

**FAMILY - AMENDMENTS TO STALKING LAW –
PROCEDURES FOR COMPLAINTS FILED BY PARENTS/GUARDIANS
SEEKING TEMPORARY RESTRAINING ORDERS**

Directive #7-03
Issued by:

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Administrative Director

INTRODUCTION

New Jersey's stalking law (*N.J.S.A. 2C:12-10*) was amended in 1999. In any case involving an allegation of stalking in which the victim is a child under the age of 18 or is developmentally disabled as defined *N.J.S.A. 5:5-44.4*, or where the victim is 18 years of age or older and is mentally defective as defined in *N.J.S.A. 2C:14-1h*, the court may issue a temporary restraining order against the defendant prohibiting contact between the defendant and the victim. This directive sets out the procedures to be followed in such situations.

The amendment (*N.J.S.A. 2C:12-10.2*) specifies that its provisions are in addition to, not in lieu of, the pre-existing law that provides that a judgment of conviction for stalking automatically operates as an application for a permanent restraining order (*N.J.S.A. 2C:12-10.1*). The 1999 amendment further provides that the parent or guardian may seek relief on an emergent *ex parte* basis, with the judge to make the decision regarding the emergent relief "forthwith." If the judge determines that the child or mentally defective adult is in danger of being stalked by the defendant, the judge is to issue a temporary restraining order limiting defendant's contact with the person being stalked. The court also may grant any other relief specified in the stalking law.

GENERAL

The procedures set forth in this directive were developed by the AOC's Family Practice Division in consultation with the Conferences of Criminal and Family Presiding Judges.

If the alleged stalking target and the defendant have been in a dating relationship, that target should be informed of the complaint procedures of the Prevention of Domestic Violence Act (*N.J.S.A. 2C:25-17 et seq.*).

Under the 1999 amendment, the parent or guardian of a child or mentally defective adult may file a stalking complaint in the Family Division seeking a temporary restraining order (TRO). Any such matter should be heard on the day it is filed, if at all possible. Since there must be a full hearing in Superior Court within ten days after the issuance of any emergency *ex parte* temporary restraining order, any TRO issued under these procedures must specify a ten-day return date with notice to the defendant to appear for the hearing.

At the ensuing ten-day hearing, the evidentiary standard to be applied in determining

whether to continue the temporary restraining order is a “preponderance of the evidence” (*N.J.S.A. 2C:12-10.2(f)*). If the court at that ten-day hearing does extend the temporary restraining order, that extended TRO is to remain in effect until either: (1) the defendant is convicted of stalking, in which case the Criminal Division judge is to hold a hearing on whether to issue a permanent restraining order (to replace the TRO) pursuant to *N.J.S.A. 2C:12-10.1*, or (2) the victim’s parent or guardian or the victim, if the victim has reached the age of 18, requests dismissal of the TRO and the court finds just cause to do so (*N.J.S.A. 2C:12-10.2(g)*). The Criminal Division in each vicinage should take whatever steps are necessary to minimize the time between the entry of an initial restraining order and the hearing date on the permanent restraining order.

The pre-1999 stalking law provides that a defendant’s violation of an order issued under that act constitutes an offense under *N.J.S.A. 2C:29-9 (a)* and that each order issued under the act must so state (*N.J.S.A. 2C:12-10.1 (f)*). A violation of any such order may be enforced in a civil action or a criminal action initiated either by the stalking victim or by the court on its own motion. Further, the act that serves as the basis for the violation of the permanent restraining order may also be the basis for the filing of a separate criminal complaint.

Since the 1999 amendment (*N.J.S.A. 2C:12-10.2*) supplemented rather than replaced the existing stalking statute, the presumption is that a violation by the defendant of an order issued pursuant to the 1999 amendment constitutes an offense under *N.J.S.A. 2C:29-9(a)*. Each order entered must state this pursuant to *N.J.S.A. 2C:12-10.2*. Violations of orders issued under *N.J.S.A. 2C:12-10.2* also may be enforced in a civil action or a criminal action initiated by the stalking victim, by the parent/guardian, or by a court on its own motion.

Two forms are attached to this Directive. The first, the complaint/order form, captioned “Complaint for Temporary Restraining Order by Parent or Guardian Under *N.J.S.A. 2C:12-10.2* for Stalking,” should be used for the initial emergent *ex parte* hearing as the initial temporary restraining order. The second, labeled in that attachments as “second order,” should be used for orders issued at the ten-day hearing or for any amended orders issued prior to the Criminal Division hearing on final relief.

