



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Regarding the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act**

**December 06, 2021**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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## Project Summary<sup>1</sup>

The New Jersey Legislature considers domestic violence a serious crime against society.<sup>2</sup> As a result, the Legislature enacted the Prevention of Domestic Violence Act (PDVA) to “assure the victims of domestic violence the maximum protection from abuse the law can provide.”<sup>3</sup>

Consistent with the Commission’s mandate to consider the work of the Uniform Law Commission<sup>4</sup>, Staff reviewed the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act of 2015 (the “Act” or “RECDVPOA”), which proposes recognition of domestic-violence protection orders across international jurisdictions.<sup>5</sup> To determine whether any, or all, portions of the Act would be appropriate for enactment in New Jersey, Staff examined the New Jersey statutes that encompass this area of law.<sup>6</sup>

To update the statutory language of New Jersey’s Prevention of Domestic Violence Act, and support the legislative intent underlying it, Staff recommends modification of N.J.S. 2C:25-17 *et seq.*, N.J.S. 2C:29-9, 37-7 and 58-3 to incorporate the protections contained in the RECDVPOA and those recommended by the Office of the Attorney General.<sup>7</sup>

## Background

The Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act of 2015 (“the Act”) provides for the enforcement of domestic violence protection orders issued by Canadian courts.<sup>8</sup> The good will between the United States and Canada allows citizens to move freely between the two countries. In certain circumstances, this freedom of movement can work against victims of domestic violence.<sup>9</sup>

Canada granted recognition of protective orders of the United States through the Uniform Enforcement of Canadian Judgments and Decrees Act (“UECJDA”).<sup>10</sup> The RECDVPOA would grant similar recognition in New Jersey to orders of protection issued by Canadian courts.<sup>11</sup>

The UECJDA and the RECDVPOA are part of state, federal, and international efforts to recognize domestic-violence protection orders across jurisdictions.<sup>12</sup> The United States has been

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<sup>1</sup> Preliminary work on this project was performed by Jennifer Weitz, during her tenure with the N.J. Law Rev. Comm’n.

<sup>2</sup> N.J. STAT. ANN. § 2C:25-18 (West 2021).

<sup>3</sup> N.J. STAT. ANN. §§ 2C:25-17 to – 35 (West 2021).

<sup>4</sup> N.J. STAT. ANN. § 1:12A-8c (West 2021).

<sup>5</sup> UNIF. RECOG. AND ENF’T OF CANADIAN DOMESTIC VIOLENCE PROT. ORDERS ACT, FINAL ACT with Comments (UNIF. L. COMM’N 2015). Available at [www.uniformlaws.org](http://www.uniformlaws.org) (last visited Aug. 26, 2021). The uniform act will be referred to as the RECDVPOA in this report.

<sup>6</sup> N.J. STAT. ANN. §§ 2C:25-17 to – 35, :37-7, :58-3 (West 2021).

<sup>7</sup> Letter from Annmarie Taggart, Acting Director, Div. of Crim. Just., Off. of the Att’y Gen., to Jennifer Weitz, Counsel, N.J. Law Rev. Comm’n (June 14, 2021) (on file with the NJLRC).

<sup>8</sup> See RECDVPOA, *supra* n.5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

a part of these efforts since 1994, with its enactment of the Violence Against Women Act (VAWA).<sup>13</sup> The full faith and credit provision of the VAWA requires every jurisdiction, nationwide, to recognize and enforce valid protection orders issued in any jurisdiction.<sup>14</sup>

New Jersey has implemented the full faith and credit clause, as well as a suite of other protections for victims of domestic violence, through a combination of statutory provisions, guidelines from the Office of the Attorney General, Rules of Court, and modules prepared by the Administrative Office of the Courts and the Division of Criminal Justice.<sup>15</sup> The primary statutory mechanism for addressing domestic violence is the Prevention of Domestic Violence Act of 1991, N.J.S. 2C:25-17 *et seq.*<sup>16</sup> When it enacted the PDVA, the Legislature stated that

domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.<sup>17</sup>

While a victim of domestic violence who resides in this state can enforce a protective order issued by the courts of New Jersey, or any other jurisdiction in the country, no mechanism exists for enforcement of a protective order from Canada.<sup>18</sup> Enactment of the RECDVPOA would provide victims of domestic violence the maximum amount of relief under the law while furthering the legislative intent of the PDVA.

### **The Uniform Recognition and Enforcement of Canadian Domestic Violence Protective Orders Act**

In 2005, the Uniform Law Conference of Canada (ULCC) passed the Enforcement of Canadian Judgments and Decrees Act (ECJDA), which gave full faith and credit to judgments throughout the provinces and territories of Canada.<sup>19</sup> As originally written, the ECJDA provided a mechanism for the enforcement of non-money judgments.<sup>20</sup> In 2007, the ECJDA was retitled the Uniform Enforcement of Canadian Judgments and Decrees Amendment Act. The UECJDA was

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<sup>13</sup> Pub. L. No. 103-322, 108 Stat. 1902-55 (codified at various Sections of 8 U.S.C., 18 U.S.C. and 42 U.S.C.).

<sup>14</sup> 18 U.S.C. § 2265.

<sup>15</sup> *E.g.*, Jayne J. Johnson, Counsel, *Final Report Relating to Uniform Interstate Enf't of Domestic Violence Protection Orders Act*, p.6. On file with the New Jersey Law Rev. Comm'n. Available at [www.njlrc.org](http://www.njlrc.org).

<sup>16</sup> N.J. STAT. ANN. §§ 2C:25-17 to – 35 (West 2021).

<sup>17</sup> N.J. STAT. ANN. § 2C:25-18. (West 2021).

<sup>18</sup> RECDVPOA, *supra* n.5, § 2 cmt.

<sup>19</sup> Enf't of Canadian Judgments and Decrees Act Comment. Available at <https://www.ulcc-uhlc.ca/> (last visited Aug. 26, 2021).

