

SENATE, No. 2483

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED AUGUST 1, 2016

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator JENNIFER BECK

District 11 (Monmouth)

Co-Sponsored by:

Senators T.Kean, Allen, Addiego and Bateman

SYNOPSIS

Enhances protections for domestic violence victims by restricting access to firearms by certain persons; provides for minimum terms of incarceration for offenders who commit physically violent acts.

CURRENT VERSION OF TEXT

As introduced.



S2483 WEINBERG, BECK

2

1 AN ACT concerning domestic violence and firearms, amending
2 P.L.1991, c.261, and supplementing Title 2C of the New Jersey
3 Statutes.

4

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

7

8 1. Section 11 of P.L.1991, c.261 (C:2C:25-27) is amended to
9 read as follows:

10 11. a. When a defendant is found guilty of a crime or offense
11 involving domestic violence and a condition of sentence restricts
12 the defendant's ability to have contact with the victim, the victim's
13 friends, co-workers, or relatives, or an animal owned, possessed,
14 leased, kept, or held by either party or a minor child residing in the
15 household, that condition shall be recorded in an order of the court
16 and a written copy of that order shall be provided to the victim by
17 the clerk of the court or other person designated by the court. In
18 addition to restricting a defendant's ability to have contact with the
19 victim, the victim's friends, co-workers, or relatives, or an animal
20 owned, possessed, leased, kept, or held by either party or a minor
21 child residing in the household, the court may require the defendant
22 to receive professional counseling from either a private source or a
23 source appointed by the court, and if the court so orders, the court
24 shall require the defendant to provide documentation of attendance
25 at the professional counseling. In any case where the court order
26 contains a requirement that the defendant receive professional
27 counseling, no application by the defendant to dissolve the
28 restraining order shall be granted unless, in addition to any other
29 provisions required by law or conditions ordered by the court, the
30 defendant has completed all required attendance at such counseling.

31 b. In addition the court may enter an order directing the
32 possession of an animal owned, possessed, leased, kept, or held by
33 either party or a minor child residing in the household. Where a
34 person has abused or threatened to abuse such animal, there shall be
35 a presumption that possession of the animal shall be awarded to the
36 non-abusive party.

37 c. (1) When a defendant is found guilty of a crime or offense
38 involving domestic violence, the court shall inform the defendant
39 that the defendant is prohibited from purchasing, owning,
40 possessing, or controlling a firearm pursuant to section 6 of
41 P.L.1979, c.179 (C.2C:39-7) and from receiving or retaining a
42 firearms purchaser identification card or permit to purchase a
43 handgun pursuant to N.J.S.2C:58-3. The court shall order the
44 defendant to arrange for the immediate surrender to a law
45 enforcement officer of any firearm that has not already been seized

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 or surrendered and any firearms purchaser identification card or
2 permit to purchase a handgun possessed by the defendant. No later
3 than five business days after the order is entered, however, the
4 defendant may arrange to sell any surrendered firearm to a licensed
5 retail dealer of firearms who shall be authorized to take possession
6 of that purchased firearm from the law enforcement agency to
7 which it was surrendered no later than 10 business days after the
8 order is entered. Any card or permit issued to the defendant shall be
9 deemed immediately revoked. The court shall establish a process
10 for notifying the appropriate authorities of the conviction requiring
11 the revocation of the card or permit. A law enforcement officer
12 accepting a surrendered firearm shall provide the defendant with a
13 receipt listing the date of surrender, the name of the defendant, and
14 any item that has been surrendered, including the serial number,
15 manufacturer, and model of the surrendered firearm. The defendant
16 shall provide a copy of this receipt to the prosecutor within 48 hours
17 of service of the order, and shall attest under penalty that any
18 firearms owned or possessed at the time of the order have been
19 transferred in accordance with this section and that the defendant
20 currently does not possess any firearms. The defendant alternatively
21 may attest under penalty that he did not own or possess a firearm at
22 the time of the order and currently does not possess a firearm. If
23 the court, upon motion of the prosecutor, finds probable cause that
24 the defendant has failed to surrender any firearm, card, or permit,
25 the court may order a search for and removal of these items at any
26 location where the judge has reasonable cause to believe these items
27 are located. The judge shall state with specificity the reasons for
28 and the scope of the search and seizure authorized by the order.

29 (2) A law enforcement officer who receives a firearm that is
30 surrendered, but not purchased and taken possession of by a
31 licensed retail dealer of firearms within 10 business days of when
32 the order is entered pursuant to paragraph (1) of this subsection,
33 may dispose of the surrendered firearm in accordance with the
34 provisions of N.J.S.2C:64-6. A firearm purchased by a licensed
35 retail dealer from a defendant shall become part of the inventory of
36 the dealer.

