

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

ASSEMBLY, No. 4026

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

SYNOPSIS

Amends the "Drug Offender Restraining Order Act of 1999" and appropriates \$95,000 to the Administrative Office of the Courts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning restraining orders for certain offenders, amending
2 and supplementing P.L.1999, c.334 and making an appropriation.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read
8 as follows:

9 3. Definitions.

10 As used in this act:

11 a. "Person" means any person charged with or convicted of a
12 criminal offense or any juvenile charged with delinquency or
13 adjudicated delinquent for an act which, if committed by an adult,
14 would be a criminal offense.

15 b. "Place" includes any premises, residence, business establishment,
16 location or specified area including all buildings and all appurtenant
17 land, in which or at which a criminal offense occurred or is alleged to
18 have occurred or is affected by the criminal offense with which the
19 person is charged. "Place" does not include public rail, bus or air
20 transportation lines or limited access highways which do not allow
21 pedestrian access.

22 c. "Criminal offense" means:

23 (1) an offense that involves the manufacturing, distributing, selling
24 or possessing with intent to distribute a controlled dangerous
25 substance pursuant to any of the following: N.J.S.2C:35-3,
26 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8,
27 N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of
28 P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101
29 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

30 (2) the unlawful possession or use of an assault firearm as defined
31 in subsection w. of N.J.S.2C:39-1.

32 (cf: P.L.1999, c.334, s.3)

33

34 2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read
35 as follows:

36 Issuance of order by court.

37 4. a. When a person is charged with a criminal offense on a
38 warrant and the person is released from custody before trial on bail or
39 personal recognizance[, or is released to the custody of a parent,
40 guardian, custodian or public or private agency], the court, upon
41 application of a law enforcement officer or prosecuting attorney
42 pursuant to section 3 of P.L. , c. (C.) (now pending before the
43 Legislature as this bill) and except as provided in subsection e. of this

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 section, shall as a condition of release [and except as provided in
2 subsection c. of this section, shall] issue an order prohibiting the
3 person from entering any place defined by subsection b. of section 3
4 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
5 the place or modifications as provided by subsection f. of this section.

6 b. When a person is [convicted of or adjudicated delinquent for
7 any criminal offense, the court, in addition to any other disposition
8 authorized by law and except as provided in subsection c. of this
9 section, shall issue an order prohibiting the person from entering any
10 place defined by subsection b. of section 3 of P.L.1999, c.334
11 (C.2C:35-5.6).

12 c.] charged with a criminal offense on a summons, the court, upon
13 application of a law enforcement officer or prosecuting attorney
14 pursuant to section 3 of P.L. , c. (C.) (now pending before the
15 Legislature as this bill) and except as provided in subsection e. of this
16 section, shall, at the time of the defendant's first appearance, issue an
17 order prohibiting the person from entering any place defined by
18 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
19 a buffer zone surrounding the place or modifications as provided by
20 subsection f. of this section.

21 c. When a person is charged with a criminal offense on a juvenile
22 delinquency complaint and is released from custody at a detention
23 hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the
24 court, upon application of a law enforcement officer or prosecuting
25 attorney pursuant to section 3 of P.L. , c. (C.) (now pending
26 before the Legislature as this bill) and except as provided in subsection
27 e. of this section, shall issue an order prohibiting the person from
28 entering any place defined by subsection b. of section 3 of P.L.1999,
29 c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or
30 modifications as provided by subsection f. of this section.

31 d. When a person is charged with a criminal offense on a juvenile
32 delinquency complaint and is released without being detained pursuant
33 to sections 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35),
34 the law enforcement officer or prosecuting attorney shall prepare an
35 application pursuant to section 3 of P.L. , c. (C.) (now pending
36 before the Legislature as this bill) for filing on the next court day.

37 The law enforcement officer releasing the juvenile shall serve the
38 juvenile and his parent or guardian with written notice that an order
39 shall be issued by the Family Part of the Superior Court on the next
40 court day prohibiting the juvenile from entering any place defined by
41 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
42 a buffer zone surrounding the place or modifications as provided by
43 subsection f. of this section.

44 The court shall issue such order on the first court day following the
45 release of the juvenile. If the restraints contained in the court order
46 differ from the restraints contained in the notice, the order shall not be

1 effective until the third court day following the issuance of the order.
2 The juvenile may apply to the court to stay or modify the order on the
3 grounds set forth in subsection e. of this section.

4 e. The court may forego issuing a restraining order for which
5 application has been made pursuant to section 3 of P.L. , c. (C.)
6 (now pending before the Legislature as this bill) only if the defendant
7 establishes by clear and convincing evidence that:

8 (1) the defendant lawfully resides at or has legitimate business on
9 or near the place, or otherwise legitimately needs to enter the place.
10 In such an event, the court shall not issue an order pursuant to this
11 section unless the court is clearly convinced that the need to bar the
12 person from the place in order to protect the public safety and the
13 rights, safety and health of the residents and persons working in the
14 place outweighs the person's interest in returning to the place. If the
15 balance of the interests of the person and the public so warrants, the
16 court may issue an order imposing conditions upon the person's entry
17 at, upon or near the place; or

18 (2) the issuance of an order would cause undue hardship to
19 innocent persons and would constitute a serious injustice which
20 overrides the need to protect the rights, safety and health of persons
21 residing in or having business in the place.

22 [d.] f. A restraining order issued pursuant to subsection a. [or],
23 b., c., d. or h. of this section shall describe the place from which the
24 person has been barred and any conditions upon the person's entry into
25 the place, with sufficient specificity to enable the person to guide his
26 conduct accordingly and to enable a law enforcement officer to
27 enforce the order. The order shall also prohibit the person from
28 entering an area of up to 500 feet surrounding the place, unless the
29 court rules that a different buffer zone would better effectuate the
30 purposes of this act. In the discretion of the court, the order may
31 contain modifications to permit the person to enter the area during
32 specified times for specified purposes, such as attending school during
33 regular school hours. When appropriate, the court may append to the
34 order a map depicting the place. The person shall be given a copy of
35 the restraining order and any appended map and shall acknowledge in
36 writing the receipt thereof.

37 [e.] g. (1) The court shall provide notice of the restraining order
38 to the local law enforcement agency where the arrest occurred and to
39 the county prosecutor. [In addition, when the order prohibits a person
40 charged with a criminal offense from entering at, upon or near any
41 building, business premises, school or other public, private or
42 commercial premises, the court may cause notice of the restraining
43 order to be transmitted to the owner of such property and to the
44 owner's agent, or, in the case of a school or any government-owned
45 property, to the appropriate administrator, and to any tenant
46 association representing the residents of the affected area.]

1 (2) Notwithstanding the provisions of section 1 of P.L.1982, c.79
2 (C.2A:4A-60), the local law enforcement agency may post a copy of
3 any orders issued pursuant to this section, or an equivalent notice
4 containing a photograph of the person and the terms of the order,
5 upon one or more of the principal entrances of the place or in any
6 other conspicuous location. Such posting shall be for the purpose of
7 informing the public, and the failure to post a copy of the order shall
8 in no way excuse any violation of the order.

9 (3) Notwithstanding the provisions of section 1 of P.L.1982, c.79
10 (C.2A:4A-60), any law enforcement agency may publish a copy of any
11 orders issued pursuant to this section, or an equivalent notice
12 containing a photograph of the person and the terms of the order, in
13 a newspaper circulating in the area of the restraining order. Such
14 publication shall be for the purpose of informing the public, and the
15 failure to publish a copy of the order shall in no way excuse any
16 violation of the order.

17 (4) Notwithstanding the provisions of section 1 of P.L.1982, c.79
18 (C.2A:4A-60), any law enforcement agency may distribute copies of
19 any orders issued pursuant to this section, or an equivalent notice
20 containing a photograph of the person and the terms of the order, to
21 residents or businesses located within the area delineated in the order
22 or, in the case of a school or any government-owned property, to the
23 appropriate administrator, or to any tenant association representing the
24 residents of the affected area. Such distribution shall be for the
25 purpose of informing the public, and the failure to publish a copy of
26 the order shall in no way excuse any violation of the order.

27 h. When a person is convicted of or adjudicated delinquent for any
28 criminal offense, the court, upon application of a law enforcement
29 officer or prosecuting attorney pursuant to section 3 of P.L. , c.
30 (C.) (now pending before the Legislature as this bill) and except as
31 provided in subsection e. of this section, shall, by separate order or
32 within the judgment of conviction, issue an order prohibiting the
33 person from entering any place defined by subsection b. of section 3
34 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
35 the place or modifications as provided by subsection f. of this section.

36 [f.] i. When a juvenile has been adjudicated delinquent for an act
37 which, if committed by an adult, would be a criminal offense, in
38 addition to an order required by subsection [b.] h. of this section or
39 any other disposition authorized by law, the court may order the
40 juvenile and any parent, guardian or any family member over whom the
41 court has jurisdiction to take such actions or obey such restraints as
42 may be necessary to facilitate the rehabilitation of the juvenile or to
43 protect public safety or to safeguard or enforce the rights of residents
44 of the place. The court may commit the juvenile to the care of the
45 Department of Human Services under the responsibility of the Division
46 of Youth and Family Services until such time as the juvenile reaches

1 the age of 18 or until the order of removal and restraint expires,
2 whichever first occurs, or to such alternative residential placement as
3 is practicable.