<sup>20</sup> *Id.* at 3.

then amended in 2011 to provide for the recognition of foreign civil protection orders, including those of the United States.<sup>21</sup> The ULCC notes that the purpose of newly added Part III is to protect one individual from possible harm or harassment from another individual.<sup>22</sup>

Part III of the UECJDA now recognizes a “foreign civil protection order” prohibiting direct or indirect contact with a protected individual.<sup>23</sup> Specifically, the UECJDA recognizes and enforces only those parts of a foreign order that deal with:

- (a) being in physical proximity to a specified person or following a specified person from place to place;
- (b) contacting or communicating with, either directly or indirectly, a specified person;
- (c) attending at or with a certain distance of a specified place or location; or
- (d) engaging in molesting, annoying, harassing, or threatening conduct directed at a specified person.<sup>24</sup>

It does not address provisions relating to custody and visitation, as those are outside its scope.<sup>25</sup>

The Act is designed to mirror the legal status accorded protective orders from the United States (and other foreign countries) in Canadian courts through the UECJDA.<sup>26</sup> The Act follows the UECJDA by focusing on the immediate threat of domestic violence.<sup>27</sup> Under the Act, a “Canadian domestic-violence protection order” is defined as “a judgment... or order issued in a civil proceeding by a court of Canada” that prohibits a respondent from:

- (A) being in physical proximity to a protected individual or following a protected individual;
- (B) directly or indirectly contacting or communicating with a protected individual or other individual described in the order;
- (C) being within a certain distance of a specified place or location associated with a protected individual; or
- (D) molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.<sup>28</sup>

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<sup>21</sup> Amendments to the Unif. Enf’t of Canadian Judgments and Decrees Act – Foreign Civil Prot. Orders, 2011. *See also* RECDVPOA, Prefatory Note at 2.

<sup>22</sup> UECJDA (2011), Part III, § 9.1, cmt.

<sup>23</sup> *Id.* at Part III, § 9.1.

<sup>24</sup> *Id.* at Part III, § 9.1, cmt.

<sup>25</sup> ECJDA, § 2, Right to register [sic] Canadian Judgment, cmt.

<sup>26</sup> RECDVPOA, Prefatory Note at 2.

<sup>27</sup> *Id.*

<sup>28</sup> RECDVPOA, § 2(1). Available at [www.uniformlaws.org](http://www.uniformlaws.org) (last visited Dec. 01, 2021).

These protections are akin to those found in the PDVA. A temporary restraining order under the PDVA may prohibit a respondent from temporarily entering the plaintiff's home, contacting the plaintiff or the plaintiff's relatives, or bothering the plaintiff at work.<sup>29</sup> While a protective order issued in New Jersey may address child support and the custody of the children,<sup>30</sup> the Act takes a more limited approach.<sup>31</sup>

Additionally, the Act enforces only Canadian civil domestic violence orders, and not criminal orders, given the potential problems in enforcing the criminal law of another country.<sup>32</sup> The Act limits recognition of protective orders to those issued by courts, and not agencies or any other entity authorized to enter or modify a protective order.<sup>33</sup>

### **Enforcement of Protective Orders Under the Act and Under the PDVA**

The Act relies on the actions of law enforcement to implement its core purpose.<sup>34</sup> As such, it provides immunity to any official or agency that makes a good faith effort to enforce the terms of the Act.<sup>35</sup> A law enforcement officer shall enforce a Canadian domestic violence protection order if there is probable cause to believe that a valid protective order exists.<sup>36</sup> Any record of such an order that identifies the protected individual and the respondent, and on its face is in effect, supplies probable cause.<sup>37</sup> If no record can be provided, law enforcement may look to other information for a determination of probable cause that a valid order exists.<sup>38</sup> Even after verifying the existence of an order, if law enforcement determines that the respondent has not been notified or served, the officer must first notify the protected individual, and then, consistent with the safety of the protected individual, make a reasonable effort to inform the respondent of the order, notify the respondent of its terms, provide a record of it, and allow the respondent a "reasonable opportunity" to comply with the order before it is enforced.<sup>39</sup>

In addition, the Act notes that a Canadian order is enforceable by a tribunal only if it was issued after the respondent was given reasonable notice and had an opportunity to be heard before the court issued the order.<sup>40</sup> If an *ex parte* order was granted, the respondent must have had reasonable notice and an opportunity to be heard within a reasonable time after the order was issued.<sup>41</sup> These protections are consonant with those found in the PDVA.

Under N.J.S. 2C:25-28, if a complaint alleging domestic violence is filed in the Family Part and a protective order is granted, the order, together with the complaint, is forwarded to the

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<sup>29</sup> N.J. STAT. ANN. § 2C:25-23 ¶ 3, §§ (1), (2), (3) (West 2020).

<sup>30</sup> *Id.* at §§ (4), (5).

<sup>31</sup> RECDVPOA, Prefatory Note and § 2 cmt. *See infra* the Outreach section of this Report.

<sup>32</sup> RECDVPOA, Prefatory Note.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at § 3, cmt.

<sup>35</sup> *Id.* at § 6, cmt.

<sup>36</sup> *Id.* § 3(a).

<sup>37</sup> *Id.* at § 3(b).

<sup>38</sup> *Id.* at § 3(c).

<sup>39</sup> *Id.* at § 3(d).

<sup>40</sup> *Id.* at § 4(c)(4)(A).

<sup>41</sup> *Id.* at § 4(c)(4)(B).

appropriate law enforcement agency for service on the defendant.<sup>42</sup> Additionally, under N.J.S. 2C:25-29, a hearing must be held within 10 days of a complaint filed pursuant to N.J.S. 2C:25-28, and a copy of the complaint must be served upon the defendant according to the Rules of Court.<sup>43</sup> If there is a criminal complaint arising out of the same incident that forms the basis of the civil complaint, a defendant's (or plaintiff's) testimony cannot be used against the defendant in the criminal proceeding.<sup>44</sup>

Both the Act and the PDVA contain provisions providing immunity for law enforcement. The Act provides immunity from civil and criminal liability to any state, state agency, local government agency, law-enforcement officer, prosecuting attorney, clerk of court, and state or local government official for any act or omission arising out of enforcement of a Canadian domestic violence protection order, or the detention or arrest of an alleged violator of such an order, if done as a good faith effort to comply with the act.<sup>45</sup>

The PDVA also extends immunity to any law enforcement officer or a member of a domestic crisis team, or any person who, in good faith, reports a possible incident of domestic violence.<sup>46</sup> Such an individual will not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other act or omission made in good faith.<sup>47</sup> Thus, regardless of the origins of a protective order, any individual in any of the categories noted above who acts in good faith will be immune from liability, whether under the Act or the PDVA.

