

2023 NJSBA Fall Conference

New and Pending Domestic Violence Legislation in Family Law Practice – From VASPA to Coercive Control

Experienced attorneys and a respected psychologist will discuss the impact of the latest pending family law legislation and what it will mean for your practice and your clients.

The discussion will include the background on how the current version of VASPA (Victim's Assistance and Survivor Protection Act) bill came to be and changes that were made in various committees as it traveled through the legislature, as well as how the panel expect to use it in their practice. Dr. Danielle Forshee will speak about what coercive control really means – how she identifies it and how she addresses it in a DV and/or custody context. The panel will also examine additional pending legislation and the expected impact of those bills on your practice.

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I. NJSA 2C:25-17 – Prevention of Domestic Violence Act of 1991

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)

B. Who can file?

1. 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 or former household member.
2. 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.

3. any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

C. Where to file?

1. where the alleged act of domestic violence occurred,
2. where the defendant resides, or
3. where the plaintiff resides or is sheltered, and the court shall follow the same procedures applicable to other emergency applications.

D. Filing a complaint

1. 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. § 2C:25-28 (2013)
 - a. Rule 5:7A Domestic Violence: Restraining Orders
 - i. Applicant shall appear before a judge personally to testify upon record or by sworn complaint
 - ii. A temporary restraining order may be issued upon sworn oral testimony of applicant who is not physically present
2. 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. § 2C:25-28 (2013)
3. 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.

E. Service/Notice

1. Personal Service

- a. 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. 2C:25-28.

F. Appeal of Ex parte Order

1. N.J.S.A. 2C:25-28(i) provides that any TRO is immediately appealable by plaintiff or defendant for a plenary hearing de novo, not on the record below, before any Superior Court, Family Division Judge in the county where the TRO was entered if that judge issued the temporary order or has access to the reasons for the issuance of the TRO and sets forth on the record the reason for the modification or dissolution.

G. Final Hearing procedure § 2C:25-29.

1. 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 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.
2. The court shall consider but not be limited to the following factors:
 - (i) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
 - (ii) The existence of immediate danger to person or property;
 - (iii) The financial circumstances of the plaintiff and defendant;
 - (iv) The best interests of the victim and any child;
 - (v) In determining custody and parenting time the protection of the victim's safety; and
 - (vi) The existence of a verifiable order of protection from another

jurisdiction.

3. 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.
4. 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.
5. No right to counsel - D.M. v. K.M (2013)

H. Relief § 2C:25-29.

1. An order restraining the defendant from subjecting the victim to domestic violence;
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.
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. 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.
 - i. 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..
 - ii. 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. Payment of monetary compensation for losses suffered as a direct result of the act of domestic violence;

5. Professional domestic Violence counseling
6. 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.
7. 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. Requiring 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;
9. 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. Emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any.
11. 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. Requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings
13. 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.
14. Prohibiting Weapons
15. 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.
16. An order requiring the defendant to undergo a psychiatric evaluation.

17. Possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household.

I. Weapons

1. 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.A. 2C:58-3 during the period in which the restraining order is in effect, or two years whichever is greater, except that this provision 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. N.J.S.A. 2C:25-29b
2. **NJSA 2C:25-21 (d)**
 - a. weapons seized shall be returned to owner except upon Order of the Superior Court.
 - b. State has 45 days from seizure to initiate proceeding to obtain title to any weapons seized or to revoke any licenses
 - c. 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:
 - i. the owner is not subject to any of the disabilities set forth in N.J.S. 2C:58-3 c. and
 1. convicted of a crime or DP offense involving DV
 2. drug dependent person
 3. physical defect or disease which would make unsafe
 4. under age
 5. not in interest of the public health, safety of welfare
 6. subject to a Restraining Order

7. juvenile offenses involving weapons
8. finds that the complaint has been dismissed at the request of the complainant and
9. the prosecutor determines that there is insufficient probable cause to indict; or
10. if the defendant is found not guilty of the charges; or
11. if the court determines that the domestic violence situation no longer exists.

J. Civil penalty 2C:25-29.1.

1. any person found by the court in a final hearing to have committed an act of domestic violence shall be ordered by the court to pay a civil penalty of at least \$ 50, but not to exceed \$ 500.
 - a. The court may waive the penalty in cases of extreme financial hardship.

K. Central Registry 2C:25-43

1. 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. All records made pursuant to this section shall be kept confidential and shall be released only to:
 - a. A public agency authorized to investigate a report of domestic violence;
 - b. 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. A court, upon its finding that access to such records may be necessary for determination of an issue before the court;
- d. 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. The Division of Child Protection and Permanency in the Department of Children and Families when the division is conducting a background investigation involving:
 - i. 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
 - ii. 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.

L. Contempt

- 1. § 2C:29-9 A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c.250 (C.2C:28-5.1), or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.
 - a. Except as provided below, 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 when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of this act or an order entered under the

provisions of a substantially similar statute under the laws of another state or the United States. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this subsection.

2. § 2C:25-32. Alleged contempt, complainant's procedure
 - a. Where a person alleges that a defendant has committed contempt of an order entered pursuant to the provisions of 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.
3. § 2C:25-31. law enforcement procedures
 - a. if probable cause that a defendant has committed contempt of an order, the defendant shall be arrested and taken into custody by a law enforcement officer.
 - b. The law enforcement officer shall:
 - c. Conduct a search of the domestic violence central registry and sign a complaint concerning the incident which gave rise to the contempt charge;
 - d. 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;
 - e. If the defendant is unable to meet the bail set, take the necessary steps to insure that the defendant shall be incarcerated at police headquarters or at the county jail; and
 - f. 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.