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REPORTS:

[Yes](#)

974.90 New Jersey. Legislature. Assembly. Task Force on Domestic Violence.
W872 Findings and recommendations...July, 1998.
1998c [see Recommendation #28 @ p.8]

HEARINGS:

[Yes](#)

974.90 New Jersey. Legislature. Assembly Task Force on Domestic Violence.
W872 Public hearing...held 3-6-98, Trenton, 1998.
1998a [see especially, pp. 92-93]

NEWSPAPER ARTICLES:

No

P.L. 1999, CHAPTER 236, *approved October 13, 1999*
Assembly, No. 2790 (*Second Reprint*)

1 AN ACT concerning certain domestic violence orders and amending
2 P.L.1991, c.261.

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

6
7 1. Section 11 of P.L.1991, c.261 (C.2C:25-27) is amended to read
8 as follows:

9 11. When a defendant is found guilty of a crime or offense
10 involving domestic violence and a condition of sentence restricts the
11 defendant's ability to have contact with the victim, that condition shall
12 be recorded in an order of the court and a written copy of that order
13 shall be provided to the victim by the clerk of the court or other
14 person designated by the court. In addition to restricting a defendant's
15 ability to have contact with the victim, the court may require the
16 defendant to receive professional counseling from either a private
17 source or a source appointed by the court, and if the court so orders,
18 the court **[may]** shall require the defendant to provide documentation
19 of attendance at the professional counseling. In any case where the
20 court order contains a requirement that the defendant receive
21 professional counseling, no application ²by the defendant² to dissolve
22 the ¹restraining¹ order shall be granted unless, in addition to any other
23 provisions required by ¹law or conditions ordered by¹ the court, the
24 defendant has completed all required attendance at such counseling.
25 (cf: P.L.1991, c.261, s.11)

26
27 2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read
28 as follows:

29 13. a. A hearing shall be held in the Family Part of the Chancery
30 Division of the Superior Court within 10 days of the filing of a
31 complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in
32 the county where the ex parte restraints were ordered, unless good
33 cause is shown for the hearing to be held elsewhere. A copy of the
34 complaint shall be served on the defendant in conformity with the
35 Rules of Court. If a criminal complaint arising out of the same incident
36 which is the subject matter of a complaint brought under P.L.1981,
37 c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.)
38 has been filed, testimony given by the plaintiff or defendant in the
39 domestic violence matter shall not be used in the simultaneous or

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly APR committee amendments adopted March 4, 1999.

² Senate SLP committee amendments adopted June 17, 1999.

1 subsequent criminal proceeding against the defendant, other than
2 domestic violence contempt matters and where it would otherwise be
3 admissible hearsay under the rules of evidence that govern where a
4 party is unavailable. At the hearing the standard for proving the
5 allegations in the complaint shall be by a preponderance of the
6 evidence. The court shall consider but not be limited to the following
7 factors:

- 8 (1) The previous history of domestic violence between the plaintiff
9 and defendant, including threats, harassment and physical abuse;
- 10 (2) The existence of immediate danger to person or property;
- 11 (3) The financial circumstances of the plaintiff and defendant;
- 12 (4) The best interests of the victim and any child;
- 13 (5) In determining custody and parenting time the protection of the
14 victim's safety; and
- 15 (6) The existence of a verifiable order of protection from another
16 jurisdiction.

17 An order issued under this act shall only restrain or provide
18 damages payable from a person against whom a complaint has been
19 filed under this act and only after a finding or an admission is made
20 that an act of domestic violence was committed by that person. The
21 issue of whether or not a violation of this act occurred, including an
22 act of contempt under this act, shall not be subject to mediation or
23 negotiation in any form. In addition, where a temporary or final order
24 has been issued pursuant to this act, no party shall be ordered to
25 participate in mediation on the issue of custody or parenting time.

