

# ASSEMBLY HEALTH COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2770

# STATE OF NEW JERSEY

DATED: MARCH 20, 2023

The Assembly Health Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 2770.

This substitute bill would authorize the Superior Court to issue protective orders for persons victimized by acts of stalking and cyber-harassment in situations for which the domestic violence statutes are inapplicable because the victim lacks a prior or existing spousal, household, or dating relationship, or has or anticipates having a child in common, with the offender. See The “Prevention of Domestic Violence Act of 1991,” P.L.1991, c.261 (C.2C:25-17 et seq.). Under the current “Sexual Assault Survivor Protection Act of 2015” (SASPA), P.L.2015, c.147 (C.2C:14-13), such protective orders are available to persons when not eligible for protection under the domestic violence statutes for acts of nonconsensual sexual contact, sexual penetration, or lewdness, or attempts thereof, committed against them. The bill would expand the scope of that act to apply the same procedures for obtaining either an initial, temporary protective order or a final protective order for victims of stalking or cyber-harassment, whether or not such interactions relate to any nonconsensual sexual encounter between the actor and victim.

Prior to the adoption of the committee substitute, the underlying bill intended to create a separate, parallel process to SASPA regarding protective orders for victims of stalking and cyber-harassment. The substitute bill achieves the same goal as the underlying bill, doing so using the existing SASPA process instead of a new parallel one, which also eliminates any possible, but unintentional, overlap or conflict between what could have been two separate processes.

Because of the expansion of the scope of SASPA to potentially cover actor-victim interactions not of a sexual nature, the bill would rename the existing act the “Victim’s Assistance and Survivor Protection Act” (VASPA) to reflect its expansion to assist additional categories of victims. This name change would necessitate revising cross-references to SASPA appearing in several statutes (see bill sections 6 through 9, which do not include any substantive changes to the law). Also, because the bill addresses the issuance of protective orders for stalking in a more comprehensive manner than as currently set forth in section 2 of P.L.1999, c.47 (C.2C:12-10.2), which only

provides for orders for certain vulnerable victims of stalking in the limited context of a criminal prosecution, the bill would repeal that section of law.

Under the bill, a person may file an application for an initial, temporary protective order with the Superior Court alleging the commission of stalking or cyber-harassment, both of which are defined using the descriptions of such acts in Title 2C, the Criminal Code. See P.L.1992, c.209 (C.2C:12-10) and P.L.2013, c.272 (C.2C:33-4.1). The application could be filed in the Superior Court having jurisdiction over the place where the alleged conduct occurred, where the alleged actor resides, or where the alleged victim resides or is sheltered. An alleged victim's parent or guardian could file the application for relief in any case in which the alleged victim (1) is less than 18 years of age, or (2) has a developmental disability as defined in section 3 of P.L.1977, c.200 (C.5:5-44.4) or a mental disease or defect that renders the alleged victim temporarily or permanently incapable of understanding the nature of the alleged victim's conduct, or of understanding the nature of the alleged conduct that is the subject of the application.

However, when it is alleged that the offense has been *committed by an unemancipated minor*, an applicant seeking a protective order would not be permitted to proceed under VASPA, but an applicant may seek a protective order and other relief pursuant to the "New Jersey Code of Juvenile Justice," P.L.1982, c.77 (C.2A:4A-20 et seq.), by filing a complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30). Additionally, when it is alleged that the offense has been *committed against an unemancipated minor* by a parent, guardian, or other person having care, custody and control of that child as defined in R.S.9:6-2, an applicant seeking a protective order would not be permitted to proceed under VASPA, and would be required to report the incident to the Department of Children and Families for appropriate action by the department.

An applicant could seek a protective order, unless prohibited from doing so as described above, and the court could issue an order, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any charges. Also, the filing of an application would not prevent the filing of a criminal complaint, or the institution or maintenance of a criminal prosecution based on the same act.

