

[First Reprint]

ASSEMBLY, No. 3687

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

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Assemblywomen Jasey, Lampitt, Assemblymen Freiman, Johnson,
Houghtaling, Conaway, Calabrese, Tully, Senators Diegnan and Ruiz**

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 amended by the General Assembly on March 1, 2021.

(Sponsorship Updated As Of: 12/20/2021)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 1, 2021.

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 as
42 follows:

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

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

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

18 (2) The respondent may request that the law enforcement agency
19 sell all firearms and ammunition in a safe manner to a federally
20 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 taking
23 possession of any firearms or ammunition pursuant to this subsection
24 shall issue a receipt identifying all firearms and ammunition that have
25 been surrendered by the respondent. The officer or dealer shall
26 provide a copy of the receipt to the respondent at the time of surrender.

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

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

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

47 (1) the firearm has been reported as stolen; or

1 (2) the respondent is prohibited from possessing a firearm under
2 State or federal law.

3 At least 10 days prior to returning the firearms or ammunition, the
4 local law enforcement agency shall notify the family or household
5 member that the firearms or ammunition will be returned to the owner.

6 ¹If the firearms or ammunition were seized by the State Police, the
7 county prosecutor's office where the protective order is venued shall
8 notify the family or household member that the firearms or
9 ammunition will be returned to the owner.¹ Nothing in this act shall

10 prohibit revocation and seizure of a person's firearms purchaser
11 identification card, permit to purchase a handgun, permit to carry a
12 handgun, and weapons as authorized pursuant to applicable law.

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

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

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

27

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