37 (cf: P.L.2011, c.213, s.2)

38

39 2. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to
40 read as follows:

41 12. a. A victim may file a complaint alleging the commission of
42 an act of domestic violence with the Family Part of the Chancery
43 Division of the Superior Court in conformity with the Rules of
44 Court. The court shall not dismiss any complaint or delay
45 disposition of a case because the victim has left the residence to
46 avoid further incidents of domestic violence. Filing a complaint
47 pursuant to this section shall not prevent the filing of a criminal
48 complaint for the same act.

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

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

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

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

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

28 (3) Information provided by the plaintiff concerning firearms to
29 which the defendant has access shall be kept confidential and shall
30 not be disseminated or disclosed, provided that nothing in this
31 subsection shall prohibit dissemination or disclosure of this
32 information in a manner consistent with and in furtherance of the
33 purpose for which the information was provided.

34 d. Summons and complaint forms shall be readily available at
35 the clerk's office, at the municipal courts and at municipal and State
36 police stations.

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

40 f. A plaintiff may seek emergency, ex parte relief in the nature
41 of a temporary restraining order. A municipal court judge or a
42 judge of the Family Part of the Chancery Division of the Superior
43 Court may enter an ex parte order when necessary to protect the
44 life, health or well-being of a victim on whose behalf the relief is
45 sought.

46 g. If it appears that the plaintiff is in danger of domestic
47 violence, the judge shall, upon consideration of the plaintiff's
48 domestic violence complaint, order emergency ex parte relief, in the

1 nature of a temporary restraining order. A decision shall be made
2 by the judge regarding the emergency relief forthwith.

3 h. A judge may issue a temporary restraining order upon sworn
4 testimony or complaint of an applicant who is not physically
5 present, pursuant to court rules, or by a person who represents a
6 person who is physically or mentally incapable of filing personally.
7 A temporary restraining order may be issued if the judge is satisfied
8 that exigent circumstances exist sufficient to excuse the failure of
9 the applicant to appear personally and that sufficient grounds for
10 granting the application have been shown.

11 i. An order for emergency, ex parte relief shall be granted
12 upon good cause shown and shall remain in effect until a judge of
13 the Family Part issues a further order. Any temporary order
14 hereunder is immediately appealable for a plenary hearing de novo
15 not on the record before any judge of the Family Part of the county
16 in which the plaintiff resides or is sheltered if that judge issued the
17 temporary order or has access to the reasons for the issuance of the
18 temporary order and sets forth in the record the reasons for the
19 modification or dissolution. The denial of a temporary restraining
20 order by a municipal court judge and subsequent administrative
21 dismissal of the complaint shall not bar the victim from refiling a
22 complaint in the Family Part based on the same incident and
23 receiving an emergency, ex parte hearing de novo not on the record
24 before a Family Part judge, and every denial of relief by a
25 municipal court judge shall so state.

26 j. Emergency relief may include forbidding the defendant from
27 returning to the scene of the domestic violence, forbidding the
28 defendant from possessing any firearm or other weapon enumerated
29 in subsection r. of N.J.S.2C:39-1, ordering the search for and
30 seizure of any **[such]** firearm or other weapon at any location
31 where the judge has reasonable cause to believe the weapon is
32 located and the seizure of any firearms purchaser identification card
33 or permit to purchase a handgun issued to the defendant and any
34 other appropriate relief.

35 If the order requires the surrender of any firearm or other
36 weapon, a law enforcement officer shall accompany the defendant,
37 or may proceed without the defendant if necessary, to the scene of
38 the domestic violence or any other location where the judge has
39 reasonable cause to believe any firearm or other weapon belonging
40 to the defendant is located, to ensure that the defendant does not
41 gain access to any firearm or other weapon, and that the firearm or
42 other weapon is appropriately surrendered in accordance with the
43 order. If the order prohibits the defendant from returning to the
44 scene of domestic violence or any other location where the judge
45 has reasonable cause to believe any firearm or other weapon
46 belonging to the defendant is located, any firearm or other weapon
47 located there shall be seized by a law enforcement officer. The
48 order shall include notice to the defendant of the penalties for a

1 violation of any provision of the order, including but not limited to
2 the penalties for contempt of court and unlawful possession of a
3 firearm or other weapon pursuant to N.J.S.2C:39-5. Other
4 appropriate relief may include but is not limited to an order
5 directing the possession of any animal owned, possessed, leased,
6 kept, or held by either party or a minor child residing in the
7 household and providing that the animal shall not be disposed of
8 prior to entry of a final order pursuant to section 13 of P.L.1991,
9 c.261 (C.2C:25-29).