The Act has been enacted in seven states since its release by the ULC.<sup>48</sup> Although a number of bills concerning domestic violence have been introduced in the Legislature during the 2020-2021 session, none of them appear to address the issue covered by the Act.

### **Initial Outreach**

In connection with the Tentative Report, Staff sought comments from knowledgeable individuals and organizations.

- *Support*

The Commission received support for this project from the Office of the Attorney General, Department of Law and Public Safety, Division of Criminal Justice (DCJ or Division) and from a

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<sup>42</sup> N.J. STAT. ANN. § 2C:25-28I. (West 2021).

<sup>43</sup> N.J. STAT. ANN. § 2C:25-29a. (West 2021).

<sup>44</sup> *Id.* Testimony may be used in cases involving domestic violence contempt, and where it would be admissible hearsay if a party is unavailable.

<sup>45</sup> RECDVPOA, at § 6.

<sup>46</sup> N.J. STAT. ANN. § 2C:25-22. (West 2021).

<sup>47</sup> *Id.*

<sup>48</sup> Since its release in 2017, the Act has been enacted by Delaware, North Dakota, California, Nevada, Wisconsin, Washington, and Minnesota. It was introduced in the current legislative session in Colorado. <https://www.uniformlaws.org/committees/community-home?CommunityKey=b62ba45b-44c3-4045-88c5-504c9dad13bb>

Certified Matrimonial Law Attorney.<sup>49</sup> The DCJ stated that they “fully support the inclusion of the Canadian domestic violence protection orders in the New Jersey Protection of Domestic Violence Act (NJ PDVA).”<sup>50</sup> Similarly, David S. Carton, Esq., advised the Commission that “the [proposed] amendments [were] a good idea.”<sup>51</sup>

In addition to their support, each commenter mentioned concerns that they believed should be addressed by the Commission.

- *Concerns*

The DCJ cautioned that the proposed amendments “could be interpreted by courts as excluding enforcement of domestic violence protection orders from other states in the United States....”<sup>52</sup> Further, the DCJ noted that to this time “out-of-state-victims are not able to register their protective orders with New Jersey’s Domestic Violence Central Registry.”<sup>53</sup> DCJ provided language that it recommended for inclusion to extend the protection of the PDVA to out-of-state victims.<sup>54</sup> In addition, the DCJ said that two additional statutes in New Jersey’s Criminal Code relate to the work of the PDVA and may benefit from modification based upon the recommendations set forth in this Report.<sup>55</sup> The proposed modifications to these additional statutes are set forth in the Appendix.

The intersection of the Commission’s work with the Hague Abduction Convention and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) served as the basis for Mr. Carton’s concerns. The impact of the RECDVPOA on other acts and conventions was examined by the Uniform Law Commission. The RECDVOA explicitly recognizes that “[o]ther Acts and conventions deal with issues of custody between countries, specifically, the UCCJEA and its 2013 amendments that implement the Hague Convention on the Protection of Children.”<sup>56</sup> The proposed modifications to the statutes set forth in the Appendix, much like the language contained in the RECDVOA, pursue “the narrower goal of addressing the emergency of threatened violence.”<sup>57</sup>

### **Subsequent Outreach**

In connection with the Tentative Report, Staff sought comments from knowledgeable individuals and organizations including: the Office of the Attorney General; the Administrative Office of the Courts; the New Jersey State Municipal Prosecutor’s Association; the Association of Criminal Defense Lawyers; the Criminal Law Section of the New Jersey State Bar Association; Legal Services of New Jersey; the Office of the Public Defender; private practitioners; the County

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<sup>49</sup> Taggart, *supra* note 7, at \*1 and e-mail from letter from David S. Carton, Esq., Certified Matrimonial Law Attorney, Partner, Mandelbaum Salsburg, P.C., to Jennifer Weitz, Counsel, N.J. Law Rev. Comm’n (June 19, 2021, 3 PM EST) (on file with the NJLRC).

<sup>50</sup> Carton, *supra* note 49 at \*1.

<sup>51</sup> Taggart, *supra* note 7, at \*1.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See *infra* the Appendix to this report.

<sup>55</sup> *Id.* at \*1-7. See N.J.S. 2C:58-3(c)(6) and (8) and N.J.S. 39-7(b)(2).

<sup>56</sup> RECDVPOA, Prefatory Note at 2 and § 2 cmt.

<sup>57</sup> *Id.* at 2-3.

Prosecutor’s Association of New Jersey; numerous County Prosecutors; the New Jersey State Association of Chiefs of Police; South Jersey Legal Services; the Rutgers Law School Domestic Violence Clinic; and the Seton Hall University Law School Center for Social Justice and Family Law Clinic.

No objection was received by the Commission to the proposed modifications.

### **Conclusion**

The Uniform Law Commission identified “the problems and dangers created in a world without cross-border recognition of domestic-violence protection orders.”<sup>58</sup> Incorporating the Act into the PDVA, along with the modifications proposed by the Office of the Attorney General, would serve the legislative intent of providing comprehensive protection to all victims of domestic violence.

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<sup>58</sup> RECDVPOA, Prefatory Note.



## Appendix

The proposed modifications to the existing New Jersey statutes to incorporate the provisions of the Act are shown with underlining (to signify the addition of text), ~~striketrough~~ (to mark the removal of text) and *italics* (to indicate the proposed modification from a commenter), as follows:

### **N.J.S. 2C:25-18. Legislative findings and declarations**

The Legislature finds and declares that domestic violence is a serious crime against society; that there are thousands of persons in this State who are regularly beaten, tortured and in some cases even killed by their spouses or cohabitants; that a significant number of women who are assaulted are pregnant; that victims of domestic violence come from all social and economic backgrounds and ethnic groups; that there is a positive correlation between spousal abuse and child abuse; and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. It is, therefore, the intent of the Legislature to assure the victims of domestic violence the maximum protection from abuse the law can provide.