The applicant may seek emergency, ex parte relief in order to obtain a temporary protective order. If, upon good cause shown, it appeared that the alleged victim's safety or well-being is in danger, a judge would issue the temporary order, and this order would remain in effect until a judge issued a further order. Any such temporary order would be immediately appealable for a plenary hearing de novo on the record before any judge of the Superior Court of the county in which the alleged victim resides or is sheltered if that judge was the one who

issued the temporary protective order or has access to the reasons for the issuance of the temporary protective order and sets forth in the record the reasons for the modification or dismissal.

The temporary protective order would limit the contact of the alleged actor (now respondent in further proceedings) with the victim. In addition, the order could grant relief to the alleged victim in the form of:

- prohibiting the respondent from committing or attempting to commit any future act of stalking or cyber-harassment;

- prohibiting the respondent from entering the residence, property, school, or place of employment of the alleged victim or the alleged victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;

- prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent 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, or contact via electronic device, with the alleged victim or the alleged victim's 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; and

- prohibiting the respondent from following, harassing, or threatening to harm, stalk, follow, or harass the victim.

These enumerated protections are not intended to be the exclusive forms of available relief, as the process expressly permits the court to grant further forms of relief.

A copy of the temporary protective order would be immediately forwarded to the police of the municipality where the alleged victim resides or is sheltered. A copy of the order would also be forwarded to the sheriff of the county where the respondent resides for immediate service upon the respondent in accordance with the Rules of Court. The court or the sheriff could coordinate service of the temporary protective order upon the respondent through the police in appropriate circumstances. If personal service could not be effected upon the respondent, the court could order other appropriate substituted service. In addition, notice of the temporary protective order would 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.

Following issuance of the temporary protective order, a hearing would be held in the Superior Court within 10 days of the filing of the application therefor in the county where the temporary order was issued, unless good cause was shown for the hearing to be held elsewhere. The hearing would concern the possible issuance of a final

protective order. A copy of the hearing complaint would be served on the respondent in conformity with the Rules of Court. At the hearing the standard for issuing a final protective order would be by a preponderance of the evidence.

If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent could not be used in the criminal proceeding against the respondent, other than in contempt matters (see below), and when it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable.

If the judge of the Superior Court ruled that a final protective order be issued, it would remain in effect until further order of a judge of the Superior Court. The relief provided for in the final protective order could be the same or more expansive as that available through the temporary protective order. Notice of the final order would be sent by the clerk of the court or other person designated by the court to the appropriate county prosecutor, chiefs of police, members of the State Police, and any other appropriate law enforcement agency.

A violation by the respondent of either a temporary or final protective order would constitute a fourth-degree contempt crime under paragraph (1) subsection d. of N.J.S.2C:29-9 if the conduct could also constitute a crime or disorderly persons offense, otherwise the contempt violation would be graded as a disorderly persons offense under paragraph (2) of that subsection, and each order issued would include information about these points. A crime of the fourth degree is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both; a disorderly persons offense is punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both. If a law enforcement officer found probable cause that a respondent had committed a contempt violation, the respondent would be arrested and taken into custody, and could be subject to pretrial detention while awaiting trial pursuant to P.L.2014, c.31 (C.2A:162-15 et al.).

Finally, the bill revises section 8 of P.L.2015, c.147 (C.2C:14-20), which established a central registry maintained by the Administrative Office of the Courts, and which contains information on all protective orders issued under SASPA (being renamed as VASPA), and all persons who have been charged with violating these protective orders. The revision would expand the registry to include information on all protective orders issued for victims of stalking and cyber-harassment, and persons charged with violating any such protective orders. Generally, the information in the registry is confidential, but it is released to law enforcement, courts, and various public agencies in order to carry out investigations, proceedings, or for other official purposes.

This bill would take effect on the first day of the sixth month next following enactment.

As reported by the committee, the Assembly Committee Substitute for Assembly Bill No. 2770 is identical to Senate Bill No.1517 (2R), which was amended and reported by the committee on this date.