10 The judge shall state with specificity the reasons for and scope of
11 any search and seizure authorized by the order. The provisions of
12 this subsection prohibiting a defendant from possessing a firearm or
13 other weapon shall not apply to any law enforcement officer while
14 actually on duty, or to any member of the Armed Forces of the
15 United States or member of the National Guard while actually on
16 duty or traveling to or from an authorized place of duty.

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

21 l. An order granting emergency relief, together with the
22 complaint or complaints, shall immediately be forwarded to the
23 appropriate law enforcement agency for service on the defendant,
24 and to the police of the municipality in which the plaintiff resides or
25 is sheltered, and shall immediately be served upon the defendant by
26 the police, except that an order issued during regular court hours
27 may be forwarded to the sheriff for immediate service upon the
28 defendant in accordance with the Rules of Court. If personal
29 service cannot be effected upon the defendant, the court may order
30 other appropriate substituted service. At no time shall the plaintiff
31 be asked or required to serve any order on the defendant.

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

33 n. Notice of temporary restraining orders issued pursuant to
34 this section shall be sent by the clerk of the court or other person
35 designated by the court to the appropriate chiefs of police, members
36 of the State Police and any other appropriate law enforcement
37 agency or court.

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

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

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

46 (cf: P.L.2011, c.213, s.3)

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

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

22 (1) The previous history of domestic violence between the
23 plaintiff and defendant, including threats, harassment and physical
24 abuse;

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

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

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

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

30 (6) The existence of a verifiable order of protection from
31 another jurisdiction.

32 An order issued under this act shall only restrain or provide
33 damages payable from a person against whom a complaint has been
34 filed under this act and only after a finding or an admission is made
35 that an act of domestic violence was committed by that person. The
36 issue of whether or not a violation of this act occurred, including an
37 act of contempt under this act, shall not be subject to mediation or
38 negotiation in any form. In addition, where a temporary or final
39 order has been issued pursuant to this act, no party shall be ordered
40 to participate in mediation on the issue of custody or parenting time.

41 b. In proceedings in which complaints for restraining orders
42 have been filed, the court shall grant any relief necessary to prevent
43 further abuse. In addition to any other provisions, any restraining
44 order issued by the court shall bar the defendant from purchasing,
45 owning, possessing or controlling a firearm and from receiving or
46 retaining a firearms purchaser identification card or permit to
47 purchase a handgun pursuant to N.J.S.2C:58-3 during the period in
48 which the restraining order is in effect or two years, whichever is

1 greater~~], except that this provision]~~. The order shall require the
2 immediate surrender of any firearm or other weapon belonging to
3 the defendant. The order shall include notice to the defendant of
4 the penalties for a violation of any provision of the order, including
5 but not limited to the penalties for contempt of court and unlawful
6 possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

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

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

27 (2) An order granting exclusive possession to the plaintiff of the
28 residence or household regardless of whether the residence or
29 household is jointly or solely owned by the parties or jointly or
30 solely leased by the parties. This order shall not in any manner
31 affect title or interest to any real property held by either party or
32 both jointly. If it is not possible for the victim to remain in the
33 residence, the court may order the defendant to pay the victim's rent
34 at a residence other than the one previously shared by the parties if
35 the defendant is found to have a duty to support the victim and the
36 victim requires alternative housing.

37 (3) An order providing for parenting time. The order shall
38 protect the safety and well-being of the plaintiff and minor children
39 and shall specify the place and frequency of parenting time.
40 Parenting time arrangements shall not compromise any other
41 remedy provided by the court by requiring or encouraging contact
42 between the plaintiff and defendant. Orders for parenting time may
43 include a designation of a place of parenting time away from the
44 plaintiff, the participation of a third party, or supervised parenting
45 time.

46 (a) The court shall consider a request by a custodial parent who
47 has been subjected to domestic violence by a person with parenting
48 time rights to a child in the parent's custody for an investigation or

1 evaluation by the appropriate agency to assess the risk of harm to
2 the child prior to the entry of a parenting time order. Any denial of
3 such a request must be on the record and shall only be made if the
4 judge finds the request to be arbitrary or capricious.

