

2C:14-13 TO 2C:14-21
LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2015 **CHAPTER:** 147

NJSA: 2C:14-13 TO 2C:14-21 ("Sexual Assault Survivor Protection Act of 2015"; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.)

BILL NO: A4078 (Substituted for S2686 (2R))

SPONSOR(S) Vainieri Huttie, Valerie, and others

DATE INTRODUCED: January 12, 2015

COMMITTEE: **ASSEMBLY:** Judiciary

SENATE: Judiciary
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 6/25/2015

SENATE: 6/25/2015

DATE OF APPROVAL: November 9, 2015

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted)	Yes
A4078	
INTRODUCED BILL: (Includes sponsor(s) statement)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: Yes Judiciary
	SENATE: Yes Judiciary Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL NOTE:	Yes 2/27/2015 6/22/2015

S2686 (2R)	
INTRODUCED BILL: (Includes sponsor(s) statement)	Yes
COMMITTEE STATEMENT:	ASSEMBLY: No
	SENATE: Yes Judiciary Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL NOTE: Yes 6/18/2015

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

end

P.L.2015, CHAPTER 147, *approved November 9, 2015*
Assembly, No. 4078 (*Second Reprint*)

1 AN ACT concerning certain protective orders, amending
2 N.J.S.2C:29-9 and supplementing Title 2C of the New Jersey
3 Statutes.

4

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

7

8 1. (New section) P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 “Sexual Assault Survivor Protection Act of 2015.”

11

12 2. (New section) Application for Temporary Protective Order.

13 a. (1) Any person alleging to be a victim of nonconsensual
14 sexual contact, sexual penetration, or lewdness, or any attempt at
15 such conduct, and who is not eligible for a restraining order as a
16 “victim of domestic violence” as defined by the provisions of
17 subsection d. of section 3 of P.L.1991, c.261 (C.2C:25-19), may,
18 except as provided in subsection c. of this section, file an
19 application with the Superior Court pursuant to the Rules of Court
20 alleging the commission of such conduct or attempted conduct and
21 seeking a temporary protective order.

22 ²As used in this section and in sections 3, 4, and 8 of P.L. , c.
23 (C.) (pending before the Legislature as this bill):

24 “Sexual contact” means an intentional touching by the victim or
25 actor, either directly or through clothing, of the victim's or actor's
26 intimate parts for the purpose of degrading or humiliating the victim
27 or sexually arousing or sexually gratifying the actor.

28 “Sexual penetration” means vaginal intercourse, cunnilingus,
29 fellatio or anal intercourse between persons or insertion of the hand,
30 finger or object into the anus or vagina either by the actor or upon
31 the actor's instruction.

32 “Lewdness” means the exposing of the genitals for the purpose
33 of arousing or gratifying the sexual desire of the actor or of any
34 other person.

35 “Intimate parts” means the following body parts: sexual organs,
36 genital area, anal area, inner thigh, groin, buttock or breast of a
37 person.²

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted January 15, 2015.

²Senate SBA committee amendments adopted June 8, 2015.

1 (2) An application for relief under P.L. , c. (C.)
2 (pending before the Legislature as this bill) may be filed by the
3 alleged victim's parent or guardian on behalf of the alleged victim
4 in any case in which the alleged victim:

5 (a) is less than 18 years of age; or

6 (b) has a developmental disability as defined in section 3 of
7 P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that
8 renders the alleged victim temporarily or permanently incapable of
9 understanding the nature of the alleged victim's conduct, including,
10 but not limited to, being incapable of providing consent.

11 b. When it is alleged that nonconsensual sexual contact, sexual
12 penetration, or lewdness, or any attempt at such conduct, has been
13 committed by an unemancipated minor, an applicant seeking a
14 protective order shall not proceed under the provisions of P.L. ,
15 c. (C.) (pending before the Legislature as this bill), but may
16 seek a protective order and other relief under the New Jersey Code
17 of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) by filing a
18 complaint pursuant to the provisions of section 11 of P.L.1982, c.77
19 (C.2A:4A-30).

20 c. (1) An applicant may seek a protective order pursuant to
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 and the court may issue such an order regardless of whether
23 criminal charges based on the incident were filed and regardless of
24 the disposition of any such charges.

25 (2) The filing of an application pursuant to this section shall not
26 prevent the filing of a criminal complaint, or the institution or
27 maintenance of a criminal prosecution based on the same act.

28 d. The court shall waive any requirement that the applicant's or
29 alleged victim's place of residence appear on the application.

30 e. An applicant may seek a protective order pursuant to
31 P.L. , c. (C.) (pending before the Legislature as this bill) in
32 a court having jurisdiction over the place where the alleged conduct
33 or attempted conduct occurred, where the respondent resides, or
34 where the alleged victim resides or is sheltered.

35 f. No fees or other costs shall be assessed against an applicant
36 for seeking a protective order pursuant to P.L. , c. (C.)
37 (pending before the Legislature as this bill).

38

39 3. (New section) Temporary Protective Order.

40 a. An applicant may seek emergency, ex parte relief in the
41 nature of a temporary protective order. A judge of the Superior
42 Court may enter an emergency ex parte order when necessary to
43 protect the safety and well-being of an alleged victim on whose
44 behalf the relief is sought. The court may grant any relief necessary
45 to protect the safety and well-being of an alleged victim.

46 b. The court shall, upon consideration of the application, order
47 emergency ex parte relief in the nature of a temporary protective
48 order if the court determines that the applicant is a victim of

1 nonconsensual sexual contact, sexual penetration, or lewdness, or
2 any attempt at such conduct, and qualifies for such relief pursuant
3 to section 2 of P.L. , c. (C.) (pending before the Legislature
4 as this bill). The court shall render a decision on the application and
5 issue a temporary protective order, where appropriate, in an
6 expedited manner.

7 c. The court may issue a temporary protective order, pursuant
8 to court rules, upon sworn testimony or an application of an alleged
9 victim who is not physically present, pursuant to court rules, or by a
10 person who represents an alleged victim who is physically or
11 mentally incapable of filing personally. A temporary restraining
12 order may be issued if the judge is satisfied that exigent
13 circumstances exist sufficient to excuse the failure of the applicant
14 to appear personally and that sufficient grounds for granting the
15 application have been shown.

16 d. An order for emergency, ex parte relief shall be granted
17 upon good cause shown and shall remain in effect until a judge of
18 the Superior Court issues a further order. Any temporary protective
19 order issued pursuant to this section is immediately appealable for a
20 plenary hearing de novo not on the record before any judge of
21 Superior Court of the county in which the alleged victim resides or
22 is sheltered if that judge issued the temporary protective order or
23 has access to the reasons for the issuance of the temporary
24 protective order and sets forth in the record the reasons for the
25 modification or dismissal.

26 e. A temporary protective order issued pursuant to this section
27 may include, but is not limited to, the following emergency relief:

28 (1) an order prohibiting the respondent from committing or
29 attempting to commit any future act of nonconsensual sexual
30 contact, sexual penetration, or lewdness, or any attempt at such
31 conduct, against the alleged victim;

32 (2) an order prohibiting the respondent from entering the
33 residence, property, school, or place of employment of the victim or
34 the victim's family or household members, and requiring the
35 respondent to stay away from any specified place that is named in
36 the order and is frequented regularly by the alleged victim or the
37 alleged victim's family or household members;

38 (3) an order prohibiting the respondent from having any contact
39 with the alleged victim or others, including an order forbidding the
40 respondent from personally or through an agent initiating any
41 communication likely to cause annoyance or alarm including, but
42 not limited to, personal, written, or telephone contact, or contact via
43 electronic device, with the alleged victim or the alleged victim's
44 family members, or their employers, employees, or fellow workers,
45 an employee or volunteer of a sexual assault response entity that is
46 providing services to an alleged victim, or others with whom
47 communication would be likely to cause annoyance or alarm to the
48 alleged victim;

1 (4) an order prohibiting the respondent from stalking or
2 following, or threatening to harm, stalk, or follow, the alleged
3 victim;

4 (5) an order prohibiting the respondent from committing or
5 attempting to commit an act of harassment, including an act of
6 cyber-harassment, against the alleged victim; and

7 (6) any other relief that the court deems appropriate.

8 f. A copy of the temporary protective order issued pursuant
9 to this section shall be immediately forwarded to the police of the
10 municipality in which the alleged victim resides or is sheltered¹,
11 and to the police of the municipality¹. A copy of the temporary
12 protective order shall also be forwarded to the sheriff of the county¹
13 in which the respondent resides for immediate service ¹[on] upon¹
14 the respondent in accordance with the Rules of Court. ¹The court or
15 the sheriff may coordinate service of the temporary protective order
16 upon the respondent through the police in appropriate
17 circumstances.¹ If personal service cannot be effected upon the
18 respondent, the court may order other appropriate substituted
19 service. At no time shall the alleged victim be asked or required to
20 serve any order on the respondent.

21 g. Notice of temporary protective orders issued pursuant to this
22 section shall be sent by the clerk of the court or other person
23 designated by the court to the appropriate chiefs of police, members
24 of the State Police and any other appropriate law enforcement
25 agency or court.

26

27 4. (New section) Final Protective Order.

28 a. A hearing shall be held in the Superior Court within 10 days
29 of the filing of an application pursuant to section 3 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) in the county
31 where the temporary protective order was ordered, unless good
32 cause is shown for the hearing to be held elsewhere. A copy of the
33 application shall be served on the respondent in conformity with the
34 Rules of Court. If a criminal complaint arising out of the same
35 incident which is the subject matter of an application for a
36 protective order has been filed, testimony given by the applicant,
37 the alleged victim, or the respondent in accordance with an
38 application filed pursuant to this section shall not be used in the
39 criminal proceeding against the respondent, other than contempt
40 matters, and where it would otherwise be admissible hearsay under
41 the rules of evidence that govern when a party is unavailable. At the
42 hearing, the standard for proving the allegations made in the
43 application for a protective order shall be a preponderance of the
44 evidence. The court shall consider but not be limited to the
45 following factors:

1 (1) the occurrence of one or more acts of nonconsensual sexual
2 contact, sexual penetration, or lewdness, or any attempt at such
3 conduct, against the alleged victim; and

4 (2) the possibility of future risk to the safety or well-being of the
5 alleged victim.

6 b. The court shall not deny relief under this section due to: the
7 applicant's or alleged victim's failure to report the incident to law
8 enforcement; the alleged victim's or the respondent's alleged
9 intoxication; whether the alleged victim did or did not leave the
10 premises to avoid nonconsensual sexual contact, sexual penetration,
11 or lewdness, or an attempt at such conduct; or the absence of signs
12 of physical injury to the alleged victim.

13 c. In any proceeding involving an application for a protective
14 order pursuant to P.L. , c. (C.) (pending before the
15 Legislature as this bill), evidence of the alleged victim's previous
16 sexual conduct or manner of dress at the time of the incident shall
17 not be admitted nor shall any reference made to such conduct or
18 manner or dress, except as provided in N.J.S.2C:14-7.

19 d. The issue of whether an act alleged in the application for a
20 protective order occurred, or whether an act of contempt under
21 paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not
22 be subject to mediation or negotiation in any form.

23 e. A final protective order issued pursuant to this section shall
24 be issued only after a finding or an admission is made that the
25 respondent committed an act of nonconsensual sexual contact,
26 sexual penetration, or lewdness, or any attempt at such conduct,
27 against the alleged victim. A final protective order shall:

28 (1) prohibit the respondent from having contact with the victim;
29 and

30 (2) prohibit the respondent from committing any future act of
31 nonconsensual sexual contact, sexual penetration, or lewdness, or
32 any attempt at such conduct, against the victim.

33 f. In addition to any relief provided to the victim under
34 subsection e. of this section, a final protective order issued pursuant
35 to this section may include, but is not limited to, the following
36 relief:

37 (1) an order prohibiting the respondent from entering the
38 residence, property, school, or place of employment of the victim or
39 the victim's family or household members, and requiring the
40 respondent to stay away from any specified place that is named in
41 the order and is frequented regularly by the victim or the victim's
42 family or household members;

43 (2) an order prohibiting the respondent from having any contact
44 with the victim or others, including an order forbidding the
45 respondent from personally or through an agent initiating any
46 communication likely to cause annoyance or alarm including, but
47 not limited to, personal, written, or telephone contact, or contact via
48 electronic device, with the victim or the victim's family members or

1 their employers, employees, or fellow workers; an employee or
2 volunteer of a sexual assault response entity that is providing
3 services to a victim; or others with whom communication would be
4 likely to cause annoyance or alarm to the victim;

5 (3) an order prohibiting the respondent from stalking or
6 following, or threatening to harm, stalk or follow, the victim;

7 (4) an order prohibiting the respondent from committing or
8 attempting to commit an act of harassment, including an act of
9 cyber-harassment, against the victim; and

10 (5) any other relief that the court deems appropriate.

11 g. A ¹copy of the¹ final protective order issued pursuant to this
12 section shall be immediately forwarded to the police of the
13 municipality in which the victim resides or is sheltered¹], and to the
14 police of the municipality] . A copy of the final protective order
15 shall be forwarded to the sheriff of the county¹ in which the
16 respondent resides for immediate service ¹[on] upon¹ the
17 respondent in accordance with the Rules of Court. ¹The court or the
18 sheriff may coordinate service of the final protective order upon the
19 respondent through the police in appropriate circumstances.¹ If
20 personal service cannot be effected upon the respondent, the court
21 may order other appropriate substituted service. At no time shall the
22 victim be asked or required to serve any order on the respondent.

23 h. Notice of a final protective order issued pursuant to this
24 section shall be sent by the clerk of the Superior Court or other
25 person designated by the court to the appropriate county prosecutor,
26 the appropriate chiefs of police, members of the State Police and
27 any other appropriate law enforcement agency. Notice of the
28 issuance of a final protective order shall also be provided to the
29 Division of Child Protection and Permanency in the Department of
30 Children and Families where the victim is less than 18 years of age.

31 i. A final protective order issued pursuant to this section shall
32 remain in effect until further order of a judge of the Superior Court.
33 Either party may file a petition with the court to dissolve or modify
34 a final protective order. When considering a petition for dissolution
35 or modification of a final protective order, the court shall conduct a
36 hearing to consider whether a material change in circumstances has
37 occurred since the issuance of the protective order which would
38 make its continued enforcement inequitable, oppressive or unjust
39 taking into account the current status of the parties, including the
40 desire of the victim for the continuation of the protective order, the
41 potential for contact between the parties, the history of the
42 respondent's violations of the protective order or criminal
43 convictions, and any other factors that the court may find relevant
44 to protecting the safety and well-being of the victim.

45
46 5. (New section) ¹a.¹ Any temporary or final protective order
47 issued pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) shall be in effect throughout the State, and
2 shall be enforced by all law enforcement officers.

3 ¹b. When a law enforcement officer finds probable cause that a
4 respondent has committed contempt of an order entered pursuant to
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 the respondent shall be arrested and taken into custody. The court
7 shall determine whether the respondent shall be released pending
8 trial or detained pending a pretrial detention hearing pursuant to
9 sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19)
10 and applicable court rules.¹

11
12 6. (New section) a. A respondent's violation of any protective
13 order issued pursuant to P.L. , c. (C.) (pending before the
14 Legislature as this bill) shall constitute an offense under subsection
15 ¹**['b.] c.** of N.J.S.2C:29-9 and each order shall so state. All
16 contempt proceedings brought pursuant to ¹**['paragraph (2) of']**
17 subsection ¹**['b.] c.** of N.J.S.2C:29-9 shall be subject to any rules
18 or guidelines established by the Supreme Court to promote the
19 prompt disposition of criminal matters. ¹**['Additionally, and**
20 **notwithstanding the term of imprisonment provided in N.J.S.2C:43-**
21 **8, any person convicted of a second or subsequent nonindictable**
22 **offense involving the contempt of a protective order issued**
23 **pursuant to P.L. , c. (C.) (pending before the Legislature as**
24 **this bill) shall serve a minimum term of not less than 30 days.']¹**

25 b. Where a victim alleges that a respondent has committed
26 contempt of a protective order entered pursuant to the provisions of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 but a law enforcement officer has found that the facts are
29 insufficient to establish probable cause to arrest the respondent, the
30 law enforcement officer shall advise the victim of the procedure for
31 completing and signing a criminal complaint alleging a violation of
32 ¹subsection c. of N.J.S.2C:29-9 through the municipal court.
33 Nothing in this section shall be construed to prevent the court from
34 granting any other emergency relief it deems necessary.