The Prevention of Domestic Violence Act, *N.J.S.A. 2C:25-18 et seq.*, defines “domestic violence” as any of a number of specified acts committed by an adult or an emancipated minor upon a person who fits within the statutory parameters of a domestic violence victim. It also provides, however, that any of the acts committed by an unemancipated minor do not constitute domestic violence but instead may be the basis for filing a juvenile delinquency complaint. In light of this and the fact that the stalking legislation uses the terms “defendant” and “conviction,” terms not used in connection with juvenile proceedings, the presumption is that the legislation does not apply to minors. Accordingly, if the alleged stalker is a minor, the parent or guardian of the victim should be informed that the allegations may also serve as the basis for a juvenile delinquency complaint. The court may order restrictions on the juvenile defendant’s contact with the victim either as a condition of the juvenile’s release or upon adjudication.

COMPLAINT PROCESS

Before beginning the process, all cases should be screened by staff for eligibility for

filing under the Prevention of Domestic Violence Act. If eligible for such filing, the procedures described in the Domestic Violence Procedures Manual should be followed instead.

As used in these procedures, "*plaintiff*" refers to the parent or guardian who is actually filing the complaint, and "*victim*" refers to the minor child or mentally defective adult.

1. When a parent/guardian of a child or mentally defective adult seeks to file a Parent/Guardian Filed Stalking Complaint requesting a TRO, the parent/guardian should be directed either to that county's Family Court centralized case reception area or to the Domestic Violence case reception area. Once Family Division staff has determined that the person for whom the protection is being sought (the alleged victim) meets the statutory criteria, plaintiff should complete the Parent/Guardian Filed Stalking Complaint for Temporary Restraining Order form.
2. Professional staff (or other personnel trained to do so) should assist plaintiff in filling out the complaint, as necessary, including the request for all appropriate available reliefs.
3. If during the interview and preparation of the complaint it becomes clear that the stalking law provisions do not apply to the circumstances presented, Family Court staff should refer plaintiff to a more appropriate forum.
4. Once plaintiff has been interviewed by staff and has completed and signed the complaint, the complaint is docketed in FACTS and a file prepared. The completed complaint should be **docketed in FACTS under FO** (Family Other). Until FACTS can be updated to specify this case type, however, the vicinages should establish the case with a **status code of "01"** and **case type code of "TRN"**. The case should be forwarded to a Family Division judge.

INITIAL/EMERGENT HEARING

5. *N.J.S.A. 2C:12-10.2* allows a plaintiff to seek emergent *ex parte* relief in the form of a temporary restraining order.
6. After reviewing the complaint and hearing testimony from plaintiff, the judge should either issue or deny the Parent/Guardian Filed Stalking TRO. If it appears that the child or adult is in danger of being stalked by defendant, the judge should issue a temporary restraining order. Where an order is entered, a specific return date for a hearing within 10 days also will be set at that time.
7. When a Parent/Guardian Filed Stalking TRO is granted, the attached temporary order must be completed and signed by the judge.
8. Family Division staff is responsible for making available sufficient copies of the completed and signed order for distribution to all appropriate personnel and records (including plaintiff, defendant, the appropriate police department, Sheriff's department, and the court file). A copy must also be sent to the Criminal Division in that vicinage. Plaintiff is to be given two copies of the complaint and order. One copy of both the complaint and order is to be forwarded to the police department of the municipality in which the victim

resides. The defendant will receive his/her copy when served in person in accordance with the Rules of Court (R. 4:4-4).

9. Once service on the defendant has been attempted (successfully or unsuccessfully), the appropriate police or sheriff's department must fill out the return service portion of the Parent/Guardian Filed Stalking TRO and return that portion immediately to the Family Court.

TEN-DAY HEARING

10. The court must schedule a hearing to be held within 10 days after the date of issuance of any temporary restraining order.

11. If no one appears for the 10-day hearing, court staff should contact plaintiff to ascertain why (s)he has not appeared. If the court is satisfied that there has been no coercion of plaintiff not to appear, the court either may continue the TRO or may dismiss the complaint without prejudice. If the court is satisfied that the defendant has not been served, the court is to enter a modified order reflecting the extension of the restraints until the defendant is served. When the case is adjourned, parties are to be notified of the new court date in accordance with court rules. The service of any order of dismissal or amended Parent/Guardian Filed Stalking TRO must be in compliance with the requirements set forth in the Domestic Violence Procedures Manual.

12. If only the defendant appears, and the judge is satisfied that the plaintiff's failure to appear was not the result of coercion or duress, the judge in his or her discretion may issue an order of dismissal, which must be in compliance with the service requirements set forth in the Domestic Violence Procedures Manual.

13. If only the plaintiff appears, the court should hold the hearing and enter the appropriate order based on the circumstances of the case.