26 b. In proceedings in which complaints for restraining orders have
27 been filed, the court shall grant any relief necessary to prevent further
28 abuse. At the hearing the judge of the Family Part of the Chancery
29 Division of the Superior Court may issue an order granting any or all
30 of the following relief:

- 31 (1) An order restraining the defendant from subjecting the victim to
32 domestic violence, as defined in this act.
- 33 (2) An order granting exclusive possession to the plaintiff of the
34 residence or household regardless of whether the residence or
35 household is jointly or solely owned by the parties or jointly or solely
36 leased by the parties. This order shall not in any manner affect title or
37 interest to any real property held by either party or both jointly. If it
38 is not possible for the victim to remain in the residence, the court may
39 order the defendant to pay the victim's rent at a residence other than
40 the one previously shared by the parties if the defendant is found to
41 have a duty to support the victim and the victim requires alternative
42 housing.
- 43 (3) An order providing for parenting time. The order shall protect
44 the safety and well-being of the plaintiff and minor children and shall
45 specify the place and frequency of the parenting time. Parenting time
46 arrangements shall not compromise any other remedy provided by the

1 court by requiring or encouraging contact between the plaintiff and
2 defendant. Orders for parenting time may include a designation of a
3 place of parenting time away from the plaintiff, the participation of a
4 third party, or supervised parenting time.

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

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

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

33 (5) An order requiring the defendant to receive professional
34 domestic violence counseling from either a private source or a source
35 appointed by the court and, in that event, **[at the court's discretion]**
36 requiring the defendant to provide the court at specified intervals with
37 documentation of attendance at the professional counseling. The court
38 may order the defendant to pay for the professional counseling. No
39 application² by the defendant² to dissolve a final order which contains
40 a requirement for attendance at professional counseling pursuant to
41 this paragraph shall be granted by the court unless, in addition to any
42 other provisions required by¹ law or conditions ordered by¹ the court,
43 the defendant has completed all required attendance at such
44 counseling.

45 (6) An order restraining the defendant from entering the residence,
46 property, school, or place of employment of the victim or of other

1 family or household members of the victim and requiring the defendant
2 to stay away from any specified place that is named in the order and
3 is frequented regularly by the victim or other family or household
4 members.

5 (7) An order restraining the defendant from making contact with the
6 plaintiff or others, including an order forbidding the defendant from
7 personally or through an agent initiating any communication likely to
8 cause annoyance or alarm including, but not limited to, personal,
9 written, or telephone contact with the victim or other family members,
10 or their employers, employees, or fellow workers, or others with
11 whom communication would be likely to cause annoyance or alarm to
12 the victim.

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

18 (9) An order granting either party temporary possession of specified
19 personal property, such as an automobile, checkbook, documentation
20 of health insurance, an identification document, a key, and other
21 personal effects.

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

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

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

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

35 (14) An order granting any other appropriate relief for the plaintiff
36 and dependent children, provided that the plaintiff consents to such
37 relief, including relief requested by the plaintiff at the final hearing,
38 whether or not the plaintiff requested such relief at the time of the
39 granting of the initial emergency order.

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

43 (16) An order prohibiting the defendant from possessing any
44 firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1
45 and ordering the search for and seizure of any such weapon at any
46 location where the judge has reasonable cause to believe the weapon

1 is located. The judge shall state with specificity the reasons for and
2 scope of the search and seizure authorized by the order.

3 (17) An order prohibiting the defendant from stalking or following,
4 or threatening to harm, to stalk or to follow, the complainant or any
5 other person named in the order in a manner that, taken in the context
6 of past actions of the defendant, would put the complainant in
7 reasonable fear that the defendant would cause the death or injury of
8 the complainant or any other person. Behavior prohibited under this
9 act includes, but is not limited to, behavior prohibited under the
10 provisions of P.L.1992, c.209 (C.2C:12-10).

11 (18) An order requiring the defendant to undergo a psychiatric
12 evaluation.

