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P.L. 2003, CHAPTER 277, *approved January 14, 2004*
Assembly, No. 276 (*First Reprint*)

1 **AN ACT** concerning firearms and amending ¹[sections 5 and 13 of]¹
2 P.L.1991, c.261, N.J.S.2C:39-7 and N.J.S.2C:58-3 ¹and
3 supplementing Title 2C of the New Jersey Statutes¹.

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

7
8 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to read
9 as follows:

10 5. a. When a person claims to be a victim of domestic violence,
11 and where a law enforcement officer responding to the incident finds
12 probable cause to believe that domestic violence has occurred, the law
13 enforcement officer shall arrest the person who is alleged to be the
14 person who subjected the victim to domestic violence and shall sign a
15 criminal complaint if:

16 (1) The victim exhibits signs of injury caused by an act of domestic
17 violence;

18 (2) A warrant is in effect;

19 (3) There is probable cause to believe that the person has violated
20 N.J.S.2C:29-9, and there is probable cause to believe that the person
21 has been served with the order alleged to have been violated. If the
22 victim does not have a copy of a purported order, the officer may
23 verify the existence of an order with the appropriate law enforcement
24 agency; or

25 (4) There is probable cause to believe that a weapon as defined in
26 N.J.S.2C:39-1 has been involved in the commission of an act of
27 domestic violence.

28 b. A law enforcement officer may arrest a person; or may sign a
29 criminal complaint against that person, or may do both, where there is
30 probable cause to believe that an act of domestic violence has been
31 committed, but where none of the conditions in subsection a. of this
32 section applies.

33 c. (1) As used in this section, the word "exhibits" is to be liberally
34 construed to mean any indication that a victim has suffered bodily
35 injury, which shall include physical pain or any impairment of physical
36 condition. Where the victim exhibits no visible sign of injury, but states
37 that an injury has occurred, the officer should consider other relevant
38 factors in determining whether there is probable cause to make an
39 arrest.

40 (2) In determining which party in a domestic violence incident is

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted December 11, 2003.

1 the victim where both parties exhibit signs of injury, the officer should
2 consider the comparative extent of the injuries, the history of domestic
3 violence between the parties, if any, and any other relevant factors.

4 (3) No victim shall be denied relief or arrested or charged under
5 this act with an offense because the victim used reasonable force in self
6 defense against domestic violence by an attacker.

7 d. (1) In addition to a law enforcement officer's authority to seize
8 any weapon that is contraband, evidence or an instrumentality of
9 crime, a law enforcement officer who has probable cause to believe
10 that an act of domestic violence has been committed ~~[may]~~shall:

11 (a) question persons present to determine whether there are
12 weapons on the premises; and

13 (b) upon observing or learning that a weapon is present on the
14 premises, seize any weapon that the officer reasonably believes would
15 expose the victim to a risk of serious bodily injury. ¹If a law
16 enforcement officer seizes any firearm pursuant to this paragraph, the
17 officer shall also seize any firearm purchaser identification card or
18 permit to purchase a handgun issued to the person accused of the act
19 of domestic violence.¹

20 (2) A law enforcement officer shall deliver all weapons ¹, firearms
21 purchaser identification cards and permits to purchase a handgun¹
22 seized pursuant to this section to the county prosecutor and shall
23 append an inventory of all seized ¹~~[weapons]~~ items¹ to the domestic
24 violence report.

25 (3) Weapons seized in accordance with the ~~[above]~~ "Prevention
26 of Domestic Violence Act of 1991", P.L.1991,c.261(C.2C:25-17 et
27 seq.) shall be returned to the owner except upon order of the Superior
28 Court. The prosecutor who has possession of the seized weapons
29 may, upon notice to the owner, petition a judge of the Family Part of
30 the Superior Court, Chancery Division, within 45 days of seizure, to
31 obtain title to the seized weapons, or to revoke any and all permits,
32 licenses and other authorizations for the use, possession, or ownership
33 of such weapons pursuant to the law governing such use, possession,
34 or ownership, or may object to the return of the weapons on such
35 grounds as are provided for the initial rejection or later revocation of
36 the authorizations, or on the grounds that the owner is unfit or that the
37 owner poses a threat to the public in general or a person or persons in
38 particular.

39 A hearing shall be held and a record made thereof within ~~[15]~~ 45
40 days of the notice provided above. No formal pleading and no filing
41 fee shall be required as a preliminary to such hearing. The hearing
42 shall be summary in nature. Appeals from the results of the hearing
43 shall be to the Superior Court, Appellate Division, in accordance with
44 the law.

45 If the prosecutor does not institute an action within 45 days of
46 seizure, the seized weapons shall be returned to the owner.

1 After the hearing the court shall order the return of the firearms,
2 weapons and any authorization papers relating to the seized weapons
3 to the owner if the court determines the owner is not subject to any of
4 the disabilities set forth in N.J.S.2C:58-3c. and finds that the complaint
5 has been dismissed at the request of the complainant and the
6 prosecutor determines that there is insufficient probable cause to
7 indict; or if the defendant is found not guilty of the charges; or if the
8 court determines that the domestic violence situation no longer exists.

9 Nothing in this act shall impair the right of the State to retain
10 evidence pending a criminal prosecution. Nor shall any provision of
11 this act be construed to limit the authority of the State or a law
12 enforcement officer to seize, retain or forfeit property pursuant to
13 chapter 64 of Title 2C of the New Jersey Statutes.

14 If, after the hearing, the court determines that the weapons are not
15 to be returned to the owner, the court may:

16 (a) With respect to weapons other than firearms, order the
17 prosecutor to dispose of the weapons if the owner does not arrange
18 for the transfer or sale of the weapons to an appropriate person within
19 60 days; or

20 (b) Order the revocation of the owner's firearms purchaser
21 identification card or any permit, license or authorization, in which
22 case the court shall order the owner to surrender any firearm seized
23 and all other firearms possessed to the prosecutor and shall order the
24 prosecutor to dispose of the firearms if the owner does not arrange for
25 the sale of the firearms to a registered dealer of the firearms within 60
26 days; or

27 (c) Order such other relief as it may deem appropriate. When the
28 court orders the weapons forfeited to the State or the prosecutor is
29 required to dispose of the weapons, the prosecutor shall dispose of the
30 property as provided in N.J.S.2C:64-6.

31 (4) A civil suit may be brought to enjoin a wrongful failure to
32 return a seized firearm where the prosecutor refuses to return the
33 weapon after receiving a written request to do so and notice of the
34 owner's intent to bring a civil action pursuant to this section. Failure
35 of the prosecutor to comply with the provisions of this act shall entitle
36 the prevailing party in the civil suit to reasonable costs, including
37 attorney's fees, provided that the court finds that the prosecutor failed
38 to act in good faith in retaining the seized weapon.

39 (5) [No law enforcement officer or agency shall be held liable in
40 any civil action brought by any person for failing to learn of, locate or
41 seize a weapon pursuant to this act, or for returning a seized weapon
42 to its owner.] ¹No law enforcement officer or agency shall be held
43 liable in any civil action brought by any person for failing to learn of,
44 locate or seize a weapon pursuant to this act, or for returning a seized
45 weapon to its owner.¹

46 ¹[(6) If a weapon is found on the premises, the law enforcement

1 officers shall demand and confiscate any firearms purchaser
2 identification card or permit to purchase a handgun issued pursuant to
3 N.J.S.2C:58-3 from the accused perpetrator of the domestic violence
4 incident. The law enforcement officer shall deliver the confiscated
5 card or permit to the county prosecutor's officer.]¹

6 (cf: P.L.1991,c.261,s.5)

7

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

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

- 27 (1) The previous history of domestic violence between the plaintiff
28 and defendant, including threats, harassment and physical abuse;
29 (2) The existence of immediate danger to person or property;
30 (3) The financial circumstances of the plaintiff and defendant;
31 (4) The best interests of the victim and any child;
32 (5) In determining custody and parenting time the protection of the
33 victim's safety; and
34 (6) The existence of a verifiable order of protection from another
35 jurisdiction.

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

45 b. In proceedings in which complaints for restraining orders have
46 been filed, the court shall grant any relief necessary to prevent further

1 abuse. In addition to any other provisions, any restraining order¹ [or
2 order prohibiting the defendant from possessing any firearm]¹ issued
3 by the court shall bar the defendant from¹ purchasing, owning,
4 possessing or controlling a firearm and from¹ receiving¹ or retaining¹
5 a firearms purchaser identification card or permit to purchase a
6 handgun pursuant to N.J.S.2C:58-3¹ [for a period of at least two
7 years or]¹ during the period in which the restraining order is in effect
8 [.]or two years¹ whichever is¹ [longer] greater[.], except that this
9 provision shall not apply to any law enforcement officer while actually
10 on duty, or to any member of the Armed Forces of the United States
11 or member of the National Guard while actually on duty or traveling
12 to or from an authorized place of duty.¹ At the hearing the judge of
13 the Family Part of the Chancery Division of the Superior Court may
14 issue an order granting any or all of the following relief:

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

17 (2) An order granting exclusive possession to the plaintiff of the
18 residence or household regardless of whether the residence or
19 household is jointly or solely owned by the parties or jointly or solely
20 leased by the parties. This order shall not in any manner affect title or
21 interest to any real property held by either party or both jointly. If it
22 is not possible for the victim to remain in the residence, the court may
23 order the defendant to pay the victim's rent at a residence other than
24 the one previously shared by the parties if the defendant is found to
25 have a duty to support the victim and the victim requires alternative
26 housing.

27 (3) An order providing for parenting time. The order shall protect
28 the safety and well-being of the plaintiff and minor children and shall
29 specify the place and frequency of parenting time. Parenting time
30 arrangements shall not compromise any other remedy provided by the
31 court by requiring or encouraging contact between the plaintiff and
32 defendant. Orders for parenting time may include a designation of a
33 place of parenting time away from the plaintiff, the participation of a
34 third party, or supervised parenting time.

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

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

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

17 (5) An order requiring the defendant to receive professional
18 domestic violence counseling from either a private source or a source
19 appointed by the court and, in that event, requiring the defendant to
20 provide the court at specified intervals with documentation of
21 attendance at the professional counseling. The court may order the
22 defendant to pay for the professional counseling. No application by
23 the defendant to dissolve a final order which contains a requirement
24 for attendance at professional counseling pursuant to this paragraph
25 shall be granted by the court unless, in addition to any other provisions
26 required by law or conditions ordered by the court, the defendant has
27 completed all required attendance at such counseling.

28 (6) An order restraining the defendant from entering the residence,
29 property, school, or place of employment of the victim or of other
30 family or household members of the victim and requiring the defendant
31 to stay away from any specified place that is named in the order and
32 is frequented regularly by the victim or other family or household
33 members.

34 (7) An order restraining the defendant from making contact with
35 the plaintiff or others, including an order forbidding the defendant
36 from personally or through an agent initiating any communication
37 likely to cause annoyance or alarm including, but not limited to,
38 personal, written, or telephone contact with the victim or other family
39 members, or their employers, employees, or fellow workers, or others
40 with whom communication would be likely to cause annoyance or
41 alarm to the victim.

42 (8) An order requiring that the defendant make or continue to
43 make rent or mortgage payments on the residence occupied by the
44 victim if the defendant is found to have a duty to support the victim or
45 other dependent household members; provided that this issue has not
46 been resolved or is not being litigated between the parties in another

1 action.

2 (9) An order granting either party temporary possession of
3 specified personal property, such as an automobile, checkbook,
4 documentation of health insurance, an identification document, a key,
5 and other personal effects.

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

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

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

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

19 (14) An order granting any other appropriate relief for the plaintiff
20 and dependent children, provided that the plaintiff consents to such
21 relief, including relief requested by the plaintiff at the final hearing,
22 whether or not the plaintiff requested such relief at the time of the
23 granting of the initial emergency order.

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

27 (16) ¹[An order] In addition to the order required by this
28 subsection¹ prohibiting the defendant from possessing any firearm
29 ¹[or] the court may also issue an order prohibiting the defendant
30 from possessing any¹ other weapon enumerated in subsection r. of
31 N.J.S.2C:39-1 and ordering the search for and seizure of any
32 ¹[such] firearm or other¹ weapon at any location where the judge has
33 reasonable cause to believe the weapon is located. The judge shall
34 state with specificity the reasons for and scope of the search and
35 seizure authorized by the order.

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

44 (18) An order requiring the defendant to undergo a psychiatric
45 evaluation.

46 c. Notice of orders issued pursuant to this section shall be sent by

1 the clerk of the Family Part of the Chancery Division of the Superior
2 Court or other person designated by the court to the appropriate chiefs
3 of police, members of the State Police and any other appropriate law
4 enforcement agency.

5 d. Upon good cause shown, any final order may be dissolved or
6 modified upon application to the Family Part of the Chancery Division
7 of the Superior Court, but only if the judge who dissolves or modifies
8 the order is the same judge who entered the order, or has available a
9 complete record of the hearing or hearings on which the order was
10 based.