35
36 7. (New section) a. All records maintained pursuant to P.L. ,
37 c. (C.) (pending before the Legislature as this bill) shall be
38 confidential and shall not be made available to any individual or
39 institution except as otherwise provided by law.

40 b. A victim shall be provided with copies of all protective
41 orders issued pursuant to P.L. , c. (C.) (pending before the
42 Legislature as this bill) and other relevant documents upon request
43 at no cost.

44
45 8. (New section) The Administrative Office of the Courts shall
46 establish and maintain a central registry of all protective orders
47 issued pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) and all persons who have been charged with
2 a violation of such a protective order. All records made pursuant to
3 this section shall be kept confidential and shall be released only to:

4 a. A public agency authorized to investigate a report of
5 nonconsensual sexual contact, sexual penetration, or lewdness, or
6 any attempt at such conduct, or domestic violence;

7 b. A police or other law enforcement agency for official
8 purposes;

9 c. A court, upon its finding that access to such records may be
10 necessary for determination of an issue before the court;

11 d. A surrogate, in that person's official capacity as deputy clerk
12 of the Superior Court, in order to prepare documents that may be
13 necessary for a court to determine an issue in an adoption
14 proceeding; or

15 e. The Division of Child Protection and Permanency in the
16 Department of Children and Families when the division is
17 conducting a background investigation involving:

18 (1) an allegation of child abuse or neglect, to include any adult
19 member of the same household as the individual who is the subject
20 of the abuse or neglect allegation; or

21 (2) an out-of-home placement for a child being placed by the
22 Division of Child Protection and Permanency, to include any adult
23 member of the prospective placement household.

24 Any individual, agency, or court which receives from the
25 Administrative Office of the Courts the records referred to in this
26 section shall keep the records and reports, or parts thereof,
27 confidential and shall not disseminate or disclose such records and
28 reports, or parts thereof; provided that nothing in this section shall
29 prohibit a receiving individual, agency, surrogate or court from
30 disclosing records and reports, or parts thereof, in a manner
31 consistent with and in furtherance of the purpose for which the
32 records and reports or parts thereof were received.

33 Any individual who disseminates or discloses a record or report,
34 or parts thereof, of the central registry, other than for an official
35 purpose authorized by this section, for the investigation of an
36 alleged violation of a protective order issued pursuant to P.L. ,
37 c. (C.) (pending before the Legislature as this bill),
38 conducting a background investigation involving a person's
39 application for employment at a police or law enforcement agency,
40 making a determination of an issue before the court, conducting a
41 background investigation as specified in subsection e. of this
42 section, or for any other purpose other than that which is authorized
43 by law, the Rules of Court or court order, shall be guilty of a crime
44 of the fourth degree.

45

46 9. (New section) The Supreme Court may promulgate Rules of
47 Court to effectuate the purposes of P.L. , c. (C.) (pending
48 before the Legislature as this bill).

1 10. N.J.S.2C:29-9 is amended to read as follows:

2 2C:29-9. Contempt.

3 a. A person is guilty of a crime of the fourth degree if he
4 purposely or knowingly disobeys a judicial order or protective
5 order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or
6 hinders, obstructs or impedes the effectuation of a judicial order or
7 the exercise of jurisdiction over any person, thing or controversy by
8 a court, administrative body or investigative entity.

9 b. (1) ¹**[(a)]** Except as provided **[below]** in ¹**[subparagraphs**
10 **(b) and (c) of this]** ¹ paragraph ¹(2) of this subsection¹, a person is
11 guilty of a crime of the fourth degree if that person purposely or
12 knowingly violates any provision in an order entered under the
13 provisions of the "Prevention of Domestic Violence Act of 1991,"
14 P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the
15 provisions of a substantially similar statute under the laws of
16 another state or the United States when the conduct which
17 constitutes the violation could also constitute a crime or a
18 disorderly persons offense.

19 ¹**[(b)]** **[In all other cases a]** ¹**[A]** Orders entered pursuant to
20 paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of
21 P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered
22 under the laws of another state or the United States shall be
23 excluded from the provisions of this paragraph.

24 (2) In all other cases a¹ person is guilty of a disorderly persons
25 offense if that person purposely or knowingly violates an order
26 entered under the provisions of [this act] the "Prevention of
27 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
28 al.) or an order entered under the provisions of a substantially
29 similar statute under the laws of another state or the United States
30 ¹**[when the conduct which constitutes the violation would not also**
31 **constitute a crime or a disorderly persons offense]**¹.

32 ¹**[(c)]** ¹ Orders entered pursuant to paragraphs (3), (4), (5), (8)
33 and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-
34 29) or substantially similar orders entered under the laws of another
35 state or the United States shall be excluded from the provisions of
36 this **[subsection]** paragraph.

37 ¹**[(2)]** c.¹ A person is guilty of a crime of the fourth degree if
38 that person purposely or knowingly violates any provision in an
39 order entered under the provisions of P.L. , c. (C.)
40 (pending before the Legislature as this bill).

41 As used in this ¹**[subsection]** section¹, "state" means a state of
42 the United States, the District of Columbia, Puerto Rico, the United
43 States Virgin Islands, or any territory or insular possession subject
44 to the jurisdiction of the United States. The term includes an Indian
45 tribe or band, or Alaskan native village, which is recognized by a
46 federal law or formally acknowledged by a state.

47 (cf: P.L.2008, c.81, s.3)

ASSEMBLY, No. 4078

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JANUARY 12, 2015

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

SYNOPSIS

“Sexual Assault Survivor Protection Act of 2015”; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/16/2015)

1 AN ACT concerning certain protective orders, amending
2 N.J.S.2C:29-9 and supplementing Title 2C of the New Jersey
3 Statutes.

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

7
8 1. (New section) P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 “Sexual Assault Survivor Protection Act of 2015.”

11
12 2. (New section) Application for Temporary Protective Order.

13 a. (1) Any person alleging to be a victim of nonconsensual sexual
14 contact, sexual penetration, or lewdness, or any attempt at such
15 conduct, and who is not eligible for a restraining order as a “victim
16 of domestic violence” as defined by the provisions of subsection d.
17 of section 3 of P.L.1991, c.261 (C.2C:25-19), may, except as
18 provided in subsection c. of this section, file an application with the
19 Superior Court pursuant to the Rules of Court alleging the
20 commission of such conduct or attempted conduct and seeking a
21 temporary protective order.

22 (2) An application for relief under P.L. , c. (C.)
23 (pending before the Legislature as this bill) may be filed by the
24 alleged victim's parent or guardian on behalf of the alleged victim
25 in any case in which the alleged victim:

26 (a) is less than 18 years of age; or

27 (b) has a developmental disability as defined in section 3 of
28 P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that
29 renders the alleged victim temporarily or permanently incapable of
30 understanding the nature of the alleged victim’s conduct, including,
31 but not limited to, being incapable of providing consent.

32 b. When it is alleged that nonconsensual sexual contact, sexual
33 penetration, or lewdness, or any attempt at such conduct, has been
34 committed by an unemancipated minor, an applicant seeking a
35 protective order shall not proceed under the provisions of P.L. ,
36 c. (C.) (pending before the Legislature as this bill), but may
37 seek a protective order and other relief under the New Jersey Code
38 of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) by filing a
39 complaint pursuant to the provisions of section 11 of P.L.1982, c.77
40 (C.2A:4A-30).

41 c. (1) An applicant may seek a protective order pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 and the court may issue such an order regardless of whether
44 criminal charges based on the incident were filed and regardless of
45 the disposition of any such charges.

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 (2) The filing of an application pursuant to this section shall not
2 prevent the filing of a criminal complaint, or the institution or
3 maintenance of a criminal prosecution based on the same act.

4 d. The court shall waive any requirement that the applicant's or
5 alleged victim's place of residence appear on the application.

6 e. An applicant may seek a protective order pursuant to P.L. ,
7 c. (C.) (pending before the Legislature as this bill) in a court
8 having jurisdiction over the place where the alleged conduct or
9 attempted conduct occurred, where the respondent resides, or where
10 the alleged victim resides or is sheltered.

11 f. No fees or other costs shall be assessed against an applicant for
12 seeking a protective order pursuant to P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14

15 3. (New section) Temporary Protective Order.

16 a. An applicant may seek emergency, ex parte relief in the
17 nature of a temporary protective order. A judge of the Superior
18 Court may enter an emergency ex parte order when necessary to
19 protect the safety and well-being of an alleged victim on whose
20 behalf the relief is sought. The court may grant any relief necessary
21 to protect the safety and well-being of an alleged victim.

22 b. The court shall, upon consideration of the application, order
23 emergency ex parte relief in the nature of a temporary protective
24 order if the court determines that the applicant is a victim of
25 nonconsensual sexual contact, sexual penetration, or lewdness, or
26 any attempt at such conduct, and qualifies for such relief pursuant
27 to section 2 of P.L. , c. (C.) (pending before the Legislature
28 as this bill). The court shall render a decision on the application and
29 issue a temporary protective order, where appropriate, in an
30 expedited manner.

31 c. The court may issue a temporary protective order, pursuant
32 to court rules, upon sworn testimony or an application of an alleged
33 victim who is not physically present, pursuant to court rules, or by a
34 person who represents an alleged victim who is physically or
35 mentally incapable of filing personally. A temporary restraining
36 order may be issued if the judge is satisfied that exigent
37 circumstances exist sufficient to excuse the failure of the applicant
38 to appear personally and that sufficient grounds for granting the
39 application have been shown.

40 d. An order for emergency, ex parte relief shall be granted
41 upon good cause shown and shall remain in effect until a judge of
42 the Superior Court issues a further order. Any temporary protective
43 order issued pursuant to this section is immediately appealable for a
44 plenary hearing de novo not on the record before any judge of
45 Superior Court of the county in which the alleged victim resides or
46 is sheltered if that judge issued the temporary protective order or
47 has access to the reasons for the issuance of the temporary

1 protective order and sets forth in the record the reasons for the
2 modification or dismissal.

3 e. A temporary protective order issued pursuant to this section
4 may include, but is not limited to, the following emergency relief:

5 (1) an order prohibiting the respondent from committing or
6 attempting to commit any future act of nonconsensual sexual
7 contact, sexual penetration, or lewdness, or any attempt at such
8 conduct, against the alleged victim;

9 (2) an order prohibiting the respondent from entering the
10 residence, property, school, or place of employment of the victim or
11 the victim's family or household members, and requiring the
12 respondent to stay away from any specified place that is named in
13 the order and is frequented regularly by the alleged victim or the
14 alleged victim's family or household members;

15 (3) an order prohibiting the respondent from having any contact
16 with the alleged victim or others, including an order forbidding the
17 respondent from personally or through an agent initiating any
18 communication likely to cause annoyance or alarm including, but
19 not limited to, personal, written, or telephone contact, or contact via
20 electronic device, with the alleged victim or the alleged victim's
21 family members, or their employers, employees, or fellow workers,
22 an employee or volunteer of a sexual assault response entity that is
23 providing services to an alleged victim, or others with whom
24 communication would be likely to cause annoyance or alarm to the
25 alleged victim;

26 (4) an order prohibiting the respondent from stalking or
27 following, or threatening to harm, stalk, or follow, the alleged
28 victim;

29 (5) an order prohibiting the respondent from committing or
30 attempting to commit an act of harassment, including an act of
31 cyber-harassment, against the alleged victim; and

32 (6) any other relief that the court deems appropriate.

33 f. A temporary protective order issued pursuant to this section
34 shall be immediately forwarded to the police of the municipality in
35 which the alleged victim resides or is sheltered, and to the police of
36 the municipality in which the respondent resides for immediate
37 service on the respondent in accordance with the Rules of Court. If
38 personal service cannot be effected upon the respondent, the court
39 may order other appropriate substituted service. At no time shall the
40 alleged victim be asked or required to serve any order on the
41 respondent.

42 g. Notice of temporary protective orders issued pursuant to
43 this section shall be sent by the clerk of the court or other person
44 designated by the court to the appropriate chiefs of police, members
45 of the State Police and any other appropriate law enforcement
46 agency or court.

47

48 4. (New section) Final Protective Order.

1 a. A hearing shall be held in the Superior Court within 10 days
2 of the filing of an application pursuant to section 3 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) in the county
4 where the temporary protective order was ordered, unless good
5 cause is shown for the hearing to be held elsewhere. A copy of the
6 application shall be served on the respondent in conformity with the
7 Rules of Court. If a criminal complaint arising out of the same
8 incident which is the subject matter of an application for a
9 protective order has been filed, testimony given by the applicant,
10 the alleged victim, or the respondent in accordance with an
11 application filed pursuant to this section shall not be used in the
12 criminal proceeding against the respondent, other than contempt
13 matters, and where it would otherwise be admissible hearsay under
14 the rules of evidence that govern when a party is unavailable. At the
15 hearing, the standard for proving the allegations made in the
16 application for a protective order shall be a preponderance of the
17 evidence. The court shall consider but not be limited to the
18 following factors:

19 (1) the occurrence of one or more acts of nonconsensual sexual
20 contact, sexual penetration, or lewdness, or any attempt at such
21 conduct, against the alleged victim; and

22 (2) the possibility of future risk to the safety or well-being of the
23 alleged victim.

24 b. The court shall not deny relief under this section due to: the
25 applicant's or alleged victim's failure to report the incident to law
26 enforcement; the alleged victim's or the respondent's alleged
27 intoxication; whether the alleged victim did or did not leave the
28 premises to avoid nonconsensual sexual contact, sexual penetration,
29 or lewdness, or an attempt at such conduct; or the absence of signs
30 of physical injury to the alleged victim.

31 c. In any proceeding involving an application for a protective
32 order pursuant to P.L. , c. (C.) (pending before the
33 Legislature as this bill), evidence of the alleged victim's previous
34 sexual conduct or manner of dress at the time of the incident shall
35 not be admitted nor shall any reference made to such conduct or
36 manner or dress, except as provided in N.J.S.2C:14-7.

37 d. The issue of whether an act alleged in the application for a
38 protective order occurred, or whether an act of contempt under
39 paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not
40 be subject to mediation or negotiation in any form.

41 e. A final protective order issued pursuant to this section shall
42 be issued only after a finding or an admission is made that the
43 respondent committed an act of nonconsensual sexual contact,
44 sexual penetration, or lewdness, or any attempt at such conduct,
45 against the alleged victim. A final protective order shall:

46 (1) prohibit the respondent from having contact with the victim;
47 and

1 (2) prohibit the respondent from committing any future act of
2 nonconsensual sexual contact, sexual penetration, or lewdness, or
3 any attempt at such conduct, against the victim.

4 f. In addition to any relief provided to the victim under
5 subsection e. of this section, a final protective order issued pursuant
6 to this section may include, but is not limited to, the following
7 relief:

8 (1) an order prohibiting the respondent from entering the
9 residence, property, school, or place of employment of the victim or
10 the victim's family or household members, and requiring the
11 respondent to stay away from any specified place that is named in
12 the order and is frequented regularly by the victim or the victim's
13 family or household members;

14 (2) an order prohibiting the respondent from having any contact
15 with the victim or others, including an order forbidding the
16 respondent from personally or through an agent initiating any
17 communication likely to cause annoyance or alarm including, but
18 not limited to, personal, written, or telephone contact, or contact via
19 electronic device, with the victim or the victim's family members or
20 their employers, employees, or fellow workers; an employee or
21 volunteer of a sexual assault response entity that is providing
22 services to a victim; or others with whom communication would be
23 likely to cause annoyance or alarm to the victim;

24 (3) an order prohibiting the respondent from stalking or
25 following, or threatening to harm, stalk or follow, the victim;

26 (4) an order prohibiting the respondent from committing or
27 attempting to commit an act of harassment, including an act of
28 cyber-harassment, against the victim; and

29 (5) any other relief that the court deems appropriate.