4 [g.] j. An order issued pursuant to subsection a., b., c. or d. of this
5 section shall remain in effect until the case has been adjudicated or
6 dismissed, or for not less than two years, whichever is less. An order
7 issued pursuant to subsection [b.] h. of this section shall remain in
8 effect for such period of time as shall be fixed by the court but not
9 longer than the maximum term of imprisonment or incarceration
10 allowed by law for the underlying offense or offenses. When the court
11 issues a restraining order pursuant to subsection [b.] h. of this section
12 and the person is also sentenced to any form of probationary
13 supervision or participation in the Intensive Supervision Program, the
14 court shall make continuing compliance with the order an express
15 condition of probation or the Intensive Supervision Program. When
16 the person has been sentenced to a term of incarceration, continuing
17 compliance with the terms and conditions of the order shall be made
18 an express condition of the person's release from confinement or
19 incarceration on parole. At the time of sentencing or, in the case of a
20 juvenile, at the time of disposition of the juvenile case, the court shall
21 advise the defendant that the restraining order shall include a fixed
22 time period in accordance with this subsection and shall include that
23 provision in the judgment of conviction, dispositional order, separate
24 order or order vacating an existing restraining order, to the law
25 enforcement agency that made the arrest and to the county prosecutor.

26 [h.] k. All applications to stay or modify an order issued pursuant
27 to this act, including an order originally issued in municipal court, shall
28 be made in the Superior Court. The court shall immediately notify the
29 [appropriate law enforcement agency] county prosecutor in writing
30 whenever an application is made to stay or modify an order issued
31 pursuant to this act. If the court does not issue a restraining order, the
32 sentence imposed by the court for a criminal offense as defined in
33 subsection b. of this section shall not become final for ten days in
34 order to permit the appeal of the court's findings by the prosecution.

35 [i.] l. Nothing in this section shall be construed in any way to limit
36 the authority of the court to take such other actions or to issue such
37 orders as may be necessary to protect the public safety or to safeguard
38 or enforce the rights of others with respect to the place.

39 [j.] m. Notwithstanding any other provision of this section, the
40 court may permit the person to return to the place to obtain personal
41 belongings and effects and, by court order, may restrict the time and
42 duration and provide for police supervision of such a visit.

43 (cf: P.L.1999, c.334, s.4)

44

45 3. (New section) Certification of Offense Location.

46 The court shall issue a restraining order pursuant to P.L.1999,

1 c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement
2 officer or prosecuting attorney and submission of a certification
3 describing the location of the offense.

4
5 4. (New section) Discretion to Not Seek Restraining Order.

6 A law enforcement officer or prosecuting attorney shall have
7 discretion to not seek a restraining order pursuant to P.L.1999, c.334
8 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense
9 resulting from the stop of a motor vehicle, if the defendant was using
10 public transportation, or if the provisions of subsection e. of section
11 4 of P.L.1999, c.334 (C.2C:35-5.7) are applicable.

12
13 5. There is appropriated from the General Fund to the
14 Administrative Office of the Courts \$95,000 for the modification of
15 the judiciary's automated systems in accordance with the
16 implementation of this act.

17
18 6. This act shall take effect on the 120th day following enactment
19 except for section 5, which shall take effect immediately.

20
21
22 STATEMENT

23
24 P.L.1999, c.334, the "Drug Offender Restraining Order Act of
25 1999," requires the court to issue a restraining order prohibiting
26 certain offenders from entering premises, locations or areas where the
27 offense occurred.

28 This bill provides that the issuance of such restraining orders is at
29 the discretion of the court and is not mandatory. The bill also clarifies
30 several provisions of the statute.

31 Section 1 of the bill changes the definition of the types of "place"
32 from which an offender can be barred to exclude public rail, bus, or air
33 transportation lines and limited access highways. This section also
34 specifies the drug offenses which subject the offender to the
35 Restraining Order Act. The applicable drug offenses are as follows:
36 N.J.S.A.2C:35-3 (Leader of Narcotics Trafficking Network);
37 N.J.S.A.2C:35-4 (Maintaining a CDS Production Facility);
38 N.J.S.A.2C:35-4.1 (Booby Traps in Manufacturing or Distribution
39 Facilities); N.J.S.A.2C:35-5 (Manufacturing, Distributing or
40 Dispensing); N.J.S.A.2C:35-5.2 (Manufacturing, Distributing or
41 Dispensing Gamma Hydroxybutyrate); N.J.S.A.2C:35-5.3
42 (Manufacturing, Distributing or Dispensing Flunitrazepam);
43 N.J.S.A.2C:35-6 (Employing a Juvenile in a Drug Distribution
44 Scheme); N.J.S.A.2C:35-7 (CDS Near or on School Property); and
45 N.J.S.A.2C:35-7.1 (CDS Within 500 Feet of Certain Public Property).

46 Section 2 of the bill clarifies that separate court procedures

1 concerning the restraining orders will be conducted for various
2 defendants, depending whether the defendant is charged with a
3 criminal offense on a warrant, charged with a criminal offense on a
4 summons, is a juvenile charged with a criminal offense on a juvenile
5 delinquency complaint and released from custody or is a juvenile
6 charged with a criminal offense on a juvenile delinquency complaint
7 and is released without being detained. This section also provides that
8 a law enforcement officer or prosecuting attorney must apply to the
9 court for the restraining order. In addition, section 2 of the bill
10 provides that the order shall prohibit the defendant from entering an
11 area of up to 500 feet surrounding the place, unless the court rules that
12 a different buffer zone would better effectuate the purposes of the
13 statute. This section provides that the court has discretion to modify
14 its order to permit the defendant to enter the area during specified
15 times for specified purposes, such as attending school during regular
16 school hours. Finally, section 2 of the bill provides that a law
17 enforcement agency may publish copies of any restraining orders in
18 local newspapers.

19 Section 3 of the bill provides that the court shall issue a restraining
20 order only upon request of a law enforcement officer or prosecuting
21 attorney and submission of a certification describing the location of the
22 offense.

23 Section 4 clarifies that a law enforcement officer or prosecuting
24 attorney would have discretion to not seek a restraining order if the
25 defendant is charged with an offense resulting from the stop of a
26 motor vehicle, if the defendant was using public transportation, or on
27 other grounds set out in current law in N.J.S.A.2C:35-5.7, including
28 that the defendant shows that he lawfully resides at, or has legitimate
29 business, on or near the place or the issuance of the order would cause
30 undue hardship to innocent persons and would constitute a serious
31 injustice.

32 Finally, section 5 of the bill appropriates \$95,000 to the
33 Administrative Office of the Courts to modify the judiciary's
34 automated systems in accordance with the statute.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4026

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 13, 2001

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 4026.

This bill makes several changes to the "Drug Offender Restraining Order Act of 1999" (P.L.1999, c.334). Under the act, courts are required to issue a restraining order prohibiting certain offenders from entering premises, locations or areas where the offense occurred. This bill revises that provision to allow such restraining orders to be issued at the discretion of the court. The bill also clarifies several other provisions of the act.

Section 1 of the bill changes the definition of the types of "place" from which an offender can be barred to exclude public rail, bus, or air transportation lines and limited access highways. This section also specifies the drug offenses which subject the offender to the act. These offenses are: N.J.S.A.2C:35-3 (Leader of Narcotics Trafficking Network); N.J.S.A.2C:35-4 (Maintaining a CDS Production Facility); N.J.S.A.2C:35-4.1 (Booby Traps in Manufacturing or Distribution Facilities); N.J.S.A.2C:35-5 (Manufacturing, Distributing or Dispensing); N.J.S.A.2C:35-5.2 (Manufacturing, Distributing or Dispensing Gamma Hydroxybutyrate); N.J.S.A.2C:35-5.3 (Manufacturing, Distributing or Dispensing Flunitrazepam); N.J.S.A.2C:35-6 (Employing a Juvenile in a Drug Distribution Scheme); N.J.S.A.2C:35-7 (CDS Near or on School Property); and N.J.S.A.2C:35-7.1 (CDS Within 500 Feet of Certain Public Property).

Section 2 of the bill clarifies that separate court procedures concerning the restraining orders will be conducted for various defendants, depending whether the defendant is charged with a criminal offense on a warrant, charged with a criminal offense on a summons, is a juvenile charged with a criminal offense on a juvenile delinquency complaint and released from custody or is a juvenile charged with a criminal offense on a juvenile delinquency complaint and is released without being detained. This section also provides that a law enforcement officer or prosecuting attorney must apply to the court for the restraining order. In addition, section 2 of the bill provides that the order shall prohibit the defendant from entering an area of up to 500 feet surrounding the place, unless the court rules that

a different buffer zone would better effectuate the purposes of the statute. This section provides that the court has discretion to modify its order to permit the defendant to enter the area during specified times for specified purposes, such as attending school during regular school hours. Finally, section 2 of the bill provides that a law enforcement agency may publish copies of any restraining orders in local newspapers.

Section 3 of the bill provides that the court shall issue a restraining order only upon request of a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

Section 4 clarifies that a law enforcement officer or prosecuting attorney would have discretion to not seek a restraining order if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or on other grounds set out in current law in N.J.S.A.2C:35-5.7, including that the defendant shows that he lawfully resides at, or has legitimate business on or near, the place or the issuance of the order would cause undue hardship to innocent persons and would constitute a serious injustice.

Finally, section 5 of the bill appropriates \$95,000 to the Administrative Office of the Courts to modify the judiciary's automated systems in accordance with the act.

The committee amended the bill to delete provisions that authorized law enforcement, prior to the offender's conviction of the underlying criminal charge, to distribute and publish photographs of the offender. The amendments leave unchanged the provision of the bill authorizing law enforcement to distribute and publish photographs of the offender after his conviction.