14. Where the defendant does not appear but was properly served, the court shall proceed with the hearing and, where appropriate, issue an order of continued restraints until either (1) the defendant is convicted of stalking and the court holds a hearing as to whether a permanent restraining order should be entered, or (2) a dismissal is requested and the court finds just cause to do so. *N.J.S.A. 2C:12-10.2(g)*.

15. If the Parent/Guardian Filed Stalking TRO is modified and/or restraints are continued, the appropriate distribution and service procedures are to be followed.

16. When a ten-day hearing has been completed and an order of continued restraints entered, Family Division staff shall copy the contents of the file for records retention. The original contents of the file shall be forwarded or delivered to a designee of the Criminal Division for use by the Criminal Division judge handling the criminal complaint or contempt complaint. Distribution of the second order shall follow the approved procedures for distribution and service.

17. The Criminal Division will forward a copy of the final disposition order to the Family

Division in the vicinage upon the final resolution of the matter. That final disposition order should be entered into FACTS.

ENFORCEMENT OF LITIGANT'S RIGHTS PROCEEDINGS

As noted above, a violation of either a temporary restraining order or a final restraining order issued pursuant to the stalking statute, *N.J.S.A. 2C:12-10*, constitutes a criminal offense under *N.J.S.A. 2C:29-9(a)*, which must be stated on the order. When such violations occur, plaintiff should be directed to the police or to the prosecutor.

The enforcement of litigant's rights procedure is also available as a civil action. Civil relief may be sought prior to the final disposition of the criminal complaint that may result in a permanent restraining order (as a result of conviction) or in dismissal of the original complaint. Vicinage staff should speak to the victim to ascertain (a) whether there has been a restraining order violation, and (b) whether the victim is seeking the type of relief that civil enforcement can provide.

When the victim or plaintiff determines that civil enforcement is the appropriate action, he or she should complete the appropriate forms for the enforcement of litigants rights under *Rule 1:10-3*. Family Division staff should docket the case as a reopened FO complaint and process the case as they would an emergent matter. The judge should review the pleading as soon as possible. If the judge is satisfied with the sufficiency of the pleading, the judge should sign an order designating a return date for the enforcement hearing. The resulting court order should be processed in the same fashion as a TRO, with the defendant personally served by local law enforcement and proof of service returned to the court.

Please contact Assistant Director Harry Cassidy, in the AOC's Family Practice Division, if you have any questions concerning this directive.

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER BY PARENT OR
GUARDIAN UNDER N.J.S.A. 2C:12-10.2 FOR STALKING
[COMPLAINT/ORDER]**

Superior Court, Chancery Division, Family Part,

County

Docket No.:

In the Matter of Plaintiff:	Plaintiff Sex:	Plaintiff DOB:
Defendant's Name:	Defendant's Sex/Race:	Defendant's DOB:
Defendant's Home Address:	Hair:	Identifiers: Scars, etc.
Defendant's Home Telephone:	Work Telephone:	SS# - -

The undersigned complains that the minor(s) or mentally defective adult(s) named below has been stalked by and is in danger of being stalked by the defendant named herein.

Specific persons: (Identify children under 18 years of age or mentally defective adults):

a. _____ (DOB): _____

b. _____ (DOB): _____

c. _____ (DOB): _____

(Give specific facts regarding the course of conduct): _____

1. Does defendant have a criminal history? no yes - enter SBI No. _____
(attach CCH prior court record, if applicable)
2. Has a criminal complaint been filed in this matter? no yes
(if yes, list date, location of court & docket #) _____
3. Prior complaints of stalking filed in any court? no yes (if yes, list court, docket #) _____
4. If law enforcement officer(s) responded to a stalking call, were weapons seized?
 no yes (if yes, describe) _____
5. Any prior or pending court proceeding involving the parties: no yes
(if yes, provide docket #) _____

CERTIFICATION

I certify that the foregoing specific facts made by me are true. I am aware that if any of the foregoing responses made by me are willfully false, I am subject to punishment.

_____ Date _____ Plaintiff

Docket No.:

Defendant:

RELIEF(S): Instructions: Mark appropriate boxes -- R = Requested relief, G = Granted relief
DEFENDANT: YOU OR ANY AGENT ON YOUR BEHALF ARE PROHIBITED FROM CONTACTING THE VICTIM IN ANY MANNER INCLUDING:

- | | | |
|--------------------------|--------------------------|---|
| R | G | |
| <input type="checkbox"/> | <input type="checkbox"/> | Maintaining a visual proximity or physical proximity to:
Victim: _____
Others: _____
_____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Conveying verbal or written threats to:
Victim: _____
Others: _____
_____ |
| <input type="checkbox"/> | <input type="checkbox"/> | Implied threats or conduct or a combination thereof:
Victim: _____
Others: _____
_____ |
| <input type="checkbox"/> | <input type="checkbox"/> | You are barred from the following locations: (Do Not List Victim's Current Place of Residence, Employment, or School except where the location is specifically known to defendant) _____