30 g. A final protective order issued pursuant to this section shall
31 be immediately forwarded to the police of the municipality in which
32 the victim resides or is sheltered, and to the police of the
33 municipality in which the respondent resides for immediate service
34 on the respondent in accordance with the Rules of Court. If personal
35 service cannot be effected upon the respondent, the court may order
36 other appropriate substituted service. At no time shall the victim be
37 asked or required to serve any order on the respondent.

38 h. Notice of a final protective order issued pursuant to this
39 section shall be sent by the clerk of the Superior Court or other
40 person designated by the court to the appropriate county prosecutor,
41 the appropriate chiefs of police, members of the State Police and
42 any other appropriate law enforcement agency. Notice of the
43 issuance of a final protective order shall also be provided to the
44 Division of Child Protection and Permanency in the Department of
45 Children and Families where the victim is less than 18 years of age.

46 i. A final protective order issued pursuant to this section shall
47 remain in effect until further order of a judge of the Superior Court.
48 Either party may file a petition with the court to dissolve or modify

1 a final protective order. When considering a petition for dissolution
2 or modification of a final protective order, the court shall conduct a
3 hearing to consider whether a material change in circumstances has
4 occurred since the issuance of the protective order which would
5 make its continued enforcement inequitable, oppressive or unjust
6 taking into account the current status of the parties, including the
7 desire of the victim for the continuation of the protective order, the
8 potential for contact between the parties, the history of the
9 respondent's violations of the protective order or criminal
10 convictions, and any other factors that the court may find relevant
11 to protecting the safety and well-being of the victim.

12

13 5. (New section) Any temporary or final protective order
14 issued pursuant to P.L. , c. (C.) (pending before the
15 Legislature as this bill) shall be in effect throughout the State, and
16 shall be enforced by all law enforcement officers.

17

18 6. (New section) a. A respondent's violation of any protective
19 order issued pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall constitute an offense under subsection
21 b. of N.J.S.2C:29-9 and each order shall so state. All contempt
22 proceedings brought pursuant to paragraph (2) of subsection b. of
23 N.J.S.2C:29-9 shall be subject to any rules or guidelines established
24 by the Supreme Court to promote the prompt disposition of criminal
25 matters. Additionally, and notwithstanding the term of
26 imprisonment provided in N.J.S.2C:43-8, any person convicted of a
27 second or subsequent nonindictable offense involving the contempt
28 of a protective order issued pursuant to P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall serve a minimum
30 term of not less than 30 days.

31 b. Where a victim alleges that a respondent has committed
32 contempt of a protective order entered pursuant to the provisions of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 but a law enforcement officer has found that the facts are
35 insufficient to establish probable cause to arrest the respondent, the
36 law enforcement officer shall advise the victim of the procedure for
37 completing and signing a criminal complaint alleging a violation of
38 N.J.S.2C:29-9 through the municipal court. Nothing in this section
39 shall be construed to prevent the court from granting any other
40 emergency relief it deems necessary.

41

42 7. (New section) a. All records maintained pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill) shall be
44 confidential and shall not be made available to any individual or
45 institution except as otherwise provided by law.

46 b. A victim shall be provided with copies of all protective orders
47 issued pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) and other relevant documents upon request
2 at no cost.

3

4 8. (New section) The Administrative Office of the Courts shall
5 establish and maintain a central registry of all protective orders
6 issued pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill) and all persons who have been charged with
8 a violation of such a protective order. All records made pursuant to
9 this section shall be kept confidential and shall be released only to:

10 a. A public agency authorized to investigate a report of
11 nonconsensual sexual contact, sexual penetration, or lewdness, or
12 any attempt at such conduct, or domestic violence;

13 b. A police or other law enforcement agency for official
14 purposes;

15 c. A court, upon its finding that access to such records may be
16 necessary for determination of an issue before the court;

17 d. A surrogate, in that person's official capacity as deputy clerk
18 of the Superior Court, in order to prepare documents that may be
19 necessary for a court to determine an issue in an adoption
20 proceeding; or

21 e. The Division of Child Protection and Permanency in the
22 Department of Children and Families when the division is
23 conducting a background investigation involving:

24 (1) an allegation of child abuse or neglect, to include any adult
25 member of the same household as the individual who is the subject
26 of the abuse or neglect allegation; or

27 (2) an out-of-home placement for a child being placed by the
28 Division of Child Protection and Permanency, to include any adult
29 member of the prospective placement household.

30 Any individual, agency, or court which receives from the
31 Administrative Office of the Courts the records referred to in this
32 section shall keep the records and reports, or parts thereof,
33 confidential and shall not disseminate or disclose such records and
34 reports, or parts thereof; provided that nothing in this section shall
35 prohibit a receiving individual, agency, surrogate or court from
36 disclosing records and reports, or parts thereof, in a manner
37 consistent with and in furtherance of the purpose for which the
38 records and reports or parts thereof were received.

39 Any individual who disseminates or discloses a record or report,
40 or parts thereof, of the central registry, other than for an official
41 purpose authorized by this section, for the investigation of an
42 alleged violation of a protective order issued pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill),
44 conducting a background investigation involving a person's
45 application for employment at a police or law enforcement agency,
46 making a determination of an issue before the court, conducting a
47 background investigation as specified in subsection e. of this
48 section, or for any other purpose other than that which is authorized

1 by law, the Rules of Court or court order, shall be guilty of a crime
2 of the fourth degree.

3

4 9. (New section) The Supreme Court may promulgate Rules of
5 Court to effectuate the purposes of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7

8 10. N.J.S.2C:29-9 is amended to read as follows:

9 2C:29-9. Contempt.

10 a. A person is guilty of a crime of the fourth degree if he
11 purposely or knowingly disobeys a judicial order or protective
12 order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or
13 hinders, obstructs or impedes the effectuation of a judicial order or
14 the exercise of jurisdiction over any person, thing or controversy by
15 a court, administrative body or investigative entity.

16 b. (1) (a) Except as provided [below] in subparagraphs (b) and
17 (c) of this paragraph, a person is guilty of a crime of the fourth
18 degree if that person purposely or knowingly violates any provision
19 in an order entered under the provisions of the "Prevention of
20 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
21 al.) or an order entered under the provisions of a substantially
22 similar statute under the laws of another state or the United States
23 when the conduct which constitutes the violation could also
24 constitute a crime or a disorderly persons offense.

25 (b) [In all other cases a] A person is guilty of a disorderly
26 persons offense if that person purposely or knowingly violates an
27 order entered under the provisions of [this act] the "Prevention of
28 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
29 al.) or an order entered under the provisions of a substantially
30 similar statute under the laws of another state or the United States
31 when the conduct which constitutes the violation would not also
32 constitute a crime or a disorderly persons offense.

33 (c) Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9)
34 of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or
35 substantially similar orders entered under the laws of another state
36 or the United States shall be excluded from the provisions of this
37 [subsection] paragraph.

38 (2) A person is guilty of a crime of the fourth degree if that
39 person purposely or knowingly violates any provision in an order
40 entered under the provisions of P.L. , c. (C.) (pending
41 before the Legislature as this bill).

42 As used in this subsection, "state" means a state of the United
43 States, the District of Columbia, Puerto Rico, the United States
44 Virgin Islands, or any territory or insular possession subject to the
45 jurisdiction of the United States. The term includes an Indian tribe
46 or band, or Alaskan native village, which is recognized by a federal
47 law or formally acknowledged by a state.

48 (cf: P.L.2008, c.81, s.3)

1 11. This act shall take effect on the 180th day following
2 enactment.

3

4

5

STATEMENT

6

7 This bill, titled the “Sexual Assault Survivor Protection Act of
8 2015,” would authorize protective orders for victims of
9 nonconsensual sexual contact, sexual penetration, or lewdness, or
10 attempts at such conduct.

11 Under the bill, any person alleging to be a victim of
12 nonconsensual sexual contact, sexual penetration, or lewdness, or
13 any attempt at such conduct, and who is not eligible for a
14 restraining order as a “victim of domestic violence” under the
15 domestic violence statutes may file an application with the Superior
16 Court alleging the commission of such conduct or attempted
17 conduct and seeking a temporary protective order.

18 A parent or guardian could file the application on behalf of the
19 alleged victim if the alleged victim is less than 18 years of age, or
20 has a developmental disability as defined in section 3 of P.L.1977,
21 c.200 (C.5:5-44.4), or has a mental disease or defect that renders the
22 alleged victim temporarily or permanently incapable of
23 understanding the nature of the alleged victim’s conduct, including,
24 but not limited to, being incapable of providing consent.

25 If it is alleged that the act or attempt is committed by an
26 unemancipated minor, an applicant would seek relief pursuant to the
27 provisions of the New Jersey Code of Juvenile Justice, P.L.1982, c.
28 77 (C.2A:4A-20 et seq.) and would not proceed under the bill.

29 A protective order may be sought, and may be issued by the
30 court, regardless of whether criminal charges based on the incident
31 were filed and regardless of the disposition of any such charges. An
32 application filed in accordance with the provisions of the bill would
33 not prevent the filing of a criminal complaint, or the institution or
34 maintenance of a criminal prosecution based on the same act.

35 The court would waive any requirement that the applicant’s or
36 alleged victim’s place of residence appear on the application. No
37 fees or other costs would be assessed against an applicant for
38 seeking a protective order.

39 Under the bill, a judge of the Superior Court may enter an
40 emergency, ex parte order when necessary to protect the safety and
41 well-being of an alleged victim on whose behalf the relief is sought.
42 The court would grant any relief necessary to protect the safety and
43 well-being of the alleged victim.

44 The temporary protective order would be issued if the court
45 determines that the applicant is a victim of nonconsensual sexual
46 contact, sexual penetration, or lewdness, or any attempt at such
47 conduct. The court would render a decision on the application and
48 issue the order, where appropriate, in an expedited manner. If the

1 court is satisfied that exigent circumstances exist that would excuse
2 the alleged victim from having to appear personally, and sufficient
3 grounds for granting the application have been shown, the
4 temporary protective order would be issued, pursuant to court rules,
5 upon sworn testimony or an application of an alleged victim who is
6 not physically present, or by a person authorized to file an
7 application on behalf of an alleged victim.

8 An order for emergency, ex parte relief pursuant to the bill
9 would be granted upon good cause shown and would remain in
10 effect until a judge of the Superior Court issues a further order. A
11 temporary protective order issued would be immediately appealable
12 for a plenary hearing de novo not on the record before any judge of
13 Superior Court of the county in which the alleged victim resides or
14 is sheltered if that judge issued the temporary protective order or
15 has access to the reasons for the issuance of the order and sets forth
16 in the record the reasons for the modification or dissolution.

17 A temporary protective order may include, but would not be
18 limited to, the following emergency relief:

19 (1) prohibiting the respondent from committing or attempting to
20 commit any future act of nonconsensual sexual contact, sexual
21 penetration, or lewdness, or any attempt at such conduct, against the
22 alleged victim;

23 (2) prohibiting the respondent from entering the residence,
24 property, school, or place of employment of the alleged victim or
25 the alleged victim's family or household members, and requiring
26 the respondent to stay away from any specified place that is named
27 in the order and is frequented regularly by the alleged victim or the
28 alleged victim's family or household members;

29 (3) prohibiting the respondent from having any contact with the
30 alleged victim or others, including an order forbidding the
31 respondent from personally or through an agent initiating any
32 communication likely to cause annoyance or alarm including, but
33 not limited to, personal, written, or telephone contact, or contact via
34 electronic device, with the alleged victim or the alleged victim's
35 family members, or their employers, employees, or fellow workers,
36 an employee or volunteer of a sexual assault response entity that is
37 providing services to an alleged victim, or others with whom
38 communication would be likely to cause annoyance or alarm to the
39 alleged victim;

40 (4) prohibiting the respondent from stalking or following, or
41 threatening to harm, stalk, or follow, the alleged victim;

42 (5) prohibiting the respondent from committing or attempting to
43 commit an act of harassment, including an act of cyber-harassment,
44 against the victim; and

45 (6) any other relief that the court deems appropriate.

46 The bill would require that a hearing be held in the Superior
47 Court within 10 days of the filing of an application. The bill
48 provides that if a criminal complaint arising out of the same

1 incident which is the subject matter of the application for a
2 protective order has been filed, testimony given by the applicant in
3 accordance with an application filed pursuant to the bill would not
4 be used in the criminal proceeding against the respondent, other
5 than contempt matters, and where it would otherwise be admissible
6 hearsay under the rules of evidence that govern when a party is
7 unavailable. At the hearing, the standard for proving the allegations
8 made in the application would be a preponderance of the evidence.
9 The court would consider but not be limited to the following
10 factors: (1) the occurrence of one or more acts of nonconsensual
11 sexual contact, sexual penetration, or lewdness, or any attempt at
12 such conduct, against the alleged victim; and (2) the possibility of
13 future risk to the safety or well-being of the alleged victim.

14 A court could not deny relief due to: the petitioner's or alleged
15 victim's failure to report the incident to law enforcement; the
16 alleged victim's or the respondent's alleged intoxication; whether
17 the alleged victim did or did not leave the premises to avoid
18 nonconsensual sexual contact, sexual penetration, or lewdness, or
19 an attempt at such conduct; or the absence of signs of physical
20 injury to the alleged victim.

21 In any proceeding involving an application for a protective order
22 pursuant to the bill, evidence of the alleged victim's previous sexual
23 conduct or manner of dress at the time of the incident would not be
24 admissible nor would the bill permit any reference to such conduct
25 or manner or dress, except as provided in N.J.S.2C:14-7.

26 The issue of whether an act alleged in the application for a
27 protective order occurred, or whether an act of contempt under the
28 bill occurred, would not be subject to mediation or negotiation in
29 any form.

30 A final protective order would be issued only after a finding or
31 admission that the respondent committed an act of nonconsensual
32 sexual contact, sexual penetration, or lewdness, or any attempt at
33 such conduct, against the alleged victim. A final protective order
34 would:

35 (1) prohibit the respondent from having contact with the victim;
36 and

37 (2) prohibit the respondent from committing any future act of
38 nonconsensual sexual contact, sexual penetration, or lewdness, or
39 any attempt at such conduct, against the victim.

40 A final order may also include the following relief:

41 (1) prohibiting the respondent from entering the residence,
42 property, school, or place of employment of the victim or the
43 victim's family or household members, and requiring the
44 respondent to stay away from any specified place that is named in
45 the order and is frequented regularly by the victim or the victim's
46 family or household members;

47 (2) prohibiting the respondent from having any contact with the
48 victim or others, including an order forbidding the respondent from

1 personally or through an agent initiating any communication likely
2 to cause annoyance or alarm including, but not limited to, personal,
3 written, or telephone contact, or contact via electronic device, with
4 the victim or the victim's family members or their employers,
5 employees, or fellow workers; an employee or volunteer of a sexual
6 assault response entity that is providing services to a victim; or
7 others with whom communication would be likely to cause
8 annoyance or alarm to the victim;

9 (3) prohibiting the respondent from stalking or following, or
10 threatening to harm, stalk or follow, the victim;

11 (4) prohibiting the respondent from committing or attempting to
12 commit an act of harassment, including an act of cyber-harassment,
13 against the victim; and

14 (5) any other relief that the court deems appropriate.

15 A final protective order would be immediately forwarded to the
16 police for immediate service on the respondent in accordance with
17 the Rules of Court. Notice of a final protective order would be sent
18 by the clerk of the Superior Court or other person designated by the
19 court to the appropriate county prosecutor, chiefs of police,
20 members of the State Police and any other appropriate law
21 enforcement agency. Notice would also be provided to the Division
22 of Child Protection and Permanency in the Department of Children
23 and Families where the victim is less than 18 years of age.