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

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

26 (5) An order requiring the defendant to receive professional
27 domestic violence counseling from either a private source or a
28 source appointed by the court and, in that event, requiring the
29 defendant to provide the court at specified intervals with
30 documentation of attendance at the professional counseling. The
31 court may order the defendant to pay for the professional
32 counseling. No application by the defendant to dissolve a final
33 order which contains a requirement for attendance at professional
34 counseling pursuant to this paragraph shall be granted by the court
35 unless, in addition to any other provisions required by law or
36 conditions ordered by the court, the defendant has completed all
37 required attendance at such counseling.

38 (6) An order restraining the defendant from entering the
39 residence, property, school, or place of employment of the victim or
40 of other family or household members of the victim and requiring
41 the defendant to stay away from any specified place that is named
42 in the order and is frequented regularly by the victim or other
43 family or household members.

44 (7) An order restraining the defendant from making contact with
45 the plaintiff or others, including an order forbidding the defendant
46 from personally or through an agent initiating any communication
47 likely to cause annoyance or alarm including, but not limited to,
48 personal, written, or telephone contact with the victim or other

1 family members, or their employers, employees, or fellow workers,
2 or others with whom communication would be likely to cause
3 annoyance or alarm to the victim.

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

10 (9) An order granting either party temporary possession of
11 specified personal property, such as an automobile, checkbook,
12 documentation of health insurance, an identification document, a
13 key, and other personal effects.

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

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

21 (12) An order requiring that a law enforcement officer
22 accompany either party to the residence or any shared business
23 premises to supervise the removal of personal belongings in order
24 to ensure the personal safety of the plaintiff when a restraining
25 order has been issued. This order shall be restricted in duration.

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

27 (14) An order granting any other appropriate relief for the
28 plaintiff and dependent children, provided that the plaintiff consents
29 to such relief, including relief requested by the plaintiff at the final
30 hearing, whether or not the plaintiff requested such relief at the time
31 of the granting of the initial emergency order.

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

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

43 (17) An order prohibiting the defendant from stalking or
44 following, or threatening to harm, to stalk or to follow, the
45 complainant or any other person named in the order in a manner
46 that, taken in the context of past actions of the defendant, would put
47 the complainant in reasonable fear that the defendant would cause
48 the death or injury of the complainant or any other person.

1 Behavior prohibited under this act includes, but is not limited to,
2 behavior prohibited under the provisions of P.L.1992, c.209
3 (C.2C:12-10).

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

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

11 c. Notice of orders issued pursuant to this section shall be sent
12 by the clerk of the Family Part of the Chancery Division of the
13 Superior Court or other person designated by the court to the
14 appropriate chiefs of police, members of the State Police and any
15 other appropriate law enforcement agency.

16 d. Upon good cause shown, any final order may be dissolved or
17 modified upon application to the Family Part of the Chancery
18 Division of the Superior Court, but only if the judge who dissolves
19 or modifies the order is the same judge who entered the order, or
20 has available a complete record of the hearing or hearings on which
21 the order was based.

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

25 (cf: P.L.2011, c.213, s.4)

26

27 4. (New section) a. Notwithstanding the provisions of
28 subsection f. of N.J.S.2C:44-1, a person convicted of any of the
29 following crimes of domestic violence, as defined in section 3 of
30 P.L.1991, c.261 (C.2C:25-19), shall be sentenced in accordance
31 with subsection b. of this section:

32 (1) Homicide, pursuant to N.J.S.2C:11-1 et seq.;

33 (2) Aggravated assault, pursuant to paragraph (1), (2), (3), (4),
34 (6), (7) or (8) of subsection b. of N.J.S.2C:12-1;

35 (3) Assault by auto or vessel, pursuant to subsection c. of
36 N.J.S.2C:12-1;

37 (4) Kidnapping, pursuant to N.J.S.2C:13-1;

38 (5) Criminal restraint, pursuant to N.J.S.2C:13-2;

39 (6) Sexual assault, pursuant to N.J.S.2C:14-2; or

40 (7) Criminal sexual contact, pursuant to N.J.S.2C:14-3.

41 b. (1) Unless the provisions of any other law provide for a
42 higher mandatory minimum term of imprisonment, a person
43 convicted of a crime of domestic violence set forth in subsection a.
44 of this section shall be sentenced to a term of imprisonment as
45 follows: for a second or subsequent crime of the fourth degree set
46 forth in subsection a. of this section, 18 months; for a second or
47 subsequent crime of the third degree set forth in subsection a. of

1 this section, five years; for a crime of the second degree, 10 years;
2 and for a crime of the first degree, 20 years.