Other committee amendments clarify language in section 1 of the bill and correct an internal reference in section 4.

[First Reprint]

ASSEMBLY, No. 4026

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Co-Sponsored by:

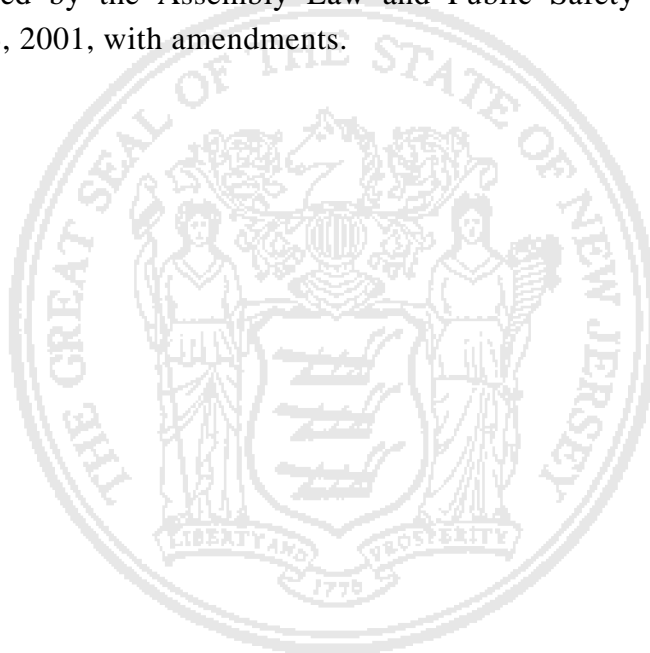
Senator Gormley

SYNOPSIS

Amends the "Drug Offender Restraining Order Act of 1999" and appropriates \$95,000 to the Administrative Office of the Courts.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on December 13, 2001, with amendments.



(Sponsorship Updated As Of: 1/8/2002)

1 AN ACT concerning restraining orders for certain offenders, amending
2 and supplementing P.L.1999, c.334 and making an appropriation.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read
8 as follows:

9 3. Definitions.

10 As used in this act:

11 a. "Person" means any person charged with or convicted of a
12 criminal offense or any juvenile charged with delinquency or
13 adjudicated delinquent for an act which, if committed by an adult,
14 would be a criminal offense.

15 b. "Place" includes any premises, residence, business establishment,
16 location or specified area including all buildings and all appurtenant
17 land, in which or at which a criminal offense occurred or is alleged to
18 have occurred or is affected by the criminal offense with which the
19 person is charged. "Place" does not include public rail, bus or air
20 transportation lines or limited access highways which do not allow
21 pedestrian access.

22 c. "Criminal offense" means:

23 (1) ¹[an offense that involves the manufacturing, distributing,
24 selling or possessing with intent to distribute a controlled dangerous
25 substance pursuant to]¹ any of the following: N.J.S.2C:35-3,
26 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8,
27 N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of
28 P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101
29 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

30 (2) the unlawful possession or use of an assault firearm as defined
31 in subsection w. of N.J.S.2C:39-1.

32 (cf: P.L.1999, c.334, s.3)

33
34 2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read
35 as follows:

36 Issuance of order by court.

37 4. a. When a person is charged with a criminal offense on a
38 warrant and the person is released from custody before trial on bail or
39 personal recognizance[, or is released to the custody of a parent,
40 guardian, custodian or public or private agency], the court, upon
41 application of a law enforcement officer or prosecuting attorney

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:

¹ Assembly ALP committee amendments adopted December 13, 2001.

1 pursuant to section 3 of P.L. , c. (C.) (now pending before the
2 Legislature as this bill) and except as provided in subsection e. of this
3 section, shall as a condition of release [and except as provided in
4 subsection c. of this section, shall] issue an order prohibiting the
5 person from entering any place defined by subsection b. of section 3
6 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
7 the place or modifications as provided by subsection f. of this section.

8 b. When a person is [convicted of or adjudicated delinquent for
9 any criminal offense, the court, in addition to any other disposition
10 authorized by law and except as provided in subsection c. of this
11 section, shall issue an order prohibiting the person from entering any
12 place defined by subsection b. of section 3 of P.L.1999, c.334
13 (C.2C:35-5.6).

14 c.] charged with a criminal offense on a summons, the court, upon
15 application of a law enforcement officer or prosecuting attorney
16 pursuant to section 3 of P.L. , c. (C.) (now pending before the
17 Legislature as this bill) and except as provided in subsection e. of this
18 section, shall, at the time of the defendant's first appearance, issue an
19 order prohibiting the person from entering any place defined by
20 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
21 a buffer zone surrounding the place or modifications as provided by
22 subsection f. of this section.

23 c. When a person is charged with a criminal offense on a juvenile
24 delinquency complaint and is released from custody at a detention
25 hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the
26 court, upon application of a law enforcement officer or prosecuting
27 attorney pursuant to section 3 of P.L. , c. (C.) (now pending
28 before the Legislature as this bill) and except as provided in subsection
29 e. of this section, shall issue an order prohibiting the person from
30 entering any place defined by subsection b. of section 3 of P.L.1999,
31 c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or
32 modifications as provided by subsection f. of this section.

33 d. When a person is charged with a criminal offense on a juvenile
34 delinquency complaint and is released without being detained pursuant
35 to sections 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35),
36 the law enforcement officer or prosecuting attorney shall prepare an
37 application pursuant to section 3 of P.L. , c. (C.) (now pending
38 before the Legislature as this bill) for filing on the next court day.

39 The law enforcement officer releasing the juvenile shall serve the
40 juvenile and his parent or guardian with written notice that an order
41 shall be issued by the Family Part of the Superior Court on the next
42 court day prohibiting the juvenile from entering any place defined by
43 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
44 a buffer zone surrounding the place or modifications as provided by
45 subsection f. of this section.

1 The court shall issue such order on the first court day following the
2 release of the juvenile. If the restraints contained in the court order
3 differ from the restraints contained in the notice, the order shall not be
4 effective until the third court day following the issuance of the order.
5 The juvenile may apply to the court to stay or modify the order on the
6 grounds set forth in subsection e. of this section.

7 e. The court may forego issuing a restraining order for which
8 application has been made pursuant to section 3 of P.L. , c. (C.)
9 (now pending before the Legislature as this bill) only if the defendant
10 establishes by clear and convincing evidence that:

11 (1) the defendant lawfully resides at or has legitimate business on
12 or near the place, or otherwise legitimately needs to enter the place.
13 In such an event, the court shall not issue an order pursuant to this
14 section unless the court is clearly convinced that the need to bar the
15 person from the place in order to protect the public safety and the
16 rights, safety and health of the residents and persons working in the
17 place outweighs the person's interest in returning to the place. If the
18 balance of the interests of the person and the public so warrants, the
19 court may issue an order imposing conditions upon the person's entry
20 at, upon or near the place; or

21 (2) the issuance of an order would cause undue hardship to
22 innocent persons and would constitute a serious injustice which
23 overrides the need to protect the rights, safety and health of persons
24 residing in or having business in the place.

25 [d.] f. A restraining order issued pursuant to subsection a. [or],
26 b., c., d. or h. of this section shall describe the place from which the
27 person has been barred and any conditions upon the person's entry into
28 the place, with sufficient specificity to enable the person to guide his
29 conduct accordingly and to enable a law enforcement officer to
30 enforce the order. The order shall also prohibit the person from
31 entering an area of up to 500 feet surrounding the place, unless the
32 court rules that a different buffer zone would better effectuate the
33 purposes of this act. In the discretion of the court, the order may
34 contain modifications to permit the person to enter the area during
35 specified times for specified purposes, such as attending school during
36 regular school hours. When appropriate, the court may append to the
37 order a map depicting the place. The person shall be given a copy of
38 the restraining order and any appended map and shall acknowledge in
39 writing the receipt thereof.

40 [e.] g. (1) The court shall provide notice of the restraining order
41 to the local law enforcement agency where the arrest occurred and to
42 the county prosecutor. [In addition, when the order prohibits a person
43 charged with a criminal offense from entering at, upon or near any
44 building, business premises, school or other public, private or
45 commercial premises, the court may cause notice of the restraining
46 order to be transmitted to the owner of such property and to the

1 owner's agent, or, in the case of a school or any government-owned
2 property, to the appropriate administrator, and to any tenant
3 association representing the residents of the affected area.]

4 (2) Notwithstanding the provisions of section 1 of P.L.1982, c.79
5 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
6 delinquency for a criminal offense, ¹ the local law enforcement agency
7 may post a copy of any orders issued pursuant to this section, or an
8 equivalent notice containing ¹[a photograph of the person and] ¹ the
9 terms of the order, upon one or more of the principal entrances of the
10 place or in any other conspicuous location. Such posting shall be for
11 the purpose of informing the public, and the failure to post a copy of
12 the order shall in no way excuse any violation of the order.

13 (3) Notwithstanding the provisions of section 1 of P.L.1982, c.79
14 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
15 delinquency for a criminal offense, ¹ any law enforcement agency may
16 publish a copy of any orders issued pursuant to this section, or an
17 equivalent notice containing ¹[a photograph of the person and] ¹ the
18 terms of the order, in a newspaper circulating in the area of the
19 restraining order. Such publication shall be for the purpose of
20 informing the public, and the failure to publish a copy of the order
21 shall in no way excuse any violation of the order.