_____ |

Notice to Defendant: A violation of any of the provisions listed in this order constitutes criminal contempt pursuant to N.J.S.A. 2C:29-9(a), and will result in your arrest and criminal prosecution. **Only a court can modify any of the conditions or terms of this court order.**

Comments:

- | | |
|---|---|
| <input type="checkbox"/> TRO denied. Complaint dismissed | <input type="checkbox"/> TRO granted. Exigent circumstances exist and sufficient facts have been presented to this court such that it appears that the minor (s) or mentally defective adult is in danger of being stalked pursuant to N.J.S.A. 2C:12-10.2 and a Final Hearing is scheduled. |
|---|---|

This order shall remain in effect until: (1) the defendant is convicted of stalking, in which case the court shall hold a hearing on the issue of whether a permanent restraining order shall be entered pursuant to N.J.S.A. 2C:12-10.1; or (2) the victim, or the parent(s) or guardian if the victim is a minor, requests that the restraining order be dismissed and the court finds just cause to do so.

Date	Honorable	Court

Docket No.:

Defendant:

NOTICE TO APPEAR FOR HEARING

- Both Plaintiff and Defendant are ordered to appear for a hearing on (date) _____ at (time) _____ at the Superior Court, Chancery Division, Family Part, _____ County, located at _____

Important Notice: The terms and conditions of this court order may only be changed or vacated by the court. The parties cannot themselves modify the terms of this court order. The named defendant **cannot** have any contact with the plaintiff or victim without permission of the court. Defendant may be arrested if this order is violated.

- Plaintiff was given a copy of the complaint and order by : _____

Print Name	Time/Date	Signature/Badge No./Dept.

RETURN OF SERVICE

- I hereby certify that I served the within complaint and order by delivering a copy to the defendant personally.

Print Name	Time/Date	Signature/Badge No./Dept.

- I hereby certify that I served the within complaint and order by use of substituted service as follows:

Print Name	Time/Date	Signature/Badge No./Dept.

- Defendant could not be served: Explain:

Print Name	Time/Date	Signature/Badge No./Dept.

RESTRAINING ORDER []
OR
AMENDED RESTRAINING ORDER []
ISSUED PURSUANT TO N.J.S.A. 2C:12-10.2
[SECOND ORDER]

Superior Court, Chancery Division, Family Part, _____ County

Docket No.: _____

In the Matter of	Plaintiff	Plaintiff
Plaintiff:	Sex:	DOB:
Defendant's Name:	Defendant's Sex/Race	Defendant's DOB:
Defendant's Home Address:	Hair:	Identifiers: Eye Color Scars, etc.
Defendant's Home Telephone:	Work Telephone:	SS# - -

The Court having considered the Parent/Guardian's Complaint dated _____ seeking a **TEMPORARY RESTRAINING ORDER** against the defendant for stalking, and the Court having found by a preponderance of the evidence that _____ has been stalked by, and is in danger of being stalked by defendant;

IT IS on this _____ day of _____, 20____, **ORDERED** that:

- The defendant (or any agent on his/her behalf) is prohibited from maintaining a visual proximity to Victim:** _____
Others: _____

- The defendant (or any agent on his/her behalf) is prohibited from conveying verbal or written threats to:**
Victim: _____
Others: _____

- The defendant (or any agent on his/her behalf) is prohibited from implied threats or conduct or a combination thereof:**
Victim: _____
Others: _____

- THE DEFENDANT IS BARRED FROM THE FOLLOWING LOCATIONS:**
Victim: _____
Others: _____

**RESTRAINING ORDER [] OR AMENDED RESTRAINING ORDER [] FOR PARENT OR GUARDIAN
UNDER N.J.S.A. 2C:12-10.2 FOR PARENT/GUARDIAN FILED STALKING**

Docket No.:

Defendant:

PROHIBITION AGAINST WEAPON(S) POSSESSION:

***A VIOLATION OF ANY OF THE PROVISIONS LISTED IN THIS ORDER
CONSTITUTES CRIMINAL CONTEMPT PURSUANT TO N.J.S.A. 2C:29-9(a), AND MAY
RESULT IN DEFENDANT'S ARREST AND CRIMINAL PROSECUTION.***

Date:

Honorable:

RETURN OF SERVICE

- Plaintiff was given a copy of the Order by _____
- I hereby certify that I served the within Order by delivering a copy to the defendant personally
- I hereby certify that I served the within Order by use of substituted service as follows:

- Defendant could not be served. Explain: _____

DATE

SIGNATURE, TITLE & DEPARTMENT OR OFFICE

AOC 6/26/03