3 (2) The term of imprisonment imposed pursuant to paragraph (1)
4 of this subsection shall include the imposition of a minimum term.
5 The minimum term shall be fixed at one-half of the sentence
6 imposed by the court or 42 months, whichever is greater, or 18
7 months in the case of a fourth degree crime, during which the
8 defendant shall be ineligible for parole.

9
10 5. This act shall take effect on the first day of the seventh month
11 next following enactment.

12

13

14

STATEMENT

15

16 This bill enhances protections for domestic violence victims by
17 restricting access to firearms by a person convicted of a domestic
18 violence crime or subject to a domestic violence restraining order.

19 Specifically, the bill requires the sentencing court to inform
20 defendants convicted of a domestic violence crime or offense that
21 they are prohibited from possessing a firearm, or obtaining a
22 firearms purchaser identification card or permit to purchase a
23 handgun. The bill also requires the court to order the defendant to
24 arrange for the immediate surrender of firearms, firearms purchaser
25 identification cards, and permits to purchase a handgun to a law
26 enforcement officer. The bill allows the defendant five days after
27 conviction to arrange to sell a surrendered firearm to a licensed
28 firearms dealer; the dealer has 10 days after the date of the order to
29 take possession of the firearm from the law enforcement agency to
30 which it was surrendered. If the firearm is not purchased by a retail
31 dealer within 10 days, it is subject to forfeiture; if it is purchased by
32 a dealer, it becomes part of the dealer's inventory.

33 The bill requires any identification card and permit that has been
34 issued to a connected defendant to be immediately revoked and
35 requires the court to establish a process for notifying the
36 appropriate authorities of the revocation. It also requires a law
37 enforcement officer to whom weapons are surrendered to provide
38 the defendant with a receipt naming the defendant, the surrender
39 date, and description of a surrendered item, and requiring the
40 defendant to provide a copy of the receipt to the prosecutor within
41 48 hours. Defendants are required by the bill to attest under penalty
42 that they surrendered or do not possess a firearm. The court is
43 permitted to order a search for and removal of firearms if there is
44 probable cause that the defendant has failed to surrender firearms
45 and is required to state with specificity the reasons for and the
46 scope of the search and seizure.

47 The bill also protects domestic violence victims by specifying
48 that the plaintiff may provide information concerning firearms to

1 which the defendant has access, including the location of these
2 firearms, if known, on a form to be prescribed by the
3 Administrative Director of the Courts. The form is to also clarify
4 the confidential nature of this information.

5 Under the bill, an order for a temporary or final restraining order
6 is to include notice to the defendant of the penalties for a violation
7 of any provision of the order, including but not limited to the
8 penalties for contempt of court and unlawful possession of a firearm
9 or other weapon.

10 Further, when a temporary restraining order requires the
11 surrender of any firearm or other weapon and when a final
12 restraining order is issued, the bill requires a law enforcement
13 officer to accompany the defendant or proceed without the
14 defendant if necessary to where the firearm or other weapon is
15 located to ensure that the items are appropriately surrendered in
16 accordance with the order. If the order prohibits the defendant from
17 returning to a location where firearms or other weapons are located,
18 any firearm or other weapon located there will be seized by a law
19 enforcement officer.

20 Finally, the bill further strengthens protections for victims of
21 domestic violence by providing mandatory minimum terms of
22 incarceration, with set periods of parole ineligibility, for offenders
23 who commit physically violent acts.

24 Under the provisions of the bill, a person convicted of any of the
25 following crimes of domestic violence would be subject to the
26 enhanced penalties provided in the bill:

- 27 (1) Homicide, pursuant to N.J.S.2C:11-1 et seq.;
- 28 (2) Aggravated assault and assault by auto or vessel pursuant to
29 subsection b. and c. of N.J.S.2C:12-1;
- 30 (3) Kidnapping, pursuant to N.J.S.2C:13-1;
- 31 (4) Criminal restraint, pursuant to N.J.S.2C:13-2;
- 32 (5) Sexual assault, pursuant to N.J.S.2C:14-2; and
- 33 (6) Criminal sexual contact, pursuant to N.J.S.2C:14-3.

34 The bill provides that a person will be sentenced to a term of
35 imprisonment as follows: 18 months for a second or subsequent
36 crime of the fourth degree, five years for a second or subsequent
37 crime of the third degree, 10 years for a crime of the second degree,
38 and 20 years for a crime of the first degree, unless the provisions of
39 any other law provide for a higher mandatory minimum term.

40 The court additionally will impose a period of parole ineligibility
41 as follows: 18 months for a crime of the fourth degree, 42 months
42 for a crime of the third degree, five years for a crime of the second
43 degree, and 10 years for a crime of the first degree.