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

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

24 (cf: P.L.1997, c.299, s.8)

25

26 3. This act shall take effect immediately.

27

28

29

30

31 Strengthens requirements for court-ordered counseling of domestic
32 violence offenders.

ASSEMBLY, No. 2790

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JANUARY 12, 1999

Sponsored by:

Assemblyman KEVIN J. O'TOOLE

District 21 (Essex and Union)

Assemblyman GUY F. TALARICO

District 38 (Bergen)

Co-Sponsored by:

**Assemblywoman Heck, Assemblymen Azzolina, Holzapfel, Wolfe and
LeFevre**

SYNOPSIS

Strengthens requirements for court-ordered counseling of domestic violence offenders.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/5/1999)

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2 P.L.1991, c.261.

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13 shall be provided to the victim by the clerk of the court or other
14 person designated by the court. In addition to restricting a defendant's
15 ability to have contact with the victim, the court may require the
16 defendant to receive professional counseling from either a private
17 source or a source appointed by the court, and if the court so orders,
18 the court **【may】** shall require the defendant to provide documentation
19 of attendance at the professional counseling. In any case where the
20 court order contains a requirement that the defendant receive
21 professional counseling, no application to dissolve the order shall be
22 granted unless, in addition to any other provisions required by the
23 court, the defendant has completed all required attendance at such
24 counseling.

25 (cf: P.L.1991, c.261, s.11)

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34 complaint shall be served on the defendant in conformity with the
35 Rules of Court. If a criminal complaint arising out of the same incident
36 which is the subject matter of a complaint brought under P.L.1981,
37 c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261 (C.2C:25-17 et seq.)
38 has been filed, testimony given by the plaintiff or defendant in the
39 domestic violence matter shall not be used in the simultaneous or
40 subsequent criminal proceeding against the defendant, other than
41 domestic violence contempt matters and where it would otherwise be
42 admissible hearsay under the rules of evidence that govern where a
43 party is unavailable. At the hearing the standard for proving the

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 allegations in the complaint shall be by a preponderance of the
2 evidence. The court shall consider but not be limited to the following
3 factors:

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

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

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

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

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

11 (6) The existence of a verifiable order of protection from another
12 jurisdiction.

13 An order issued under this act shall only restrain or provide
14 damages payable from a person against whom a complaint has been
15 filed under this act and only after a finding or an admission is made
16 that an act of domestic violence was committed by that person. The
17 issue of whether or not a violation of this act occurred, including an
18 act of contempt under this act, shall not be subject to mediation or
19 negotiation in any form. In addition, where a temporary or final order
20 has been issued pursuant to this act, no party shall be ordered to
21 participate in mediation on the issue of custody or parenting time.

22 b. In proceedings in which complaints for restraining orders have
23 been filed, the court shall grant any relief necessary to prevent further
24 abuse. At the hearing the judge of the Family Part of the Chancery
25 Division of the Superior Court may issue an order granting any or all
26 of the following relief:

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

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

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

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

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

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

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

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

46 (7) An order restraining the defendant from making contact with

1 the plaintiff or others, including an order forbidding the defendant
2 from personally or through an agent initiating any communication
3 likely to cause annoyance or alarm including, but not limited to,
4 personal, written, or telephone contact with the victim or other family
5 members, or their employers, employees, or fellow workers, or others
6 with whom communication would be likely to cause annoyance or
7 alarm to the victim.

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

14 (9) An order granting either party temporary possession of
15 specified personal property, such as an automobile, checkbook,
16 documentation of health insurance, an identification document, a key,
17 and other personal effects.

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

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

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

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

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

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

39 (16) An order prohibiting the defendant from possessing any
40 firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1
41 and ordering the search for and seizure of any such weapon at any
42 location where the judge has reasonable cause to believe the weapon
43 is located. The judge shall state with specificity the reasons for and
44 scope of the search and seizure authorized by the order.