The Legislature further finds and declares that the health and welfare of some of its most vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psychologically, physically and financially; because of age, disabilities or infirmities, this group of citizens frequently must rely on the aid and support of others; while the institutionalized elderly are protected under P.L.1977, c. 239 (C. 52:27G-1 et seq.), elderly and disabled adults in noninstitutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend.

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under section 1 of P.L.1989, c. 23 (C. 2C:24-8), must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

The Legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous societal attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. The Legislature finds that battered adults presently experience substantial difficulty in gaining access to protection from the judicial system, particularly due to that system's inability to generate a prompt response in an emergency situation.

It is the intent of the Legislature to stress that the primary duty of a law enforcement officer when responding to a domestic violence call is to enforce the laws allegedly violated and to protect the victim. Further, it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and

criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public. To that end, the Legislature encourages the training of all police and judicial personnel in the procedures and enforcement of this act, and about the social and psychological context in which domestic violence occurs; and it further encourages the broad application of the remedies available under this act in the civil and criminal courts of this State. It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grows out of a domestic situation.

The Legislature further finds and declares that the protections available under this act shall be extended to those individuals possessing valid domestic violence protection orders issued by Canadian courts. Reflecting the historic relationship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada has granted recognition to protection orders of the United States through the Uniform Enforcement of Canadian Judgments and Decrees Act (UECJDA). This act accords similar recognition to protection orders issued in Canada.

**Credits:** L.1991, c. 261, § 2, eff. Nov. 12, 1991.

#### **Comments**

The recognition of Canadian Domestic-Violence Protection Orders is an extension of New Jersey's Legislative intent to protect the health and welfare of vulnerable persons in New Jersey.

The Commission did not receive any objection or modification to the proposed statutory modifications contained in this section.

#### **N.J.S. 2C:25-19. Definitions**

As used in this act:

a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

- (1) Homicide N.J.S.2C:11-1 et seq.
- (2) Assault N.J.S.2C:12-1
- (3) Terroristic threats N.J.S.2C:12-3
- (4) Kidnapping N.J.S.2C:13-1
- (5) Criminal restraint N.J.S.2C:13-2
- (6) False imprisonment N.J.S.2C:13-3
- (7) Sexual assault N.J.S.2C:14-2

- (8) Criminal sexual contact N.J.S.2C:14-3
- (9) Lewdness N.J.S.2C:14-4
- (10) Criminal mischief N.J.S.2C:17-3
- (11) Burglary N.J.S.2C:18-2
- (12) Criminal trespass N.J.S.2C:18-3
- (13) Harassment N.J.S.2C:33-4
- (14) Stalking P.L.1992, c. 209 (C.2C:12-10)
- (15) Criminal coercion N.J.S.2C:13-5
- (16) Robbery N.J.S.2C:15-1
- (17) Contempt of a domestic violence order pursuant to subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly persons offense
- (18) Any other crime involving risk of death or serious bodily injury to a person protected under the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et al.)
- (19) Cyber-harassment P.L.2013, c. 272 (C.2C:33-4.1)

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute “domestic violence,” but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c. 77 (C.2A:4A-30).

b. “Law enforcement agency” means a department, division, bureau, commission, board or other authority of the State or of any political subdivision thereof which employs law enforcement officers.

c. “Law enforcement officer” means a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.

d. “Victim of domestic violence” means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member. “Victim of domestic violence” also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. “Victim of domestic violence” also includes any person who has been subjected to domestic violence by a person with whom the victim has had a

dating relationship.

e. “Emancipated minor” means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

f. “Canadian domestic violence protection order” means a judgment or part of a judgment or order issued in a civil proceeding by a court of Canada under law of the issuing jurisdiction which that<sup>59</sup> relates to domestic violence.

**Credits:** L.1991, c. 261, § 3, eff. Nov. 12, 1991. Amended by L.1994, c. 93, § 1, eff. Aug. 11, 1994; L.1994, c. 94, § 1, eff. Aug. 11, 1994; L.2015, c. 98, § 2, eff. Aug. 10, 2015; L.2016, c. 77, § 1, eff. Dec. 5, 2016.

#### COMMENT

The definition of “Canadian domestic violence protection order” is based on the definition of “foreign civil protection order” found in the UECJDA at § 9.1.

#### **N.J.S. 2C:25-21. Arrest; criminal complaint; seizure of weapons**

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

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

(2) A warrant is in effect;

(3) There is probable cause to believe that the person has violated N.J.S. 2C:29-9, or a Canadian domestic violence protection order,<sup>60</sup> and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or

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

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

c. (1) As used in this section, the word “exhibits” is to be liberally construed to mean

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<sup>59</sup> Taggart, *supra* note 7, at \*1-2.

<sup>60</sup> *Id.* at \*2. *See also* the Comment immediately following this section.

any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

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

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

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

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

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

(2) A law enforcement officer shall deliver all weapons, firearms purchaser identification cards and permits to purchase a handgun seized pursuant to this section to the county prosecutor and shall append an inventory of all seized items to the domestic violence report.

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

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

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

After the hearing the court shall order the return of the firearms, weapons and any authorization papers relating to the seized weapons to the owner if the court determines the owner is not subject to any of the disabilities set forth in N.J.S.2C:58-3c. and finds that the complaint has been dismissed at the request of the complainant and the prosecutor determines that there is insufficient probable cause to indict; or if the defendant is found not guilty of the charges; or if the court determines that the domestic violence situation no longer exists. Nothing in this act shall impair the right of the State to retain evidence pending a criminal prosecution. Nor shall any provision of this act be construed to limit the authority of the State or a law enforcement officer to seize, retain or forfeit property pursuant to chapter 64 of Title 2C of the New Jersey Statutes.