22 (4) Notwithstanding the provisions of section 1 of P.L.1982, c.79
23 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
24 delinquency for a criminal offense, ¹ any law enforcement agency may
25 distribute copies of any orders issued pursuant to this section, or an
26 equivalent notice containing ¹[a photograph of the person and] ¹ the
27 terms of the order, to residents or businesses located within the area
28 delineated in the order or, in the case of a school or any government-
29 owned property, to the appropriate administrator, or to any tenant
30 association representing the residents of the affected area. Such
31 distribution shall be for the purpose of informing the public, and the
32 failure to publish a copy of the order shall in no way excuse any
33 violation of the order.

34 h. When a person is convicted of or adjudicated delinquent for any
35 criminal offense, the court, upon application of a law enforcement
36 officer or prosecuting attorney pursuant to section 3 of P.L. , c.
37 (C.) (now pending before the Legislature as this bill) and except as
38 provided in subsection e. of this section, shall, by separate order or
39 within the judgment of conviction, issue an order prohibiting the
40 person from entering any place defined by subsection b. of section 3
41 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
42 the place or modifications as provided by subsection f. of this section.
43 ¹Upon the person's conviction or adjudication of delinquency for a
44 criminal offense, a law enforcement agency, in addition to posting,
45 publishing, and distributing the order or an equivalent notice pursuant
46 to paragraphs (2), (3) and (4) of subsection g. of this section, may also

1 post, publish and distribute a photograph of the person.¹

2 [f.] i. When a juvenile has been adjudicated delinquent for an act
3 which, if committed by an adult, would be a criminal offense, in
4 addition to an order required by subsection [b.] h. of this section or
5 any other disposition authorized by law, the court may order the
6 juvenile and any parent, guardian or any family member over whom the
7 court has jurisdiction to take such actions or obey such restraints as
8 may be necessary to facilitate the rehabilitation of the juvenile or to
9 protect public safety or to safeguard or enforce the rights of residents
10 of the place. The court may commit the juvenile to the care of the
11 Department of Human Services under the responsibility of the Division
12 of Youth and Family Services until such time as the juvenile reaches
13 the age of 18 or until the order of removal and restraint expires,
14 whichever first occurs, or to such alternative residential placement as
15 is practicable.

16 [g.] j. An order issued pursuant to subsection a., b., c. or d. of this
17 section shall remain in effect until the case has been adjudicated or
18 dismissed, or for not less than two years, whichever is less. An order
19 issued pursuant to subsection [b.] h. of this section shall remain in
20 effect for such period of time as shall be fixed by the court but not
21 longer than the maximum term of imprisonment or incarceration
22 allowed by law for the underlying offense or offenses. When the court
23 issues a restraining order pursuant to subsection [b.] h. of this section
24 and the person is also sentenced to any form of probationary
25 supervision or participation in the Intensive Supervision Program, the
26 court shall make continuing compliance with the order an express
27 condition of probation or the Intensive Supervision Program. When
28 the person has been sentenced to a term of incarceration, continuing
29 compliance with the terms and conditions of the order shall be made
30 an express condition of the person's release from confinement or
31 incarceration on parole. At the time of sentencing or, in the case of a
32 juvenile, at the time of disposition of the juvenile case, the court shall
33 advise the defendant that the restraining order shall include a fixed
34 time period in accordance with this subsection and shall include that
35 provision in the judgment of conviction, dispositional order, separate
36 order or order vacating an existing restraining order, to the law
37 enforcement agency that made the arrest and to the county prosecutor.

38 [h.] k. All applications to stay or modify an order issued pursuant
39 to this act, including an order originally issued in municipal court, shall
40 be made in the Superior Court. The court shall immediately notify the
41 [appropriate law enforcement agency] county prosecutor in writing
42 whenever an application is made to stay or modify an order issued
43 pursuant to this act. If the court does not issue a restraining order, the
44 sentence imposed by the court for a criminal offense as defined in
45 subsection b. of this section shall not become final for ten days in
46 order to permit the appeal of the court's findings by the prosecution.

1 [i.] l. Nothing in this section shall be construed in any way to limit
2 the authority of the court to take such other actions or to issue such
3 orders as may be necessary to protect the public safety or to safeguard
4 or enforce the rights of others with respect to the place.

5 [j.] m. Notwithstanding any other provision of this section, the
6 court may permit the person to return to the place to obtain personal
7 belongings and effects and, by court order, may restrict the time and
8 duration and provide for police supervision of such a visit.

9 (cf: P.L.1999, c.334, s.4)

10
11 3. (New section) Certification of Offense Location.

12 The court shall issue a restraining order pursuant to P.L.1999,
13 c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement
14 officer or prosecuting attorney and submission of a certification
15 describing the location of the offense.

16
17 4. (New section) Discretion to Not Seek Restraining Order.

18 A law enforcement officer or prosecuting attorney shall have
19 discretion to not seek a restraining order pursuant to P.L.1999, c.334
20 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense
21 resulting from the stop of a motor vehicle, if the defendant was using
22 public transportation, or if the provisions of ¹paragraph (1) or (2) of¹
23 subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are
24 applicable.

25
26 5. There is appropriated from the General Fund to the
27 Administrative Office of the Courts \$95,000 for the modification of
28 the judiciary's automated systems in accordance with the
29 implementation of this act.

30
31 6. This act shall take effect on the 120th day following enactment
32 except for section 5, which shall take effect immediately.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 4026
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JANUARY 17, 2002

SUMMARY

Synopsis: Amends the "Drug Offender Restraining Order Act of 1999" and appropriates \$95,000 to the Administrative Office of the Courts

Type of Impact: General Fund expenditure

Agencies Affected: The Judiciary, Local police departments

Executive Estimate

| Fiscal Impact | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3</u> |
|----------------------|----------------------|----------------------|----------------------|
| State Cost | \$95,000 | \$0 | \$0 |

- ! The Office of Legislative Services (OLS) **concurs** with the Judiciary estimate.
- ! The bill makes several changes to the "Drug Offender Restraining Order Act of 1999" (P.L.1999, c.334). Under the act, courts are required to issue a restraining order prohibiting certain offenders from entering premises, locations or areas where the offense occurred. This bill revises that provision to allow such restraining orders to be issued at the discretion of the court. The bill also clarifies several other provisions of the act.
- ! The bill appropriates \$95,000 to the Administrative Office of the Courts to modify the judiciary's automated systems in accordance with the act.
- ! The Administrative Office of the Courts (AOC) states that the bill would limit the number of restraining orders issued statewide, and would therefore save an unspecified amount of money for the State and local governments. The AOC further notes that it would require the \$95,000 appropriation to reprogram the Automated Traffic System computer system to track restraining orders through the various State and local court systems.

BILL DESCRIPTION

Assembly Bill No. 4026 (1R) of 2001 makes several changes to the "Drug Offender Restraining Order Act of 1999" (P.L.1999, c.334). Under the act, courts are required to issue a restraining order prohibiting certain offenders from entering premises, locations or areas where the offense occurred. This bill revises that provision to allow such restraining

orders to be issued at the discretion of the court. The bill also clarifies several other provisions of the act.

The bill changes the definition of the types of "place" from which an offender can be barred to exclude public rail, bus, or air transportation lines and limited access highways. It also specifies the drug offenses which subject the offender to the act.

The bill clarifies that separate court procedures concerning the restraining orders will be conducted for various defendants, depending whether the defendant is charged with a criminal offense on a warrant, charged with a criminal offense on a summons, is a juvenile charged with a criminal offense on a juvenile delinquency complaint and released from custody or is a juvenile charged with a criminal offense on a juvenile delinquency complaint and is released without being detained. It also provides that a law enforcement officer or prosecuting attorney must apply to the court for the restraining order. In addition, the bill provides that the order shall prohibit the defendant from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of the statute.

The bill provides that the court shall issue a restraining order only upon request of a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

The bill clarifies that a law enforcement officer or prosecuting attorney would have discretion to not seek a restraining order if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or on other grounds set out in current law in N.J.S.A.2C:35-5.7, including that the defendant shows that he lawfully resides at, or has legitimate business on or near, the place or the issuance of the order would cause undue hardship to innocent persons and would constitute a serious injustice.

Finally, the bill appropriates \$95,000 to the Administrative Office of the Courts to modify the judiciary's automated systems in accordance with the act.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Administrative Office of the Courts (AOC) states that the bill would limit the number of restraining orders issued statewide, and would therefore save an unspecified amount of money for the State and local governments. The AOC further notes that it would require the \$95,000 appropriation to reprogram the Automated Traffic System computer system to track restraining orders through the various State and local court systems.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Judiciary estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

SENATE, No. 2783

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED DECEMBER 13, 2001

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

SYNOPSIS

Amends the "Drug Offender Restraining Order Act of 1999" and appropriates \$95,000 to the Administrative Office of the Courts.

CURRENT VERSION OF TEXT

As introduced.



S2783 GORMLEY

2

1 AN ACT concerning restraining orders for certain offenders, amending
2 and supplementing P.L.1999, c.334 and making an appropriation.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 3 of P.L.1999, c.334 (C.2C:35-5.6) is amended to read
8 as follows:

9 3. Definitions.

10 As used in this act:

11 a. "Person" means any person charged with or convicted of a
12 criminal offense or any juvenile charged with delinquency or
13 adjudicated delinquent for an act which, if committed by an adult,
14 would be a criminal offense.