24 A final protective order issued under the bill would remain in
25 effect until further order of a judge of the Superior Court. Either
26 party may file a petition with the court to dissolve or modify a final
27 protective order. When considering a petition for dissolution or
28 modification, the court would consider whether a material change in
29 circumstances has occurred since the issuance of the protective
30 order which would make its continued enforcement inequitable,
31 oppressive or unjust taking into account the current status of the
32 parties, including the desire of the victim for the continuation of the
33 protective order, the potential for contact between the parties, the
34 history of the respondent's violations of the protective order or
35 criminal convictions, and any other factors that the court may find
36 relevant to protecting the safety and well-being of the victim.

37 A respondent's violation of any protective order issued under the
38 bill would constitute an offense under subsection b. of N.J.S.
39 2C:29-9. Under current law, N.J.S.2C:29-9 governs contempt
40 proceedings for a violation of an order entered under the provisions
41 of the "Prevention of Domestic Violence Act of 1991," P.L.1991,
42 c.261 (C.2C:25-17 et al.). The bill would amend N.J.S.2C:29-9 to
43 provide that a person is guilty of a crime of the fourth degree if that
44 person purposely or knowingly violates any provision in an order
45 entered under the provisions of the bill. A person convicted of a
46 second or subsequent nonindictable offense involving the contempt
47 of a protective order would serve a minimum term of not less than
48 30 days.

1 Where a victim alleges that a respondent has committed
2 contempt of a protective order, but a law enforcement officer has
3 found that the facts are insufficient to establish probable cause to
4 arrest the respondent, the law enforcement officer would advise the
5 victim of the procedure for completing and signing a criminal
6 complaint through the municipal court alleging contempt of the
7 order.

8 All records maintained pursuant to the bill would be confidential
9 and not made available to any individual or institution except as
10 otherwise provided by law.

11 A victim would be provided with copies of all protective orders
12 issued pursuant to the bill as well as other relevant documents upon
13 request at no cost.

14 The Administrative Office of the Courts would establish and
15 maintain a central registry of all protective orders and all persons
16 charged with a violation of such orders. All records would be kept
17 confidential and would be released only to:

18 a. A public agency authorized to investigate a report of
19 nonconsensual sexual contact, sexual penetration, or lewdness, or
20 any attempt at such conduct, or domestic violence;

21 b. A police or other law enforcement agency for official
22 purposes;

23 c. A court, upon its finding that access to such records may be
24 necessary for determination of an issue before the court;

25 d. A surrogate, in that person's official capacity as deputy clerk
26 of the Superior Court, in order to prepare documents that may be
27 necessary for a court to determine an issue in an adoption
28 proceeding; or

29 e. The Division of Child Protection and Permanency in the
30 Department of Children and Families when the division is
31 conducting a background investigation involving an allegation of
32 child abuse or neglect, to include any adult member of the same
33 household as the individual who is the subject of the abuse or
34 neglect allegation, or an out-of-home placement for a child being
35 placed by the Division of Child Protection and Permanency, to
36 include any adult member of the prospective placement household.

37 The bill provides that any individual who disseminates or
38 discloses a record or report, or parts thereof, of the central registry,
39 other than for an official purpose authorized by the bill, or for any
40 other purpose other than that authorized by law, the Rules of Court
41 or court order, would be guilty of a crime of the fourth degree.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4078

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 15, 2015

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4078.

This bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize protective orders for victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a “victim of domestic violence” under the domestic violence statutes may file an application with the Superior Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order.

A parent or guardian could file the application on behalf of the alleged victim if the alleged victim is less than 18 years of age, or has a developmental disability as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4), or has a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim’s conduct, including, but not limited to, being incapable of providing consent.

If it is alleged that the act or attempt is committed by an unemancipated minor, an applicant would seek relief pursuant to the provisions of the New Jersey Code of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) and would not proceed under the bill.

A protective order may be sought, and may be issued by the court, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges. An application filed in accordance with the provisions of the bill would not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

The court would waive any requirement that the applicant’s or alleged victim’s place of residence appear on the application. No fees or other costs would be assessed against an applicant for seeking a protective order.

Under the bill, a judge of the Superior Court may enter an emergency, ex parte order when necessary to protect the safety and

well-being of an alleged victim on whose behalf the relief is sought. The court would grant any relief necessary to protect the safety and well-being of the alleged victim.

The temporary protective order would be issued if the court determines that the applicant is a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct. The court would render a decision on the application and issue the order, where appropriate, in an expedited manner. If the court is satisfied that exigent circumstances exist that would excuse the alleged victim from having to appear personally, and sufficient grounds for granting the application have been shown, the temporary protective order would be issued, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is not physically present, or by a person authorized to file an application on behalf of an alleged victim.

An order for emergency, ex parte relief pursuant to the bill would be granted upon good cause shown and would remain in effect until a judge of the Superior Court issues a further order. A temporary protective order issued would be immediately appealable for a plenary hearing de novo not on the record before any judge of Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the modification or dissolution.

A temporary protective order may include, but would not be limited to, the following emergency relief:

(1) prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim;

(2) prohibiting the respondent from entering the residence, property, school, or place of employment of the alleged victim or the alleged victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

(3) prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

(4) prohibiting the respondent from stalking or following, or threatening to harm, stalk, or follow, the alleged victim;

(5) prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(6) any other relief that the court deems appropriate.

The bill would require that a hearing be held in the Superior Court within 10 days of the filing of an application. The bill provides that if a criminal complaint arising out of the same incident which is the subject matter of the application for a protective order has been filed, testimony given by the applicant in accordance with an application filed pursuant to the bill would not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application would be a preponderance of the evidence. The court would consider but not be limited to the following factors: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and (2) the possibility of future risk to the safety or well-being of the alleged victim.

A court could not deny relief due to: the petitioner's or alleged victim's failure to report the incident to law enforcement; the alleged victim's or the respondent's alleged intoxication; whether the alleged victim did or did not leave the premises to avoid nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct; or the absence of signs of physical injury to the alleged victim.

In any proceeding involving an application for a protective order pursuant to the bill, evidence of the alleged victim's previous sexual conduct or manner of dress at the time of the incident would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7.

The issue of whether an act alleged in the application for a protective order occurred, or whether an act of contempt under the bill occurred, would not be subject to mediation or negotiation in any form.

A final protective order would be issued only after a finding or admission that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim. A final protective order would:

(1) prohibit the respondent from having contact with the victim; and

(2) prohibit the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim.

A final order may also include the following relief:

(1) prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim's family or household members;

(2) prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim's family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

(3) prohibiting the respondent from stalking or following, or threatening to harm, stalk or follow, the victim;

(4) prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(5) any other relief that the court deems appropriate.

As amended by the committee, temporary and final protective orders would be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent. The amended bill provides that the court or the sheriff may coordinate service of the orders through the police in appropriate circumstances. As introduced, the bill had provided that the police would serve the respondent.

Notice of a final protective order would be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, chiefs of police, members of the State Police and any other appropriate law enforcement agency. Notice would also be provided to the Division of Child Protection and Permanency in the Department of Children and Families where the victim is less than 18 years of age.

A final protective order issued under the bill would remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent's violations of the protective order or criminal convictions,

and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

A respondent's violation of any protective order issued under the bill would constitute an offense under subsection b. of N.J.S. 2C:29-9. Under current law, N.J.S.2C:29-9 governs contempt proceedings for a violation of an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.). The bill would amend N.J.S.2C:29-9 to provide that a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the bill.

The committee amendments provide that when a law enforcement officer finds probable cause that a respondent has committed contempt of an order entered under the bill, the respondent would be arrested and taken into custody. The court would determine whether the respondent would be released pending trial or detained pending a detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) or applicable court rules.

Under the bill, where a victim alleges that a respondent has committed contempt of a protective order, but a law enforcement officer has found that the facts are insufficient to establish probable cause to arrest the respondent, the law enforcement officer would advise the victim of the procedure for completing and signing a criminal complaint through the municipal court alleging contempt of the order.

The committee amendments delete a provision in section 6 of the bill that would have imposed a minimum term of imprisonment on persons convicted of a second or subsequent nonindictable offense of contempt of an order issued under the bill. This provision is a drafting error as there are no such nonindictable offenses under the bill; all contempts of orders issued under the bill are indictable offenses (crimes of the fourth degree).

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

A victim would be provided with copies of all protective orders issued pursuant to the bill as well as other relevant documents upon request at no cost.

The Administrative Office of the Courts would establish and maintain a central registry of all protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a. A public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
- b. A police or other law enforcement agency for official purposes;

c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;

d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

e. The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, to include any adult member of the same household as the individual who is the subject of the abuse or neglect allegation, or an out-of-home placement for a child being placed by the Division of Child Protection and Permanency, to include any adult member of the prospective placement household.

The bill provides that any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, other than for an official purpose authorized by the bill, or for any other purpose other than that authorized by law, the Rules of Court or court order, would be guilty of a crime of the fourth degree.

COMMITTEE AMENDMENTS:

(1) Amend sections 3 and 4 of the bill to provide that temporary and final protective orders would be served on the respondent by the sheriff of the county in which the respondent resides, and that the court or the sheriff may coordinate service of the orders through the police in appropriate circumstances.

(2) Amend section 5 to provide that when a law enforcement officer finds probable cause that a respondent has committed contempt of an order entered under the bill, the respondent would be arrested and taken into custody. The court would determine whether the respondent would be released pending trial or detained pending a detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19).

(3) Amend section 6 to remove the provision concerning convictions of second or subsequent nonindictable offenses involving contempt of a protective order. The amendments also make technical changes to section 6 to clarify the provisions of N.J.S.2C:29-9 concerning criminal penalties for violations of orders entered under the bill and violations of orders entered under the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.).

FISCAL NOTE
 [First Reprint]
ASSEMBLY, No. 4078
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: FEBRUARY 27, 2015

SUMMARY

Synopsis: “Sexual Assault Survivor Protection Act of 2015”; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

Type of Impact: Minimal General Fund expenditure. Local expenditure

Agencies Affected: The Judiciary, Local law enforcement agencies.

Judiciary Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
Local Cost	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.
- The bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize protective orders for victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.
- The Administrative Office of the Courts (AOC) notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation’s fiscal impact. However, the

Judiciary anticipates that any expenditure it would incur related to this legislation would be relatively nominal.

BILL DESCRIPTION

Assembly Bill No. 4078 (1R) of 2015, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize protective orders for victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a “victim of domestic violence” under the domestic violence statutes may file an application with the Superior Court alleging the commission of such conduct or attempted conduct and seeking a temporary protective order.

A parent or guardian could file the application on behalf of the alleged victim if the alleged victim is less than 18 years of age, or has a developmental disability, or has a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim’s conduct, including, but not limited to, being incapable of providing consent.

If it is alleged that the act or attempt is committed by an unemancipated minor, an applicant would seek relief pursuant to the provisions of the New Jersey Code of Juvenile Justice and would not proceed under the bill.

A protective order may be sought, and may be issued by the court, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges. An application filed in accordance with the provisions of the bill would not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

The court would waive any requirement that the applicant’s or alleged victim’s place of residence appear on the application. No fees or other costs would be assessed against an applicant for seeking a protective order.

Under the bill, a judge of the Superior Court may enter an emergency, *ex parte* order when necessary to protect the safety and well-being of an alleged victim on whose behalf the relief is sought. The court would grant any relief necessary to protect the safety and well-being of the alleged victim.

The temporary protective order would be issued if the court determines that the applicant is a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct. The court would render a decision on the application and issue the order, where appropriate, in an expedited manner. If the court is satisfied that exigent circumstances exist that would excuse the alleged victim from having to appear personally, and sufficient grounds for granting the application have been shown, the temporary protective order would be issued, pursuant to court rules, upon sworn testimony or an application of an alleged victim who is not physically present, or by a person authorized to file an application on behalf of an alleged victim.

An order for emergency, *ex parte* relief pursuant to the bill would be granted upon good cause shown and would remain in effect until a judge of the Superior Court issues a further order. A temporary protective order issued would be immediately appealable for a plenary hearing *de novo* not on the record before any judge of Superior Court of the county in which the alleged victim resides or is sheltered if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the modification or dissolution.

A temporary protective order may include, but would not be limited to, the following emergency relief:

(1) prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim;

(2) prohibiting the respondent from entering the residence, property, school, or place of employment of the alleged victim or the alleged victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

(3) prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

(4) prohibiting the respondent from stalking or following, or threatening to harm, stalk, or follow, the alleged victim;

(5) prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(6) any other relief that the court deems appropriate.

The bill would require that a hearing be held in the Superior Court within 10 days of the filing of an application. The bill provides that if a criminal complaint arising out of the same incident which is the subject matter of the application for a protective order has been filed, testimony given by the applicant in accordance with an application filed pursuant to the bill would not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application would be a preponderance of the evidence. The court would consider but not be limited to the following factors: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and (2) the possibility of future risk to the safety or well-being of the alleged victim.

A court could not deny relief due to: the petitioner's or alleged victim's failure to report the incident to law enforcement; the alleged victim's or the respondent's alleged intoxication; whether the alleged victim did or did not leave the premises to avoid nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct; or the absence of signs of physical injury to the alleged victim.

In any proceeding involving an application for a protective order pursuant to the bill, evidence of the alleged victim's previous sexual conduct or manner of dress at the time of the incident would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7.

The issue of whether an act alleged in the application for a protective order occurred, or whether an act of contempt under the bill occurred, would not be subject to mediation or negotiation in any form.

A final protective order would be issued only after a finding or admission that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim. A final protective order would:

(1) prohibit the respondent from having contact with the victim; and

(2) prohibit the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim.

A final order may also include the following relief:

(1) prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim's family or household members;

(2) prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim's family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

(3) prohibiting the respondent from stalking or following, or threatening to harm, stalk or follow, the victim;

(4) prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and

(5) any other relief that the court deems appropriate.

Temporary and final protective orders would be forwarded to the sheriff of the county in which the respondent resides for immediate service upon the respondent. The bill provides that the court or the sheriff may coordinate service of the orders through the police in appropriate circumstances.

Notice of a final protective order would be sent by the clerk of the Superior Court or other person designated by the court to the appropriate county prosecutor, chiefs of police, members of the State Police and any other appropriate law enforcement agency. Notice would also be provided to the Division of Child Protection and Permanency in the Department of Children and Families where the victim is less than 18 years of age.

A final protective order issued under the bill would remain in effect until further order of a judge of the Superior Court. Either party may file a petition with the court to dissolve or modify a final protective order. When considering a petition for dissolution or modification, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive or unjust taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of the respondent's violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

A respondent's violation of any protective order issued under the bill would result in a person being guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the bill.

The bill provides that when a law enforcement officer finds probable cause that a respondent has committed contempt of an order entered under the bill, the respondent would be arrested and taken into custody. The court would determine whether the respondent would be released pending trial or detained pending a detention hearing.

Under the bill, where a victim alleges that a respondent has committed contempt of a protective order, but a law enforcement officer has found that the facts are insufficient to establish probable cause to arrest the respondent, the law enforcement officer would advise the

victim of the procedure for completing and signing a criminal complaint through the municipal court alleging contempt of the order.

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

A victim would be provided with copies of all protective orders issued pursuant to the bill as well as other relevant documents upon request at no cost.

The AOC would establish and maintain a central registry of all protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

a. A public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;

b. A police or other law enforcement agency for official purposes;

c. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;

d. A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

e. The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, to include any adult member of the same household as the individual who is the subject of the abuse or neglect allegation, or an out-of-home placement for a child being placed by the Division of Child Protection and Permanency, to include any adult member of the prospective placement household.

The bill provides that any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, other than for an official purpose authorized by the bill, or for any other purpose other than that authorized by law, the Rules of Court or court order, would be guilty of a crime of the fourth degree.

FISCAL ANALYSIS

JUDICIAL BRANCH

Administrative Office of the Courts

The AOC states that expenditures the Judiciary would incur as a result of this bill include Judge and judiciary staff time necessary to process and review the applications, issue and distribute the protective orders, and costs related to the establishment and maintenance of the central registry.

The AOC notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation's fiscal impact. However, the Judiciary anticipates that any expenditures it would incur related to this legislation would be relatively nominal.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4078

STATE OF NEW JERSEY

DATED: MAY 7, 2015

The Senate Judiciary Committee reports favorably Assembly Bill No. 4078 (1R).

This bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize courts to issue temporary as well as final protective orders against offenders to help victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order. The application would be to the court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the alleged offender resides, or where the alleged victim resides or is sheltered. A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding

against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;

- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;

- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;

- prohibiting the offender from threatening, following, stalking, or harassing the victim; and

- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State

Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency ex parte application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner of dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for temporary protective orders, e.g., prohibiting the offender from entering the

residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Whenever a law enforcement officer found probable cause that an offender committed contempt of an order, the person would be arrested and taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. Whenever a victim alleged contempt of an order, but an officer could not establish probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The Administrative Office of the Courts (AOC) would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;

- a police or other law enforcement agency for official purposes;

- a court, upon its finding that access to such records may be necessary for determination of an issue before the court;

- a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding;

or

- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

This bill, as reported by the committee, is identical to Senate Bill No. 2686, as amended and also reported by the committee today.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4078

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 2015

The Senate Budget and Appropriations Committee reports favorably, Assembly Bill No. 4078 (1R), with committee amendments.

As amended, this bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize courts to issue temporary and final protective orders on behalf of victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct. The committee amended the bill to add definitions of the terms “sexual contact,” “sexual penetration,” “lewdness,” and “intimate parts.”

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order. The committee amendments add the following definition of “lewdness” to the bill: “the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.”

The application would be to the court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the alleged offender resides, or where the alleged victim resides or is sheltered. A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;

- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;

- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;

- prohibiting the offender from threatening, following, stalking, or harassing the victim; and

- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency *ex parte* application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing *de novo* not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or

attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for temporary protective orders, e.g., prohibiting the offender from entering the residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

If a law enforcement officer finds probable cause that an offender committed contempt of an order, the person would be arrested and

taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. If a victim alleges contempt of an order, but an officer could not establish probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The Administrative Office of the Courts (AOC) would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
 - a police or other law enforcement agency for official purposes;
 - a court, upon its finding that access to such records may be necessary for determination of an issue before the court;
 - a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding;
- or
- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

COMMITTEE AMENDMENTS:

The committee amendments add the following definitions to terms used in the bill:

“Sexual contact” is defined as “an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.”

“Sexual penetration” is defined as “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction.”

“Lewdness” is defined as “the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.”

"Intimate parts" is defined as “the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.”

FISCAL IMPACT:

In the Fiscal Note for this bill, the Administrative Office of the Courts (AOC) stated that the Judiciary and judiciary staff would incur expenses as a result of the time necessary to process and review the applications, issue and distribute the protective orders, and costs related to the establishment and maintenance of the central registry.

The AOC noted that as the Judiciary does not have the ability to estimate the number of applications that would be received under the bill, could not provide a quantifiable estimate of the fiscal impact, but anticipates that any necessary expenditures would be relatively nominal. The Office of Legislative Services notes that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions

FISCAL NOTE
 [Second Reprint]
ASSEMBLY, No. 4078
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: JUNE 22, 2015

SUMMARY

Synopsis: “Sexual Assault Survivor Protection Act of 2015;” authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

Type of Impact: Minimal General Fund expenditure. Local expenditure

Agencies Affected: The Judiciary, Local law enforcement agencies.

Judiciary Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
Local Cost	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.
- The bill, titled the “Sexual Assault Survivor Protection Act of 2015;” would authorize protective orders for victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.
- The Administrative Office of the Courts (AOC) notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation’s fiscal impact. However, the

Judiciary anticipates that any expenditure it would incur related to this legislation would be relatively nominal.

BILL DESCRIPTION

Assembly Bill No. 4078 (2R) of 2015, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize courts to issue temporary and final protective orders on behalf of victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order.

A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;

- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;

- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;

- prohibiting the offender from threatening, following, stalking, or harassing the victim; and
- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency ex parte application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for

temporary protective orders, e.g., prohibiting the offender from entering the residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

If a law enforcement officer finds probable cause that an offender committed contempt of an order, the person would be arrested and taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. If a victim alleges contempt of an order, but an officer could not establish probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The Administrative Office of the Courts (AOC) would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
- a police or other law enforcement agency for official purposes;
- a court, upon its finding that access to such records may be necessary for determination of an issue before the court;

- a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

The AOC states that expenditures the Judiciary would incur as a result of this bill include Judge and judiciary staff time necessary to process and review the applications, issue and distribute the protective orders, and costs related to the establishment and maintenance of the central registry.

The AOC notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation's fiscal impact. However, the Judiciary anticipates that any expenditures it would incur related to this legislation would be relatively nominal.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2686

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED DECEMBER 22, 2014

Sponsored by:

Senator NELLIE POU
District 35 (Bergen and Passaic)
Senator JENNIFER BECK
District 11 (Monmouth)

Co-Sponsored by:

Senator Van Drew

SYNOPSIS

“Sexual Assault Survivor Protection Act of 2015”; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2015)

1 AN ACT concerning certain protective orders, amending
2 N.J.S.2C:29-9 and supplementing Title 2C of the New Jersey
3 Statutes.

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

7
8 1. (New section) P.L. , c. (C.) (pending before the
9 Legislature as this bill) shall be known and may be cited as the
10 “Sexual Assault Survivor Protection Act of 2015.”

11
12 2. (New section) Application for Temporary Protective Order.

13 a. (1) Any person alleging to be a victim of nonconsensual sexual
14 contact, sexual penetration, or lewdness, or any attempt at such
15 conduct, and who is not eligible for a restraining order as a “victim
16 of domestic violence” as defined by the provisions of subsection d.
17 of section 3 of P.L.1991, c.261 (C.2C:25-19), may, except as
18 provided in subsection c. of this section, file an application with the
19 Superior Court pursuant to the Rules of Court alleging the
20 commission of such conduct or attempted conduct and seeking a
21 temporary protective order.

22 (2) An application for relief under P.L. , c. (C.)
23 (pending before the Legislature as this bill) may be filed by the
24 alleged victim's parent or guardian on behalf of the alleged victim
25 in any case in which the alleged victim:

26 (a) is less than 18 years of age; or

27 (b) has a developmental disability as defined in section 3 of
28 P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that
29 renders the alleged victim temporarily or permanently incapable of
30 understanding the nature of the alleged victim’s conduct, including,
31 but not limited to, being incapable of providing consent.

32 b. When it is alleged that nonconsensual sexual contact, sexual
33 penetration, or lewdness, or any attempt at such conduct, has been
34 committed by an unemancipated minor, an applicant seeking a
35 protective order shall not proceed under the provisions of P.L. ,
36 c. (C.) (pending before the Legislature as this bill), but may
37 seek a protective order and other relief under the New Jersey Code
38 of Juvenile Justice, P.L.1982, c. 77 (C.2A:4A-20 et seq.) by filing a
39 complaint pursuant to the provisions of section 11 of P.L.1982, c.77
40 (C.2A:4A-30).

41 c. (1) An applicant may seek a protective order pursuant to
42 P.L. , c. (C.) (pending before the Legislature as this bill)
43 and the court may issue such an order regardless of whether
44 criminal charges based on the incident were filed and regardless of
45 the disposition of any such charges.

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 (2) The filing of an application pursuant to this section shall not
2 prevent the filing of a criminal complaint, or the institution or
3 maintenance of a criminal prosecution based on the same act.

4 d. The court shall waive any requirement that the applicant's or
5 alleged victim's place of residence appear on the application.

6 e. An applicant may seek a protective order pursuant to P.L. ,
7 c. (C.) (pending before the Legislature as this bill) in a court
8 having jurisdiction over the place where the alleged conduct or
9 attempted conduct occurred, where the respondent resides, or where
10 the alleged victim resides or is sheltered.

11 f. No fees or other costs shall be assessed against an applicant for
12 seeking a protective order pursuant to P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14

15 3. (New section) Temporary Protective Order.

16 a. An applicant may seek emergency, ex parte relief in the nature
17 of a temporary protective order. A judge of the Superior Court may
18 enter an emergency ex parte order when necessary to protect the
19 safety and well-being of an alleged victim on whose behalf the
20 relief is sought. The court may grant any relief necessary to protect
21 the safety and well-being of an alleged victim.

22 b. The court shall, upon consideration of the application, order
23 emergency ex parte relief in the nature of a temporary protective
24 order if the court determines that the applicant is a victim of
25 nonconsensual sexual contact, sexual penetration, or lewdness, or
26 any attempt at such conduct, and qualifies for such relief pursuant
27 to section 2 of P.L. , c. (C.) (pending before the Legislature
28 as this bill). The court shall render a decision on the application and
29 issue a temporary protective order, where appropriate, in an
30 expedited manner.

31 c. The court may issue a temporary protective order, pursuant to
32 court rules, upon sworn testimony or an application of an alleged
33 victim who is not physically present, pursuant to court rules, or by a
34 person who represents an alleged victim who is physically or
35 mentally incapable of filing personally. A temporary restraining
36 order may be issued if the judge is satisfied that exigent
37 circumstances exist sufficient to excuse the failure of the applicant
38 to appear personally and that sufficient grounds for granting the
39 application have been shown.

40 d. An order for emergency, ex parte relief shall be granted upon
41 good cause shown and shall remain in effect until a judge of the
42 Superior Court issues a further order. Any temporary protective
43 order issued pursuant to this section is immediately appealable for a
44 plenary hearing de novo not on the record before any judge of
45 Superior Court of the county in which the alleged victim resides or
46 is sheltered if that judge issued the temporary protective order or
47 has access to the reasons for the issuance of the temporary

1 protective order and sets forth in the record the reasons for the
2 modification or dismissal.

3 e. A temporary protective order issued pursuant to this section
4 may include, but is not limited to, the following emergency relief:

5 (1) an order prohibiting the respondent from committing or
6 attempting to commit any future act of nonconsensual sexual
7 contact, sexual penetration, or lewdness, or any attempt at such
8 conduct, against the alleged victim;

9 (2) an order prohibiting the respondent from entering the
10 residence, property, school, or place of employment of the victim or
11 the victim's family or household members, and requiring the
12 respondent to stay away from any specified place that is named in
13 the order and is frequented regularly by the alleged victim or the
14 alleged victim's family or household members;

15 (3) an order prohibiting the respondent from having any contact
16 with the alleged victim or others, including an order forbidding the
17 respondent from personally or through an agent initiating any
18 communication likely to cause annoyance or alarm including, but
19 not limited to, personal, written, or telephone contact, or contact via
20 electronic device, with the alleged victim or the alleged victim's
21 family members, or their employers, employees, or fellow workers,
22 an employee or volunteer of a sexual assault response entity that is
23 providing services to an alleged victim, or others with whom
24 communication would be likely to cause annoyance or alarm to the
25 alleged victim;

26 (4) an order prohibiting the respondent from stalking or
27 following, or threatening to harm, stalk, or follow, the alleged
28 victim;

29 (5) an order prohibiting the respondent from committing or
30 attempting to commit an act of harassment, including an act of
31 cyber-harassment, against the alleged victim; and

32 (6) any other relief that the court deems appropriate.

33 f. A temporary protective order issued pursuant to this section
34 shall be immediately forwarded to the police of the municipality in
35 which the alleged victim resides or is sheltered, and to the police of
36 the municipality in which the respondent resides for immediate
37 service on the respondent in accordance with the Rules of Court. If
38 personal service cannot be effected upon the respondent, the court
39 may order other appropriate substituted service. At no time shall the
40 alleged victim be asked or required to serve any order on the
41 respondent.

42 g. Notice of temporary protective orders issued pursuant to this
43 section shall be sent by the clerk of the court or other person
44 designated by the court to the appropriate chiefs of police, members
45 of the State Police and any other appropriate law enforcement
46 agency or court.

47

48 4. (New section) Final Protective Order.

1 a. A hearing shall be held in the Superior Court within 10 days of
2 the filing of an application pursuant to section 3 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) in the
4 county where the temporary protective order was ordered, unless
5 good cause is shown for the hearing to be held elsewhere. A copy of
6 the application shall be served on the respondent in conformity with
7 the Rules of Court. If a criminal complaint arising out of the same
8 incident which is the subject matter of an application for a
9 protective order has been filed, testimony given by the applicant,
10 the alleged victim, or the respondent in accordance with an
11 application filed pursuant to this section shall not be used in the
12 criminal proceeding against the respondent, other than contempt
13 matters, and where it would otherwise be admissible hearsay under
14 the rules of evidence that govern when a party is unavailable. At the
15 hearing, the standard for proving the allegations made in the
16 application for a protective order shall be a preponderance of the
17 evidence. The court shall consider but not be limited to the
18 following factors:

19 (1) the occurrence of one or more acts of nonconsensual sexual
20 contact, sexual penetration, or lewdness, or any attempt at such
21 conduct, against the alleged victim; and

22 (2) the possibility of future risk to the safety or well-being of the
23 alleged victim.

24 b. The court shall not deny relief under this section due to: the
25 applicant's or alleged victim's failure to report the incident to law
26 enforcement; the alleged victim's or the respondent's alleged
27 intoxication; whether the alleged victim did or did not leave the
28 premises to avoid nonconsensual sexual contact, sexual penetration,
29 or lewdness, or an attempt at such conduct; or the absence of signs
30 of physical injury to the alleged victim.

31 c. In any proceeding involving an application for a protective
32 order pursuant to P.L. , c. (C.) (pending before the
33 Legislature as this bill), evidence of the alleged victim's previous
34 sexual conduct or manner of dress at the time of the incident shall
35 not be admitted nor shall any reference made to such conduct or
36 manner or dress, except as provided in N.J.S.2C:14-7.

37 d. The issue of whether an act alleged in the application for a
38 protective order occurred, or whether an act of contempt under
39 paragraph (2) of subsection b. of N.J.S.2C:29-9 occurred, shall not
40 be subject to mediation or negotiation in any form.

41 e. A final protective order issued pursuant to this section shall
42 be issued only after a finding or an admission is made that the
43 respondent committed an act of nonconsensual sexual contact,
44 sexual penetration, or lewdness, or any attempt at such conduct,
45 against the alleged victim. A final protective order shall:

46 (1) prohibit the respondent from having contact with the victim;
47 and

1 (2) prohibit the respondent from committing any future act of
2 nonconsensual sexual contact, sexual penetration, or lewdness, or
3 any attempt at such conduct, against the victim.

4 f. In addition to any relief provided to the victim under
5 subsection e. of this section, a final protective order issued pursuant
6 to this section may include, but is not limited to, the following
7 relief:

8 (1) an order prohibiting the respondent from entering the
9 residence, property, school, or place of employment of the victim or
10 the victim's family or household members, and requiring the
11 respondent to stay away from any specified place that is named in
12 the order and is frequented regularly by the victim or the victim's
13 family or household members;

14 (2) an order prohibiting the respondent from having any contact
15 with the victim or others, including an order forbidding the
16 respondent from personally or through an agent initiating any
17 communication likely to cause annoyance or alarm including, but
18 not limited to, personal, written, or telephone contact, or contact via
19 electronic device, with the victim or the victim's family members or
20 their employers, employees, or fellow workers; an employee or
21 volunteer of a sexual assault response entity that is providing
22 services to a victim; or others with whom communication would be
23 likely to cause annoyance or alarm to the victim;

24 (3) an order prohibiting the respondent from stalking or
25 following, or threatening to harm, stalk or follow, the victim;

26 (4) an order prohibiting the respondent from committing or
27 attempting to commit an act of harassment, including an act of
28 cyber-harassment, against the victim; and

29 (5) any other relief that the court deems appropriate.

30 g. A final protective order issued pursuant to this section shall be
31 immediately forwarded to the police of the municipality in which
32 the victim resides or is sheltered, and to the police of the
33 municipality in which the respondent resides for immediate service
34 on the respondent in accordance with the Rules of Court. If personal
35 service cannot be effected upon the respondent, the court may order
36 other appropriate substituted service. At no time shall the victim be
37 asked or required to serve any order on the respondent.