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

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

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

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

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

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

**Credits:** L.1991, c. 261, § 5, eff. Nov. 12, 1991. Amended by L.2003, c. 277, § 1, eff. Jan. 14, 2004.

#### COMMENT

A perpetrator of domestic violence who violates an order of protection, is subject to arrest under this subsection. There must be probable cause that the individual was served with the order alleged to have been violated.

##### *Subsection a.(3)*

The proposed revision to N.J.S. 2C:29-9, *infra*, includes a specific reference to Canadian domestic violence protection orders. As a result of the inclusion of such orders in N.J.S. 2C:29-9, a concern was raised by the Attorney General's Office that the addition of the phrase "or a Canadian domestic violence protection order" to subsection a.(3) might be "duplicative, or at worst, could be interpreted to exclude other states['] domestic violence orders."<sup>61</sup>

Given the possibility that the addition of this text might be interpreted to exclude other state domestic violence protection orders not listed in N.J.S. 2C:25-1, even though they are listed in N.J.S. 2C:29-9, Staff recommends the adoption of the Attorney General's recommendation.

#### **N.J.S. 2C:25-22. Immunity from civil liability**

A law enforcement officer or a member of a domestic crisis team or any person who, in good faith, reports a possible incident of domestic violence to the police shall not be held liable in any civil action brought by any party for an arrest based on probable cause, enforcement in good faith of a court order, including a Canadian domestic violence protection order, or any other act or omission in good faith under this act.

**Credits:** L.1991, c. 261, § 6, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 2, eff. Aug. 11, 1994.

#### COMMENT

This section extends the immunity granted to an officer or individual acting in good faith to include enforcement of a Canadian protective order. It is analogous to Section 6 of the Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act (URECDVPOA).

This statute extends immunity from civil liability when the enforcement of the order of the terms of the order is done in good faith. To ensure "that [the statute] is not read to exclude any other orders, and that [a] Canadian [domestic violence protection] order is" viewed as one example, the Attorney General's Office has recommended that the word "including" be added before the reference to the Canadian domestic violence protection order.<sup>62</sup>

#### **N.J.S. 2C:25-24. Domestic violence offense report; contents; annual report by Superintendent of State Police**

a. It shall be the duty of a law enforcement officer who responds to a domestic violence call to complete a domestic violence offense report. All information contained in the domestic violence offense report shall be forwarded to the appropriate county bureau of identification and

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<sup>61</sup> Taggart, *supra* note 7, at \*2.

<sup>62</sup> *Id.* at \*2-3.

to the State bureau of records and identification in the Division of State Police in the Department of Law and Public Safety. A copy of the domestic violence offense report shall be forwarded to the municipal court where the offense was committed unless the case has been transferred to the Superior Court.

b. The domestic violence offense report shall be on a form prescribed by the supervisor of the State bureau of records and identification which shall include, but not be limited to, the following information:

- (1) The relationship of the parties;
- (2) The sex of the parties;
- (3) The time and date of the incident;
- (4) The number of domestic violence calls investigated;
- (5) Whether children were involved, or whether the alleged act of domestic violence had been committed in the presence of children;
- (6) The type and extent of abuse;
- (7) The number and type of weapons involved;
- (8) The action taken by the law enforcement officer;
- (9) The existence of any prior court orders concerning the parties issued:
  - (A) pursuant to this act; ~~concerning the parties, or~~
  - (B) pursuant to the laws of another state;
  - (C) by the United States; or
  - (C) as a Canadian domestic violence protection orders.
- (10) The number of domestic violence calls alleging a violation of a domestic violence restraining order;
- (11) The number of arrests for a violation of a domestic violence order; and
- (12) Any other data that may be necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence.

c. It shall be the duty of the Superintendent of the State Police with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety to compile and report annually to the Governor, the Legislature, and the Advisory Council on Domestic Violence on the tabulated data from the domestic violence offense reports, classified by county.



**Credits:** L.1991, c. 261, § 8, eff. Nov. 12, 1991. Amended by L.1999, c. 119, § 2, eff. June 9, 1999.

#### COMMENT

Under this subsection, a report made by a law enforcement officer responding to a domestic violence call would note the existence of a Canadian protective order.

#### *Subsection b.(9)(A) – (C)*

In addition to the inclusion of Canadian domestic violence protection orders, the Attorney General has recommended that this section be modified to include orders issued under the laws of another state and orders issued by the United States government.<sup>63</sup>

Consistent with New Jersey’s Legislative intent to protect the health and welfare of vulnerable persons in New Jersey, Staff recommends the adoption of the modifications proposed by the Attorney General.

### **N.J.S. 2C:25-28. Complaint by victim; emergency relief; temporary restraining orders; service of process**

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

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

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

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

c. (1) The clerk of the court, or other person designated by the court, shall assist the parties in completing any forms necessary for the filing of a summons, complaint, answer

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<sup>63</sup> Taggart, *supra* note 7, at \*3.

or other pleading.

(2) The plaintiff may provide information concerning firearms to which the defendant has access, including the location of these firearms, if known, on a form to be prescribed by the Administrative Director of the Courts.

(3) Information provided by the plaintiff concerning firearms to which the defendant has access shall be kept confidential and shall not be disseminated or disclosed, provided that nothing in this subsection shall prohibit dissemination or disclosure of this information in a manner consistent with and in furtherance of the purpose for which the information was provided.

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

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

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

g. If it appears that the plaintiff is in danger of domestic violence, the judge shall, upon consideration of the plaintiff's domestic violence complaint, order emergency ex parte relief, in the nature of a temporary restraining order. A decision shall be made by the judge regarding the emergency relief forthwith.

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

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

j. Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief.

If the order requires the surrender of any firearm or other weapon, a law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to the scene of the domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, to ensure that the defendant does not gain access to any firearm or other weapon, and that the firearm or other weapon is appropriately surrendered in accordance with the order. If the order prohibits the defendant from returning to the scene of domestic violence or any other location where the judge has reasonable cause to believe any firearm or other weapon belonging to the defendant is located, any firearm or other weapon located there shall be seized by a law enforcement officer. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5. Other appropriate relief may include but is not limited to an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to section 13 of P.L.1991, c. 261 (C.2C:25-29).

