

## CHAPTER 44

AN ACT concerning restraining orders and amending P.L.1999, c.334 and P.L.2001, c. 365.

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

1. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read as follows:

C.2C:35-5.7 Issuance of order by court.

4. a. When a person is charged with a criminal offense on a warrant and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall as a condition of release issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section. With regard to an applicant who is not physically present at the same location as the court, the applicant may make such application to the court through telephone, radio or other means of electronic communication. The court may consider and grant such application in accordance with the Rules of Court.

b. When a person is charged with a criminal offense on a summons, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

c. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released from custody at a detention hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

d. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released without being detained pursuant to section 15 or 16 of P.L.1982, c.77 (C.2A:4A-34 or C.2A:4A-35), the law enforcement officer or prosecuting attorney shall prepare an application pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) for filing on the next court day.

The law enforcement officer releasing the juvenile shall serve the juvenile and his parent or guardian with written notice that an order shall be issued by the Family Part of the Superior Court on the next court day prohibiting the juvenile from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subsection e. of this section.

e. The court may forego issuing a restraining order for which application has been made pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) only if the defendant establishes by clear and convincing evidence that:

(1) the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order pursuant to this section unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place; or

(2) the issuance of an order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of persons residing in or having business in the place.

f. A restraining order issued pursuant to subsection a., b., c., d. or h. of this section shall describe the place from which the person has been barred and any conditions upon the person's entry into the place, with sufficient specificity to enable the person to guide his conduct accordingly and to enable a law enforcement officer to enforce the order. The order shall also prohibit the person from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of this act. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, the court may append to the order a map depicting the place. The person shall be given a copy of the restraining order and any appended map and shall acknowledge in writing the receipt thereof.

g. (1) The court shall provide notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor.

(2) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, the local law enforcement agency may post a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, upon one or more of the principal entrances of the place or in any other conspicuous location. Such posting shall be for the purpose of informing the public, and the failure to post a copy of the order shall in no way excuse any violation of the order.

(3) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may publish a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, in a newspaper circulating in the area of the restraining order. Such publication shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

(4) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may distribute copies of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, to residents or businesses located within the area delineated in the order or, in the case of a school or any government-owned property, to the appropriate administrator, or to any tenant association representing the residents of the affected area. Such distribution shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

h. When a person is convicted of or adjudicated delinquent for any criminal offense, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L.2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, by separate order or within the judgment of conviction, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section. Upon the person's conviction or adjudication of delinquency for a criminal offense, a law enforcement agency, in addition to posting, publishing, and distributing the order or an equivalent notice pursuant to paragraphs (2), (3) and (4) of subsection g. of this section, may also post, publish and distribute a photograph of the person.

i. When a juvenile has been adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense, in addition to an order required by subsection h. of this section or any other disposition authorized by law, the court may order the juvenile and any parent, guardian or any family member over whom the court has jurisdiction to take such actions or obey such restraints as may be necessary to facilitate the rehabilitation of the juvenile or to protect public safety or to safeguard or enforce the rights of residents of the place. The court may commit the juvenile to the care and responsibility of the Department of Children and Families until such time as the juvenile reaches the age of 18 or until the order of removal and restraint expires, whichever first occurs, or to such alternative residential placement as is practicable.

j. An order issued pursuant to subsection a., b., c. or d. of this section shall remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. An order issued pursuant to subsection h. of this section shall remain in effect for such period of time as shall be fixed by the court but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subsection h. of this section and the person is also sentenced to any form of probationary supervision or participation in the Intensive Supervision Program, the court shall make continuing compliance with the order an express condition of probation or the Intensive Supervision Program. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subsection and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county prosecutor.

k. All applications to stay or modify an order issued pursuant to this act, including an order originally issued in municipal court, shall be made in the Superior Court. The court shall immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to this act. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense as defined in subsection b. of this section shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

l. Nothing in this section shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of others with respect to the place.

m. Notwithstanding any other provision of this section, the court may permit the person to return to the place to obtain personal belongings and effects and, by court order, may restrict the time and duration and provide for police supervision of such a visit.

2. Section 3 of P.L.2001, c.365 (C.2C:35-5.9) is amended to read as follows:

C.2C:35-5.9 Certification of offense location.

3. Certification of Offense Location.

The court shall issue a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement officer or prosecuting attorney and either: (1) submission of a certification describing the location of the offense; or (2) in matters where the applicant is not physically present at the same location as the court, an oral statement describing the location of the offense followed by submission within a reasonable time of a certification describing the location of the offense in accordance with the Rules of Court.

3. This act shall take effect immediately and shall apply to matters in which a criminal complaint is filed on or after the effective date of this act.

Approved April 6, 2011.