15 b. "Place" includes any premises, residence, business establishment,
16 location or specified area including all buildings and all appurtenant
17 land, in which or at which a criminal offense occurred or is alleged to
18 have occurred or is affected by the criminal offense with which the
19 person is charged. "Place" does not include public rail, bus or air
20 transportation lines or limited access highways which do not allow
21 pedestrian access.

22 c. "Criminal offense" means:

23 [an offense that involves the manufacturing, distributing, selling or
24 possessing with intent to distribute a controlled dangerous substance]
25 (1) any of the following: N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-
26 5, N.J.S.2C:35-6, N.J.S.2C:35-8, N.J.S.2C:35-9, P.L.1997, c.185
27 (C.2C:35-4.1), sections 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or
28 C.2C:35-5.3), P.L.1987, c.101 (C.2C:35-7) or P.L.1997, c.327
29 (C.2C:35-7.1), or

30 (2) the unlawful possession or use of an assault firearm as defined
31 in subsection w. of N.J.S.2C:39-1.

32 (cf: P.L.1999, c.334, s.3)

33
34 2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read
35 as follows:

36 Issuance of order by court.

37 4. a. When a person is charged with a criminal offense on a
38 warrant and the person is released from custody before trial on bail or
39 personal recognizance[, or is released to the custody of a parent,
40 guardian, custodian or public or private agency], the court, upon
41 application of a law enforcement officer or prosecuting attorney
42 pursuant to section 3 of P.L. , c. (C.) (now pending before the
43 Legislature as this bill) and except as provided in subsection e. of this

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 section, shall as a condition of release [and except as provided in
2 subsection c. of this section, shall] issue an order prohibiting the
3 person from entering any place defined by subsection b. of section 3
4 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
5 the place or modifications as provided by subsection f. of this section.

6 b. When a person is [convicted of or adjudicated delinquent for
7 any criminal offense, the court, in addition to any other disposition
8 authorized by law and except as provided in subsection c. of this
9 section, shall issue an order prohibiting the person from entering any
10 place defined by subsection b. of section 3 of P.L.1999, c.334
11 (C.2C:35-5.6).

12 c.] charged with a criminal offense on a summons, the court, upon
13 application of a law enforcement officer or prosecuting attorney
14 pursuant to section 3 of P.L. , c. (C.) (now pending before the
15 Legislature as this bill) and except as provided in subsection e. of this
16 section, shall, at the time of the defendant's first appearance, issue an
17 order prohibiting the person from entering any place defined by
18 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
19 a buffer zone surrounding the place or modifications as provided by
20 subsection f. of this section.

21 c. When a person is charged with a criminal offense on a juvenile
22 delinquency complaint and is released from custody at a detention
23 hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the
24 court, upon application of a law enforcement officer or prosecuting
25 attorney pursuant to section 3 of P.L. , c. (C.) (now pending
26 before the Legislature as this bill) and except as provided in subsection
27 e. of this section, shall issue an order prohibiting the person from
28 entering any place defined by subsection b. of section 3 of P.L.1999,
29 c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or
30 modifications as provided by subsection f. of this section.

31 d. When a person is charged with a criminal offense on a juvenile
32 delinquency complaint and is released without being detained pursuant
33 to sections 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35),
34 the law enforcement officer or prosecuting attorney shall prepare an
35 application pursuant to section 3 of P.L. , c. (C.) (now pending
36 before the Legislature as this bill) for filing on the next court day.

37 The law enforcement officer releasing the juvenile shall serve the
38 juvenile and his parent or guardian with written notice that an order
39 shall be issued by the Family Part of the Superior Court on the next
40 court day prohibiting the juvenile from entering any place defined by
41 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
42 a buffer zone surrounding the place or modifications as provided by
43 subsection f. of this section.

44 The court shall issue such order on the first court day following the
45 release of the juvenile. If the restraints contained in the court order
46 differ from the restraints contained in the notice, the order shall not be

1 effective until the third court day following the issuance of the order.
2 The juvenile may apply to the court to stay or modify the order on the
3 grounds set forth in subsection e. of this section.

4 e. The court may forego issuing a restraining order for which
5 application has been made pursuant to section 3 of P.L. , c. (C.)
6 (now pending before the Legislature as this bill) only if the defendant
7 establishes by clear and convincing evidence that:

8 (1) the defendant lawfully resides at or has legitimate business on
9 or near the place, or otherwise legitimately needs to enter the place.
10 In such an event, the court shall not issue an order pursuant to this
11 section unless the court is clearly convinced that the need to bar the
12 person from the place in order to protect the public safety and the
13 rights, safety and health of the residents and persons working in the
14 place outweighs the person's interest in returning to the place. If the
15 balance of the interests of the person and the public so warrants, the
16 court may issue an order imposing conditions upon the person's entry
17 at, upon or near the place; or

18 (2) the issuance of an order would cause undue hardship to
19 innocent persons and would constitute a serious injustice which
20 overrides the need to protect the rights, safety and health of persons
21 residing in or having business in the place.

22 [d.] f. A restraining order issued pursuant to subsection a. [or],
23 b., c., d. or h. of this section shall describe the place from which the
24 person has been barred and any conditions upon the person's entry into
25 the place, with sufficient specificity to enable the person to guide his
26 conduct accordingly and to enable a law enforcement officer to
27 enforce the order. The order shall also prohibit the person from
28 entering an area of up to 500 feet surrounding the place, unless the
29 court rules that a different buffer zone would better effectuate the
30 purposes of this act. In the discretion of the court, the order may
31 contain modifications to permit the person to enter the area during
32 specified times for specified purposes, such as attending school during
33 regular school hours. When appropriate, the court may append to the
34 order a map depicting the place. The person shall be given a copy of
35 the restraining order and any appended map and shall acknowledge in
36 writing the receipt thereof.

37 [e.] g. (1) The court shall provide notice of the restraining order
38 to the local law enforcement agency where the arrest occurred and to
39 the county prosecutor. [In addition, when the order prohibits a person
40 charged with a criminal offense from entering at, upon or near any
41 building, business premises, school or other public, private or
42 commercial premises, the court may cause notice of the restraining
43 order to be transmitted to the owner of such property and to the
44 owner's agent, or, in the case of a school or any government-owned
45 property, to the appropriate administrator, and to any tenant
46 association representing the residents of the affected area.]

1 (2) Notwithstanding the provisions of section 1 of P.L.1982, c.79
2 (C.2A:4A-60), prior to the person's conviction or adjudication of
3 delinquency for a criminal offense, the local law enforcement agency
4 may post a copy of any orders issued pursuant to this section, or an
5 equivalent notice containing the terms of the order, upon one or more
6 of the principal entrances of the place or in any other conspicuous
7 location. Such posting shall be for the purpose of informing the
8 public, and the failure to post a copy of the order shall in no way
9 excuse any violation of the order.

10 (3) Notwithstanding the provisions of section 1 of P.L.1982, c.79
11 (C.2A:4A-60), prior to the person's conviction or adjudication of
12 delinquency for a criminal offense, any law enforcement agency may
13 publish a copy of any orders issued pursuant to this section, or an
14 equivalent notice containing the terms of the order, in a newspaper
15 circulating in the area of the restraining order. Such publication shall
16 be for the purpose of informing the public, and the failure to publish
17 a copy of the order shall in no way excuse any violation of the order.

18 (4) Notwithstanding the provisions of section 1 of P.L.1982, c.79
19 (C.2A:4A-60), prior to the person's conviction or adjudication of
20 delinquency for a criminal offense, any law enforcement agency may
21 distribute copies of any orders issued pursuant to this section, or an
22 equivalent notice containing the terms of the order, to residents or
23 businesses located within the area delineated in the order or, in the
24 case of a school or any government-owned property, to the
25 appropriate administrator, or to any tenant association representing the
26 residents of the affected area. Such distribution shall be for the
27 purpose of informing the public, and the failure to publish a copy of
28 the order shall in no way excuse any violation of the order.

29 h. When a person is convicted of or adjudicated delinquent for any
30 criminal offense, the court, upon application of a law enforcement
31 officer or prosecuting attorney pursuant to section 3 of P.L. , c.
32 (C.) (now pending before the Legislature as this bill) and except as
33 provided in subsection e. of this section, shall, by separate order or
34 within the judgment of conviction, issue an order prohibiting the
35 person from entering any place defined by subsection b. of section 3
36 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
37 the place or modifications as provided by subsection f. of this section.
38 Upon the person's conviction or adjudication of delinquency for a
39 criminal offense, a law enforcement agency, in addition to posting,
40 publishing, and distributing the order or an equivalent notice pursuant
41 to paragraphs (2), (3) and (4) of subsection g. of this section, may also
42 post, publish and distribute a photograph of the person.

43 [f.] i. When a juvenile has been adjudicated delinquent for an act
44 which, if committed by an adult, would be a criminal offense, in
45 addition to an order required by subsection [b.] h. of this section or
46 any other disposition authorized by law, the court may order the

1 juvenile and any parent, guardian or any family member over whom the
2 court has jurisdiction to take such actions or obey such restraints as
3 may be necessary to facilitate the rehabilitation of the juvenile or to
4 protect public safety or to safeguard or enforce the rights of residents
5 of the place. The court may commit the juvenile to the care of the
6 Department of Human Services under the responsibility of the Division
7 of Youth and Family Services until such time as the juvenile reaches
8 the age of 18 or until the order of removal and restraint expires,
9 whichever first occurs, or to such alternative residential placement as
10 is practicable.