The judge shall state with specificity the reasons for and scope of any search and seizure authorized by the order. The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

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

l. An order granting emergency relief, together with the complaint or complaints, shall immediately be forwarded to the appropriate law enforcement agency for service on the defendant, and to the police of the municipality in which the plaintiff resides or is sheltered, and shall immediately be served upon the defendant by the police, except that an order issued during regular court hours may be forwarded to the sheriff for immediate service upon the defendant in accordance with the Rules of Court. If personal service cannot be effected upon the defendant, the court may order other appropriate substituted service. At no time shall the plaintiff be asked or required to serve any order on the defendant.

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

n.m. Notice of temporary restraining orders issued pursuant to this section shall be sent by

the clerk of the court or other person designated by the court to the appropriate chiefs of police, members of the State Police and any other appropriate law enforcement agency or court.

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

~~p. n.~~ Any temporary or final restraining order issued pursuant to this act shall be in effect throughout the State, and shall be enforced by all law enforcement officers.

~~q. o.~~ Prior to the issuance of any temporary or final restraining order issued pursuant to this section, the court shall order that a search be made of the domestic violence central registry with regard to the defendant's record.

**Credits:** L.1991, c. 261, § 12, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 4, eff. Aug. 11, 1994; L.1999, c. 421, § 3, eff. Jan. 18, 2000; L.2003, c. 277, § 5, eff. Jan. 14, 2004; L.2011, c. 213, § 3, eff. Jan. 17, 2012; L.2016, c. 91, § 2, eff. Aug. 1, 2017.

## COMMENT

### *Subsection a.*

The proposed revision to N.J.S. 2C:29-9, *infra*, includes a specific reference to Canadian domestic violence protection orders. As a result of the inclusion of such orders in N.J.S. 2C:29-9, a concern was raised by a commenter that the addition of the phrase “or a Canadian domestic violence protection order” to subsection a. might be duplicative or may be interpreted to exclude other states’ domestic violence orders.<sup>64</sup> Given the possibility that the addition of this text might exclude other state domestic violence protection orders not listed in N.J.S. 2C:25-1, even though they are listed in N.J.S. 2C:29-9, Staff recommends the adoption of the Attorney General’s proposed modification.

When this section is read in connection with the modifications set forth in N.J.S. 2C:29-9, an individual who violates a Canadian domestic violence protective order while in New Jersey will be subject to prosecution.

### *Deleted Subsections*

The balance of the statute has been modified to remove previously repealed subsections.

## **N.J.S. 2C:25-29. Hearing; factors considered; orders for relief**

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

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<sup>64</sup> Taggart, *supra* note 7, at \*3-4.

hearing the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

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

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

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. In addition to any other provisions, any restraining order issued by the court shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3 during the period in which the restraining order is in effect or two years, whichever is greater. The order shall require the immediate surrender of any firearm or other weapon belonging to the defendant. The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

A law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to any place where any firearm or other weapon belonging to the defendant is located to ensure that the defendant does not gain access to any firearm or other weapon, and a law enforcement officer shall take custody of any firearm or other weapon belonging to the defendant. If the order prohibits the defendant from returning to the scene of domestic violence or other place where firearms or other weapons belonging to the defendant are located, any firearm or other weapon located there shall be seized by a law enforcement officer. The provisions of this subsection requiring the surrender or removal of a firearm, card, or permit shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the

United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

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

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

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

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

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

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. The order may require the defendant to pay the victim directly, to reimburse the Victims of Crime Compensation Office for any and all compensation paid by the Victims of Crime Compensation Office directly to or on behalf of the victim, and may require that the defendant reimburse any parties that may have compensated the victim, as the court may determine. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees,

court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

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

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

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

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

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

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

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

(12) An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order

has been issued. This order shall be restricted in duration.

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

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

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

~~(16)~~ (15) In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

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

~~(18)~~ (17) An order requiring the defendant to undergo a psychiatric evaluation.

~~(19)~~ (18) An order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. Where a person has abused or threatened to abuse such animal, there shall be a presumption that possession of the animal shall be awarded to the non-abusive party.

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

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

e. Prior to the issuance of any order pursuant to this section, the court shall order that a



search be made of the domestic violence central registry.

**Credits:** L.1991, c. 261, § 13, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 5, eff. Aug. 11, 1994; L.1994, c. 137, § 2, eff. Oct. 31, 1994; L.1995, c. 242, § 1, eff. Sept. 1, 1995; L.1997, c. 299, § 8, eff. Jan. 8, 1998; L.1999, c. 236, § 2, eff. Oct. 13, 1999; L.1999, c. 421, § 4, eff. Jan. 18, 2000; L.2003, c. 277, § 2, eff. Jan. 14, 2004; L.2011, c. 213, § 4, eff. Jan. 17, 2012; L.2016, c. 91, § 3, eff. Aug. 1, 2017.

#### COMMENT

Under this subsection, in a hearing for relief held subsequent to the issuance of an ex parte order, a court may consider the existence of a Canadian restraining order.

##### *Subsection a.(6)*

The Attorney General has recommended that the word “including” replace the word “or” in this subsection to ensure that this subsection is not read “to the exclusion of other jurisdiction’s court orders.”<sup>65</sup>

The balance of the statute has been modified to remove previously repealed subsections.

### **N.J.S. 2C:25-29.3. Rules of Court**

The Supreme Court may promulgate Rules of Court to effectuate the purposes of this act.