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

14 (cf: P.L.1999, c.421, s.4)

15

16 3. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as
17 follows:

18 6. Certain Persons Not to Have Weapons.

19 a. Except as provided in subsection b. of this section, any person,
20 having been convicted in this State or elsewhere of the crime of
21 aggravated assault, arson, burglary, escape, extortion, homicide,
22 kidnapping, robbery, aggravated sexual assault, sexual assault, bias
23 intimidation in violation of N.J.S.2C:16-1 or endangering the welfare
24 of a child pursuant to N.J.S.2C:24-4, whether or not armed with or
25 having in his possession any weapon enumerated in subsection r. of
26 N.J.S.2C:39-1, or any person convicted of a crime pursuant to the
27 provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or N.J.S.2C:39-9, or any
28 person who has ever been committed for a mental disorder to any
29 hospital, mental institution or sanitarium unless he possesses a
30 certificate of a medical doctor or psychiatrist licensed to practice in
31 New Jersey or other satisfactory proof that he is no longer suffering
32 from a mental disorder which interferes with or handicaps him in the
33 handling of a firearm, or any person who has been convicted of other
34 than a disorderly persons or petty disorderly persons offense for the
35 unlawful use, possession or sale of a controlled dangerous substance
36 as defined in N.J.S.2C:35-2 who purchases, owns, possesses or
37 controls any of the said weapons is guilty of a crime of the fourth
38 degree.

39 b. (1) A person having been convicted in this State or elsewhere
40 of the crime of aggravated assault, arson, burglary, escape, extortion,
41 homicide, kidnapping, robbery, aggravated sexual assault, sexual
42 assault, bias intimidation in violation of N.J.S.2C:16-1 ¹[or]¹
43 endangering the welfare of a child pursuant to N.J.S.2C:24-4, stalking
44 pursuant to P.L.1992, c.209 (C.2C:12-10) or ¹[for] a crime
45 involving¹ domestic violence as defined in section 3 of P.L., c.261
46 (C.2C:25-19), whether or not armed with or having in his possession

1 a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person
2 having been convicted of a crime pursuant to the provisions of
3 N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of
4 P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3;
5 N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or
6 controls a firearm is guilty of a crime of the second degree and upon
7 conviction thereof, the person shall be sentenced to a term of
8 imprisonment by the court. The term of imprisonment shall include the
9 imposition of a minimum term, which shall be fixed at five years,
10 during which the defendant shall be ineligible for parole. If the
11 defendant is sentenced to an extended term of imprisonment pursuant
12 to N.J.S.2C:43-7, the extended term of imprisonment shall include the
13 imposition of a minimum term, which shall be fixed at, or between,
14 one-third and one-half of the sentence imposed by the court or five
15 years, whichever is greater, during which the defendant shall be
16 ineligible for parole.

17 (2) A person having been convicted in this State or elsewhere of a
18 disorderly persons offense¹ involving domestic violence¹, whether or
19 not armed with or having in his possession a weapon enumerated in
20 subsection r. of N.J.S.2C:39-1,¹ [for stalking pursuant to P.L. 1992,
21 c.209 (C.2C:12-10), endangering the welfare of a child pursuant to
22 N.J.S.2C:24-4 or for domestic violence as defined in section 3 of
23 P.L.1991, c.261 (C.2C:25-19),]¹ who purchases, owns, possesses or
24 controls a firearm is guilty of a crime of the¹ [fourth] third¹ degree.

25 (3) A person whose¹ [weapons have been] firearm is¹ seized
26 pursuant to¹ [subsection d. of section 5 of P.L. 1991, c.261 (C.2C:25-
27 21) or who is subject to the prohibitions on the purchase of firearms
28 provided in subsection b. of section 13 of P.L.1991,c.261 (C.26:25-
29 29)] the "Prevention of Domestic Violence Act of 1991,"
30 P.L.1991,c.261 (C.2C:25-17 et seq.) and whose firearm has not been
31 returned, or who is subject to a court order prohibiting the possession
32 of firearms issued pursuant to the "Prevention of Domestic Violence
33 Act of 1991," P.L.1991,c.261 (C.2C:25-17 et seq.)¹ who purchases,
34 owns, possesses or controls a firearm is guilty of a crime of the
35 ¹ [fourth] third degree, except that the provisions of this paragraph
36 shall not apply to any law enforcement officer while actually on duty,
37 or to any member of the Armed Forces of the United States or member
38 of the National Guard while actually on duty or traveling to or from
39 an authorized place of duty.¹

40 ¹[(4) The provisions of paragraph (2) of this subsection shall not
41 apply to a person convicted for endangering the welfare of a child
42 pursuant to N.J.S2C:24-4 or for domestic violence as defined in
43 section 3 of P.L. 1991, c.261 (C.2C:25-19) two years after that
44 person's conviction or completion of a term of imprisonment,
45 whichever is later, provided that person subsequently has not been

1 convicted of any crime or disorderly persons offense.]]¹

2 c. Whenever any person shall have been convicted in another state,
3 territory, commonwealth or other jurisdiction of the United States, or
4 any country in the world, in a court of competent jurisdiction, of a
5 crime which in said other jurisdiction or country is comparable to one
6 of the crimes enumerated in subsection a. or b. of this section, then
7 that person shall be subject to the provisions of this section.

8 (cf: P.L.2001, c.443, s.5)

9

10 4. N.J.S.2C:58-3 is amended to read as follows:

11 2C:58-3. Purchase of Firearms.

12 a. Permit to purchase a handgun. No person shall sell, give,
13 transfer, assign or otherwise dispose of, nor receive, purchase, or
14 otherwise acquire a handgun unless the purchaser, assignee, donee,
15 receiver or holder is licensed as a dealer under this chapter or has first
16 secured a permit to purchase a handgun as provided by this section.

17 b. Firearms purchaser identification card. No person shall sell,
18 give, transfer, assign or otherwise dispose of nor receive, purchase or
19 otherwise acquire an antique cannon or a rifle or shotgun, other than
20 an antique rifle or shotgun, unless the purchaser, assignee, donee,
21 receiver or holder is licensed as a dealer under this chapter or
22 possesses a valid firearms purchaser identification card, and first
23 exhibits said card to the seller, donor, transferor or assignor, and
24 unless the purchaser, assignee, donee, receiver or holder signs a
25 written certification, on a form prescribed by the superintendent,
26 which shall indicate that he presently complies with the requirements
27 of subsection c. of this section and shall contain his name, address and
28 firearms purchaser identification card number or dealer's registration
29 number. The said certification shall be retained by the seller, as
30 provided in section 2C:58-2a., or, in the case of a person who is not
31 a dealer, it may be filed with the chief of police of the municipality in
32 which he resides or with the superintendent.

33 c. Who may obtain. No person of good character and good repute
34 in the community in which he lives, and who is not subject to any of
35 the disabilities set forth in this section or other sections of this chapter,
36 shall be denied a permit to purchase a handgun or a firearms purchaser
37 identification card, except as hereinafter set forth. No handgun
38 purchase permit or firearms purchaser identification card shall be
39 issued:

40 (1) To any person who has been convicted of ¹[a] any ¹crime, ¹or
41 a disorderly persons offense involving an act of domestic violence as
42 defined in section 3 of P.L.1991,c.261(C.2C:25-19).¹ whether or not
43 armed with or possessing a weapon at the time of such offense;

44 (2) To any drug dependent person as defined in section 2 of
45 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a
46 mental disorder to a hospital, mental institution or sanitarium, or to

1 any person who is presently an habitual drunkard;

2 (3) To any person who suffers from a physical defect or disease
3 which would make it unsafe for him to handle firearms, to any person
4 who has ever been confined for a mental disorder, or to any alcoholic
5 unless any of the foregoing persons produces a certificate of a medical
6 doctor or psychiatrist licensed in New Jersey, or other satisfactory
7 proof, that he is no longer suffering from that particular disability in
8 such a manner that would interfere with or handicap him in the
9 handling of firearms; to any person who knowingly falsifies any
10 information on the application form for a handgun purchase permit or
11 firearms purchaser identification card;

12 (4) To any person under the age of 18 years for a firearms
13 purchaser identification card and to any person under the age of 21
14 years for a permit to purchase a handgun;

15 (5) To any person where the issuance would not be in the interest
16 of the public health, safety or welfare;

17 (6) To any person who is subject to a restraining order¹ [or court
18 order]¹ issued pursuant to ¹[section 13 of P.L.1991, c.261
19 (C.2C:25-29)] the "Prevention of Domestic Violence Act of 1991,"
20 P.L.1991, c.261 (C.2C:25-17 et seq.)¹ prohibiting the person from
21 possessing any firearm¹ [A person who is subject to a restraining
22 order or court order issued pursuant to section 13 of P.L.1991, c.261
23 (C.2C:25-29) prohibiting the person from possessing any firearm shall
24 be barred from receiving a handgun purchase permit or firearms
25 purchaser identification card for a period of at least two years or as
26 ordered by the court that issued the order. At the conclusion of that
27 period, the defendant may apply for a permit or identification card;
28 or];¹

29 (7) To any person who as a juvenile was adjudicated delinquent for
30 an offense which, if committed by an adult, would constitute a crime
31 and the offense involved the unlawful use or possession of a weapon,
32 explosive or destructive device or is enumerated in subsection d. of
33 section 2 of P.L.1997, c.117 (C:2C:43-7.2) ¹[.

34 (7) To any person who is subject to the restrictions imposed by
35 paragraphs (2) or (3) of subsection b. of section 6 of
36 P.L.1979,c.179(C.2C:39-7).¹ ; or

37 ¹(8) To any person whose firearm is seized pursuant to the
38 "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261
39 (C.2C:25-17 et seq.) and whose firearm has not been returned.¹

40 d. Issuance. The chief of police of an organized full-time police
41 department of the municipality where the applicant resides or the
42 superintendent, in all other cases, shall upon application, issue to any
43 person qualified under the provisions of subsection c. of this section
44 a permit to purchase a handgun or a firearms purchaser identification
45 card.

46 Any person aggrieved by the denial of a permit or identification

1 card may request a hearing in the Superior Court of the county in
2 which he resides if he is a resident of New Jersey or in the Superior
3 Court of the county in which his application was filed if he is a
4 nonresident. The request for a hearing shall be made in writing within
5 30 days of the denial of the application for a permit or identification
6 card. The applicant shall serve a copy of his request for a hearing
7 upon the chief of police of the municipality in which he resides, if he
8 is a resident of New Jersey, and upon the superintendent in all cases.
9 The hearing shall be held and a record made thereof within 30 days of
10 the receipt of the application for such hearing by the judge of the
11 Superior Court. No formal pleading and no filing fee shall be required
12 as a preliminary to such hearing. Appeals from the results of such
13 hearing shall be in accordance with law.

14 e. Applications. Applications for permits to purchase a handgun
15 and for firearms purchaser identification cards shall be in the form
16 prescribed by the superintendent and shall set forth the name,
17 residence, place of business, age, date of birth, occupation, sex and
18 physical description, including distinguishing physical characteristics,
19 if any, of the applicant, and shall state whether the applicant is a
20 citizen, whether he is an alcoholic, habitual drunkard, drug dependent
21 person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), whether
22 he has ever been confined or committed to a mental institution or
23 hospital for treatment or observation of a mental or psychiatric
24 condition on a temporary, interim or permanent basis, giving the name
25 and location of the institution or hospital and the dates of such
26 confinement or commitment, whether he has been attended, treated or
27 observed by any doctor or psychiatrist or at any hospital or mental
28 institution on an inpatient or outpatient basis for any mental or
29 psychiatric condition, giving the name and location of the doctor,
30 psychiatrist, hospital or institution and the dates of such occurrence,
31 whether he presently or ever has been a member of any organization
32 which advocates or approves the commission of acts of force and
33 violence to overthrow the Government of the United States or of this
34 State, or which seeks to deny others their rights under the Constitution
35 of either the United States or the State of New Jersey, whether he has
36 ever been convicted of a crime or disorderly persons offense, whether
37 the person ¹[[is]has been] is¹ subject to a restraining order ¹[or court
38 order]¹ issued pursuant to ¹[section 13 of P.L.1991, c.261
39 (C.2C:25-29)] the "Prevention of Domestic Violence Act of 1991,"
40 P.L.1991, c.261 (C.2C:25-17 et. seq.)¹ prohibiting the person from
41 possessing any firearm, and such other information as the
42 superintendent shall deem necessary for the proper enforcement of this
43 chapter. For the purpose of complying with this subsection, the
44 applicant shall waive any statutory or other right of confidentiality
45 relating to institutional confinement. The application shall be signed
46 by the applicant and shall contain as references the names and

1 addresses of two reputable citizens personally acquainted with him.

2 Application blanks shall be obtainable from the superintendent,
3 from any other officer authorized to grant such permit or identification
4 card, and from licensed retail dealers.