38 h. Notice of a final protective order issued pursuant to this
39 section shall be sent by the clerk of the Superior Court or other
40 person designated by the court to the appropriate county prosecutor,
41 the appropriate chiefs of police, members of the State Police and
42 any other appropriate law enforcement agency. Notice of the
43 issuance of a final protective order shall also be provided to the
44 Division of Child Protection and Permanency in the Department of
45 Children and Families where the victim is less than 18 years of age.

46 i. A final protective order issued pursuant to this section shall
47 remain in effect until further order of a judge of the Superior Court.
48 Either party may file a petition with the court to dissolve or modify

1 a final protective order. When considering a petition for dissolution
2 or modification of a final protective order, the court shall conduct a
3 hearing to consider whether a material change in circumstances has
4 occurred since the issuance of the protective order which would
5 make its continued enforcement inequitable, oppressive or unjust
6 taking into account the current status of the parties, including the
7 desire of the victim for the continuation of the protective order, the
8 potential for contact between the parties, the history of the
9 respondent's violations of the protective order or criminal
10 convictions, and any other factors that the court may find relevant
11 to protecting the safety and well-being of the victim.

12

13 5. (New section) Any temporary or final protective order issued
14 pursuant to P.L. , c. (C.) (pending before the Legislature as
15 this bill) shall be in effect throughout the State, and shall be
16 enforced by all law enforcement officers.

17

18 6. (New section) a. A respondent's violation of any protective
19 order issued pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall constitute an offense under subsection
21 b. of N.J.S.2C:29-9 and each order shall so state. All contempt
22 proceedings brought pursuant to paragraph (2) of subsection b. of
23 N.J.S.2C:29-9 shall be subject to any rules or guidelines established
24 by the Supreme Court to promote the prompt disposition of criminal
25 matters. Additionally, and notwithstanding the term of
26 imprisonment provided in N.J.S.2C:43-8, any person convicted of a
27 second or subsequent nonindictable offense involving the contempt
28 of a protective order issued pursuant to P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall serve a minimum
30 term of not less than 30 days.

31 b. Where a victim alleges that a respondent has committed
32 contempt of a protective order entered pursuant to the provisions of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 but a law enforcement officer has found that the facts are
35 insufficient to establish probable cause to arrest the respondent, the
36 law enforcement officer shall advise the victim of the procedure for
37 completing and signing a criminal complaint alleging a violation of
38 N.J.S.2C:29-9 through the municipal court. Nothing in this section
39 shall be construed to prevent the court from granting any other
40 emergency relief it deems necessary.

41

42 7. (New section) a. All records maintained pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill) shall be
44 confidential and shall not be made available to any individual or
45 institution except as otherwise provided by law.

46 b. A victim shall be provided with copies of all protective orders
47 issued pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) and other relevant documents upon request
2 at no cost.

3

4 8. (New section) The Administrative Office of the Courts shall
5 establish and maintain a central registry of all protective orders
6 issued pursuant to P.L. , c. (C.) (pending before the
7 Legislature as this bill) and all persons who have been charged with
8 a violation of such a protective order. All records made pursuant to
9 this section shall be kept confidential and shall be released only to:

10 a. A public agency authorized to investigate a report of
11 nonconsensual sexual contact, sexual penetration, or lewdness, or
12 any attempt at such conduct, or domestic violence;

13 b. A police or other law enforcement agency for official
14 purposes;

15 c. A court, upon its finding that access to such records may be
16 necessary for determination of an issue before the court;

17 d. A surrogate, in that person's official capacity as deputy clerk
18 of the Superior Court, in order to prepare documents that may be
19 necessary for a court to determine an issue in an adoption
20 proceeding; or

21 e. The Division of Child Protection and Permanency in the
22 Department of Children and Families when the division is
23 conducting a background investigation involving:

24 (1) an allegation of child abuse or neglect, to include any adult
25 member of the same household as the individual who is the subject
26 of the abuse or neglect allegation; or

27 (2) an out-of-home placement for a child being placed by the
28 Division of Child Protection and Permanency, to include any adult
29 member of the prospective placement household.

30 Any individual, agency, or court which receives from the
31 Administrative Office of the Courts the records referred to in this
32 section shall keep the records and reports, or parts thereof,
33 confidential and shall not disseminate or disclose such records and
34 reports, or parts thereof; provided that nothing in this section shall
35 prohibit a receiving individual, agency, surrogate or court from
36 disclosing records and reports, or parts thereof, in a manner
37 consistent with and in furtherance of the purpose for which the
38 records and reports or parts thereof were received.

39 Any individual who disseminates or discloses a record or report,
40 or parts thereof, of the central registry, other than for an official
41 purpose authorized by this section, for the investigation of an
42 alleged violation of a protective order issued pursuant to P.L. ,
43 c. (C.) (pending before the Legislature as this bill),
44 conducting a background investigation involving a person's
45 application for employment at a police or law enforcement agency,
46 making a determination of an issue before the court, conducting a
47 background investigation as specified in subsection e. of this
48 section, or for any other purpose other than that which is authorized

1 by law, the Rules of Court or court order, shall be guilty of a crime
2 of the fourth degree.

3

4 9. (New section) The Supreme Court may promulgate Rules of
5 Court to effectuate the purposes of P.L. , c. (C.) (pending
6 before the Legislature as this bill).

7

8 10. N.J.S.2C:29-9 is amended to read as follows:

9 2C:29-9. Contempt.

10 a. A person is guilty of a crime of the fourth degree if he
11 purposely or knowingly disobeys a judicial order or protective
12 order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or
13 hinders, obstructs or impedes the effectuation of a judicial order or
14 the exercise of jurisdiction over any person, thing or controversy by
15 a court, administrative body or investigative entity.

16 b. (1) (a) Except as provided [below] in subparagraphs (b) and
17 (c) of this paragraph, a person is guilty of a crime of the fourth
18 degree if that person purposely or knowingly violates any provision
19 in an order entered under the provisions of the "Prevention of
20 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
21 al.) or an order entered under the provisions of a substantially
22 similar statute under the laws of another state or the United States
23 when the conduct which constitutes the violation could also
24 constitute a crime or a disorderly persons offense.

25 (b) [In all other cases a] A person is guilty of a disorderly
26 persons offense if that person purposely or knowingly violates an
27 order entered under the provisions of [this act] the "Prevention of
28 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
29 al.) or an order entered under the provisions of a substantially
30 similar statute under the laws of another state or the United States
31 when the conduct which constitutes the violation would not also
32 constitute a crime or a disorderly persons offense.

33 (c) Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9)
34 of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or
35 substantially similar orders entered under the laws of another state
36 or the United States shall be excluded from the provisions of this
37 [subsection] paragraph.

38 (2) A person is guilty of a crime of the fourth degree if that
39 person purposely or knowingly violates any provision in an order
40 entered under the provisions of P.L. , c. (C.) (pending
41 before the Legislature as this bill).

42 As used in this subsection, "state" means a state of the United
43 States, the District of Columbia, Puerto Rico, the United States
44 Virgin Islands, or any territory or insular possession subject to the
45 jurisdiction of the United States. The term includes an Indian tribe
46 or band, or Alaskan native village, which is recognized by a federal
47 law or formally acknowledged by a state.

48 (cf: P.L.2008, c.81, s.3)

1 11. This act shall take effect on the 180th day following
2 enactment.

3

4

5

STATEMENT

6

7 This bill, titled the “Sexual Assault Survivor Protection Act of
8 2015,” would authorize protective orders for victims of
9 nonconsensual sexual contact, sexual penetration, or lewdness, or
10 attempts at such conduct.

11 Under the bill, any person alleging to be a victim of
12 nonconsensual sexual contact, sexual penetration, or lewdness, or
13 any attempt at such conduct, and who is not eligible for a
14 restraining order as a “victim of domestic violence” under the
15 domestic violence statutes may file an application with the Superior
16 Court alleging the commission of such conduct or attempted
17 conduct and seeking a temporary protective order.

18 A parent or guardian could file the application on behalf of the
19 alleged victim if the alleged victim is less than 18 years of age, or
20 has a developmental disability as defined in section 3 of P.L.1977,
21 c.200 (C.5:5-44.4), or has a mental disease or defect that renders the
22 alleged victim temporarily or permanently incapable of
23 understanding the nature of the alleged victim’s conduct, including,
24 but not limited to, being incapable of providing consent.

25 If it is alleged that the act or attempt is committed by an
26 unemancipated minor, an applicant would seek relief pursuant to the
27 provisions of the New Jersey Code of Juvenile Justice, P.L.1982, c.
28 77 (C.2A:4A-20 et seq.) and would not proceed under the bill.

29 A protective order may be sought, and may be issued by the
30 court, regardless of whether criminal charges based on the incident
31 were filed and regardless of the disposition of any such charges. An
32 application filed in accordance with the provisions of the bill would
33 not prevent the filing of a criminal complaint, or the institution or
34 maintenance of a criminal prosecution based on the same act.

35 The court would waive any requirement that the applicant’s or
36 alleged victim’s place of residence appear on the application. No
37 fees or other costs would be assessed against an applicant for
38 seeking a protective order.

39 Under the bill, a judge of the Superior Court may enter an
40 emergency, ex parte order when necessary to protect the safety and
41 well-being of an alleged victim on whose behalf the relief is sought.
42 The court would grant any relief necessary to protect the safety and
43 well-being of the alleged victim.

44 The temporary protective order would be issued if the court
45 determines that the applicant is a victim of nonconsensual sexual
46 contact, sexual penetration, or lewdness, or any attempt at such
47 conduct. The court would render a decision on the application and
48 issue the order, where appropriate, in an expedited manner. If the

1 court is satisfied that exigent circumstances exist that would excuse
2 the alleged victim from having to appear personally, and sufficient
3 grounds for granting the application have been shown, the
4 temporary protective order would be issued, pursuant to court rules,
5 upon sworn testimony or an application of an alleged victim who is
6 not physically present, or by a person authorized to file an
7 application on behalf of an alleged victim.

8 An order for emergency, ex parte relief pursuant to the bill
9 would be granted upon good cause shown and would remain in
10 effect until a judge of the Superior Court issues a further order. A
11 temporary protective order issued would be immediately appealable
12 for a plenary hearing de novo not on the record before any judge of
13 Superior Court of the county in which the alleged victim resides or
14 is sheltered if that judge issued the temporary protective order or
15 has access to the reasons for the issuance of the order and sets forth
16 in the record the reasons for the modification or dissolution.

17 A temporary protective order may include, but would not be
18 limited to, the following emergency relief:

19 (1) prohibiting the respondent from committing or attempting to
20 commit any future act of nonconsensual sexual contact, sexual
21 penetration, or lewdness, or any attempt at such conduct, against the
22 alleged victim;

23 (2) prohibiting the respondent from entering the residence,
24 property, school, or place of employment of the alleged victim or
25 the alleged victim's family or household members, and requiring
26 the respondent to stay away from any specified place that is named
27 in the order and is frequented regularly by the alleged victim or the
28 alleged victim's family or household members;

29 (3) prohibiting the respondent from having any contact with the
30 alleged victim or others, including an order forbidding the
31 respondent from personally or through an agent initiating any
32 communication likely to cause annoyance or alarm including, but
33 not limited to, personal, written, or telephone contact, or contact via
34 electronic device, with the alleged victim or the alleged victim's
35 family members, or their employers, employees, or fellow workers,
36 an employee or volunteer of a sexual assault response entity that is
37 providing services to an alleged victim, or others with whom
38 communication would be likely to cause annoyance or alarm to the
39 alleged victim;

40 (4) prohibiting the respondent from stalking or following, or
41 threatening to harm, stalk, or follow, the alleged victim;

42 (5) prohibiting the respondent from committing or attempting to
43 commit an act of harassment, including an act of cyber-harassment,
44 against the alleged victim; and

45 (6) any other relief that the court deems appropriate.

46 The bill would require that a hearing be held in the Superior
47 Court within 10 days of the filing of an application. The bill
48 provides that if a criminal complaint arising out of the same

1 incident which is the subject matter of the application for a
2 protective order has been filed, testimony given by the applicant in
3 accordance with an application filed pursuant to the bill would not
4 be used in the criminal proceeding against the respondent, other
5 than contempt matters, and where it would otherwise be admissible
6 hearsay under the rules of evidence that govern when a party is
7 unavailable. At the hearing, the standard for proving the allegations
8 made in the application would be a preponderance of the evidence.
9 The court would consider but not be limited to the following
10 factors: (1) the occurrence of one or more acts of nonconsensual
11 sexual contact, sexual penetration, or lewdness, or any attempt at
12 such conduct, against the alleged victim; and (2) the possibility of
13 future risk to the safety or well-being of the alleged victim.

14 A court could not deny relief due to: the petitioner's or alleged
15 victim's failure to report the incident to law enforcement; the
16 alleged victim's or the respondent's alleged intoxication; whether
17 the alleged victim did or did not leave the premises to avoid
18 nonconsensual sexual contact, sexual penetration, or lewdness, or
19 an attempt at such conduct; or the absence of signs of physical
20 injury to the alleged victim.

21 In any proceeding involving an application for a protective order
22 pursuant to the bill, evidence of the alleged victim's previous sexual
23 conduct or manner of dress at the time of the incident would not be
24 admissible nor would the bill permit any reference to such conduct
25 or manner of dress, except as provided in N.J.S.2C:14-7.

26 The issue of whether an act alleged in the application for a
27 protective order occurred, or whether an act of contempt under the
28 bill occurred, would not be subject to mediation or negotiation in
29 any form.

30 A final protective order would be issued only after a finding or
31 admission that the respondent committed an act of nonconsensual
32 sexual contact, sexual penetration, or lewdness, or any attempt at
33 such conduct, against the alleged victim. A final protective order
34 would:

35 (1) prohibit the respondent from having contact with the victim;
36 and

37 (2) prohibit the respondent from committing any future act of
38 nonconsensual sexual contact, sexual penetration, or lewdness, or
39 any attempt at such conduct, against the victim.

40 A final order may also include the following relief:

41 (1) prohibiting the respondent from entering the residence,
42 property, school, or place of employment of the victim or the
43 victim's family or household members, and requiring the
44 respondent to stay away from any specified place that is named in
45 the order and is frequented regularly by the victim or the victim's
46 family or household members;

47 (2) prohibiting the respondent from having any contact with the
48 victim or others, including an order forbidding the respondent from

1 personally or through an agent initiating any communication likely
2 to cause annoyance or alarm including, but not limited to, personal,
3 written, or telephone contact, or contact via electronic device, with
4 the victim or the victim's family members or their employers,
5 employees, or fellow workers; an employee or volunteer of a sexual
6 assault response entity that is providing services to a victim; or
7 others with whom communication would be likely to cause
8 annoyance or alarm to the victim;

9 (3) prohibiting the respondent from stalking or following, or
10 threatening to harm, stalk or follow, the victim;

11 (4) prohibiting the respondent from committing or attempting to
12 commit an act of harassment, including an act of cyber-harassment,
13 against the victim; and

14 (5) any other relief that the court deems appropriate.

15 A final protective order would be immediately forwarded to the
16 police for immediate service on the respondent in accordance with
17 the Rules of Court. Notice of a final protective order would be sent
18 by the clerk of the Superior Court or other person designated by the
19 court to the appropriate county prosecutor, chiefs of police,
20 members of the State Police and any other appropriate law
21 enforcement agency. Notice would also be provided to the Division
22 of Child Protection and Permanency in the Department of Children
23 and Families where the victim is less than 18 years of age.

24 A final protective order issued under the bill would remain in
25 effect until further order of a judge of the Superior Court. Either
26 party may file a petition with the court to dissolve or modify a final
27 protective order. When considering a petition for dissolution or
28 modification, the court would consider whether a material change in
29 circumstances has occurred since the issuance of the protective
30 order which would make its continued enforcement inequitable,
31 oppressive or unjust taking into account the current status of the
32 parties, including the desire of the victim for the continuation of the
33 protective order, the potential for contact between the parties, the
34 history of the respondent's violations of the protective order or
35 criminal convictions, and any other factors that the court may find
36 relevant to protecting the safety and well-being of the victim.