**Credits:** L.2001, c. 195, § 4, eff. Aug. 2, 2001.

#### COMMENT

*See comment infra following N.J.S. 2C:25-35 entitled Rules of Court.*

### **N.J.S. 2C:25-31. Contempt of order; arrest and custody of defendant**

Where a law enforcement officer finds that there is probable cause that a defendant has committed contempt of an order entered pursuant to the provisions of P.L.1981, c. 426 (C.2C:25-1 et seq.) or P.L.1991, c. 261 (C.2C:25-17 et seq.), or of a protective order entered pursuant to the laws of another state or the United States or of a Canadian domestic violence protection order, the defendant shall be arrested and taken into custody by a law enforcement officer. The law enforcement officer shall follow these procedures:

The law enforcement officer shall transport the defendant to the police station or such other place as the law enforcement officer shall determine is proper. The law enforcement officer shall:

- a. Conduct a search of the domestic violence central registry and sign a complaint concerning the incident which gave rise to the contempt charge;
- b. Telephone or communicate in person or by facsimile with the appropriate judge assigned pursuant to this act and request bail be set on the contempt charge;
- c. If the defendant is unable to meet the bail set, take the necessary steps to ~~insure~~ ensure

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<sup>65</sup> Taggart, *supra* note 7, at \*4.

that the defendant shall be incarcerated at police headquarters or at the county jail; and

d. During regular court hours, the defendant shall have bail set by a Superior Court judge that day. On weekends, holidays and other times when the court is closed, the officer shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details. In addition, if a municipal court judge set the bail, the arresting officer shall notify the clerk of that municipal court of this information.

f. A Canadian domestic violence protection order is enforceable under this section if:

(1) the order identifies a victim and a defendant;

(2) the issuing court had jurisdiction over the parties and the subject matter under law applicable in the issuing court; and

(3) the order was issued after:

(A) the defendant was given reasonable notice and had an opportunity to be heard before the court issued the order; or

(B) in the case of an ex parte order, the defendant was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the defendant to due process.

g. A claim that a Canadian domestic violence protection order does not comply with subsection (f) is an affirmative defense in a proceeding seeking enforcement of the order. If a court determines that the order is not enforceable, the court shall issue an order that the Canadian domestic violence protection order is not enforceable under this section and may not be registered pursuant to N.J.S. 2C:25-34.

**Credits:** L.1991, c. 261, § 15, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 7, eff. Aug. 11, 1994; L.1999, c. 421, § 5, eff. Jan. 18, 2000.

#### COMMENT

An individual in contempt of a protective order, whether issued pursuant to New Jersey statutes or by a Canadian court, would be subject to arrest. The validity of a Canadian protective order would be determined by the factors listed in subsection f., which are derived from Section 4, subsection c. of the URECDVPOA.

In addition to the inclusion of Canadian domestic violence protection orders, the Attorney General has recommended that this section be modified to include orders issued under the laws of another state and orders issued by the United States government.<sup>66</sup>

Consistent with New Jersey's Legislative intent to protect the health and welfare of vulnerable persons in New Jersey, Staff recommends the adoption of the modifications proposed by the Attorney General.

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<sup>66</sup> *Id.* at \*3.

**N.J.S. 2C:25-32. Lack of probable cause for arrest for contempt; advice and assistance to victim**

Where a person alleges that a defendant has committed contempt of:

a. an order entered pursuant to the provisions of P.L.1981, c. 426 (C.2C:25-1 et seq.), ~~or~~ P.L.1991, c. 261, or

b. a protective order entered pursuant to the laws of another state, or

c. a protective order of the United States, or

d. a Canadian domestic violence protection order,

but where a law enforcement officer has found that there is not probable cause sufficient to arrest the defendant, the law enforcement officer shall advise the complainant of the procedure for completing and signing a criminal complaint alleging a violation of N.J.S.2C:29-9. During regular court hours, the assistance of the clerk of the Family Part of the Chancery Division of the Superior Court shall be made available to such complainants. Nothing in this section shall be construed to prevent the court from granting any other emergency relief it deems necessary.

**Credits:** L.1991, c. 261, § 16, eff. Nov. 12, 1991.

**COMMENT**

This subsection has been modified to include Canadian domestic violence protective orders. In addition to the inclusion of Canadian domestic violence protection orders, the Attorney General has recommended that this section be modified to include orders issued under the laws of another state and orders issued by the United States government.<sup>67</sup>

Consistent with New Jersey's Legislative intent to protect the health and welfare of vulnerable persons in New Jersey, Staff recommends the adoption of the modifications proposed by the Attorney General.

**N.J.S. 2C:25-34. Domestic violence restraining orders; central registry**

a. The Administrative Office of the Courts shall establish and maintain a central registry of all persons who have had domestic violence restraining orders entered against them, all persons who have been charged with a crime or offense involving domestic violence, and all persons who have been charged with a violation of a court order involving domestic violence.

b. (1) An individual may register a *protection order entered pursuant to the laws of another state, the United States, or a Canadian domestic violence protection order* with the central registry. To register the order, the individual must:

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<sup>67</sup> *Id.* at \*5.

(A) present a certified copy of the order to the central registry; and,

(B) file an affidavit stating that, to the best of the individual's knowledge, the order is valid and in effect.

(2) After a ~~Canadian~~ domestic violence protection order is registered under this section, the central registry shall provide the individual registering the order with a certified copy of the registered order.

(3) A ~~Canadian~~ domestic violence protection order registered under this section may be entered in a state or federal registry of protection orders in accordance with this Act.

(4) An inaccurate, expired, or unenforceable ~~Canadian~~ domestic violence protection order may be corrected or removed from the central registry in accordance with the laws of this state.

(5) A fee ~~may~~ ~~[may not]~~ shall not be charged for the registration of a ~~Canadian~~ domestic violence protection order under this section.

(6) Registration of a Canadian domestic violence protection order is not required for its enforcement under this Act.

c. All records made pursuant to this section shall be kept confidential and shall be released only to:

a. (1) A public agency authorized to investigate a report of domestic violence;

b. (2) A police or other law enforcement agency investigating a report of domestic violence, or conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer or for any other purpose authorized by law or the Supreme Court of the State of New Jersey;

c. (3) A court, upon its finding that access to such records may be necessary for determination of an issue before the court;

d. (4) A surrogate, in that person's official capacity as deputy clerk of the Superior Court, in order to prepare documents that may be necessary for a court to determine an issue in an adoption proceeding; or

e. (5) The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving:

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

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

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

e. Any individual who disseminates or discloses a record or report, or parts thereof, of the central registry, for a purpose other than investigating a report of domestic violence, conducting a background investigation involving a person's application for a firearm permit or employment as a police or law enforcement officer, making a determination of an issue before the court, conducting a background investigation as specified in subsection e. of this section, or for any other purpose other than that which is authorized by law or the Supreme Court of the State of New Jersey, shall be guilty of a crime of the fourth degree.