5 The chief police officer or the superintendent shall obtain the
6 fingerprints of the applicant and shall have them compared with any
7 and all records of fingerprints in the municipality and county in which
8 the applicant resides and also the records of the State Bureau of
9 Identification and the Federal Bureau of Investigation, provided that
10 an applicant for a handgun purchase permit who possesses a valid
11 firearms purchaser identification card, or who has previously obtained
12 a handgun purchase permit from the same licensing authority for which
13 he was previously fingerprinted, and who provides other reasonably
14 satisfactory proof of his identity, need not be fingerprinted again;
15 however, the chief police officer or the superintendent shall proceed
16 to investigate the application to determine whether or not the applicant
17 has become subject to any of the disabilities set forth in this chapter.

18 f. Granting of permit or identification card; fee; term; renewal;
19 revocation. The application for the permit to purchase a handgun
20 together with a fee of \$2.00, or the application for the firearms
21 purchaser identification card together with a fee of \$5.00, shall be
22 delivered or forwarded to the licensing authority who shall investigate
23 the same and, unless good cause for the denial thereof appears, shall
24 grant the permit or the identification card, or both, if application has
25 been made therefor, within 30 days from the date of receipt of the
26 application for residents of this State and within 45 days for
27 nonresident applicants. A permit to purchase a handgun shall be valid
28 for a period of 90 days from the date of issuance and may be renewed
29 by the issuing authority for good cause for an additional 90 days. A
30 firearms purchaser identification card shall be valid until such time as
31 the holder becomes subject to any of the disabilities set forth in
32 subsection c. of this section, whereupon the card shall be void and
33 shall be returned within five days by the holder to the superintendent,
34 who shall then advise the licensing authority. Failure of the holder to
35 return the firearms purchaser identification card to the superintendent
36 within the said five days shall be an offense under section 2C:39-10a.
37 Any firearms purchaser identification card may be revoked by the
38 Superior Court of the county wherein the card was issued, after
39 hearing upon notice, upon a finding that the holder thereof no longer
40 qualifies for the issuance of such permit. The county prosecutor of
41 any county, the chief police officer of any municipality or any citizen
42 may apply to such court at any time for the revocation of such card.

43 There shall be no conditions or requirements added to the form or
44 content of the application, or required by the licensing authority for
45 the issuance of a permit or identification card, other than those that are
46 specifically set forth in this chapter.

1 g. Disposition of fees. All fees for permits shall be paid to the
2 State Treasury if the permit is issued by the superintendent, to the
3 municipality if issued by the chief of police, and to the county treasurer
4 if issued by the judge of the Superior Court.

5 h. Form of permit; quadruplicate; disposition of copies. The permit
6 shall be in the form prescribed by the superintendent and shall be
7 issued to the applicant in quadruplicate. Prior to the time he receives
8 the handgun from the seller, the applicant shall deliver to the seller the
9 permit in quadruplicate and the seller shall complete all of the
10 information required on the form. Within five days of the date of the
11 sale, the seller shall forward the original copy to the superintendent
12 and the second copy to the chief of police of the municipality in which
13 the purchaser resides, except that in a municipality having no chief of
14 police, such copy shall be forwarded to the superintendent. The third
15 copy shall then be returned to the purchaser with the pistol or revolver
16 and the fourth copy shall be kept by the seller as a permanent record.

17 i. Restriction on number of firearms person may purchase. Only
18 one handgun shall be purchased or delivered on each permit, but a
19 person shall not be restricted as to the number of rifles or shotguns he
20 may purchase, provided he possesses a valid firearms purchaser
21 identification card and provided further that he signs the certification
22 required in subsection b. of this section for each transaction.

23 j. Firearms passing to heirs or legatees. Notwithstanding any other
24 provision of this section concerning the transfer, receipt or acquisition
25 of a firearm, a permit to purchase or a firearms purchaser identification
26 card shall not be required for the passing of a firearm upon the death
27 of an owner thereof to his heir or legatee, whether the same be by
28 testamentary bequest or by the laws of intestacy. The person who
29 shall so receive, or acquire said firearm shall, however, be subject to
30 all other provisions of this chapter. If the heir or legatee of such
31 firearm does not qualify to possess or carry it, he may retain ownership
32 of the firearm for the purpose of sale for a period not exceeding 180
33 days, or for such further limited period as may be approved by the
34 chief law enforcement officer of the municipality in which the heir or
35 legatee resides or the superintendent, provided that such firearm is in
36 the custody of the chief law enforcement officer of the municipality or
37 the superintendent during such period.

38 k. Sawed-off shotguns. Nothing in this section shall be construed
39 to authorize the purchase or possession of any sawed-off shotgun.

40 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the
41 sale or purchase of a visual distress signalling device approved by the
42 United States Coast Guard, solely for possession on a private or
43 commercial aircraft or any boat; provided, however, that no person
44 under the age of 18 years shall purchase nor shall any person sell to a
45 person under the age of 18 years such a visual distress signalling
46 device.

1 (cf: P.L.2003, c.73, s1)

2

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

5 12. a. A victim may file a complaint alleging the commission of an
6 act of domestic violence with the Family Part of the Chancery Division
7 of the Superior Court in conformity with the [rules of court] Rules of
8 Court. The court shall not dismiss any complaint or delay disposition
9 of a case because the victim has left the residence to avoid further
10 incidents of domestic violence. Filing a complaint pursuant to this
11 section shall not prevent the filing of a criminal complaint for the same
12 act.

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

19 A plaintiff may apply for relief under this section in a court having
20 jurisdiction over the place where the alleged act of domestic violence
21 occurred, where the defendant resides, or where the plaintiff resides
22 or is sheltered, and the court shall follow the same procedures
23 applicable to other emergency applications. Criminal complaints filed
24 pursuant to this act shall be investigated and prosecuted in the
25 jurisdiction where the offense is alleged to have occurred. Contempt
26 complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the
27 county where the contempt is alleged to have been committed and a
28 copy of the contempt complaint shall be forwarded to the court that
29 issued the order alleged to have been violated.

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

32 c. The clerk of the court, or other person designated by the court,
33 shall assist the parties in completing any forms necessary for the filing
34 of a summons, complaint, answer or other pleading.

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

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

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

46 g. If it appears that the plaintiff is in danger of domestic violence,

1 the judge shall, upon consideration of the plaintiff's domestic violence
2 complaint, order emergency ex parte relief, in the nature of a
3 temporary restraining order. A decision shall be made by the judge
4 regarding the emergency relief forthwith.

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

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

27 j. Emergency relief may include forbidding the defendant from
28 returning to the scene of the domestic violence, forbidding the
29 defendant **[to possess]** from possessing any firearm or other weapon
30 enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for
31 and seizure of any such weapon at any location where the judge has
32 reasonable cause to believe the weapon is located and the seizure of
33 any firearms purchaser identification card or permit to purchase a
34 handgun issued to the defendant and any other appropriate relief. The
35 judge shall state with specificity the reasons for and scope of the
36 search and seizure authorized by the order. The provisions of this
37 subsection prohibiting a defendant from possessing a firearm or other
38 weapon shall not apply to any law enforcement officer while actually
39 on duty, or to any member of the Armed Forces of the United States
40 or member of the National Guard while actually on duty or traveling
41 to or from an authorized place of duty.

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

46 l. An order granting emergency relief, together with the complaint

1 or complaints, shall immediately be forwarded to the appropriate law
2 enforcement agency for service on the defendant, and to the police of
3 the municipality in which the plaintiff resides or is sheltered, and shall
4 immediately be served upon the defendant by the police, except that
5 an order issued during regular court hours may be forwarded to the
6 sheriff for immediate service upon the defendant in accordance with
7 the Rules of Court. If personal service cannot be effected upon the
8 defendant, the court may order other appropriate substituted service.
9 At no time shall the plaintiff be asked or required to serve any order
10 on the defendant.

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

12 n. Notice of temporary restraining orders issued pursuant to this
13 section shall be sent by the clerk of the court or other person
14 designated by the court to the appropriate chiefs of police, members
15 of the State Police and any other appropriate law enforcement agency
16 or court.

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

18 p. Any temporary or permanent restraining order issued pursuant
19 to this act shall be in effect throughout the State, and shall be enforced
20 by all law enforcement officers.

21 q. Prior to the issuance of any temporary or permanent restraining
22 order issued pursuant to this section, the court shall order that a
23 search be made of the domestic violence central registry with regard
24 to the defendant's record.¹

25 (cf: P.L.1999, c.421, s.3)

26

27 ¹6. (New section) The Attorney General may adopt, pursuant to
28 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), rules and regulations necessary and appropriate to implement
30 this act.¹

31

32 ¹[5.] 7.¹ This act shall take effect immediately.

33

34

35

36

37 Prohibits firearm possession by persons convicted of domestic violence
38 crime or domestic violence disorderly persons offense, convicted of
39 stalking, or subject to domestic violence restraining order.

ASSEMBLY, No. 276

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblyman REED GUSCIORA

District 15 (Mercer)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Co-Sponsored by:

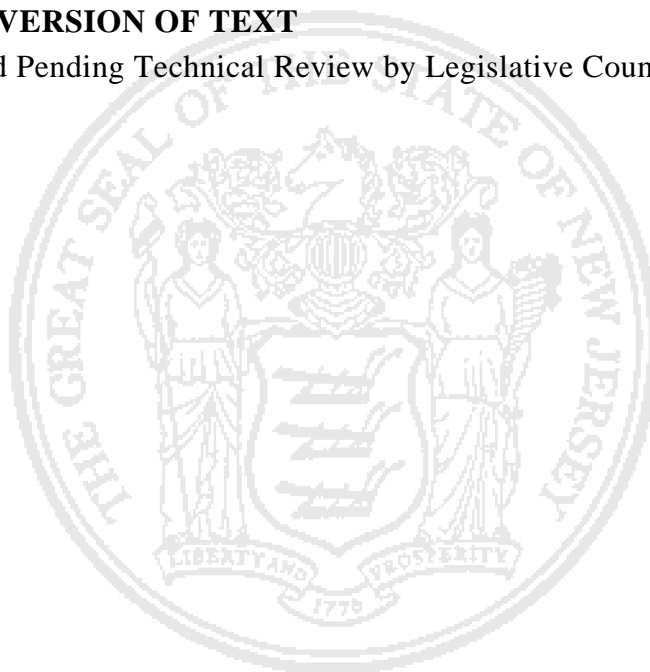
Assemblymen Gear and Barnes

SYNOPSIS

Prohibits person convicted of child abuse, domestic violence or stalking from purchasing or owning a firearm.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 10/1/2002)

1 AN ACT concerning firearms and amending sections 5 and 13 of
2 P.L.1991, c.261, N.J.S.2C:39-7 and N.J.S.2C:58-3.

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

6
7 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to read
8 as follows:

9 5. a. When a person claims to be a victim of domestic violence,
10 and where a law enforcement officer responding to the incident finds
11 probable cause to believe that domestic violence has occurred, the law
12 enforcement officer shall arrest the person who is alleged to be the
13 person who subjected the victim to domestic violence and shall sign a
14 criminal complaint if:

15 (1) The victim exhibits signs of injury caused by an act of domestic
16 violence;

17 (2) A warrant is in effect;

18 (3) There is probable cause to believe that the person has violated
19 N.J.S.2C:29-9, and there is probable cause to believe that the person
20 has been served with the order alleged to have been violated. If the
21 victim does not have a copy of a purported order, the officer may
22 verify the existence of an order with the appropriate law enforcement
23 agency; or

24 (4) There is probable cause to believe that a weapon as defined in
25 N.J.S.2C:39-1 has been involved in the commission of an act of
26 domestic violence.

27 b. A law enforcement officer may arrest a person; or may sign a
28 criminal complaint against that person, or may do both, where there is
29 probable cause to believe that an act of domestic violence has been
30 committed, but where none of the conditions in subsection a. of this
31 section applies.

32 c. (1) As used in this section, the word "exhibits" is to be liberally
33 construed to mean any indication that a victim has suffered bodily
34 injury, which shall include physical pain or any impairment of physical
35 condition. Where the victim exhibits no visible sign of injury, but
36 states that an injury has occurred, the officer should consider other
37 relevant factors in determining whether there is probable cause to
38 make an arrest.

39 (2) In determining which party in a domestic violence incident is
40 the victim where both parties exhibit signs of injury, the officer should
41 consider the comparative extent of the injuries, the history of domestic
42 violence between the parties, if any, and any other relevant factors.

43 (3) No victim shall be denied relief or arrested or charged under

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

Matter underlined thus is new matter.

1 this act with an offense because the victim used reasonable force in self
2 defense against domestic violence by an attacker.

3 d. (1) In addition to a law enforcement officer's authority to seize
4 any weapon that is contraband, evidence or an instrumentality of
5 crime, a law enforcement officer who has probable cause to believe
6 that an act of domestic violence has been committed ~~[may]~~shall:

7 (a) question persons present to determine whether there are
8 weapons on the premises; and

9 (b) upon observing or learning that a weapon is present on the
10 premises, seize any weapon that the officer reasonably believes would
11 expose the victim to a risk of serious bodily injury.

