

2C:25-26.1

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Domestic violence offenses-release)

NJSA: 2C:25-26.1

LAWS OF: 1994 **CHAPTER:** 137

BILL NO: A1602

SPONSOR(S): Solomon

DATE INTRODUCED: March 28, 1994

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** September 12, 1994
SENATE: October 3, 1994

DATE OF APPROVAL: October 31, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:
"Battering victims to get warning of abusers' release," 11-1-94, Asbury Park Press.

KBG:pp

DEPOSITORY COPY
Do Not Remove From Library

ASSEMBLY, No. 1602
STATE OF NEW JERSEY

INTRODUCED MARCH 28, 1994

By Assemblyman SOLOMON

1 AN ACT concerning domestic violence, amending and
2 supplementing chapter 25 of Title 2C of the New Jersey
3 Statutes.

4

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

7 1. (New section) Notwithstanding any other provision of law to
8 the contrary, whenever a defendant charged with a crime or an
9 offense involving domestic violence is released from custody the
10 prosecuting agency shall notify the victim.

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

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

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

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

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

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

35 (5) In determining custody and visitation the protection of the
36 victim's safety; and

37 (6) The existence of a verifiable order of protection from
38 another jurisdiction.

39 b. In proceedings in which complaints for restraining orders
40 have been filed, the court shall grant any relief necessary to
41 prevent further abuse. At the hearing the judge of the Family
42 Part of the Chancery Division of the Superior Court may issue an

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

Matter underlined thus is new matter.

1 order granting any or all of the following relief:

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

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

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

22 (a) The court shall consider a request by the plaintiff for an
23 investigation or evaluation by the appropriate agency to assess
24 the risk of harm to the child prior to the entry of a visitation
25 order. Any denial of such a request must be on the record and
26 shall only be made if the judge finds the request to be arbitrary
27 or capricious.

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

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

49 (5) An order requiring the defendant to receive professional
50 domestic violence counseling from either a private source or a
51 source appointed by the court and, in that event, at the court's
52 discretion requiring the defendant to provide the court at
53 specified intervals with documentation of attendance at the
54 professional counseling. The court may order the defendant to

1 pay for the professional counseling.

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

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

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

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

24 (10) An order awarding emergent monetary relief to the victim
25 and other dependents, if any. An ongoing obligation of support
26 shall be determined at a later date pursuant to applicable law.

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

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

35 (13) An order which permits the victim and the defendant to
36 occupy the same premises but limits the defendant's use of that
37 premises, but only if it is documented by the judge granting the
38 order that:

39 (a) The plaintiff specifically and voluntarily requests such an
40 order; and

41 (b) The judge determines that the request is made voluntarily
42 and with the plaintiff's knowledge that the order may not provide
43 the same protection as an order excluding the defendant from the
44 premises and with the plaintiff's knowledge that the order may
45 be difficult to enforce; and

46 (c) Any conditions placed upon the defendant in connection
47 with the continued access to the premises and any penalties for
48 noncompliance with those conditions shall be explicitly set out in
49 the order and shall be in addition to any other remedies for
50 noncompliance available to the victim.

51 (14) An order granting any other appropriate relief for the
52 plaintiff and dependent children, provided that the plaintiff
53 consents to such relief, including relief requested by the plaintiff
54 at the final hearing, whether or not the plaintiff requested such

1 relief at the time of the granting of the initial emergency order.

2 (15) An order that requires that the defendant report to the
3 intake unit of the Family Part of the Chancery Division of the
4 Superior Court 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
7 N.J.S.2C:39-1.

8 (17) An order requiring the defendant to undergo a psychiatric
9 evaluation.

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

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

20 (cf: P.L.1991, c.261, s.13)

21 3. This act shall take effect immediately.

22

23

24

STATEMENT

25

26

27 This bill would require the prosecuting agency to notify the
28 victim of a domestic violence matter whenever a defendant
29 charged with a crime or an offense involving domestic violence is
30 released from custody.

31 The bill would also allow the court to order a defendant
32 involved in a domestic violence matter to undergo psychiatric
33 examination.

34

35

36

37

38 Requires victim notification in domestic violence matters under
39 certain circumstances; allows psychiatric examinations of
40 defendants in domestic violence matters.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1602

STATE OF NEW JERSEY

DATED: MAY 19, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 1602.

This bill would require the prosecuting agency to notify the victim of a domestic violence matter whenever a defendant charged with a crime or an offense involving domestic violence is released from custody. In addition, this bill would allow the court to order a defendant involved in a domestic violence matter to undergo psychiatric examination.

This bill was prompted by events in Haddon Heights where Colleen McHugh, a Moorestown resident, was fatally shot by her former boyfriend, Eric Boettcher. Ms. McHugh was not notified when Mr. Boettcher posted bail and was released from the county jail. Mr. Boettcher was held in the county jail for violating a restraining order.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1602

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1994

The Senate Judiciary Committee reports favorably Assembly Bill No. 1602.

This bill would require the prosecuting agency to notify the victim in domestic violence matter whenever a defendant charged with a crime or an offense involving domestic violence is released from custody.

In addition, this bill would permit a judge on entering a permanent order in a domestic violence case to require the defendant to undergo a psychiatric evaluation.