37 A respondent's violation of any protective order issued under the
38 bill would constitute an offense under subsection b. of N.J.S.
39 2C:29-9. Under current law, N.J.S.2C:29-9 governs contempt
40 proceedings for a violation of an order entered under the provisions
41 of the "Prevention of Domestic Violence Act of 1991," P.L.1991,
42 c.261 (C.2C:25-17 et al.). The bill would amend N.J.S.2C:29-9 to
43 provide that a person is guilty of a crime of the fourth degree if that
44 person purposely or knowingly violates any provision in an order
45 entered under the provisions of the bill. A person convicted of a
46 second or subsequent nonindictable offense involving the contempt
47 of a protective order would serve a minimum term of not less than
48 30 days.

1 Where a victim alleges that a respondent has committed
2 contempt of a protective order, but a law enforcement officer has
3 found that the facts are insufficient to establish probable cause to
4 arrest the respondent, the law enforcement officer would advise the
5 victim of the procedure for completing and signing a criminal
6 complaint through the municipal court alleging contempt of the
7 order.

8 All records maintained pursuant to the bill would be confidential
9 and not made available to any individual or institution except as
10 otherwise provided by law.

11 A victim would be provided with copies of all protective orders
12 issued pursuant to the bill as well as other relevant documents upon
13 request at no cost.

14 The Administrative Office of the Courts would establish and
15 maintain a central registry of all protective orders and all persons
16 charged with a violation of such orders. All records would be kept
17 confidential and would be released only to:

18 a. A public agency authorized to investigate a report of
19 nonconsensual sexual contact, sexual penetration, or lewdness, or
20 any attempt at such conduct, or domestic violence;

21 b. A police or other law enforcement agency for official
22 purposes;

23 c. A court, upon its finding that access to such records may be
24 necessary for determination of an issue before the court;

25 d. A surrogate, in that person's official capacity as deputy clerk
26 of the Superior Court, in order to prepare documents that may be
27 necessary for a court to determine an issue in an adoption
28 proceeding; or

29 e. The Division of Child Protection and Permanency in the
30 Department of Children and Families when the division is
31 conducting a background investigation involving an allegation of
32 child abuse or neglect, to include any adult member of the same
33 household as the individual who is the subject of the abuse or
34 neglect allegation, or an out-of-home placement for a child being
35 placed by the Division of Child Protection and Permanency, to
36 include any adult member of the prospective placement household.

37 The bill provides that any individual who disseminates or
38 discloses a record or report, or parts thereof, of the central registry,
39 other than for an official purpose authorized by the bill, or for any
40 other purpose other than that authorized by law, the Rules of Court
41 or court order, would be guilty of a crime of the fourth degree.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2686

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 7, 2015

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2686.

This bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would, as amended, authorize courts to issue temporary as well as final protective orders against offenders to help victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order. The application would be to the court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the alleged offender resides, or where the alleged victim resides or is sheltered. A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding

against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;

- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;

- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;

- prohibiting the offender from threatening, following, stalking, or harassing the victim; and

- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State

Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency ex parte application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner of dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for temporary protective orders, e.g., prohibiting the offender from entering the

residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Whenever a law enforcement officer found probable cause that an offender committed contempt of an order, the person would be arrested and taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. Whenever a victim alleged contempt of an order, but an officer could not establish probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The Administrative Office of the Courts (AOC) would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
 - a police or other law enforcement agency for official purposes;
 - a court, upon its finding that access to such records may be necessary for determination of an issue before the court;
 - a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding;
- or
- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

Committee Notes

This bill, as amended and reported by the committee, is identical to Assembly Bill No. 4078(1R), also reported by the committee today.

The committee amendments to the bill:

- provide that a copy of a temporary or final protective order would be forwarded to various law enforcement officers, as indicated above, and provide for a court or sheriff to coordinate service of the order upon the offender through police in appropriate circumstances;
- establish that a purposeful or knowing violation of a protective order would constitute a fourth degree crime of contempt, and because such is an indictable crime, eliminate unnecessary language in the bill relating to multiple, nonindictable contempt violations;
- require that a law enforcement officer arrest and take into custody an offender who committed contempt of a protective order when the officer finds probable cause of the violation, with that offender then

held while awaiting a court determination for release or for remaining in custody subject to a pretrial detention hearing;

- require that a law enforcement officer advise a victim of the procedure for filing a criminal complaint over an alleged contempt violation, when the officer could not find probable cause of a violation; and

- clarify that the bill's fourth degree crime of contempt is a separate form of contempt from those that relate to violations of restraining orders issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.).

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2686

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 2015

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2686 (1R), with committee amendments.

As amended, this bill, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize courts to issue temporary and final protective orders on behalf of victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct. The committee amended the bill to add definitions of the terms “sexual contact,” “sexual penetration,” “lewdness,” and “intimate parts.”

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order.

The application would be to the court having jurisdiction over the place where the alleged conduct or attempted conduct occurred, where the alleged offender resides, or where the alleged victim resides or is sheltered. A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing

of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;
- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;
- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;
- prohibiting the offender from threatening, following, stalking, or harassing the victim; and
- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is

sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency ex parte application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any

contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for temporary protective orders, e.g., prohibiting the offender from entering the residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

If a law enforcement officer finds probable cause that an offender committed contempt of an order, the person would be arrested and taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. If a victim alleges contempt of an order, but an officer could not establish

probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The Administrative Office of the Courts (AOC) would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
 - a police or other law enforcement agency for official purposes;
 - a court, upon its finding that access to such records may be necessary for determination of an issue before the court;
 - a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding;
- or
- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

As amended and reported, this bill is identical to Assembly Bill No. 4078 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments add the following definitions to terms used in the bill:

“Sexual contact” is defined as “an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor.”

“Sexual penetration” is defined as “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction.”

“Lewdness” is defined as “the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.”

"Intimate parts" is defined as “the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.”

FISCAL IMPACT:

In the Fiscal Note for this bill, the Administrative Office of the Courts (AOC) stated that the Judiciary and judiciary staff would incur expenses as a result of the time necessary to process and review the applications, issue and distribute the protective orders, and costs related to the establishment and maintenance of the central registry.

The AOC noted that as the Judiciary does not have the ability to estimate the number of applications that would be received under the bill, could not provide a quantifiable estimate of the fiscal impact, but anticipates that any necessary expenditures would be relatively nominal. The Office of Legislative Services notes that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions

FISCAL NOTE
 [Second Reprint]
SENATE, No. 2686
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: JUNE 19, 2015

SUMMARY

Synopsis: “Sexual Assault Survivor Protection Act of 2015;” authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct.

Type of Impact: Minimal General Fund expenditure. Local expenditure

Agencies Affected: The Judiciary, Local law enforcement agencies.

Judiciary Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
Local Cost	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.
- The bill, titled the “Sexual Assault Survivor Protection Act of 2015;” would authorize protective orders for victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.
- The Administrative Office of the Courts (AOC) notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation’s fiscal impact. However, the

Judiciary anticipates that any expenditure it would incur related to this legislation would be relatively nominal.

BILL DESCRIPTION

Senate Bill No. 2686 (2R) of 2015, titled the “Sexual Assault Survivor Protection Act of 2015,” would authorize courts to issue temporary and final protective orders on behalf of victims of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts at such conduct.

Temporary and Final Protective Orders

Under the bill, any person alleging to be a victim of nonconsensual sexual contact, sexual penetration, or lewdness, or an attempt at such conduct, who is not otherwise eligible to seek a restraining order as a victim of domestic violence pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et al.), could file an application with the Superior Court seeking a temporary protective order.

A parent or guardian could file the application on behalf of the alleged victim if the person: is less than 18 years of age; or has a developmental disability or mental disease or defect that renders the person temporarily or permanently incapable of understanding the nature of the person’s conduct.

In a case in which an unemancipated minor is the alleged offender, the alleged victim would instead be required to seek a protective order and other relief pursuant to the provisions of the “New Jersey Code of Juvenile Justice,” P.L.1982, c.77 (C.2A:4A-20 et seq.).

A protective order could be sought, and may be issued by a court, regardless of whether criminal charges were filed, based on the incident or incidents included in the application for a protective order, and regardless of the disposition of any such charges. Also, the filing of a protective order application would not prevent a separate filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same incident or incidents. The bill provides that if a criminal complaint arising out of the same incident or incidents has been filed, testimony given by the victim in accordance with the application would not be used in the criminal proceeding against the respondent, other than for contempt matters for violating a protective order (see below), and when it would otherwise be admissible hearsay under the Rules of Evidence governing unavailable parties.

With respect to a temporary protective order, a judge of the Superior Court could enter an emergency, ex parte order when necessary to protect the safety and well-being of the alleged victim on whose behalf the relief is sought. Any such order would be granted upon good cause shown.

The court could issue the order, pursuant to court rules, upon the sworn testimony or application of an alleged victim not physically present, or based upon the application of a parent or guardian representing an alleged victim incapable of personally filing. In such a case, the order could be issued if the judge is satisfied that (1) sufficient exigent circumstances exist to excuse the failure of the alleged victim to appear personally and (2) sufficient grounds for granting the application have been shown.

If the court issued a temporary protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The emergency relief contained in that protective order could include one or more of the following actions:

- prohibiting the offender from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim;

- requiring the respondent to not enter the residence, property, school, or place of employment of the victim, or victim's family or household members, and stay away from other places named in the order that are frequented regularly by the victim, or victim's family or household members;

- prohibiting the respondent from having any contact, personally or through any third party, with the victim or others, including family members, or the victim's or family member's employers, employees, or fellow workers;

- prohibiting the offender from threatening, following, stalking, or harassing the victim; and
- any other relief that the court deems appropriate.

A copy of the temporary protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

A copy of the temporary protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order.

Following the issuance of the temporary protective order, a subsequent hearing on the issue of whether or not to issue a final protective order would occur within 10 days of the initial, emergency ex parte application, with notice to the offender. However, the temporary protective order would be immediately appealable for a plenary hearing de novo not on the record before any judge of the Superior Court of the county in which the victim resides or is sheltered, if that judge issued the temporary protective order or has access to the reasons for the issuance of the order and sets forth in the record the reasons for the order's modification or dissolution.

The hearing concerning a final protective order would take place in the county where the temporary protective order was issued, unless good cause is shown for the hearing to be held elsewhere. The standard of proof concerning the issuance of a final protective order would be based on a preponderance of the evidence supporting the order, a higher standard than the good cause standard required for issuance of the temporary protective order.

The court would consider but not be limited to the following factors concerning the issuance of a final protective order: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim; and (2) the possibility of future risk to the safety or well-being of the victim. Evidence of the victim's previous sexual conduct or manner of dress at the time of the one or more incidents would not be admissible nor would the bill permit any reference to such conduct or manner or dress, except as provided in N.J.S.2C:14-7 (the State's Rape Shield Law, generally intended to focus proceedings on the offender's actions and protect the privacy interests of the victim).

A court could not deny the relief of a final protective order due to: the victim's failure (or petitioner's failure, if a different person) to report the act or attempted acts of nonconsensual activity or lewdness to law enforcement; the victim's or offender's alleged intoxication; whether the victim did or did not leave the premises to avoid the act or attempted acts of nonconsensual activity or lewdness; or the absence of signs of physical injury to the victim.

If the court issued a final protective order, the order would remain in effect until a judge of the Superior Court issued a further order. The final protective order would prohibit the offender from having any contact with the victim as well as committing or attempting to commit any future acts of nonconsensual activity or lewdness against the victim. The order could also contain additional forms of relief based on the same forms of relief provided under the bill for

temporary protective orders, e.g., prohibiting the offender from entering the residence, property, school, or place of employment of the victim, or victim's family or household members.

A copy of the final protective order would be provided to the victim, as well as other relevant documents, upon request at no cost.

As with a temporary protective order, a copy of the final protective order would also be forwarded to the police of the municipality in which the victim resides or is sheltered, and to the sheriff of the county in which the offender resides for immediate service upon the offender. The court or sheriff could also coordinate service of the order upon the offender through the police in appropriate circumstances. If personal service could not be effected upon the offender, the court could order other appropriate substituted service. Appropriate chiefs of police, members of the State Police, and other law enforcement agencies or courts would also be notified of the court's order, as well as the Division of Child Protection and Permanency in the Department of Children and Families whenever the victim is less than 18 years of age.

Either the victim or offender could file a petition with the court to dissolve or modify a final protective order. When considering such a petition, the court would consider whether a material change in circumstances has occurred since the issuance of the protective order which would make its continued enforcement inequitable, oppressive, or unjust, taking into account the current status of the parties, including the desire of the victim for the continuation of the protective order, the potential for contact between the parties, the history of any violations of the protective order or criminal convictions, and any other factors that the court may find relevant to protecting the safety and well-being of the victim.

Enforcement of Protective Orders

As to the enforcement of any protective order, any such order would be effective throughout the State and enforceable by all law enforcement officers. An offender's purposeful or knowing violation of any protective order would constitute a fourth degree crime of contempt. A fourth degree crime is ordinarily punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

If a law enforcement officer finds probable cause that an offender committed contempt of an order, the person would be arrested and taken into custody. The court would determine whether the person would be released or remain detained and subject to a pretrial detention hearing pursuant to sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) and applicable court rules. If a victim alleges contempt of an order, but an officer could not establish probable cause, the officer would advise the victim of the procedure for filing a criminal complaint regarding that alleged violation.

All contempt proceedings for a protective order violation would be subject to rules and guidelines established by the Supreme Court to promote the prompt disposition of criminal matters.

Protective Order Records

All records maintained pursuant to the bill would be confidential and not made available to any individual or institution except as otherwise provided by law.

The AOC would establish and maintain a central registry of all court-issued protective orders and all persons charged with a violation of such orders. All records would be kept confidential and would be released only to:

- a public agency authorized to investigate a report of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, or domestic violence;
- a police or other law enforcement agency for official purposes;
- a court, upon its finding that access to such records may be necessary for determination of an issue before the court;

- a surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

- the Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving an allegation of child abuse or neglect, or an out-of-home placement for a child being placed by the division.

Any individual who disseminated or disclosed a record or report, or parts thereof, of the AOC central registry, other than for an official purpose expressly authorized by the bill, or otherwise by law, court rule, or court order would be guilty of a crime of the fourth degree (imprisonment up to 18 months; fine up to \$10,000; or both).

FISCAL ANALYSIS

EXECUTIVE BRANCH

Administrative Office of the Courts

The AOC states that expenditures the Judiciary would incur as a result of this bill include Judge and judiciary staff time necessary to process and review the applications, issue and distribute the protective orders, and costs related to the establishment and maintenance of the central registry.

The AOC notes that as the Judiciary does not have the ability to estimate the number of applications that would be received under this bill, it is unable to provide a quantifiable estimate of the legislation's fiscal impact. However, the Judiciary anticipates that any expenditures it would incur related to this legislation would be relatively nominal.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary statement. The OLS adds that local law enforcement agencies would incur indeterminate costs to enforce restraining orders within their jurisdictions.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal note has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Takes Action On Pending Legislation

Monday, November 9, 2015 Tags: [Bill Action](#)



Stay Connected with Social Media

Stay Connected with Email Alerts

LIKE THIS PAGE? SHARE IT WITH YOUR FRIENDS.

...

Trenton, NJ – Governor Chris Christie today took action on legislation, including a package of five bills intended to address the fiscal stability of Atlantic City.

Understanding both the immediate and long-term obstacles facing Atlantic City and its stabilization, the Governor has consistently highlighted the need for comprehensive reform efforts to confront the city's challenges – both from State and local leaders. The Governor remains committed to bringing about the necessary reforms to stabilize Atlantic City and continue an effective long-term transition to an economy that is diversified beyond its traditional gaming industry.

Continuing in that effort, Governor Christie conditionally vetoed A-3981, establishing a payment-in-lieu-of-taxes (PILOT) program for casinos operating in the City, A-3984, reallocating revenue derived from the casino investment alternative tax from the Casino Reinvestment Development Authority to the City to pay debt service on municipal bonds, and A-3985, repealing the Atlantic City Alliance.