12 (2) A law enforcement officer shall deliver all weapons seized
13 pursuant to this section to the county prosecutor and shall append an
14 inventory of all seized weapons to the domestic violence report.

15 (3) Weapons seized in accordance with the ~~[above]~~ "Prevention of
16 Domestic Violence Act of 1991", P.L.1991,c.261 (C.2C:25-17 et seq.)
17 shall be returned to the owner except upon order of the Superior
18 Court. The prosecutor who has possession of the seized weapons
19 may, upon notice to the owner, petition a judge of the Family Part of
20 the Superior Court, Chancery Division, within 45 days of seizure, to
21 obtain title to the seized weapons, or to revoke any and all permits,
22 licenses and other authorizations for the use, possession, or ownership
23 of such weapons pursuant to the law governing such use, possession,
24 or ownership, or may object to the return of the weapons on such
25 grounds as are provided for the initial rejection or later revocation of
26 the authorizations, or on the grounds that the owner is unfit or that the
27 owner poses a threat to the public in general or a person or persons in
28 particular.

29 A hearing shall be held and a record made thereof within ~~[15]~~ 45
30 days of the notice provided above. No formal pleading and no filing
31 fee shall be required as a preliminary to such hearing. The hearing
32 shall be summary in nature. Appeals from the results of the hearing
33 shall be to the Superior Court, Appellate Division, in accordance with
34 the law.

35 If the prosecutor does not institute an action within 45 days of
36 seizure, the seized weapons shall be returned to the owner.

37 After the hearing the court shall order the return of the firearms,
38 weapons and any authorization papers relating to the seized weapons
39 to the owner if the court determines the owner is not subject to any of
40 the disabilities set forth in N.J.S.2C:58-3c and finds that the complaint
41 has been dismissed at the request of the complainant and the
42 prosecutor determines that there is insufficient probable cause to
43 indict; or if the defendant is found not guilty of the charges; or if the
44 court determines that the domestic violence situation no longer exists.

45 Nothing in this act shall impair the right of the State to retain
46 evidence pending a criminal prosecution. Nor shall any provision of

1 this act be construed to limit the authority of the State or a law
2 enforcement officer to seize, retain or forfeit property pursuant to
3 chapter 64 of Title 2C of the New Jersey Statutes.

4 If, after the hearing, the court determines that the weapons are not
5 to be returned to the owner, the court may:

6 (a) With respect to weapons other than firearms, order the
7 prosecutor to dispose of the weapons if the owner does not arrange
8 for the transfer or sale of the weapons to an appropriate person within
9 60 days; or

10 (b) Order the revocation of the owner's firearms purchaser
11 identification card or any permit, license or authorization, in which
12 case the court shall order the owner to surrender any firearm seized
13 and all other firearms possessed to the prosecutor and shall order the
14 prosecutor to dispose of the firearms if the owner does not arrange for
15 the sale of the firearms to a registered dealer of the firearms within 60
16 days; or

17 (c) Order such other relief as it may deem appropriate. When the
18 court orders the weapons forfeited to the State or the prosecutor is
19 required to dispose of the weapons, the prosecutor shall dispose of the
20 property as provided in N.J.S.2C:64-6.

21 (4) A civil suit may be brought to enjoin a wrongful failure to
22 return a seized firearm where the prosecutor refuses to return the
23 weapon after receiving a written request to do so and notice of the
24 owner's intent to bring a civil action pursuant to this section. Failure
25 of the prosecutor to comply with the provisions of this act shall entitle
26 the prevailing party in the civil suit to reasonable costs, including
27 attorney's fees, provided that the court finds that the prosecutor failed
28 to act in good faith in retaining the seized weapon.

29 (5) [No law enforcement officer or agency shall be held liable in
30 any civil action brought by any person for failing to learn of, locate or
31 seize a weapon pursuant to this act, or for returning a seized weapon
32 to its owner.](Deleted by amendment, P.L. .c.) (now pending
33 before the Legislature as this bill)

34 (6) If a weapon is found on the premises, the law enforcement
35 officers shall demand and confiscate any firearms purchaser
36 identification card or permit to purchase a handgun issued pursuant to
37 N.J.S.2C:58-3 from the accused perpetrator of the domestic violence
38 incident. The law enforcement officer shall deliver the confiscated
39 card or permit to the county prosecutor's officer.

40 (cf: P.L.1991, c.261, s.5)

41
42 2. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read
43 as follows:

44 13. a. A hearing shall be held in the Family Part of the Chancery
45 Division of the Superior Court within 10 days of the filing of a
46 complaint pursuant to section 12 of P.L.1991, c.261 (C.2C:25-28) in

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

- 15 (1) The previous history of domestic violence between the plaintiff
16 and defendant, including threats, harassment and physical abuse;
- 17 (2) The existence of immediate danger to person or property;
- 18 (3) The financial circumstances of the plaintiff and defendant;
- 19 (4) The best interests of the victim and any child;
- 20 (5) In determining custody and visitation the protection of the
21 victim's safety; and
- 22 (6) The existence of a verifiable order of protection from another
23 jurisdiction.

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

33 b. In proceedings in which complaints for restraining orders have
34 been filed, the court shall grant any relief necessary to prevent further
35 abuse. In addition to any other provisions, any restraining order or
36 order prohibiting the defendant from possessing any firearm issued by
37 the court shall bar the defendant from receiving a firearms purchaser
38 identification card or permit to purchase a handgun pursuant to
39 N.J.S.2C:58-3 for a period of at least two years or during the period
40 in which the restraining order is in effect, whichever is longer. At the
41 hearing the judge of the Family Part of the Chancery Division of the
42 Superior Court may issue an order granting any or all of the following
43 relief:

- 44 (1) An order restraining the defendant from subjecting the victim
45 to domestic violence, as defined in this act.
- 46 (2) An order granting exclusive possession to the plaintiff of the

1 residence or household regardless of whether the residence or
2 household is jointly or solely owned by the parties or jointly or solely
3 leased by the parties. This order shall not in any manner affect title or
4 interest to any real property held by either party or both jointly. If it
5 is not possible for the victim to remain in the residence, the court may
6 order the defendant to pay the victim's rent at a residence other than
7 the one previously shared by the parties if the defendant is found to
8 have a duty to support the victim and the victim requires alternative
9 housing.

10 (3) An order providing for visitation. The order shall protect the
11 safety and well-being of the plaintiff and minor children and shall
12 specify the place and frequency of visitation. Visitation arrangements
13 shall not compromise any other remedy provided by the court by
14 requiring or encouraging contact between the plaintiff and defendant.
15 Orders for visitation may include a designation of a place of visitation
16 away from the plaintiff, the participation of a third party, or supervised
17 visitation.

18 (a) The court shall consider a request by a custodial parent who
19 has been subjected to domestic violence by a person with visitation
20 rights to a child in the parent's custody for an investigation or
21 evaluation by the appropriate agency to assess the risk of harm to the
22 child prior to the entry of a visitation order. Any denial of such a
23 request must be on the record and shall only be made if the judge finds
24 the request to be arbitrary or capricious.

25 (b) The court shall consider suspension of the visitation order and
26 hold an emergency hearing upon an application made by the plaintiff
27 certifying under oath that the defendant's access to the child pursuant
28 to the visitation order has threatened the safety and well-being of the
29 child.

30 (4) An order requiring the defendant to pay to the victim monetary
31 compensation for losses suffered as a direct result of the act of
32 domestic violence. The order may require the defendant to pay the
33 victim directly, to reimburse the Violent Crimes Compensation Board
34 for any and all compensation paid by the Violent Crime Compensation
35 Board directly to or on behalf of the victim, and may require that the
36 defendant reimburse any parties that may have compensated the
37 victim, as the court may determine. Compensatory losses shall
38 include, but not be limited to, loss of earnings or other support,
39 including child or spousal support, out-of-pocket losses for injuries
40 sustained, cost of repair or replacement of real or personal property
41 damaged or destroyed or taken by the defendant, cost of counseling
42 for the victim, moving or other travel expenses, reasonable attorney's
43 fees, court costs, and compensation for pain and suffering. Where
44 appropriate, punitive damages may be awarded in addition to
45 compensatory damages.

46 (5) An order requiring the defendant to receive professional

1 domestic violence counseling from either a private source or a source
2 appointed by the court and, in that event, at the court's discretion
3 requiring the defendant to provide the court at specified intervals with
4 documentation of attendance at the professional counseling. The court
5 may order the defendant to pay for the professional counseling.

6 (6) An order restraining the defendant from entering the residence,
7 property, school, or place of employment of the victim or of other
8 family or household members of the victim and requiring the defendant
9 to stay away from any specified place that is named in the order and
10 is frequented regularly by the victim or other family or household
11 members.

12 (7) An order restraining the defendant from making contact with
13 the plaintiff or others, including an order forbidding the defendant
14 from personally or through an agent initiating any communication
15 likely to cause annoyance or alarm including, but not limited to,
16 personal, written, or telephone contact with the victim or other family
17 members, or their employers, employees, or fellow workers, or others
18 with whom communication would be likely to cause annoyance or
19 alarm to the victim.

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

26 (9) An order granting either party temporary possession of
27 specified personal property, such as an automobile, checkbook,
28 documentation of health insurance, an identification document, a key,
29 and other personal effects.

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

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

37 (12) An order requiring that a law enforcement officer accompany
38 either party to the residence or any shared business premises to
39 supervise the removal of personal belongings in order to ensure the
40 personal safety of the plaintiff when a restraining order has issued.
41 This order shall be restricted in duration.

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

43 (14) An order granting any other appropriate relief for the plaintiff
44 and dependent children, provided that the plaintiff consents to such
45 relief, including relief requested by the plaintiff at the final hearing,
46 whether or not the plaintiff requested such relief at the time of the

1 granting of the initial emergency order.

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

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

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

19 (18) An order requiring the defendant to undergo a psychiatric
20 evaluation.

21 c. Notice of orders issued pursuant to this section shall be sent by
22 the clerk of the Family Part of the Chancery Division of the Superior
23 Court or other person designated by the court to the appropriate chiefs
24 of police, members of the State Police and any other appropriate law
25 enforcement agency.

26 d. Upon good cause shown, any final order may be dissolved or
27 modified upon application to the Family Part of the Chancery Division
28 of the Superior Court, but only if the judge who dissolves or modifies
29 the order is the same judge who entered the order, or has available a
30 complete record of the hearing or hearings on which the order was
31 based.

32 (cf: P.L.1995, c.242, s.1)

33

34 3. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as
35 follows:

36 6. Certain Persons Not to Have Weapons.

37 a. Except as provided in subsection b. of this section, any person,
38 having been convicted in this State or elsewhere of the crime of
39 aggravated assault, arson, burglary, escape, extortion, homicide,
40 kidnapping, robbery, aggravated sexual assault, sexual assault or
41 endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether
42 or not armed with or having in his possession any weapon enumerated
43 in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime
44 pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or
45 N.J.S.2C:39-9, or any person who has ever been committed for a
46 mental disorder to any hospital, mental institution or sanitarium unless

1 he possesses a certificate of a medical doctor or psychiatrist licensed
2 to practice in New Jersey or other satisfactory proof that he is no
3 longer suffering from a mental disorder which interferes with or
4 handicaps him in the handling of a firearm, or any person who has been
5 convicted of other than a disorderly persons or petty disorderly
6 persons offense for the unlawful use, possession or sale of a controlled
7 dangerous substance as defined in N.J.S.2C:35-2 who purchases,
8 owns, possesses or controls any of the said weapons is guilty of a
9 crime of the fourth degree.

10 b. (1) A person having been convicted in this State or elsewhere
11 of the crime of aggravated assault, arson, burglary, escape, extortion,
12 homicide, kidnapping, robbery, aggravated sexual assault, sexual
13 assault or endangering the welfare of a child pursuant to
14 N.J.S.2C:24-4, stalking pursuant to P.L.1992, c.209 (C.2C:12-10) or
15 for domestic violence as defined in section 3 of P.L.1991, c.261
16 (C.2C:25-19), whether or not armed with or having in his possession
17 a weapon enumerated in subsection r. of N.J.S.2C:39-1, or a person
18 having been convicted of a crime pursuant to the provisions of
19 N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive; section 1 of
20 P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11; N.J.S.2C:39-3;
21 N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases, owns, possesses or
22 controls a firearm is guilty of a crime of the second degree.

23 (2) A person having been convicted in this State or elsewhere of a
24 disorderly persons offense, whether or not armed with or having in his
25 possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, for
26 stalking pursuant to P.L.1992, c.209 (C.2C:12-10), endangering the
27 welfare of a child pursuant to N.J.S.2C:24-4 or for domestic violence
28 as defined in section 3 of P.L.1991, c.261 (C.2C:25-19), who
29 purchases, owns, possesses or controls a firearm is guilty of a crime
30 of the fourth degree.