11 [g.] j. An order issued pursuant to subsection a., b., c. or d. of this
12 section shall remain in effect until the case has been adjudicated or
13 dismissed, or for not less than two years, whichever is less. An order
14 issued pursuant to subsection [b.] h. of this section shall remain in
15 effect for such period of time as shall be fixed by the court but not
16 longer than the maximum term of imprisonment or incarceration
17 allowed by law for the underlying offense or offenses. When the court
18 issues a restraining order pursuant to subsection [b.] h. of this section
19 and the person is also sentenced to any form of probationary
20 supervision or participation in the Intensive Supervision Program, the
21 court shall make continuing compliance with the order an express
22 condition of probation or the Intensive Supervision Program. When
23 the person has been sentenced to a term of incarceration, continuing
24 compliance with the terms and conditions of the order shall be made
25 an express condition of the person's release from confinement or
26 incarceration on parole. At the time of sentencing or, in the case of a
27 juvenile, at the time of disposition of the juvenile case, the court shall
28 advise the defendant that the restraining order shall include a fixed
29 time period in accordance with this subsection and shall include that
30 provision in the judgment of conviction, dispositional order, separate
31 order or order vacating an existing restraining order, to the law
32 enforcement agency that made the arrest and to the county prosecutor.

33 [h.] k. All applications to stay or modify an order issued pursuant
34 to this act, including an order originally issued in municipal court, shall
35 be made in the Superior Court. The court shall immediately notify the
36 [appropriate law enforcement agency] county prosecutor in writing
37 whenever an application is made to stay or modify an order issued
38 pursuant to this act. If the court does not issue a restraining order, the
39 sentence imposed by the court for a criminal offense as defined in
40 subsection b. of this section shall not become final for ten days in
41 order to permit the appeal of the court's findings by the prosecution.

42 [i.] l. Nothing in this section shall be construed in any way to limit
43 the authority of the court to take such other actions or to issue such
44 orders as may be necessary to protect the public safety or to safeguard
45 or enforce the rights of others with respect to the place.

46 [j.] m. Notwithstanding any other provision of this section, the

1 court may permit the person to return to the place to obtain personal
2 belongings and effects and, by court order, may restrict the time and
3 duration and provide for police supervision of such a visit.

4 (cf: P.L.1999, c.334, s.4)

5
6 3. (New section) Certification of Offense Location.

7 The court shall issue a restraining order pursuant to P.L.1999,
8 c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement
9 officer or prosecuting attorney and submission of a certification
10 describing the location of the offense.

11
12 4. (New section) Discretion to Not Seek Restraining Order.

13 A law enforcement officer or prosecuting attorney shall have
14 discretion to not seek a restraining order pursuant to P.L.1999, c.334
15 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense
16 resulting from the stop of a motor vehicle, if the defendant was using
17 public transportation, or if the provisions of paragraph (1) or (2) of
18 subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are
19 applicable.

20
21 5. There is appropriated from the General Fund to the
22 Administrative Office of the Courts \$95,000 for the modification of
23 the judiciary's automated systems in accordance with the
24 implementation of this act.

25
26 6. This act shall take effect on the 120th day following enactment
27 except for section 5, which shall take effect immediately.

28
29
30 STATEMENT

31
32 P.L.1999, c.334, the "Drug Offender Restraining Order Act of
33 1999," requires the court to issue a restraining order prohibiting
34 certain offenders from entering premises, locations or areas where the
35 offense occurred.

36 This bill provides that the issuance of such restraining orders is at
37 the discretion of the court and is not mandatory. The bill also clarifies
38 several provisions of the statute.

39 Section 1 of the bill changes the definition of the types of "place"
40 from which an offender can be barred to exclude public rail, bus, or air
41 transportation lines and limited access highways. This section also
42 specifies the CDS-related offenses which subject the offender to the
43 Restraining Order Act. The applicable offenses are as follows:
44 N.J.S.A.2C:35-3 (Leader of Narcotics Trafficking Network);
45 N.J.S.A.2C:35-4 (Maintaining a CDS Production Facility);
46 N.J.S.A.2C:35-4.1 (Booby Traps in Manufacturing or Distribution

1 Facilities); N.J.S.A.2C:35-5 (Manufacturing, Distributing or
2 Dispensing); N.J.S.A.2C:35-5.2 (Manufacturing, Distributing or
3 Dispensing Gamma Hydroxybutyrate); N.J.S.A.2C:35-5.3
4 (Manufacturing, Distributing or Dispensing Flunitrazepam);
5 N.J.S.A.2C:35-6 (Employing a Juvenile in a Drug Distribution
6 Scheme); N.J.S.A.2C:35-7 (CDS Near or on School Property); and
7 N.J.S.A.2C:35-7.1 (CDS Within 500 Feet of Certain Public Property).

8 Section 2 of the bill clarifies that separate court procedures
9 concerning the restraining orders will be conducted for various
10 defendants, depending whether the defendant is charged with a
11 criminal offense on a warrant, charged with a criminal offense on a
12 summons, is a juvenile charged with a criminal offense on a juvenile
13 delinquency complaint and released from custody or is a juvenile
14 charged with a criminal offense on a juvenile delinquency complaint
15 and is released without being detained. This section also provides that
16 a law enforcement officer or prosecuting attorney must apply to the
17 court for the restraining order. In addition, section 2 of the bill
18 provides that the order shall prohibit the defendant from entering an
19 area of up to 500 feet surrounding the place, unless the court rules that
20 a different buffer zone would better effectuate the purposes of the
21 statute. This section provides that the court has discretion to modify
22 its order to permit the defendant to enter the area during specified
23 times for specified purposes, such as attending school during regular
24 school hours. Finally, section 2 of the bill provides that a law
25 enforcement agency may publish copies of any restraining orders in
26 local newspapers.

27 Section 3 of the bill provides that the court shall issue a restraining
28 order only upon request of a law enforcement officer or prosecuting
29 attorney and submission of a certification describing the location of the
30 offense.

31 Section 4 clarifies that a law enforcement officer or prosecuting
32 attorney would have discretion to not seek a restraining order if the
33 defendant is charged with an offense resulting from the stop of a
34 motor vehicle, if the defendant was using public transportation, or on
35 other grounds set out in current law in N.J.S.A.2C:35-5.7, including
36 that the defendant shows that he lawfully resides at, or has legitimate
37 business, on or near the place or the issuance of the order would cause
38 undue hardship to innocent persons and would constitute a serious
39 injustice.

40 Finally, section 5 of the bill appropriates \$95,000 to the
41 Administrative Office of the Courts to modify the judiciary's
42 automated systems in accordance with the statute.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2783

STATE OF NEW JERSEY

DATED: DECEMBER 17, 2001

The Senate Judiciary Committee reports favorably Senate Bill No. 2783.

P.L.1999, c.334, the "Drug Offender Restraining Order Act of 1999," requires the court to issue a restraining order prohibiting certain offenders from entering premises, locations or areas where the offense occurred. This bill provides that the restraining order may be issued only upon the request of law enforcement or the prosecuting attorney. The bill also clarifies several provisions of the statute.

Section 1 of the bill changes the definition of the types of "place" from which an offender can be barred to exclude public rail, bus, or air transportation lines and limited access highways. This section also specifies the CDS-related offenses which subject the offender to the Restraining Order Act. The applicable offenses include N.J.S.A.2C:35-3 (Leader of Narcotics Trafficking Network); N.J.S.A.2C:35-4 (Maintaining a CDS Production Facility); N.J.S.A.2C:35-4.1 (Booby Traps in Manufacturing or Distribution Facilities), and N.J.S.A.2C:35-5 (Manufacturing, Distributing or Dispensing), among others.

Section 2 of the bill clarifies that separate court procedures concerning the restraining orders will be conducted for various defendants, depending whether the defendant is charged with a criminal offense on a warrant, charged with a criminal offense on a summons, is a juvenile charged with a criminal offense on a juvenile delinquency complaint and released from custody or is a juvenile charged with a criminal offense on a juvenile delinquency complaint and is released without being detained. This section also provides that a law enforcement officer or prosecuting attorney must apply to the court for the restraining order. In addition, section 2 of the bill provides that the order shall prohibit the defendant from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of the statute. This section provides that the court has discretion to modify its order to permit the defendant to enter the area during specified times for specified purposes, such as attending school during regular school hours. Section 2 of the bill also provides that a law enforcement agency may publish copies of any restraining orders in local newspapers.

Section 3 of the bill provides that the court shall issue a restraining order only upon request of a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

Section 4 clarifies that a law enforcement officer or prosecuting attorney would have discretion to not seek a restraining order if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or on other grounds set out in current law in N.J.S.A.2C:35-5.7, including that the defendant shows that he lawfully resides at, or has legitimate business, on or near the place or the issuance of the order would cause undue hardship to innocent persons and would constitute a serious injustice.

Finally, section 5 of the bill appropriates \$95,000 to the Administrative Office of the Courts to modify the judiciary's automated systems in accordance with the statute.

ASSEMBLY BILL NO. 4026 (FIRST REPRINT)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 15 of the New Jersey Constitution, I am appending to Assembly Bill No. 4026 (First Reprint), at the time of signing it, my statement of items, or parts thereof, to which I object so that each item, or part thereof, so objected to shall not take effect.

The bill provides that the issuance of restraining orders pursuant to the Drug Offender Restraining Order Act of 1999 is at the discretion of the court and is not mandatory. Section 5 of the bill appropriates \$95,000 to the Administrative Office of the Courts to modify the judiciary's automated systems in accordance with the statute. I share the Legislature's interest in providing the Administrative Office of the Courts with the necessary funding to properly implement this bill but I cannot approve the funding contained in the bill. The Administrative Office of the Courts would be able to begin the process of updating their automated systems with \$50,000.