**Credits:** L.1999, c. 421, § 1, eff. Jan. 18, 2000. Amended by L.2003, c. 286, § 1, eff. Jan. 14, 2004; L.2006, c. 47, § 26, eff. July 1, 2006; L.2012, c. 16, § 9, eff. June 29, 2012.

#### COMMENT

The modifications to this subsection are based on Section 5 of the URECDVPOA. The subsection has been modified by adding section numbers for ease of access. In addition to the inclusion of Canadian domestic violence protection orders, the Attorney General has recommended that this section be modified to include orders issued under the laws of another state and orders issued by the United States government.<sup>68</sup>

In addition, the Office of the Attorney General “strongly believe[s] that domestic violence survivors in Canada or other U.S. states should not be forced to pay a fee for the registration of their orders in our registry.”

### **N.J.S. 2C:25-35. Rules of Court**

~~The Supreme Court of New Jersey may adopt Rules of Court appropriate or necessary to effectuate the purposes of this act.~~

**Credits:** L.1999, c. 421, § 7, eff. Jan. 18, 2000.

#### COMMENT

The PDVA contains a nearly identical provision in N.J.S. 2C:25-29.3. Rules of Court, *supra*. This statute appears to be duplicative and may be unnecessary.

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<sup>68</sup> Taggart, *supra* note 7, at \*5.

## **N.J.S. 2C:29-9. Contempt.**

\* \* \*

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

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States or Canada.

c. A person is guilty of a crime of the third degree if that person purposely or knowingly violates any provision in an order entered under the provisions of section 3 of P.L.1996, c.39 (C.2C:12-10.1) or section 2 of P.L.1999, c.47 (C.2C:12-10.2) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States or Canada when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

d. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States or Canada when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

(2) In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of P.L.2015, c.147 (C.2C:14-13 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States or Canada.

### **COMMENT**

The proposed modifications to this subsection would allow the crimes listed herein to be based on Canadian protective orders, as well as those orders previously noted.

## **N.J.S. 2C:39-7. Certain persons not to have weapons or ammunition**

\* \* \*

b. ... (2) A person having been convicted in this State or elsewhere<sup>69</sup> of a disorderly persons offense

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<sup>69</sup> See comment *infra* immediately following this statute.

involving domestic violence, whether or not armed with or having in the person's possession a weapon enumerated in subsection r. of N.J.S.2C:39-1, who purchases, owns, possesses or controls a firearm or ammunition is guilty of a crime of the third degree.

\* \* \*

(3) A person whose firearm is seized pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et seq.), a protective order entered under the laws of another state, the United States, or a Canadian domestic violence protection order, and whose firearm has not been returned, or who is subject to a court order prohibiting the possession of firearms issued pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et seq.), a protective order entered under the laws of another state, the United States, or a Canadian domestic violence protection order, who purchases, owns, possesses or controls a firearm or ammunition is guilty of a crime of the third degree, except that the provisions of this paragraph shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

#### COMMENT

- *Subsection b.(2)*

The New Jersey Code of Criminal Justice prohibits certain persons from possessing a weapons or ammunition.<sup>70</sup> A person who has been convicted of a disorderly persons offense involving domestic violence may no longer possess a weapon or ammunition.<sup>71</sup> The Attorney General noted that this subsection of the statute “[o]stensibly ... includes other U.S. states domestic violence offenses, but may not be permitted to cover Canadian offenses if the language is not amended to include Canada....”<sup>72</sup> As it is currently drafted, the statutory language of this subsection provides victims of domestic violence with the broadest possible coverage because the phrase “or elsewhere,” provides no geographic limitation. The identification of jurisdictions, other than New Jersey, to this statute may be interpreted as a narrowing of the breadth of the statute.

- *Subsection b.(3)*

A person whose firearm is seized pursuant to the PDVA, has not been returned, or is prohibited from possessing a firearm as a result of a court order may not possess a weapon or ammunition.<sup>73</sup> The Attorney General has recommended that the Commission “expand [this statute] to include restraining and protective orders issued by other U.S. states and Canada.”<sup>74</sup>

Consistent with New Jersey’s Legislative intent to protect the health and welfare of vulnerable persons in New Jersey, Staff recommends the adoption of these modifications proposed by the Attorney General regarding this subsection of the statute.

### **N.J.S. 2C:58-3. Purchase of firearms**

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<sup>70</sup> N.J.S. 2C:39-7.

<sup>71</sup> N.J.S. 2C:39-7b.(2).

<sup>72</sup> Taggart, *supra* note 7, at \*7.

<sup>73</sup> N.J.S. 2C:39-7b(3).

<sup>74</sup> Taggart, *supra* note 7, at \*7.

\* \* \*

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

\* \* \*

(6) To any person who is subject to:

*(A) a restraining order issued pursuant to the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et seq.) prohibiting the person from possessing any firearm;*

*(B) a protection order entered under the laws of another state;*

*(C) a protection order issued by the United States; or,*

*(D) a Canadian domestic violence protection order;*

\* \* \*

(8) To any person whose firearm is seized, and whose firearm has not been returned, pursuant to:

*(A) the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et seq.) ~~and whose firearm has not been returned;~~*

*(B) a protection order entered under the laws of another state;*

*(C) a protection order issued by the United States; or,*

*(D) a Canadian domestic violence protection order;*

\* \* \*

#### COMMENT

In New Jersey, an individual is prohibited from obtaining a permit to purchase a firearm if they are the subject of a restraining order or have had a firearm seized pursuant to the PDVA.<sup>75</sup> The Attorney General has recommended that the Commission “expand [this statute] to include restraining and protective orders issued by other U.S. states and Canada.”<sup>76</sup>

Consistent with New Jersey’s Legislative intent to protect the health and welfare of vulnerable persons in New Jersey, Staff recommends the adoption of the modifications proposed by the Attorney General.

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<sup>75</sup> See N.J.S. 2C:58-3c(6), (8).

<sup>76</sup> Taggart, *supra* note 7, at \*7.