31 (3) A person whose weapons have been seized pursuant to
32 subsection d. of section 5 of P.L.1991, c.261 (C.2C:25-21) or who is
33 subject to the prohibitions on the purchase of firearms provided in
34 subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) who
35 purchases, owns, possesses or controls a firearm is guilty of a crime
36 of the fourth degree.

37 (4) The provisions of paragraph (2) of this subsection shall not
38 apply to a person convicted for endangering the welfare of a child
39 pursuant to N.J.S.2C:24-4 or for domestic violence as defined in
40 section 3 of P.L.1991, c.261 (C.2C:25-19) two years after that
41 person's conviction or completion of a term of imprisonment,
42 whichever is later, provided that person subsequently has not been
43 convicted of any crime or disorderly persons offense.

44 c. Whenever any person shall have been convicted in another state,
45 territory, commonwealth or other jurisdiction of the United States, or
46 any country in the world, in a court of competent jurisdiction, of a

1 crime which in said other jurisdiction or country is comparable to one
2 of the crimes enumerated in subsection a. or b. of this section, then
3 that person shall be subject to the provisions of this section.

4 (cf: P.L.1995, c.114, s.1).

5
6 4. N.J.S.2C:58-3 is amended to read as follows:

7 2C:58-3. Purchase of Firearms.

8 a. Permit to purchase a handgun. No person shall sell, give,
9 transfer, assign or otherwise dispose of, nor receive, purchase, or
10 otherwise acquire a handgun unless the purchaser, assignee, donee,
11 receiver or holder is licensed as a dealer under this chapter or has first
12 secured a permit to purchase a handgun as provided by this section.

13 b. Firearms purchaser identification card. No person shall sell,
14 give, transfer, assign or otherwise dispose of nor receive, purchase or
15 otherwise acquire an antique cannon or a rifle or shotgun, other than
16 an antique rifle or shotgun, unless the purchaser, assignee, donee,
17 receiver or holder is licensed as a dealer under this chapter or
18 possesses a valid firearms purchaser identification card, and first
19 exhibits said card to the seller, donor, transferor or assignor, and
20 unless the purchaser, assignee, donee, receiver or holder signs a
21 written certification, on a form prescribed by the superintendent,
22 which shall indicate that he presently complies with the requirements
23 of subsection c. of this section and shall contain his name, address and
24 firearms purchaser identification card number or dealer's registration
25 number. The said certification shall be retained by the seller, as
26 provided in section 2C:58-2a., or, in the case of a person who is not
27 a dealer, it may be filed with the chief of police of the municipality in
28 which he resides or with the superintendent.

29 c. Who may obtain. No person of good character and good repute
30 in the community in which he lives, and who is not subject to any of
31 the disabilities set forth in this section or other sections of this chapter,
32 shall be denied a permit to purchase a handgun or a firearms purchaser
33 identification card, except as hereinafter set forth. No handgun
34 purchase permit or firearms purchaser identification card shall be
35 issued:

36 (1) To any person who has been convicted of a crime, whether or
37 not armed with or possessing a weapon at the time of such offense;

38 (2) To any drug dependent person as defined in section 2 of
39 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a
40 mental disorder to a hospital, mental institution or sanitarium, or to
41 any person who is presently an habitual drunkard;

42 (3) To any person who suffers from a physical defect or disease
43 which would make it unsafe for him to handle firearms, to any person
44 who has ever been confined for a mental disorder, or to any alcoholic
45 unless any of the foregoing persons produces a certificate of a medical
46 doctor or psychiatrist licensed in New Jersey, or other satisfactory

1 proof, that he is no longer suffering from that particular disability in
2 such a manner that would interfere with or handicap him in the
3 handling of firearms; to any person who knowingly falsifies any
4 information on the application form for a handgun purchase permit or
5 firearms purchaser identification card;

6 (4) To any person under the age of 18 years;

7 (5) To any person where the issuance would not be in the interest
8 of the public health, safety or welfare; or

9 (6) To any person who is subject to a restraining order or court
10 order issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29)
11 prohibiting the person from possessing any firearm. A person who is
12 subject to a restraining order or court order issued pursuant to section
13 13 of P.L.1991, c.261 (C.2C:25-29) prohibiting the person from
14 possessing any firearm shall be barred from receiving a handgun
15 purchase permit or firearms purchaser identification card for a period
16 of at least two years or as ordered by the court that issued the order.
17 At the conclusion of that period, the defendant may apply for a permit
18 or identification card; or

19 (7) To any person who is subject to the restrictions imposed by
20 paragraphs (2) or (3) of subsection b. of section 6 of P.L.1979, c.179
21 (C.2C:39-7).

22 d. Issuance. The chief of police of an organized full-time police
23 department of the municipality where the applicant resides or the
24 superintendent, in all other cases, shall upon application, issue to any
25 person qualified under the provisions of subsection c. of this section
26 a permit to purchase a handgun or a firearms purchaser identification
27 card.

28 Any person aggrieved by the denial of a permit or identification
29 card may request a hearing in the Superior Court of the county in
30 which he resides if he is a resident of New Jersey or in the Superior
31 Court of the county in which his application was filed if he is a
32 nonresident. The request for a hearing shall be made in writing within
33 30 days of the denial of the application for a permit or identification
34 card. The applicant shall serve a copy of his request for a hearing
35 upon the chief of police of the municipality in which he resides, if he
36 is a resident of New Jersey, and upon the superintendent in all cases.
37 The hearing shall be held and a record made thereof within 30 days of
38 the receipt of the application for such hearing by the judge of the
39 Superior Court. No formal pleading and no filing fee shall be required
40 as a preliminary to such hearing. Appeals from the results of such
41 hearing shall be in accordance with law.

42 e. Applications. Applications for permits to purchase a handgun
43 and for firearms purchaser identification cards shall be in the form
44 prescribed by the superintendent and shall set forth the name,
45 residence, place of business, age, date of birth, occupation, sex and
46 physical description, including distinguishing physical characteristics,

1 if any, of the applicant, and shall state whether the applicant is a
2 citizen, whether he is an alcoholic, habitual drunkard, drug dependent
3 person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), whether
4 he has ever been confined or committed to a mental institution or
5 hospital for treatment or observation of a mental or psychiatric
6 condition on a temporary, interim or permanent basis, giving the name
7 and location of the institution or hospital and the dates of such
8 confinement or commitment, whether he has been attended, treated or
9 observed by any doctor or psychiatrist or at any hospital or mental
10 institution on an inpatient or outpatient basis for any mental or
11 psychiatric condition, giving the name and location of the doctor,
12 psychiatrist, hospital or institution and the dates of such occurrence,
13 whether he presently or ever has been a member of any organization
14 which advocates or approves the commission of acts of force and
15 violence to overthrow the Government of the United States or of this
16 State, or which seeks to deny others their rights under the Constitution
17 of either the United States or the State of New Jersey, whether he has
18 ever been convicted of a crime or disorderly persons offense, whether
19 the person **[is]** has been subject to a restraining order or a court order
20 issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29)
21 prohibiting the person from possessing any firearm, and such other
22 information as the superintendent shall deem necessary for the proper
23 enforcement of this chapter. For the purpose of complying with this
24 subsection, the applicant shall waive any statutory or other right of
25 confidentiality relating to institutional confinement. The application
26 shall be signed by the applicant and shall contain as references the
27 names and addresses of two reputable citizens personally acquainted
28 with him.

29 Application blanks shall be obtainable from the superintendent,
30 from any other officer authorized to grant such permit or identification
31 card, and from licensed retail dealers.

32 The chief police officer or the superintendent shall obtain the
33 fingerprints of the applicant and shall have them compared with any
34 and all records of fingerprints in the municipality and county in which
35 the applicant resides and also the records of the State Bureau of
36 Identification and the Federal Bureau of Investigation, provided that
37 an applicant for a handgun purchase permit who possesses a valid
38 firearms purchaser identification card, or who has previously obtained
39 a handgun purchase permit from the same licensing authority for which
40 he was previously fingerprinted, and who provides other reasonably
41 satisfactory proof of his identity, need not be fingerprinted again;
42 however, the chief police officer or the superintendent shall proceed
43 to investigate the application to determine whether or not the applicant
44 has become subject to any of the disabilities set forth in this chapter.

45 f. Granting of permit or identification card; fee; term; renewal;
46 revocation. The application for the permit to purchase a handgun

1 together with a fee of \$2.00, or the application for the firearms
2 purchaser identification card together with a fee of \$5.00, shall be
3 delivered or forwarded to the licensing authority who shall investigate
4 the same and, unless good cause for the denial thereof appears, shall
5 grant the permit or the identification card, or both, if application has
6 been made therefor, within 30 days from the date of receipt of the
7 application for residents of this State and within 45 days for
8 nonresident applicants. A permit to purchase a handgun shall be valid
9 for a period of 90 days from the date of issuance and may be renewed
10 by the issuing authority for good cause for an additional 90 days. A
11 firearms purchaser identification card shall be valid until such time as
12 the holder becomes subject to any of the disabilities set forth in
13 subsection c. of this section, whereupon the card shall be void and
14 shall be returned within five days by the holder to the superintendent,
15 who shall then advise the licensing authority. Failure of the holder to
16 return the firearms purchaser identification card to the superintendent
17 within the said five days shall be an offense under section 2C:39-10a.
18 Any firearms purchaser identification card may be revoked by the
19 Superior Court of the county wherein the card was issued, after
20 hearing upon notice, upon a finding that the holder thereof no longer
21 qualifies for the issuance of such permit. The county prosecutor of
22 any county, the chief police officer of any municipality or any citizen
23 may apply to such court at any time for the revocation of such card.
24 There shall be no conditions or requirements added to the form or
25 content of the application, or required by the licensing authority for
26 the issuance of a permit or identification card, other than those that are
27 specifically set forth in this chapter.

28 g. Disposition of fees. All fees for permits shall be paid to the
29 State Treasury if the permit is issued by the superintendent, to the
30 municipality if issued by the chief of police, and to the county treasurer
31 if issued by the judge of the Superior Court.

32 h. Form of permit; quadruplicate; disposition of copies. The permit
33 shall be in the form prescribed by the superintendent and shall be
34 issued to the applicant in quadruplicate. Prior to the time he receives
35 the handgun from the seller, the applicant shall deliver to the seller the
36 permit in quadruplicate and the seller shall complete all of the
37 information required on the form. Within five days of the date of the
38 sale, the seller shall forward the original copy to the superintendent
39 and the second copy to the chief of police of the municipality in which
40 the purchaser resides, except that in a municipality having no chief of
41 police, such copy shall be forwarded to the superintendent. The third
42 copy shall then be returned to the purchaser with the pistol or revolver
43 and the fourth copy shall be kept by the seller as a permanent record.

44 i. Restriction on number of firearms person may purchase. Only
45 one handgun shall be purchased or delivered on each permit, but a
46 person shall not be restricted as to the number of rifles or shotguns he

1 may purchase, provided he possesses a valid firearms purchaser
2 identification card and provided further that he signs the certification
3 required in subsection b. of this section for each transaction.

4 j. Firearms passing to heirs or legatees. Notwithstanding any other
5 provision of this section concerning the transfer, receipt or acquisition
6 of a firearm, a permit to purchase or a firearms purchaser identification
7 card shall not be required for the passing of a firearm upon the death
8 of an owner thereof to his heir or legatee, whether the same be by
9 testamentary bequest or by the laws of intestacy. The person who
10 shall so receive, or acquire said firearm shall, however, be subject to
11 all other provisions of this chapter. If the heir or legatee of such
12 firearm does not qualify to possess or carry it, he may retain ownership
13 of the firearm for the purpose of sale for a period not exceeding
14 180 days, or for such further limited period as may be approved by the
15 chief law enforcement officer of the municipality in which the heir or
16 legatee resides or the superintendent, provided that such firearm is in
17 the custody of the chief law enforcement officer of the municipality or
18 the superintendent during such period.

19 k. Sawed-off shotguns. Nothing in this section shall be construed
20 to authorize the purchase or possession of any sawed-off shotgun.

21 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the
22 sale or purchase of a visual distress signalling device approved by the
23 United States Coast Guard, solely for possession on a private or
24 commercial aircraft or any boat; provided, however, that no person
25 under the age of 18 years shall purchase nor shall any person sell to a
26 person under the age of 18 years such a visual distress signalling
27 device.

28 (cf: P.L.1991, c.261, s.19).

29
30 5. This act shall take effect immediately.

31
32
33 STATEMENT
34

35 Domestic violence, child abuse and stalking are serious offenses
36 which frequently involve violence and can have fatal consequences.
37 This bill is intended to reduce the likelihood of serious injury or death
38 in such cases.

39 The bill requires a police officer, who has probable cause to believe
40 that an act of domestic violence has been committed, to seize any
41 weapons on the premises he believes to pose a threat to the victim.
42 Current law permits, but does not require, the officer to seize such
43 weapons. The bill also requires the officer to confiscate any firearms
44 purchaser identifications cards or handgun purchase permits belonging
45 to the accused perpetrator of domestic violence.

