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DOMESTIC VIOLENCE

In 1982, the Prevention of Domestic Violence Act, codified at N.J.S.A. 2C:25-17, et seq. was enacted to address domestic abuse and provide civil remedies for victims in the form of a restraining order. The Domestic Violence Act addresses what constitutes domestic violence, who is a protected party, meaning who can receive a restraining order, how to obtain a restraining order, including the relief a court may grant in a restraining order, and the consequences should a party fail to abide by the restraining order.

What constitutes domestic violence?

The Act specifies that domestic violence is the occurrence of one or more of the following:

1. Homicide
2. Assault
3. Terroristic threats
4. Kidnapping
5. Criminal restraint
6. False imprisonment
7. Sexual assault
8. Criminal sexual contact
9. Lewdness
10. Criminal mischief
11. Burglary
12. Criminal Trespass
13. Harassment
14. Stalking

Who can file a complaint for domestic violence?

In order to file for a restraining order, the plaintiff has to have a certain relationship with the defendant. A protected person under the Domestic Violence Act is someone who is at least eighteen years old or who is an emancipated minor. The protected person must have been subjected to domestic abuse by a spouse, former spouse or any present or former household member. A protected party can be of any age if that person has a child in common with the abuser or anticipates having a child in common if one of the parties is pregnant. A victim of domestic violence in a dating relationship may also seek a restraining order.

How can a person obtain a restraining order?

There are two steps in obtaining a restraining order.

Complaint - First, victims may file a complaint with the Family Part of the Chancery Division of the Superior Court during weekdays and normal courthouse hours. On the weekends, holidays, evenings or other times that the courthouse is not open, a victim may seek protection through a Municipal Court Judge. At this stage, the court may enter an ex parte Temporary Restraining Order (TRO) in favor of the victim if the judge determines that an imminent danger of domestic violence exists. Ex parte means that the court may enter an order based upon the victim's sworn testimony alone. The complainant may

provide testimony via telephone or other means of electronic communication pursuant to R. 5:7A. This type of order may provide the following relief:

1. Forbidding the defendant from returning to the scene of the domestic violence
2. Forbidding the defendant from possessing firearms or other weapons, including an order to search and seize any weapons at any location where the judge has reasonable cause to believe the weapon is located
3. And any other additional relief

The TRO will immediately be sent to the law enforcement agency for service upon the defendant and to the police in the municipality where the defendant lives. According to N.J.S.A. 2C:25-28(i), the defendant may immediately appeal the order for a plenary hearing de novo (anew) not on the record before any family part judge in the County which the Plaintiff resides or is sheltered, provided that judge issued the temporary or can access the reasons for the temporary issuance of the temporary order and the defendant sets forth in the record those reasons for the modification or dissolution. This Order will remain in effect until a judge of the Family Part issues a further order.

Domestic Violence Hearing - Within ten days of filing the Complaint, the court shall conduct a domestic violence hearing in which both plaintiff and defendant are permitted to testify and provide witnesses to determine whether a final order shall be entered. According to N.J.S.A. 2C:25-29(b) the final order may include the following relief:

1. Restraining the defendant from subjecting the victim to domestic violence
2. Granting exclusive possession of the residence or household regardless of ownership, including payment or rent
3. Parenting time
4. Monetary compensation for losses suffered as a direct result of the act of domestic violence, including punitive damages
5. Counseling and/or anger management
6. Restraints from entering the residence, property, school, place of employment of the victim
7. Restraining any contact with the plaintiff directly or through third persons
8. Payment of rent or mortgage payments
9. Temporary possession of personal property, including vehicles
10. Emergency monetary relief, such as child support
11. Temporary custody of a child
12. Supervision of the removal of personal belongings
13. Any other appropriate relief for the plaintiff and dependent children
14. Requiring that the Family Part In-Take Unit monitor the final order
15. Preventing the defendant from possessing firearms or weapons and/or ordering the search and seizure of any weapons
16. Restraint the defendant against stalking, following, or threatening to harm the protected party
17. Psychiatric evaluation of the defendant

If the court after a hearing finds that the defendant committed an act of domestic violence, a civil penalty shall be ordered against the defendant between \$50 and \$500 and submitted to the Domestic Violence Victims' Fund. Unlike a criminal trial, plaintiff needs to prove the case by a preponderance by the evidence, a lesser standard than beyond a reasonable doubt.

If a law enforcement officer finds probable cause that a defendant has violated a restraining order, the defendant shall be arrested without a warrant. Alternatively, a protected party may file a complaint alleging that the defendant has violated the order. The court shall conduct a hearing to determine whether the defendant has violated the order. According to N.J.S.A. 2C:44-1(b), the Court may impose jail time for a first contempt offense if aggravating circumstances outweigh mitigating circumstances. If a person is convicted of a second or subsequent non-indictable domestic violence contempt offense, the defendant shall serve a minimum term of not less than 30 days.