45 (17) An order prohibiting the defendant from stalking or following,
46 or threatening to harm, to stalk or to follow, the complainant or any

1 other person named in the order in a manner that, taken in the context
2 of past actions of the defendant, would put the complainant in
3 reasonable fear that the defendant would cause the death or injury of
4 the complainant or any other person. Behavior prohibited under this
5 act includes, but is not limited to, behavior prohibited under the
6 provisions of P.L.1992, c.209 (C.2C:12-10).

7 (18) An order requiring the defendant to undergo a psychiatric
8 evaluation.

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

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

20 (cf: P.L.1997, c.299, s.8)

21
22 3. This act shall take effect immediately.

23
24
25 STATEMENT

26
27 This bill would strengthen the provisions for counseling of domestic
28 violence offenders. Currently, the statutes provide that the court may
29 order professional counseling for a person found to have committed
30 a violation of the domestic violence statutes. However, the statutes
31 also allow judges discretion to require defendants to provide proof of
32 actual attendance.

33 According to reports, enforcement of counseling requirements is
34 weak. This bill provides that, once the judge makes the decision to
35 order a defendant to attend counseling, the defendant must provide the
36 court with documentation that he attended the counseling.

37 In addition, the bill provides that any final order under the
38 domestic violence laws which contains a counseling requirement could
39 not be dissolved unless, in addition to any other provisions required by
40 the court, the defendant also provides proof that he fully complied
41 with the counseling requirement.

42 This bill embodies Recommendation #28 of the Report and
43 Recommendations of the Assembly Task Force on Domestic Violence,
44 issued in July, 1998.

ASSEMBLY POLICY AND REGULATORY OVERSIGHT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2790

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 22, 1999

The Assembly Policy and Regulatory Oversight Committee reports favorably and with committee amendments Assembly Bill No. 2790.

Currently, the statutes provide that the court may order professional counseling for a person found to have committed a violation of the domestic violence statutes. However, the statutes also allow judges discretion in requiring defendants to provide proof of actual attendance.

Assembly Bill No. 2790 amends sections 11 and 13 of P.L.1991, c.261 (C.2C:25-27 and 2C:25-29) to provide that, once the judge makes a decision to order a defendant to attend counseling, the defendant must provide the court with documentation that he attended the counseling.

According to testimony presented to the Assembly Task Force on Domestic Violence, enforcement of counseling requirements is weak. This bill provides that any final restraining order under the domestic violence laws which contains a counseling requirement may not be dissolved unless, in addition to any other provisions required by the court, the defendant also provides proof that he fully complied with the counseling requirement.

The committee made technical amendments to clarify certain aspects of the bill, including specifying that the order to be dissolved is a restraining order, and that the defendant must comply with any other provisions required by law or conditions ordered by the court.

This bill embodies Recommendation #28 of the report of the Assembly Task Force on Domestic Violence, issued in July, 1998.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2790

STATE OF NEW JERSEY

DATED: JUNE 17, 1999

The Senate Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2790 (1R).

Currently, the statutes provide that the court may order professional counseling for a person found to have committed a violation of the domestic violence statutes. However, the statutes also allow judges discretion in requiring defendants to provide proof of actual attendance.

This bill amends sections 11 and 13 of P.L.1991, c.261 (C.2C:25-27 and 2C:25-29) to provide that, once the judge makes a decision to order a defendant to attend counseling, the defendant must provide the court with documentation that he attended the counseling.

According to testimony presented to the Assembly Task Force on Domestic Violence, enforcement of counseling requirements is weak. This bill provides that any final restraining order under the domestic violence laws which contains a counseling requirement may not be dissolved upon the defendant's application unless, in addition to any other provisions required by the court, the defendant also provides proof that he fully complied with the counseling requirement.

The committee amendments specify that the court would postpone dissolving a restraining order only when the defendant makes the request for dissolution.

This bill embodies Recommendation #28 of the report of the Assembly Task Force on Domestic Violence, issued in July 1998.