46 The bill also would prohibit persons who have been found guilty of

1 crimes or disorderly persons offenses for domestic violence, child
2 abuse or stalking from purchasing or owning firearms.

3 Existing law disqualifies a person who has been convicted of certain
4 serious crimes from purchasing or owning a firearm. This bill adds the
5 crimes of domestic violence and stalking to these serious crimes. A
6 person who purchases or possesses a firearm in violation of this law
7 would be guilty of a crime of the second degree, punishable by
8 imprisonment for five to 10 years, a fine of up to \$100,000 or both.
9 Current law prohibits persons convicted of child abuse from having
10 firearms.

11 However, some offenses that constitute endangering the welfare of
12 a child, domestic violence or stalking may be charged as a disorderly
13 persons offense, which is not defined as a crime under Title 2C, the
14 criminal code. Also, offenses originally charged as a crime may be
15 downgraded to disorderly persons offenses as the result of a plea
16 bargain. Persons found guilty of this lesser charge are not subject to
17 existing prohibitions against the purchase and ownership of firearms
18 by persons convicted of a crime.

19 This bill closes this "loophole" by barring any person convicted of
20 a disorderly persons offense for domestic violence, endangering the
21 welfare of a child or stalking from purchasing or owning a firearm. A
22 violator would be guilty of a crime of the fourth degree which is
23 punishable by imprisonment for a term of up to 18 months, a fine of up
24 to \$7,500 or both.

25 Persons convicted of disorderly persons offenses for domestic
26 violence or endangering the welfare of a child would be eligible under
27 the bill to possess a firearm two years after their conviction or release
28 from imprisonment, whichever came later, if they had not been
29 convicted of subsequent offenses.

30 The bill also strengthens the prohibitions on the purchase or
31 possession of firearms by persons who are subject to domestic
32 violence restraining orders. The bill would require the court to bar a
33 person subject to such an order from purchasing a firearm for two
34 years or the duration of the order. Under the terms of the bill,
35 possession of a firearm by a person subject to a restraining order
36 would constitute a crime of the fourth degree.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 276

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 11, 2003

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 276.

Assembly Bill No. 276 prohibits firearm possession by persons convicted of a domestic violence crime or a domestic violence disorderly persons offense, stalking or subject to a domestic violence restraining order.

Under the provisions of N.J.S.2C:39-7, persons convicted of certain serious crimes are barred from purchasing or owning a firearm. A violation of this statute constitutes a crime of the second degree. This bill provides that persons convicted of stalking and persons convicted of crimes involving domestic violence would also be barred from purchasing or owning a firearm under that statute.

Under the provisions of N.J.S.A.2C:25-21, a law enforcement officer at the scene of an alleged act of domestic violence who has probable cause to believe that an act of domestic violence has been committed may seize any weapons on the premises he believes to pose a threat to the victim. Section 1 of the bill provides that in this situation the law enforcement officer must seize such weapons and any firearms purchaser identification card or permit to purchase a handgun belonging to the person accused of the act of domestic violence.

Section 2 of the bill amends N.J.S.A.2C:25-29 to require that any permanent domestic violence restraining order issued by the family court must include a provision barring the defendant from purchasing, owning, possessing or controlling a firearm and from receiving a firearms purchaser identification card or permit to purchase a handgun. The ban would last for the length of time the restraining order is in effect or for two years, whichever is greater. As amended by this committee, this provision of section 2 of the bill would not apply to a law enforcement officer while on duty or to a member of the United States Armed Forces or the National Guard while on duty or traveling to or from a place of duty.

Section 3 of the bill, as originally introduced, had provided that a person whose weapon was seized by a law enforcement officer pursuant to the domestic violence act or who was barred from

purchasing a firearm pursuant to a court order under the domestic violence act would be guilty of a crime of the fourth degree if he purchased, owned, possessed or controlled a firearm. The committee amended this section of the bill to make it a crime of the third degree to purchase, own, possess or control a firearm under these circumstances. The amendments also clarify the language of this provision, so that it now refers to a person whose firearm is seized pursuant to the domestic violence act and whose firearm has not been returned, and to a person who is subject to a court order prohibiting the possession of firearms issued pursuant to the domestic violence act.

The committee also made several stylistic and language changes to the bill so that it conforms to its Senate counterpart S483. In addition, the committee made technical amendments to the bill to conform it with recent legislative enactments.

COMMITTEE AMENDMENTS

The committee amended the bill to:

- (1) provide an exemption to the prohibition on gun possession for a law enforcement officer while on duty or to a member of the United States Armed Forces or the National Guard while on duty or traveling to or from a place of duty.
- (2) make it a crime of the third degree to purchase, own, possess or control a firearm if it has been prohibited by the provisions of this bill.
- (3) make the bill identical to the Senate version.
- (4) make technical corrections.

SENATE, No. 483

STATE OF NEW JERSEY 210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator JOHN O. BENNETT

District 12 (Mercer and Monmouth)

Co-Sponsored by:

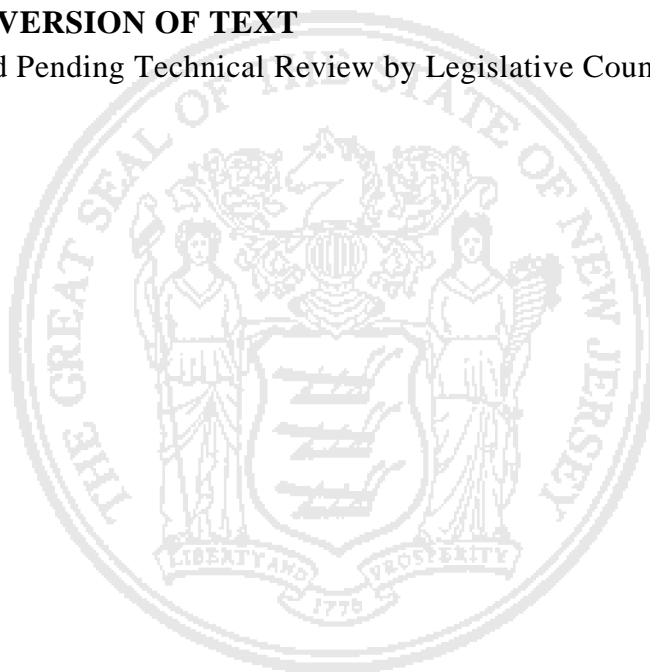
Senators Turner, Gill and Sarlo

SYNOPSIS

Prohibits person convicted of child abuse, domestic violence or stalking from purchasing or owning a firearm.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 11/25/2003)

1 AN ACT concerning firearms and amending sections 5 and 13 of
2 P.L.1991, c.261, N.J.S.2C:39-7 and N.J.S.2C:58-3.

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

6
7 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to read
8 as follows:

9 5. a. When a person claims to be a victim of domestic violence,
10 and where a law enforcement officer responding to the incident finds
11 probable cause to believe that domestic violence has occurred, the law
12 enforcement officer shall arrest the person who is alleged to be the
13 person who subjected the victim to domestic violence and shall sign a
14 criminal complaint if:

15 (1) The victim exhibits signs of injury caused by an act of domestic
16 violence;

17 (2) A warrant is in effect;

18 (3) There is probable cause to believe that the person has violated
19 N.J.S.2C:29-9, and there is probable cause to believe that the person
20 has been served with the order alleged to have been violated. If the
21 victim does not have a copy of a purported order, the officer may
22 verify the existence of an order with the appropriate law enforcement
23 agency; or

24 (4) There is probable cause to believe that a weapon as defined in
25 N.J.S.2C:39-1 has been involved in the commission of an act of
26 domestic violence.

27 b. A law enforcement officer may arrest a person; or may sign a
28 criminal complaint against that person, or may do both, where there is
29 probable cause to believe that an act of domestic violence has been
30 committed, but where none of the conditions in subsection a. of this
31 section applies.

32 c. (1) As used in this section, the word "exhibits" is to be liberally
33 construed to mean any indication that a victim has suffered bodily
34 injury, which shall include physical pain or any impairment of physical
35 condition. Where the victim exhibits no visible sign of injury, but
36 states that an injury has occurred, the officer should consider other
37 relevant factors in determining whether there is probable cause to
38 make an arrest.

39 (2) In determining which party in a domestic violence incident is
40 the victim where both parties exhibit signs of injury, the officer should
41 consider the comparative extent of the injuries, the history of domestic
42 violence between the parties, if any, and any other relevant factors.

43 (3) No victim shall be denied relief or arrested or charged under

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

Matter underlined thus is new matter.

1 this act with an offense because the victim used reasonable force in self
2 defense against domestic violence by an attacker.

3 d. (1) In addition to a law enforcement officer's authority to seize
4 any weapon that is contraband, evidence or an instrumentality of
5 crime, a law enforcement officer who has probable cause to believe
6 that an act of domestic violence has been committed [may] shall:

7 (a) question persons present to determine whether there are
8 weapons on the premises; and

9 (b) upon observing or learning that a weapon is present on the
10 premises, seize any weapon that the officer reasonably believes would
11 expose the victim to a risk of serious bodily injury.

12 (2) A law enforcement officer shall deliver all weapons seized
13 pursuant to this section to the county prosecutor and shall append an
14 inventory of all seized weapons to the domestic violence report.

15 (3) Weapons seized in accordance with the [above] "Prevention of
16 Domestic Violence Act of 1991," P.L.1991,c.261 (C.2C:25-17 et seq.)
17 shall be returned to the owner except upon order of the Superior
18 Court. The prosecutor who has possession of the seized weapons
19 may, upon notice to the owner, petition a judge of the Family Part of
20 the Superior Court, Chancery Division, within 45 days of seizure, to
21 obtain title to the seized weapons, or to revoke any and all permits,
22 licenses and other authorizations for the use, possession, or ownership
23 of such weapons pursuant to the law governing such use, possession,
24 or ownership, or may object to the return of the weapons on such
25 grounds as are provided for the initial rejection or later revocation of
26 the authorizations, or on the grounds that the owner is unfit or that the
27 owner poses a threat to the public in general or a person or persons in
28 particular.

29 A hearing shall be held and a record made thereof within [15]
30 45 days of the notice provided above. No formal pleading and no
31 filing fee shall be required as a preliminary to such hearing. The
32 hearing shall be summary in nature. Appeals from the results of the
33 hearing shall be to the Superior Court, Appellate Division, in
34 accordance with the law.

35 If the prosecutor does not institute an action within 45 days of
36 seizure, the seized weapons shall be returned to the owner.

37 After the hearing the court shall order the return of the firearms,
38 weapons and any authorization papers relating to the seized weapons
39 to the owner if the court determines the owner is not subject to any of
40 the disabilities set forth in N.J.S.2C:58-3c. and finds that the complaint
41 has been dismissed at the request of the complainant and the
42 prosecutor determines that there is insufficient probable cause to
43 indict; or if the defendant is found not guilty of the charges; or if the
44 court determines that the domestic violence situation no longer exists.
45 Nothing in this act shall impair the right of the State to retain evidence
46 pending a criminal prosecution. Nor shall any provision of this act be

1 construed to limit the authority of the State or a law enforcement
2 officer to seize, retain or forfeit property pursuant to chapter 64 of
3 Title 2C of the New Jersey Statutes.

4 If, after the hearing, the court determines that the weapons are not
5 to be returned to the owner, the court may:

6 (a) With respect to weapons other than firearms, order the
7 prosecutor to dispose of the weapons if the owner does not arrange
8 for the transfer or sale of the weapons to an appropriate person within
9 60 days; or

10 (b) Order the revocation of the owner's firearms purchaser
11 identification card or any permit, license or authorization, in which
12 case the court shall order the owner to surrender any firearm seized
13 and all other firearms possessed to the prosecutor and shall order the
14 prosecutor to dispose of the firearms if the owner does not arrange for
15 the sale of the firearms to a registered dealer of the firearms within 60
16 days; or

17 (c) Order such other relief as it may deem appropriate. When the
18 court orders the weapons forfeited to the State or the prosecutor is
19 required to dispose of the weapons, the prosecutor shall dispose of the
20 property as provided in N.J.S.2C:64-6.

21 (4) A civil suit may be brought to enjoin a wrongful failure to
22 return a seized firearm where the prosecutor refuses to return the
23 weapon after receiving a written request to do so and notice of the
24 owner's intent to bring a civil action pursuant to this section. Failure
25 of the prosecutor to comply with the provisions of this act shall entitle
26 the prevailing party in the civil suit to reasonable costs, including
27 attorney's fees, provided that the court finds that the prosecutor failed
28 to act in good faith in retaining the seized weapon.

29 (5) [No law enforcement officer or agency shall be held liable in
30 any civil action brought by any person for failing to learn of, locate or
31 seize a weapon pursuant to this act, or for returning a seized weapon
32 to its owner.] No law enforcement officer or agency shall be held
33 liable in any civil action brought by any person for failing to learn of,
34 locate or seize a weapon pursuant to this act, or for returning a seized
35 weapon to its owner.