Therefore, I herewith append to Assembly Bill No. 4026 (First Reprint), at the time of signing it, the following statement of objections to the items, or parts thereof, to which I object and which shall not take effect:

Page 7, Section 5, Line 27: Delete "\$95,000" and insert "\$50,000"

Respectfully,

Donald T. DiFrancesco
Acting Governor, Senate President

Attest:

James A. Harkness
Chief Counsel

§§3,4 -
C.2C:35-5.9
& 2C:35-5.10
§5 - Approp.-LIV
§6 - Note to
§§1-5

P.L. 2001, CHAPTER 365, *approved January 7, 2002*
Assembly, No. 4026 (*First Reprint*)

1 AN ACT concerning restraining orders for certain offenders, amending
2 and supplementing P.L.1999, c.334 and making an appropriation.

3

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

6

7 1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read
8 as follows:

9 3. Definitions.

10 As used in this act:

11 a. "Person" means any person charged with or convicted of a
12 criminal offense or any juvenile charged with delinquency or
13 adjudicated delinquent for an act which, if committed by an adult,
14 would be a criminal offense.

15 b. "Place" includes any premises, residence, business establishment,
16 location or specified area including all buildings and all appurtenant
17 land, in which or at which a criminal offense occurred or is alleged to
18 have occurred or is affected by the criminal offense with which the
19 person is charged. "Place" does not include public rail, bus or air
20 transportation lines or limited access highways which do not allow
21 pedestrian access.

22 c. "Criminal offense" means:

23 (1) ¹[an offense that involves the manufacturing, distributing,
24 selling or possessing with intent to distribute a controlled dangerous
25 substance pursuant to]¹ any of the following: N.J.S.2C:35-3,
26 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8,
27 N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of
28 P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101
29 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

30 (2) the unlawful possession or use of an assault firearm as defined
31 in subsection w. of N.J.S.2C:39-1.

32 (cf: P.L.1999, c.334, s.3)

33

34 2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read
35 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:

¹ **Assembly ALP committee amendments adopted December 13, 2001.**

2 Governor's line-item veto changes of January 7, 2002.

1 Issuance of order by court.

2 4. a. When a person is charged with a criminal offense on a
3 warrant and the person is released from custody before trial on bail or
4 personal recognizance[, or is released to the custody of a parent,
5 guardian, custodian or public or private agency], the court, upon
6 application of a law enforcement officer or prosecuting attorney
7 pursuant to section 3 of P.L. , c. (C.) (now pending before the
8 Legislature as this bill) and except as provided in subsection e. of this
9 section, shall as a condition of release [and except as provided in
10 subsection c. of this section, shall] issue an order prohibiting the
11 person from entering any place defined by subsection b. of section 3
12 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding
13 the place or modifications as provided by subsection f. of this section.

14 b. When a person is [convicted of or adjudicated delinquent for
15 any criminal offense, the court, in addition to any other disposition
16 authorized by law and except as provided in subsection c. of this
17 section, shall issue an order prohibiting the person from entering any
18 place defined by subsection b. of section 3 of P.L.1999, c.334
19 (C.2C:35-5.6).

20 c.] charged with a criminal offense on a summons, the court, upon
21 application of a law enforcement officer or prosecuting attorney
22 pursuant to section 3 of P.L. , c. (C.) (now pending before the
23 Legislature as this bill) and except as provided in subsection e. of this
24 section, shall, at the time of the defendant's first appearance, issue an
25 order prohibiting the person from entering any place defined by
26 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
27 a buffer zone surrounding the place or modifications as provided by
28 subsection f. of this section.

29 c. When a person is charged with a criminal offense on a juvenile
30 delinquency complaint and is released from custody at a detention
31 hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the
32 court, upon application of a law enforcement officer or prosecuting
33 attorney pursuant to section 3 of P.L. , c. (C.) (now pending
34 before the Legislature as this bill) and except as provided in subsection
35 e. of this section, shall issue an order prohibiting the person from
36 entering any place defined by subsection b. of section 3 of P.L.1999,
37 c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or
38 modifications as provided by subsection f. of this section.

39 d. When a person is charged with a criminal offense on a juvenile
40 delinquency complaint and is released without being detained pursuant
41 to sections 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35),
42 the law enforcement officer or prosecuting attorney shall prepare an
43 application pursuant to section 3 of P.L. , c. (C.) (now pending
44 before the Legislature as this bill) for filing on the next court day.

45 The law enforcement officer releasing the juvenile shall serve the
46 juvenile and his parent or guardian with written notice that an order

1 shall be issued by the Family Part of the Superior Court on the next
2 court day prohibiting the juvenile from entering any place defined by
3 subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including
4 a buffer zone surrounding the place or modifications as provided by
5 subsection f. of this section.

6 The court shall issue such order on the first court day following the
7 release of the juvenile. If the restraints contained in the court order
8 differ from the restraints contained in the notice, the order shall not be
9 effective until the third court day following the issuance of the order.
10 The juvenile may apply to the court to stay or modify the order on the
11 grounds set forth in subsection e. of this section.

12 e. The court may forego issuing a restraining order for which
13 application has been made pursuant to section 3 of P.L. , c. (C.)
14 (now pending before the Legislature as this bill) only if the defendant
15 establishes by clear and convincing evidence that:

16 (1) the defendant lawfully resides at or has legitimate business on
17 or near the place, or otherwise legitimately needs to enter the place.
18 In such an event, the court shall not issue an order pursuant to this
19 section unless the court is clearly convinced that the need to bar the
20 person from the place in order to protect the public safety and the
21 rights, safety and health of the residents and persons working in the
22 place outweighs the person's interest in returning to the place. If the
23 balance of the interests of the person and the public so warrants, the
24 court may issue an order imposing conditions upon the person's entry
25 at, upon or near the place; or

26 (2) the issuance of an order would cause undue hardship to
27 innocent persons and would constitute a serious injustice which
28 overrides the need to protect the rights, safety and health of persons
29 residing in or having business in the place.

30 [d.] f. A restraining order issued pursuant to subsection a. [or],
31 b., c., d. or h. of this section shall describe the place from which the
32 person has been barred and any conditions upon the person's entry into
33 the place, with sufficient specificity to enable the person to guide his
34 conduct accordingly and to enable a law enforcement officer to
35 enforce the order. The order shall also prohibit the person from
36 entering an area of up to 500 feet surrounding the place, unless the
37 court rules that a different buffer zone would better effectuate the
38 purposes of this act. In the discretion of the court, the order may
39 contain modifications to permit the person to enter the area during
40 specified times for specified purposes, such as attending school during
41 regular school hours. When appropriate, the court may append to the
42 order a map depicting the place. The person shall be given a copy of
43 the restraining order and any appended map and shall acknowledge in
44 writing the receipt thereof.

45 [e.] g. (1) The court shall provide notice of the restraining order
46 to the local law enforcement agency where the arrest occurred and to

1 the county prosecutor. [In addition, when the order prohibits a person
2 charged with a criminal offense from entering at, upon or near any
3 building, business premises, school or other public, private or
4 commercial premises, the court may cause notice of the restraining
5 order to be transmitted to the owner of such property and to the
6 owner's agent, or, in the case of a school or any government-owned
7 property, to the appropriate administrator, and to any tenant
8 association representing the residents of the affected area.]

9 (2) Notwithstanding the provisions of section 1 of P.L.1982, c.79
10 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
11 delinquency for a criminal offense,¹ the local law enforcement agency
12 may post a copy of any orders issued pursuant to this section, or an
13 equivalent notice containing ¹[a photograph of the person and]¹ the
14 terms of the order, upon one or more of the principal entrances of the
15 place or in any other conspicuous location. Such posting shall be for
16 the purpose of informing the public, and the failure to post a copy of
17 the order shall in no way excuse any violation of the order.

18 (3) Notwithstanding the provisions of section 1 of P.L.1982, c.79
19 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
20 delinquency for a criminal offense,¹ any law enforcement agency may
21 publish a copy of any orders issued pursuant to this section, or an
22 equivalent notice containing ¹[a photograph of the person and]¹ the
23 terms of the order, in a newspaper circulating in the area of the
24 restraining order. Such publication shall be for the purpose of
25 informing the public, and the failure to publish a copy of the order
26 shall in no way excuse any violation of the order.

27 (4) Notwithstanding the provisions of section 1 of P.L.1982, c.79
28 (C.2A:4A-60), ¹prior to the person's conviction or adjudication of
29 delinquency for a criminal offense,¹ any law enforcement agency may
30 distribute copies of any orders issued pursuant to this section, or an
31 equivalent notice containing ¹[a photograph of the person and]¹ the
32 terms of the order, to residents or businesses located within the area
33 delineated in the order or, in the case of a school or any government-
34 owned property, to the appropriate administrator, or to any tenant
35 association representing the residents of the affected area. Such
36 distribution shall be for the purpose of informing the public, and the
37 failure to publish a copy of the order shall in no way excuse any
38 violation of the order.