This bill is identical to Senate Bill No. 1648, which also was amended and released by the committee on this date.

SENATE, No. 1648

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JANUARY 21, 1999

Sponsored by:

Senator ANTHONY R. BUCCO

District 25 (Morris)

Senator JAMES S. CAFIERO

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Strengthens requirements for court-ordered counseling of domestic violence offenders.

CURRENT VERSION OF TEXT

As introduced.



S1648 BUCCO, CAFIERO

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

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 allegations in the complaint shall be by a preponderance of the
2 evidence. The court shall consider but not be limited to the following
3 factors:

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

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

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

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

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

11 (6) The existence of a verifiable order of protection from another
12 jurisdiction.

13 An order issued under this act shall only restrain or provide
14 damages payable from a person against whom a complaint has been
15 filed under this act and only after a finding or an admission is made
16 that an act of domestic violence was committed by that person. The
17 issue of whether or not a violation of this act occurred, including an
18 act of contempt under this act, shall not be subject to mediation or
19 negotiation in any form. In addition, where a temporary or final order
20 has been issued pursuant to this act, no party shall be ordered to
21 participate in mediation on the issue of custody or parenting time.

22 b. In proceedings in which complaints for restraining orders have
23 been filed, the court shall grant any relief necessary to prevent further
24 abuse. At the hearing the judge of the Family Part of the Chancery
25 Division of the Superior Court may issue an order granting any or all
26 of the following relief:

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

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

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

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

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

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

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

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

46 (7) An order restraining the defendant from making contact with

1 the plaintiff or others, including an order forbidding the defendant
2 from personally or through an agent initiating any communication
3 likely to cause annoyance or alarm including, but not limited to,
4 personal, written, or telephone contact with the victim or other family
5 members, or their employers, employees, or fellow workers, or others
6 with whom communication would be likely to cause annoyance or
7 alarm to the victim.

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

14 (9) An order granting either party temporary possession of
15 specified personal property, such as an automobile, checkbook,
16 documentation of health insurance, an identification document, a key,
17 and other personal effects.

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

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

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

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

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

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

39 (16) An order prohibiting the defendant from possessing any
40 firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1
41 and ordering the search for and seizure of any such weapon at any
42 location where the judge has reasonable cause to believe the weapon
43 is located. The judge shall state with specificity the reasons for and
44 scope of the search and seizure authorized by the order.

45 (17) An order prohibiting the defendant from stalking or following,
46 or threatening to harm, to stalk or to follow, the complainant or any

1 other person named in the order in a manner that, taken in the context
2 of past actions of the defendant, would put the complainant in
3 reasonable fear that the defendant would cause the death or injury of
4 the complainant or any other person. Behavior prohibited under this
5 act includes, but is not limited to, behavior prohibited under the
6 provisions of P.L.1992, c.209 (C.2C:12-10).

7 (18) An order requiring the defendant to undergo a psychiatric
8 evaluation.

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

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

20 (cf: P.L.1997, c.299, s.8)

21
22 3. This act shall take effect immediately.

23
24
25 STATEMENT

26
27 This bill would strengthen the provisions for counseling of domestic
28 violence offenders. Currently, the statutes provide that the court may
29 order professional counseling for a person found to have committed
30 a violation of the domestic violence statutes. However, the statutes
31 also allow judges discretion to require defendants to provide proof of
32 actual attendance.

33 According to reports, enforcement of counseling requirements is
34 weak. This bill provides that, once the judge makes the decision to
35 order a defendant to attend counseling, the defendant must provide the
36 court with documentation that he attended the counseling.

37 In addition, the bill provides that any final order under the
38 domestic violence laws which contains a counseling requirement could
39 not be dissolved unless, in addition to any other provisions required by
40 the court, the defendant also provides proof that he fully complied
41 with the counseling requirement.