36 (6) If a weapon is found on the premises, the law enforcement
37 officer shall demand and confiscate any firearms purchaser
38 identification card or permit to purchase a handgun issued pursuant to
39 N.J.S.2C:58-3 from the person accused of the act of domestic
40 violence. The law enforcement officer shall deliver the confiscated
41 card or permit to the county prosecutor's office.

42 (cf: P.L.1991, c.261, s.5)

43

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

46 13. a. A hearing shall be held in the Family Part of the Chancery

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

- 18 (1) The previous history of domestic violence between the plaintiff
19 and defendant, including threats, harassment and physical abuse;
- 20 (2) The existence of immediate danger to person or property;
- 21 (3) The financial circumstances of the plaintiff and defendant;
- 22 (4) The best interests of the victim and any child;
- 23 (5) In determining custody and parenting time the protection of the
24 victim's safety; and
- 25 (6) The existence of a verifiable order of protection from another
26 jurisdiction.

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

36 b. In proceedings in which complaints for restraining orders have
37 been filed, the court shall grant any relief necessary to prevent further
38 abuse. In addition to any other provisions, any restraining order
39 issued by the court shall bar the defendant from purchasing, owning,
40 possessing or controlling a firearm and from receiving a firearms
41 purchaser identification card or permit to purchase a handgun pursuant
42 to N.J.S.2C:58-3 during the period in which the restraining order is
43 in effect, except that this provision shall not apply to any law
44 enforcement officer while actually on duty, or to any member of the
45 Armed Forces of the United States or member of the National Guard
46 while actually on duty, or traveling to or from an authorized place of

1 duty. At the hearing the judge of the Family Part of the Chancery
2 Division of the Superior Court may issue an order granting any or all
3 of the following relief:

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

6 (2) An order granting exclusive possession to the plaintiff of the
7 residence or household regardless of whether the residence or
8 household is jointly or solely owned by the parties or jointly or solely
9 leased by the parties. This order shall not in any manner affect title or
10 interest to any real property held by either party or both jointly. If it
11 is not possible for the victim to remain in the residence, the court may
12 order the defendant to pay the victim's rent at a residence other than
13 the one previously shared by the parties if the defendant is found to
14 have a duty to support the victim and the victim requires alternative
15 housing.

16 (3) An order providing for parenting time. The order shall protect
17 the safety and well-being of the plaintiff and minor children and shall
18 specify the place and frequency of parenting time. Parenting time
19 arrangements shall not compromise any other remedy provided by the
20 court by requiring or encouraging contact between the plaintiff and
21 defendant. Orders for parenting time may include a designation of a
22 place of visitation away from the plaintiff, the participation of a third
23 party, or supervised parenting time.

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

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

36 (4) An order requiring the defendant to pay to the victim monetary
37 compensation for losses suffered as a direct result of the act of
38 domestic violence. The order may require the defendant to pay the
39 victim directly, to reimburse the Violent Crimes Compensation Board
40 for any and all compensation paid by the Violent Crime Compensation
41 Board directly to or on behalf of the victim, and may require that the
42 defendant reimburse any parties that may have compensated the
43 victim, as the court may determine. Compensatory losses shall
44 include, but not be limited to, loss of earnings or other support,
45 including child or spousal support, out-of-pocket losses for injuries
46 sustained, cost of repair or replacement of real or personal property

1 damaged or destroyed or taken by the defendant, cost of counseling
2 for the victim, moving or other travel expenses, reasonable attorney's
3 fees, court costs, and compensation for pain and suffering. Where
4 appropriate, punitive damages may be awarded in addition to
5 compensatory damages.

6 (5) An order requiring the defendant to receive professional
7 domestic violence counseling from either a private source or a source
8 appointed by the court and, in that event, requiring the defendant to
9 provide the court at specified intervals with documentation of
10 attendance at the professional counseling. The court may order the
11 defendant to pay for the professional counseling.

12 No application by the defendant to dissolve a final order which
13 contains a requirement for attendance at professional counseling
14 pursuant to this paragraph shall be granted by the court unless, in
15 addition to any other provisions required by law or conditions ordered
16 by the court, the defendant has completed all required attendance at
17 such counseling.

18 (6) An order restraining the defendant from entering the residence,
19 property, school, or place of employment of the victim or of other
20 family or household members of the victim and requiring the defendant
21 to stay away from any specified place that is named in the order and
22 is frequented regularly by the victim or other family or household
23 members.

24 (7) An order restraining the defendant from making contact with
25 the plaintiff or others, including an order forbidding the defendant
26 from personally or through an agent initiating any communication
27 likely to cause annoyance or alarm including, but not limited to,
28 personal, written, or telephone contact with the victim or other family
29 members, or their employers, employees, or fellow workers, or others
30 with whom communication would be likely to cause annoyance or
31 alarm to the victim.

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

38 (9) An order granting either party temporary possession of
39 specified personal property, such as an automobile, checkbook,
40 documentation of health insurance, an identification document, a key,
41 and other personal effects.

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

46 (11) An order awarding temporary custody of a minor child. The

1 court shall presume that the best interests of the child are served by an
2 award of custody to the non-abusive parent.

3 (12) An order requiring that a law enforcement officer accompany
4 either party to the residence or any shared business premises to
5 supervise the removal of personal belongings in order to ensure the
6 personal safety of the plaintiff when a restraining order has issued.
7 This order shall be restricted in duration.

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

9 (14) An order granting any other appropriate relief for the plaintiff
10 and dependent children, provided that the plaintiff consents to such
11 relief, including relief requested by the plaintiff at the final hearing,
12 whether or not the plaintiff requested such relief at the time of the
13 granting of the initial emergency order.

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

17 (16) **[An order]** In addition to the order required by subsection b.
18 of section 13 of P.L.1991, c.261 (C.2C:25-29b.) prohibiting the
19 defendant from possessing any firearm **[or]**, the court may also issue
20 an order prohibiting the defendant from possessing any other weapon
21 enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search
22 for and seizure of any such weapon at any location where the judge
23 has reasonable cause to believe the weapon is located. The judge shall
24 state with specificity the reasons for and scope of the search and
25 seizure authorized by the order.

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

34 (18) An order requiring the defendant to undergo a psychiatric
35 evaluation.

36 c. Notice of orders issued pursuant to this section shall be sent by
37 the clerk of the Family Part of the Chancery Division of the Superior
38 Court or other person designated by the court to the appropriate chiefs
39 of police, members of the State Police and any other appropriate law
40 enforcement agency.

41 d. Upon good cause shown, any final order may be dissolved or
42 modified upon application to the Family Part of the Chancery Division
43 of the Superior Court, but only if the judge who dissolves or modifies
44 the order is the same judge who entered the order, or has available a
45 complete record of the hearing or hearings on which the order was
46 based.

1 e. Prior to the issuance of any order pursuant to this section, the
2 court shall order that a search be made of the domestic violence
3 registry.

4 (cf: P.L.1999, c.421, s.4)

5
6 3. Section 6 of P.L.1979, c.179 (C.2C:39-7) is amended to read as
7 follows:

8 6. Certain Persons Not to Have Weapons.

9 a. Except as provided in subsection b. of this section, any person,
10 having been convicted in this State or elsewhere of the crime of
11 aggravated assault, arson, burglary, escape, extortion, homicide,
12 kidnapping, robbery, aggravated sexual assault, sexual assault or
13 endangering the welfare of a child pursuant to N.J.S.2C:24-4, whether
14 or not armed with or having in his possession any weapon enumerated
15 in subsection r. of N.J.S.2C:39-1, or any person convicted of a crime
16 pursuant to the provisions of N.J.S.2C:39-3, N.J.S.2C:39-4 or
17 N.J.S.2C:39-9, or any person who has ever been committed for a
18 mental disorder to any hospital, mental institution or sanitarium unless
19 he possesses a certificate of a medical doctor or psychiatrist licensed
20 to practice in New Jersey or other satisfactory proof that he is no
21 longer suffering from a mental disorder which interferes with or
22 handicaps him in the handling of a firearm, or any person who has been
23 convicted of other than a disorderly persons or petty disorderly
24 persons offense for the unlawful use, possession or sale of a controlled
25 dangerous substance as defined in N.J.S.2C:35-2 who purchases,
26 owns, possesses or controls any of the said weapons is guilty of a
27 crime of the fourth degree.

28 b. (1) A person having been convicted in this State or elsewhere
29 of the crime of aggravated assault, arson, burglary, escape, extortion,
30 homicide, kidnapping, robbery, aggravated sexual assault, sexual
31 assault [or], endangering the welfare of a child pursuant to
32 N.J.S.2C:24-4, stalking pursuant to P.L.1992, c.209 (C.2C:12-10) or
33 a crime involving domestic violence as defined in section 3 of
34 P.L.1991, c.261 (C.2C:25-19), whether or not armed with or having
35 in his possession a weapon enumerated in subsection r. of
36 N.J.S.2C:39-1, or a person having been convicted of a crime pursuant
37 to the provisions of N.J.S.2C:35-3 through N.J.S.2C:35-6, inclusive;
38 section 1 of P.L.1987, c.101 (C.2C:35-7); N.J.S.2C:35-11;
39 N.J.S.2C:39-3; N.J.S.2C:39-4; or N.J.S.2C:39-9 who purchases,
40 owns, possesses or controls a firearm is guilty of a crime of the second
41 degree.

42 (2) A person having been convicted in this State or elsewhere of a
43 disorderly persons offense involving domestic violence, whether or
44 not armed with or having in his possession a weapon enumerated in
45 subsection r. of N.J.S.2C:39-1, who purchases, owns, possesses or
46 controls a firearm is guilty of a crime of the fourth degree.

1 (3) A person whose weapon has been seized pursuant to subsection
2 d. of section 5 of P.L.1991, c.261 (C.2C:25-21) or who is subject to
3 the prohibitions on the purchase of firearms provided in subsection b.
4 of section 13 of P.L.1991, c.261 (C.2C:25-29) who purchases, owns,
5 possesses or controls a firearm is guilty of a crime of the fourth
6 degree.

7 c. Whenever any person shall have been convicted in another state,
8 territory, commonwealth or other jurisdiction of the United States, or
9 any country in the world, in a court of competent jurisdiction, of a
10 crime which in said other jurisdiction or country is comparable to one
11 of the crimes enumerated in subsection a. or b. of this section, then
12 that person shall be subject to the provisions of this section.

13 (cf: P.L.1995, c.114, s.1).

14
15 4. N.J.S.2C:58-3 is amended to read as follows:

16 2C:58-3. Purchase of Firearms.

17 a. Permit to purchase a handgun. No person shall sell, give,
18 transfer, assign or otherwise dispose of, nor receive, purchase, or
19 otherwise acquire a handgun unless the purchaser, assignee, donee,
20 receiver or holder is licensed as a dealer under this chapter or has first
21 secured a permit to purchase a handgun as provided by this section.

22 b. Firearms purchaser identification card. No person shall sell,
23 give, transfer, assign or otherwise dispose of nor receive, purchase or
24 otherwise acquire an antique cannon or a rifle or shotgun, other than
25 an antique rifle or shotgun, unless the purchaser, assignee, donee,
26 receiver or holder is licensed as a dealer under this chapter or
27 possesses a valid firearms purchaser identification card, and first
28 exhibits said card to the seller, donor, transferor or assignor, and
29 unless the purchaser, assignee, donee, receiver or holder signs a
30 written certification, on a form prescribed by the superintendent,
31 which shall indicate that he presently complies with the requirements
32 of subsection c. of this section and shall contain his name, address and
33 firearms purchaser identification card number or dealer's registration
34 number. The said certification shall be retained by the seller, as
35 provided in section 2C:58-2a., or, in the case of a person who is not
36 a dealer, it may be filed with the chief of police of the municipality in
37 which he resides or with the superintendent.

38 c. Who may obtain. No person of good character and good repute
39 in the community in which he lives, and who is not subject to any of
40 the disabilities set forth in this section or other sections of this chapter,
41 shall be denied a permit to purchase a handgun or a firearms purchaser
42 identification card, except as hereinafter set forth. No handgun
43 purchase permit or firearms purchaser identification card shall be
44 issued:

45 (1) To any person who has been convicted of a crime, whether or
46 not armed with or possessing a weapon at the time of such offense;

1 (2) To any drug dependent person as defined in section 2 of
2 P.L.1970, c.226 (C.24:21-2), to any person who is confined for a
3 mental disorder to a hospital, mental institution or sanitarium, or to
4 any person who is presently an habitual drunkard;

5 (3) To any person who suffers from a physical defect or disease
6 which would make it unsafe for him to handle firearms, to any person
7 who has ever been confined for a mental disorder, or to any alcoholic
8 unless any of the foregoing persons produces a certificate of a medical
9 doctor or psychiatrist licensed in New Jersey, or other satisfactory
10 proof, that he is no longer suffering from that particular disability in
11 such a manner that would interfere with or handicap him in the
12 handling of firearms; to any person who knowingly falsifies any
13 information on the application form for a handgun purchase permit or
14 firearms purchaser identification card;

15 (4) To any person under the age of 18 years for a firearms
16 purchaser identification card and to any person under the age of 21
17 years for a permit to purchase a handgun;

18 (5) To any person where the issuance would not be in the interest
19 of the public health, safety or welfare; or

20 (6) To any person who is subject to a restraining order or court
21 order issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29)
22 prohibiting the person from possessing any firearm. A person who is
23 subject to a restraining order or court order issued pursuant to section
24 13 of P.L.1991, c.261 (C.2C:25-29) prohibiting the person from
25 possessing any firearm shall be barred from receiving a handgun
26 purchase permit or firearms purchaser identification card for the period
27 in which the restraining order is in effect. At the conclusion of that
28 period, the defendant may apply for a permit or identification card; or

29 (7) To any person who as a juvenile was adjudicated delinquent for
30 an offense which, if committed by an adult, would constitute a crime
31 and the offense involved the unlawful use or possession of a firearm;
32 or

33 (8) To any person who is subject to the restrictions imposed by
34 paragraphs (2) or (3) of subsection b. of section 6 of P.L.1979, c.179
35 (C.2C:39-7).