39 h. When a person is convicted of or adjudicated delinquent for any
40 criminal offense, the court, upon application of a law enforcement
41 officer or prosecuting attorney pursuant to section 3 of P.L. , c.
42 (C.) (now pending before the Legislature as this bill) and except as
43 provided in subsection e. of this section, shall, by separate order or
44 within the judgment of conviction, issue an order prohibiting the
45 person from entering any place defined by subsection b. of section 3
46 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding

1 the place or modifications as provided by subsection f. of this section.
2 ¹Upon the person's conviction or adjudication of delinquency for a
3 criminal offense, a law enforcement agency, in addition to posting,
4 publishing, and distributing the order or an equivalent notice pursuant
5 to paragraphs (2), (3) and (4) of subsection g. of this section, may also
6 post, publish and distribute a photograph of the person.¹

7 [f.] i. When a juvenile has been adjudicated delinquent for an act
8 which, if committed by an adult, would be a criminal offense, in
9 addition to an order required by subsection [b.] h. of this section or
10 any other disposition authorized by law, the court may order the
11 juvenile and any parent, guardian or any family member over whom the
12 court has jurisdiction to take such actions or obey such restraints as
13 may be necessary to facilitate the rehabilitation of the juvenile or to
14 protect public safety or to safeguard or enforce the rights of residents
15 of the place. The court may commit the juvenile to the care of the
16 Department of Human Services under the responsibility of the Division
17 of Youth and Family Services until such time as the juvenile reaches
18 the age of 18 or until the order of removal and restraint expires,
19 whichever first occurs, or to such alternative residential placement as
20 is practicable.

21 [g.] j. An order issued pursuant to subsection a., b., c. or d. of this
22 section shall remain in effect until the case has been adjudicated or
23 dismissed, or for not less than two years, whichever is less. An order
24 issued pursuant to subsection [b.] h. of this section shall remain in
25 effect for such period of time as shall be fixed by the court but not
26 longer than the maximum term of imprisonment or incarceration
27 allowed by law for the underlying offense or offenses. When the court
28 issues a restraining order pursuant to subsection [b.] h. of this section
29 and the person is also sentenced to any form of probationary
30 supervision or participation in the Intensive Supervision Program, the
31 court shall make continuing compliance with the order an express
32 condition of probation or the Intensive Supervision Program. When
33 the person has been sentenced to a term of incarceration, continuing
34 compliance with the terms and conditions of the order shall be made
35 an express condition of the person's release from confinement or
36 incarceration on parole. At the time of sentencing or, in the case of a
37 juvenile, at the time of disposition of the juvenile case, the court shall
38 advise the defendant that the restraining order shall include a fixed
39 time period in accordance with this subsection and shall include that
40 provision in the judgment of conviction, dispositional order, separate
41 order or order vacating an existing restraining order, to the law
42 enforcement agency that made the arrest and to the county prosecutor.

43 [h.] k. All applications to stay or modify an order issued pursuant
44 to this act, including an order originally issued in municipal court, shall
45 be made in the Superior Court. The court shall immediately notify the
46 [appropriate law enforcement agency] county prosecutor in writing

1 whenever an application is made to stay or modify an order issued
2 pursuant to this act. If the court does not issue a restraining order, the
3 sentence imposed by the court for a criminal offense as defined in
4 subsection b. of this section shall not become final for ten days in
5 order to permit the appeal of the court's findings by the prosecution.

6 [i.] l. Nothing in this section shall be construed in any way to limit
7 the authority of the court to take such other actions or to issue such
8 orders as may be necessary to protect the public safety or to safeguard
9 or enforce the rights of others with respect to the place.

10 [j.] m. Notwithstanding any other provision of this section, the
11 court may permit the person to return to the place to obtain personal
12 belongings and effects and, by court order, may restrict the time and
13 duration and provide for police supervision of such a visit.

14 (cf: P.L.1999, c.334, s.4)

15
16 3. (New section) Certification of Offense Location.

17 The court shall issue a restraining order pursuant to P.L.1999,
18 c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement
19 officer or prosecuting attorney and submission of a certification
20 describing the location of the offense.

21
22 4. (New section) Discretion to Not Seek Restraining Order.

23 A law enforcement officer or prosecuting attorney shall have
24 discretion to not seek a restraining order pursuant to P.L.1999, c.334
25 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense
26 resulting from the stop of a motor vehicle, if the defendant was using
27 public transportation, or if the provisions of ¹paragraph (1) or (2) of¹
28 subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are
29 applicable.

30
31 5. There is appropriated from the General Fund to the
32 Administrative Office of the Courts ² ~~[\$95,000]~~ \$50,000 ² for the
33 modification of the judiciary's automated systems in accordance with
34 the implementation of this act.

35
36 6. This act shall take effect on the 120th day following enactment
37 except for section 5, which shall take effect immediately.

38
39
40
41
42 Amends the "Drug Offender Restraining Order Act of 1999" and
43 appropriates \$95,000 to the Administrative Office of the Courts.

CHAPTER 365

AN ACT concerning restraining orders for certain offenders, amending and supplementing P.L.1999, c.334 and making an appropriation.

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

1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read as follows:

C.2C:35-5.6 Definitions relative to removal, restraint of certain offenders.

3. Definitions.

As used in this act:

a. "Person" means any person charged with or convicted of a criminal offense or any juvenile charged with delinquency or adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense.

b. "Place" includes any premises, residence, business establishment, location or specified area including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the person is charged. "Place" does not include public rail, bus or air transportation lines or limited access highways which do not allow pedestrian access.

c. "Criminal offense" means:

(1) any of the following: N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8, N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

(2) the unlawful possession or use of an assault firearm as defined in subsection w. of N.J.S.2C:39-1.

2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read as follows:

C.2C:35-5.7 Issuance of order by court.

Issuance of order by court.

4. a. When a person is charged with a criminal offense on a warrant and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall as a condition of release issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

b. When a person is charged with a criminal offense on a summons, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

c. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released from custody at a detention hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

d. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released without being detained pursuant to section 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35), the law enforcement officer or prosecuting attorney shall prepare an application pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) for filing on the next court day.

The law enforcement officer releasing the juvenile shall serve the juvenile and his parent or guardian with written notice that an order shall be issued by the Family Part of the Superior Court on the next court day prohibiting the juvenile from entering any place defined by

subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subsection e. of this section.

e. The court may forego issuing a restraining order for which application has been made pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) only if the defendant establishes by clear and convincing evidence that:

(1) the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order pursuant to this section unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place; or

(2) the issuance of an order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of persons residing in or having business in the place.

f. A restraining order issued pursuant to subsection a., b., c., d. or h. of this section shall describe the place from which the person has been barred and any conditions upon the person's entry into the place, with sufficient specificity to enable the person to guide his conduct accordingly and to enable a law enforcement officer to enforce the order. The order shall also prohibit the person from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of this act. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, the court may append to the order a map depicting the place. The person shall be given a copy of the restraining order and any appended map and shall acknowledge in writing the receipt thereof.

g. (1) The court shall provide notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor.

(2) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, the local law enforcement agency may post a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, upon one or more of the principal entrances of the place or in any other conspicuous location. Such posting shall be for the purpose of informing the public, and the failure to post a copy of the order shall in no way excuse any violation of the order.

(3) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may publish a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, in a newspaper circulating in the area of the restraining order. Such publication shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

(4) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may distribute copies of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, to residents or businesses located within the area delineated in the order or, in the case of a school or any government-owned property, to the appropriate administrator, or to any tenant association representing the residents of the affected area. Such distribution shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

h. When a person is convicted of or adjudicated delinquent for any criminal offense, the

court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, by separate order or within the judgment of conviction, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section. Upon the person's conviction or adjudication of delinquency for a criminal offense, a law enforcement agency, in addition to posting, publishing, and distributing the order or an equivalent notice pursuant to paragraphs (2), (3) and (4) of subsection g. of this section, may also post, publish and distribute a photograph of the person.

i. When a juvenile has been adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense, in addition to an order required by subsection h. of this section or any other disposition authorized by law, the court may order the juvenile and any parent, guardian or any family member over whom the court has jurisdiction to take such actions or obey such restraints as may be necessary to facilitate the rehabilitation of the juvenile or to protect public safety or to safeguard or enforce the rights of residents of the place. The court may commit the juvenile to the care of the Department of Human Services under the responsibility of the Division of Youth and Family Services until such time as the juvenile reaches the age of 18 or until the order of removal and restraint expires, whichever first occurs, or to such alternative residential placement as is practicable.

j. An order issued pursuant to subsection a., b., c. or d. of this section shall remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. An order issued pursuant to subsection h. of this section shall remain in effect for such period of time as shall be fixed by the court but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subsection h. of this section and the person is also sentenced to any form of probationary supervision or participation in the Intensive Supervision Program, the court shall make continuing compliance with the order an express condition of probation or the Intensive Supervision Program. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subsection and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county prosecutor.

k. All applications to stay or modify an order issued pursuant to this act, including an order originally issued in municipal court, shall be made in the Superior Court. The court shall immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to this act. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense as defined in subsection b. of this section shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

l. Nothing in this section shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of others with respect to the place.

m. Notwithstanding any other provision of this section, the court may permit the person to return to the place to obtain personal belongings and effects and, by court order, may restrict the time and duration and provide for police supervision of such a visit.

C.2C:35-5.9 Certification of offense location.

3. Certification of Offense Location.

The court shall issue a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

C.2C:35-5.10 Discretion to not seek restraining order.

4. Discretion to Not Seek Restraining Order.

A law enforcement officer or prosecuting attorney shall have discretion to not seek a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or if the provisions of paragraph (1) or (2) of subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are applicable.

5. There is appropriated from the General Fund to the Administrative Office of the Courts \$50,000 for the modification of the judiciary's automated systems in accordance with the implementation of this act.

6. This act shall take effect on the 120th day following enactment except for section 5, which shall take effect immediately.

Approved January 7, 2002.