any
40 other appropriate law enforcement agency.

41 d. Upon good cause shown, any final order may be dissolved or
42 modified upon application to the Family Part of the Chancery
43 Division of the Superior Court, but only if the judge who dissolves
44 or modifies the order is the same judge who entered the order, or
45 has available a complete record of the hearing or hearings on which
46 the order was based.

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

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

5

6 4. This act shall take effect on the 120th day following
7 enactment.