36 d. Issuance. The chief of police of an organized full-time police
37 department of the municipality where the applicant resides or the
38 superintendent, in all other cases, shall upon application, issue to any
39 person qualified under the provisions of subsection c. of this section
40 a permit to purchase a handgun or a firearms purchaser identification
41 card.

42 Any person aggrieved by the denial of a permit or identification
43 card may request a hearing in the Superior Court of the county in
44 which he resides if he is a resident of New Jersey or in the Superior
45 Court of the county in which his application was filed if he is a
46 nonresident. The request for a hearing shall be made in writing within

1 30 days of the denial of the application for a permit or identification
2 card. The applicant shall serve a copy of his request for a hearing
3 upon the chief of police of the municipality in which he resides, if he
4 is a resident of New Jersey, and upon the superintendent in all cases.
5 The hearing shall be held and a record made thereof within 30 days of
6 the receipt of the application for such hearing by the judge of the
7 Superior Court. No formal pleading and no filing fee shall be required
8 as a preliminary to such hearing. Appeals from the results of such
9 hearing shall be in accordance with law.

10 e. Applications. Applications for permits to purchase a handgun
11 and for firearms purchaser identification cards shall be in the form
12 prescribed by the superintendent and shall set forth the name,
13 residence, place of business, age, date of birth, occupation, sex and
14 physical description, including distinguishing physical characteristics,
15 if any, of the applicant, and shall state whether the applicant is a
16 citizen, whether he is an alcoholic, habitual drunkard, drug dependent
17 person as defined in section 2 of P.L.1970, c.226 (C.24:21-2), whether
18 he has ever been confined or committed to a mental institution or
19 hospital for treatment or observation of a mental or psychiatric
20 condition on a temporary, interim or permanent basis, giving the name
21 and location of the institution or hospital and the dates of such
22 confinement or commitment, whether he has been attended, treated or
23 observed by any doctor or psychiatrist or at any hospital or mental
24 institution on an inpatient or outpatient basis for any mental or
25 psychiatric condition, giving the name and location of the doctor,
26 psychiatrist, hospital or institution and the dates of such occurrence,
27 whether he presently or ever has been a member of any organization
28 which advocates or approves the commission of acts of force and
29 violence to overthrow the Government of the United States or of this
30 State, or which seeks to deny others their rights under the Constitution
31 of either the United States or the State of New Jersey, whether he has
32 ever been convicted of a crime or disorderly persons offense, whether
33 the person [is] has been subject to a restraining order or a court order
34 issued pursuant to section 13 of P.L.1991, c.261 (C.2C:25-29)
35 prohibiting the person from possessing any firearm, and such other
36 information as the superintendent shall deem necessary for the proper
37 enforcement of this chapter. For the purpose of complying with this
38 subsection, the applicant shall waive any statutory or other right of
39 confidentiality relating to institutional confinement. The application
40 shall be signed by the applicant and shall contain as references the
41 names and addresses of two reputable citizens personally acquainted
42 with him.

43 Application blanks shall be obtainable from the superintendent,
44 from any other officer authorized to grant such permit or identification
45 card, and from licensed retail dealers.

46 The chief police officer or the superintendent shall obtain the

1 fingerprints of the applicant and shall have them compared with any
2 and all records of fingerprints in the municipality and county in which
3 the applicant resides and also the records of the State Bureau of
4 Identification and the Federal Bureau of Investigation, provided that
5 an applicant for a handgun purchase permit who possesses a valid
6 firearms purchaser identification card, or who has previously obtained
7 a handgun purchase permit from the same licensing authority for which
8 he was previously fingerprinted, and who provides other reasonably
9 satisfactory proof of his identity, need not be fingerprinted again;
10 however, the chief police officer or the superintendent shall proceed
11 to investigate the application to determine whether or not the applicant
12 has become subject to any of the disabilities set forth in this chapter.

13 f. Granting of permit or identification card; fee; term; renewal;
14 revocation. The application for the permit to purchase a handgun
15 together with a fee of \$2.00, or the application for the firearms
16 purchaser identification card together with a fee of \$5.00, shall be
17 delivered or forwarded to the licensing authority who shall investigate
18 the same and, unless good cause for the denial thereof appears, shall
19 grant the permit or the identification card, or both, if application has
20 been made therefor, within 30 days from the date of receipt of the
21 application for residents of this State and within 45 days for
22 nonresident applicants. A permit to purchase a handgun shall be valid
23 for a period of 90 days from the date of issuance and may be renewed
24 by the issuing authority for good cause for an additional 90 days. A
25 firearms purchaser identification card shall be valid until such time as
26 the holder becomes subject to any of the disabilities set forth in
27 subsection c. of this section, whereupon the card shall be void and
28 shall be returned within five days by the holder to the superintendent,
29 who shall then advise the licensing authority. Failure of the holder to
30 return the firearms purchaser identification card to the superintendent
31 within the said five days shall be an offense under section 2C:39-10a.
32 Any firearms purchaser identification card may be revoked by the
33 Superior Court of the county wherein the card was issued, after
34 hearing upon notice, upon a finding that the holder thereof no longer
35 qualifies for the issuance of such permit. The county prosecutor of
36 any county, the chief police officer of any municipality or any citizen
37 may apply to such court at any time for the revocation of such card.

38 There shall be no conditions or requirements added to the form or
39 content of the application, or required by the licensing authority for
40 the issuance of a permit or identification card, other than those that are
41 specifically set forth in this chapter.

42 g. Disposition of fees. All fees for permits shall be paid to the
43 State Treasury if the permit is issued by the superintendent, to the
44 municipality if issued by the chief of police, and to the county treasurer
45 if issued by the judge of the Superior Court.

46 h. Form of permit; quadruplicate; disposition of copies. The permit

1 shall be in the form prescribed by the superintendent and shall be
2 issued to the applicant in quadruplicate. Prior to the time he receives
3 the handgun from the seller, the applicant shall deliver to the seller the
4 permit in quadruplicate and the seller shall complete all of the
5 information required on the form. Within five days of the date of the
6 sale, the seller shall forward the original copy to the superintendent
7 and the second copy to the chief of police of the municipality in which
8 the purchaser resides, except that in a municipality having no chief of
9 police, such copy shall be forwarded to the superintendent. The third
10 copy shall then be returned to the purchaser with the pistol or revolver
11 and the fourth copy shall be kept by the seller as a permanent record.

12 i. Restriction on number of firearms person may purchase. Only
13 one handgun shall be purchased or delivered on each permit, but a
14 person shall not be restricted as to the number of rifles or shotguns he
15 may purchase, provided he possesses a valid firearms purchaser
16 identification card and provided further that he signs the certification
17 required in subsection b. of this section for each transaction.

18 j. Firearms passing to heirs or legatees. Notwithstanding any other
19 provision of this section concerning the transfer, receipt or acquisition
20 of a firearm, a permit to purchase or a firearms purchaser identification
21 card shall not be required for the passing of a firearm upon the death
22 of an owner thereof to his heir or legatee, whether the same be by
23 testamentary bequest or by the laws of intestacy. The person who
24 shall so receive, or acquire said firearm shall, however, be subject to
25 all other provisions of this chapter. If the heir or legatee of such
26 firearm does not qualify to possess or carry it, he may retain ownership
27 of the firearm for the purpose of sale for a period not exceeding 180
28 days, or for such further limited period as may be approved by the
29 chief law enforcement officer of the municipality in which the heir or
30 legatee resides or the superintendent, provided that such firearm is in
31 the custody of the chief law enforcement officer of the municipality or
32 the superintendent during such period.

33 k. Sawed-off shotguns. Nothing in this section shall be construed
34 to authorize the purchase or possession of any sawed-off shotgun.

35 l. Nothing in this section and in N.J.S.2C:58-2 shall apply to the
36 sale or purchase of a visual distress signalling device approved by the
37 United States Coast Guard, solely for possession on a private or
38 commercial aircraft or any boat; provided, however, that no person
39 under the age of 18 years shall purchase nor shall any person sell to a
40 person under the age of 18 years such a visual distress signalling
41 device.

42 (cf: P.L.2001, c.3, s.1).

43

44 5. (New section) The Attorney General may adopt, pursuant to the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), rules and regulations necessary and appropriate to implement
47 this act.

1 6. This act shall take effect immediately.

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STATEMENT

5

6 Under existing law, persons convicted of certain serious crimes who
7 purchase or own a firearm are guilty of a crime of the second degree.
8 The bill adds domestic violence and stalking to those crimes.

9 This bill would also provide that a person convicted of a disorderly
10 persons offense involving domestic violence would be banned from
11 purchasing or owning a firearm. Violation of this provision would be
12 punishable as a crime of the fourth degree.

13 In addition, this bill requires a police officer who has probable
14 cause to believe that an act of domestic violence has been committed,
15 to seize any weapons on the premises he believes to pose a threat to
16 the victim. Current law permits, but does not require, the officer to
17 seize such weapons. The bill also requires the officer to confiscate
18 any firearms purchaser identification cards or handgun purchase
19 permits belonging to the person accused of domestic violence.

20 The bill also strengthens the prohibitions on the purchase or
21 possession of firearms by persons who are subject to domestic
22 violence restraining orders. The bill would require the court to bar a
23 person subject to such an order from purchasing a firearm for the
24 duration of the order. This bill makes an exception, however, to this
25 ban for law enforcement officers while on duty and for members of the
26 United States Armed Forces while on duty or traveling to or from a
27 place of duty. Under the bill, possession of a firearm by a person
28 subject to a restraining order would constitute a crime of the fourth
29 degree.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 483

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 24, 2003

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 483.

Under the provisions of N.J.S.A.2C:39-7, persons convicted of certain serious crimes are barred from purchasing or owning a firearm. Violation of this statute constitutes a crime of the second degree. This bill provides that persons convicted of stalking and persons convicted of crimes involving domestic violence would also be barred from purchasing or owning a firearm under that statute.

Under the provisions of N.J.S.A.2C:25-21, a law enforcement officer at the scene of an alleged act of domestic violence who has probable cause to believe that an act of domestic violence has been committed may seize any weapons on the premises he believes to pose a threat to the victim. Section 1 of the bill provides that in this situation the law enforcement officer must seize such weapons. In addition, section 1 provides that if weapons are seized under these circumstances, the officer must also seize any firearms purchaser identification card or permit to purchase a handgun belonging to the person accused of the act of domestic violence.

Section 2 of the bill amends N.J.S.A.2C:25-29 to require that any permanent domestic violence restraining order issued by the family court must include a provision barring the defendant from purchasing, owning, possessing or controlling a firearm and from receiving a firearms purchaser identification card or permit to purchase a handgun. As originally introduced, the bill required that the firearms ban would last for the length of time that the restraining order is in effect. As amended by the committee, the ban would last for the length of time the restraining order is in effect or for two years, whichever is greater. This provision of section 2 of the bill would not apply to a law enforcement officer while on duty or to a member of the United States Armed Forces or the National Guard while on duty or traveling to or from a place of duty.

Section 3 of the bill, as originally introduced, had provided that a person whose weapon was seized by a law enforcement officer pursuant to the domestic violence act or who was barred from

purchasing a firearm pursuant to a court order under the domestic violence act would be guilty of a crime of the fourth degree if he purchased, owned, possessed or controlled a firearm. The committee amended this section of the bill to make it a crime of the third degree to purchase, own, possess or control a firearm under these circumstances. The amendments also clarify the language of this provision, so that it now refers to a person whose firearm is seized pursuant to the domestic violence act and whose firearm has not been returned, and to a person who is subject to a court order prohibiting the possession of firearms issued pursuant to the domestic violence act.

The committee also made several stylistic and language changes to the bill, and made technical amendments to the bill to conform it with recent legislative enactments. N.J.S.A. 2C:39-7 has been amended by P.L. 2001, c.216 and P.L.2001, c.443. N.J.S.A.2C:58-3 has been amended by P.L.2003, c.73.

This bill was prefiled for introduction in the 2002 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.