"While I commend the Legislature for attempting to devise measures to stabilize the City's budget and finances, I am concerned that the bills, in their present form, fail to recognize the true path to economic revitalization and fiscal stability in the City," Governor Christie said. "While these bills represent the bipartisan efforts of many to provide important, near-term support to the City's immediate challenges, I do not believe they meet the goal of setting a course toward renewed, long-term prosperity and economic growth. To achieve these goals, we must continue our work and go further to ensure that the next step leads to that economically vibrant future for Atlantic City."

In addition, the Governor signed A- 3983, authorizing supplemental school aid to the Atlantic City school district, and vetoed the fifth bill, A-3982, which would add a costly and unjustified new mandate for casino business operation in the City by requiring each casino, as a condition of licensure, to provide to its full time employees "suitable" health care benefits and "suitable" retirement benefits.

"A-3982 would do nothing to enhance the financial condition of Atlantic City," Governor Christie wrote. "To be sure, this bill would make it more costly for casinos to operate in Atlantic City, thereby impeding the industry's ability to grow and expand."

Governor Christie also vetoed legislation designed to revise certain laws concerning domestic violence and firearms. The Christie Administration has made protecting our most vulnerable residents one of its main priorities and has enacted some of the toughest measures to combat domestic violence. Governor Christie has supported a comprehensive approach to addressing the level of violence within our society and recently signed legislation to further penalize aggravated assault perpetuated against domestic violence victims. This legislation, A-4218 (Mosquera, Greenwald, Lagana, Benson, Lampitt, Vainieri Huttie, Danielsen/Weinberg, Gill, Cruz-Perez), substantially restates New Jersey's existing laws that govern firearms and domestic violence and does not offer new and sensible improvements to those current laws. For that reason, rather than restate existing laws, the Governor is proposing significant amendments that will meaningfully deter future acts of violence.

• **Enhanced Penalties For Domestic Violence.** Governor Christie is proposing enhanced criminal penalties imposed against those who are convicted of domestic violence. To demonstrate society's unconditional condemnation of this conduct, perpetrators would receive the maximum available prison sentence under New Jersey law.

• **Tighter Restrictions On Parole Eligibility For Perpetrators Of Domestic Violence.** The Governor's recommended changes will strengthen penalties for perpetrators of domestic abuse by lengthening periods of parole

ineligibility.

- **Prioritizing Victims Who Seek Firearms For Protection.** The Governor is also recommending an immediate codification in statute of new rules currently being processed, giving expedited processing of firearm license applications for victims of domestic violence so that the victims may better defend themselves against future instances of abuse.

"I urge the Legislature to join with me in a bipartisan manner to broaden this bill's approach to reducing domestic violence while simultaneously empowering victims to protect themselves through lawful means," Governor Christie said. "Together, we can enact a more comprehensive approach and reduce the harm that domestic violence inflicts on victims, families, and our society."

The Governor also took the following action on other pending legislation:

BILL SIGNINGS:

S-2174/A-3364 (Barnes, Holzapfel/Quijano, Mainor, Pinkin) - Prohibits manufacture, sale, or installation of counterfeit or nonfunctional air bags in motor vehicles

A-815/S-852 (Coughlin, Ciattarelli, Diegnan, Pinkin, Giblin/Vitale) - Requires municipalities which license peddlers and solicitors to accept certain background check results from other municipalities

A-1029/S-274 (Benson, Vainieri Huttie, Jasey, Tucker, Wimberly/Greenstein, Ruiz) - Requires training program for school bus drivers and school bus aides on interacting with students with special needs, and requires development and use of student information cards

A-1041/S-2676 (Schaer, Johnson, Vainieri Huttie, Eustace, Mazzeo/Rumana, Gordon, Weinberg) - Exempts Holocaust reparations payments from legal process, and from estate recovery under Medicaid program

A-1102/S-1145 (Vainieri Huttie, Sumter, Spencer, Schaer, Wimberly/Weinberg, Cruz-Perez) - Provides for licensure of dementia care homes by DOH

ACS for A-1662/S-2856 (Johnson, Lagana, Wimberly/Weinberg) - Authorizes the court to order the deletion, sealing, labeling, or correction of certain personal information in government records involving certain victims of identity theft

AS for A-1678/SS for S-1365 (Johnson, Mainor, O'Scanlon, Wilson, Wimberly/Weinberg) - Authorizes court to order submission of DNA evidence to national database to determine whether evidence matches known individual or DNA profile from an unsolved crime

AS for ACS for A-2073/SCS for S-712 (Handlin, Space, Garcia, Pintor Marin/Cruz-Perez, Kyrillos, Lesniak) - Exempts certain offers and sales of securities from registration

A-2385/S-944 (McKeon, Diegnan, Jasey, Andrzejczak/Smith, Codey) - Authorizes rural electric cooperative and certain municipalities to establish municipal shared services authority

ACS for A-2477/SCS for S-1705 (Lampitt, Conaway, Benson, Sumter, Munoz, Pinkin/Vitale, Singer) - Establishes requirements for pharmacists to dispense biological products

A-2714/S-1993 (Giblin, Sumter/Barnes) - Requires continuing education for licensed practicing psychologists

A-2936/S-1957 (Mosquera, Lampitt, Singleton, Wimberly/Singer, Connors) - Requires complaint for guardianship of person receiving services from Division of Developmental Disabilities to include one of documents identified in bill

A-3012/S-2296 (Ciattarelli, Dancer/Bateman) - Criminalizes bestiality

A-3079/S-2766 (Jasey, Diegnan, Mainor, Wimberly, Oliver, DeCrose/Turner, Ruiz) - Prohibits administration of standardized assessments in kindergarten through second grade

A-3153/S-2415 (DeAngelo, Mosquera/Madden, Beach) - Requires UI employer contribution reports and remittances be submitted to the Division of Revenue

A-3248/S-2459 (Conaway, Sumter, Pintor Marin/Singer) - Establishes the Task Force on Chronic Obstructive Pulmonary Disease in DOH

A-3580/S-2846 (Moriarty, Dancer, Coughlin, Mainor, Pinkin, Munoz, Daniels, Wimberly/Madden, Turner) - Prohibits sale of powdered alcohol

A-3636/SCS for S-2393, 2408, 2411 (McKeon, Lagana, Spencer/Scutari, O'Toole, Holzapfel) - Establishes crime-fraud exception to marital and civil union partnership privilege

A-3669/S-2655 (Mazzeo, Burzichelli/Whelan) - Prohibits eligibility for certain sign programs from being conditioned on availability of free drinking water or public telephone

A-3807/S-2619 (Eustace, Greenwald/Whelan) - Permits educational research and services corporations to act as lead procurement agencies for local units and publically supported educational institutions; permits Council of County Colleges to act as lead procurement agency for county colleges

A-3841/S-2540 (Munoz, Gusciora, Angelini, DeCroce/O'Toole, Weinberg) – Upgrades violation of a stalking restraining order to a crime of the third degree

A-3843/S-2735 (Caputo, Giblin, Tucker, Johnson, Mainor, Sumter/Rice) - Permits municipality to enact ordinance allowing voluntary registration of private outdoor video surveillance cameras

A-3983/S-2574 (Mazzeo, Burzichelli, Giblin/Sweeney, Whelan) - Authorizes supplemental State aid to school districts in municipality with significant decrease in commercial property valuation; makes appropriation

A-4008/SCS for S-2334 (Singleton, Mukherji, Pintor Marin, Wimberly, Sumter/Cunningham, Ruiz) - Requires DOC to make reports containing information concerning treatment and reentry initiative participation; requires AOC to establish program that collects recidivism data and make reports concerning adults sentenced to period of probation

A-4013/S-2497 (Greenwald, Lagana, Coughlin/Oroho) - Eliminates mortgage guaranty insurance coverage cap of 25% of outstanding balance of insured loan

A-4073/S-2687 (Schaer, Prieto, Caride, Lagana, Giblin, Wimberly, Rumana/Sarlo, Gill) - Requires installation of carbon monoxide detectors in certain structures; designated as "Korman and Park's Law"

A-4078/S-2686 (Vainieri Huttie, Mosquera, McKeon, Munoz, Benson, Sumter/Pou, Beck) - "Sexual Assault Survivor Protection Act of 2015"; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct

A-4089/S-2693 (Coughlin, Ciattarelli/Beach, Singer) - Revises certain provisions of dental service corporation law

A-4143/S-2514 (Lagana, Spencer, Mukherji, Johnson, Rumana, Rodriguez-Gregg, Gusciora, Mazzeo/Barnes, Addiego) - Permits holders of certain alcoholic beverage licenses to be issued amusement game license and updates definition of recognized amusement park

A-4144/S-2755 (Pintor Marin, Spencer, Caride, Quijano, Mukherji/Ruiz, Stack) – Requires insurance producer licensing examination and registration materials to be offered in English and Spanish, and examination instructional materials to be available in Spanish

A-4167/S-2751 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttie/Barnes) - Requires DHS to notify enrollees in Programs of All-Inclusive Care for the Elderly of Medicare eligibility

A-4168/S-2750 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttie/Barnes) - Requires providers to submit to DHS expenditure details of enrollees in Program of All-Inclusive Care for the Elderly

A-4169/S-2752 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttie/Barnes) - Requires DHS to monitor utilization and billing of services for Medicaid home and community-based long-term care

A-4333/S-3020 (Singleton, Gill) - Exempts certain activities of alarm businesses from statutes governing practice of locksmithing

A-4361/S-2891 (Johnson, A.M. Bucco, Garcia, S. Kean/Barnes, A.R. Bucco) - Revises definition of all-terrain vehicles

A-4375/S-3011 (Moriarty, Andrzejczak, Mazzeo, Mosquera, Quijano, Ciattarelli, Wimberly/Van Drew, Bateman) - Upgrades crimes of false public alarm under certain circumstances and establishes reporting requirements concerning crime

A-4485/S-2881 (Diegnan, Jasey, Wimberly, McKeon, Lagana/Gill, Turner) - Prohibits withholding of State school aid based on student participation rate on State assessments

A-4587/S-3049 (Greenwald, Lampitt, McKeon, Holley/Scutari, Cruz-Perez) – Requires facilities providing services to persons with developmental disabilities and schools to adopt policies permitting administration of medical marijuana to qualifying patients

AJR-64/SJR-82 (Schaer, Eustace, Lagana, Spencer, Caride, Mukherji/Pou, Ruiz) - Declares August 16 of each year as "Dominican Restoration Day" in New Jersey

BILLS VETOED:

S-929/A-1908 (Sweeney, Madden/Burzichelli, Riley, Moriarty) – **ABSOLUTE** -Concerns certain workers' compensation supplemental benefits

A-801/S-861 (Coughlin, Wisniewski, Mazzeo/Vitale, Sacco) - **CONDITIONAL** - Directs New Jersey Turnpike Authority and South Jersey Transportation Authority to study and report on potential revenue generating services of rest areas and service plazas

A-947/S-2216 (Singleton, Lagana, Diegnan/Pennacchio, Rice) – **CONDITIONAL** - Requires release of bid list prior to bid date under "Local Public Contracts Law"

A-1468/S-2513 (Diegnan, Lampitt, Caride/Barnes, Ruiz) – **CONDITIONAL** -Establishes Task Force on Engineering Curriculum and Instruction

A-1726/S-308 (Eustace, Lagana, Mosquera, Vainieri Huttie, Wimberly/Gordon) – **CONDITIONAL** - Amends "Flood Hazard Area Control Act" to require DEP to take certain actions concerning delineations of flood hazard areas and

floodplains

A-2579/S-1510 (Mukherji, Pintor Marin, Eustace/Smith, Bateman) – CONDITIONAL - Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments

A-2771/S-452 (Johnson, Burzichelli, Pintor Marin, Mosquera/Ruiz, Cruz-Perez) – CONDITIONAL - "The New Jersey Social Innovation Act"; establishes social innovation loan pilot program and study commission within EDA

A-2906/S-2926 (Stender, Pinkin, Mazzeo/Whelan, Scutari) – ABSOLUTE - Excludes from gross income compensation paid to members of district boards of election for services rendered in elections

A-3223/S-2056 (Singleton, Lampitt, Quijano, Pintor Marin, Wimberly/Sarlo, Ruiz) – CONDITIONAL - Requires Division of Local Government Services to include certain property tax information on division's web page

A-3393/S-2167 (Spencer, Pintor Marin, Caputo, Tucker/Rice, Ruiz) – CONDITIONAL - Permits Newark to use rental car tax proceeds over three-year period to help reduce its "cash deficit for preceding year" appropriation and operational deficit

A-3421/S-2220 (Dancer, Mukherji/Singer) – CONDITIONAL - Revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act"

A-3435/S-2503 (Garcia, Mukherji, Vainieri Huttie, Mainor, Eustace, Mosquera/Stack, Gordon) - CONDITIONAL - "Boys & Girls Clubs Keystone Law"; permits minors to give consent for behavioral health care

A-3500/S-1973 (Andrzejczak, Pinkin, Quijano/Van Drew, Beach) – ABSOLUTE - Requires local recreation departments and youth serving organizations to have defibrillators for youth athletic events

A-3954/S-2981 (Conaway, Singleton, Spencer, McKeon/Greenstein) – CONDITIONAL - Requires maximum contaminant level to be established for 1,2,3-trichloropropane in drinking water

A-3981/S-2572 (Mazzeo, Burzichelli, Andrzejczak/Sweeney, Whelan) - CONDITIONAL - "Casino Property Taxation Stabilization Act"

A-3982/S-2573 (Mazzeo, Burzichelli, Andrzejczak/Sweeney, Whelan) – ABSOLUTE - Requires holder of casino license to provide certain employees with certain health care and retirement benefits

A-3984/S-2575 (Mazzeo, Burzichelli, Giblin/Sweeney, Whelan) – CONDITIONAL - Reallocates casino investment alternative tax to Atlantic City to pay debt service on municipal bonds issued

A-3985/S-2576 (Mazzeo, Burzichelli, Andrzejczak, Giblin/Sweeney, Whelan) – CONDITIONAL - Removes provisions of law relating to Atlantic City Alliance

A-4018/S-2843 (Burzichelli, Caputo, Mazzeo/Sarlo, Whelan) – ABSOLUTE - Authorizes operation of lottery courier services

A-4218/S-2786 (Mosquera, Greenwald, Lagana, Benson, Lampitt, Vainieri Huttie, Danielsen/Weinberg, Gill, Cruz-Perez) - CONDITIONAL - Revises certain laws concerning domestic violence and firearms

A-4265/S-2783 (McKeon, Pintor Marin, Jasey, Caputo, Giblin, Tucker, Spencer, Oliver, Gusciora, Danielson/Codey, Ruiz, Rice) – ABSOLUTE - Permits municipal, county, and regional police and fire forces to establish five-year residency requirement for police officers and firefighters; allows exceptions to requirement under certain circumstances

A-4337/S-3008 (Schaer, Danielsen, Dancer, Sumter/Barnes) – ABSOLUTE - Expands eligibility of inmates for medical parole and requires inmate's enrollment in Medicaid under certain circumstances

A-4476/S-2876 (Conaway/Codey) - CONDITIONAL - Requires certain surgical practices and ambulatory care facilities licensed in this State to be owned by hospital or medical school located in the State

A-4607/S-3106 (Pintor Marin, Schaer, Oliver, Lagana, Johnson, Singleton/Ruiz, Cunningham) – ABSOLUTE - Makes FY 2016 supplemental appropriations of \$6,500,000 and adds language provision

Press Contact:
Brian Murray
Nicole Sizemore
609-777-2600



[Contact Us](#) | [Privacy Notice](#) | [Legal Statement & Disclaimers](#) | [Accessibility Statement](#) | 

Statewide: [NJ Home](#) | [Services A to Z](#) | [Departments/Agencies](#) | [FAQs](#)
Office of the Governor: [Home](#) | [Newsroom](#) | [Media](#) | [Administration](#) | [NJ's Priorities](#) | [Contact Us](#)

Copyright © State of New Jersey, 1996-2017

9/21/2017

Office of the Governor | Newsroom

Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000