42 This bill embodies Recommendation #28 of the Report and
43 Recommendations of the Assembly Task Force on Domestic Violence,
44 issued in July, 1998.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1648

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 17, 1999

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1648.

Currently, the statutes provide that the court may order professional counseling for a person found to have committed a violation of the domestic violence statutes. However, the statutes also allow judges discretion in requiring defendants to provide proof of actual attendance.

This bill amends sections 11 and 13 of P.L.1991, c.261 (C.2C:25-27 and 2C:25-29) to provide that, once the judge makes a decision to order a defendant to attend counseling, the defendant must provide the court with documentation that he attended the counseling.

According to testimony presented to the Assembly Task Force on Domestic Violence, enforcement of counseling requirements is weak. This bill provides that any final restraining order under the domestic violence laws which contains a counseling requirement may not be dissolved unless, in addition to any other provisions required by the court, the defendant also provides proof that he fully complied with the counseling requirement.

The committee amendments specify that the court would postpone dissolving a restraining order only when the defendant makes the request for dissolution. The committee also made technical amendments to clarify certain aspects of the bill, including specifying that the order to be dissolved is a restraining order, and that the defendant must comply with any other provisions required by law or conditions ordered by the court.

This bill embodies Recommendation #28 of the report of the Assembly Task Force on Domestic Violence, issued in July 1998.

As amended and released by the committee, this bill is identical to Assembly Bill No. 2790 (1R), which also was released by the committee on this date.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
609-777-2600

RELEASE: October 13, 1999

Gov. Christie Whitman has signed the following pieces of legislation:

A-2790, sponsored by Assembly Members Kevin J. O'Toole (R-Essex/Union) and Guy F. Talarico (R-Bergen) and Senators Anthony R. Bucco (R-Morris) and James S. Cafiero (R-Cape May/Atlantic/Cumberland), strengthens requirements for court-ordered counseling of domestic violence offenders. The bill requires a court that orders a domestic violence offender to receive counseling, either as a condition of a defendant's sentence in a criminal matter or as a part of a final restraining order, to direct the defendant to provide documentation of his or her participation in counseling. Previously, courts had the discretion to require a defendant to provide such documentation. The bill also prohibits a court from granting an application by a domestic violence offender to dismiss a final restraining order unless the offender has completed all required attendance at such counseling. The court could, however, dismiss this order at the request of the victim. Previously a court had the discretion whether to grant such an application.

A-2149, sponsored by Assembly Members Carol J. Murphy (R-Essex/Morris /Passaic and Kenneth C. LeFevre (R-Atlantic) and Senator Diane B. Allen (R-Burlington /Camden), creates a mold lien law designed to protect plastics molders in the event a customer fails to pay for work completed. The bill provides for the ability of a molder to obtain a lien on all dies, molds, forms or patterns used for customers. If the balance due the molder for work completed for a customer remains unpaid for 60 days after it is due, the molder is permitted to sell the mold at public auction in the county where it is being held. At least 30 days prior to the sale, the molder is required to send a notice to the owner of the mold stating the place and time of the sale, a description of the mold and an itemized statement for the amount due. The proceeds of the sale will be used to cover the amount due to the molder and reasonable costs of the sale. Any excess amount is to be paid to any prior lien holder and any remainder to the owner. The bill also provides that an existing perfected security interest takes priority over a lien of a molder, and requires any owner seeking to recover a mold from a molder to post a bond in the amount of the charges still outstanding. Further, the bill provides that the sale of a mold shall not be made under the act if it is in violation of any right of an owner under federal patent or copyright law.

A-66, sponsored by Assembly Member LeRoy J. Jones, Jr. (D-Essex), prohibits a person, including a bank or other depository institution, which cashes a check for a consumer, from recording a charge card or credit card account number on the check. Previous law prohibited the recording of a charge or credit card account number on a check which a person or bank or other depository institution receives for deposit. The bill expands the prohibition to a check which is cashed.