

P.L. 2021, CHAPTER 358, *approved January 10, 2022*
Assembly, No. 3687 (*First Reprint*)

1 AN ACT concerning certain returned and seized weapons and
2 amending P.L.1991, c.261 and P.L.2018, c.35.

3

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

6

7 1. Section 5 of P.L.1991, c.261 (C.2C:25-21) is amended to
8 read as follows:

9 5. a. When a person claims to be a victim of domestic
10 violence, and where a law enforcement officer responding to the
11 incident finds probable cause to believe that domestic violence has
12 occurred, the law enforcement officer shall arrest the person who is
13 alleged to be the person who subjected the victim to domestic
14 violence and shall sign a criminal complaint if:

15 (1) The victim exhibits signs of injury caused by an act of
16 domestic violence;

17 (2) A warrant is in effect;

18 (3) There is probable cause to believe that the person has
19 violated N.J.S.2C:29-9, and there is probable cause to believe that
20 the person has been served with the order alleged to have been
21 violated. If the victim does not have a copy of a purported order,
22 the officer may verify the existence of an order with the appropriate
23 law enforcement agency; or

24 (4) There is probable cause to believe that a weapon as defined
25 in N.J.S.2C:39-1 has been involved in the commission of an act of
26 domestic violence.

27 b. A law enforcement officer may arrest a person; or may sign
28 a criminal complaint against that person, or may do both, where
29 there is probable cause to believe that an act of domestic violence
30 has been committed, but where none of the conditions in subsection
31 a. of this section applies.

32 c. (1) As used in this section, the word "exhibits" is to be
33 liberally construed to mean any indication that a victim has suffered
34 bodily injury, which shall include physical pain or any impairment
35 of physical condition. Where the victim exhibits no visible sign of
36 injury, but states that an injury has occurred, the officer should
37 consider other relevant factors in determining whether there is
38 probable cause to make an arrest.

39 (2) In determining which party in a domestic violence incident
40 is the victim where both parties exhibit signs of injury, the officer
41 should consider the comparative extent of the injuries, the history of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 1, 2021.

1 domestic violence between the parties, if any, and any other
2 relevant factors.

3 (3) No victim shall be denied relief or arrested or charged under
4 this act with an offense because the victim used reasonable force in
5 self defense against domestic violence by an attacker.

6 d. (1) In addition to a law enforcement officer's authority to
7 seize any weapon that is contraband, evidence or an instrumentality
8 of crime, a law enforcement officer who has probable cause to
9 believe that an act of domestic violence has been committed shall:

10 (a) question persons present to determine whether there are
11 weapons on the premises; and

12 (b) upon observing or learning that a weapon is present on the
13 premises, seize any weapon that the officer reasonably believes
14 would expose the victim to a risk of serious bodily injury. If a law
15 enforcement officer seizes any firearm pursuant to this paragraph,
16 the officer shall also seize any firearm purchaser identification card
17 or permit to purchase a handgun issued to the person accused of the
18 act of domestic violence.

19 (2) A law enforcement officer shall deliver all weapons,
20 firearms purchaser identification cards and permits to purchase a
21 handgun seized pursuant to this section to the county prosecutor and
22 shall append an inventory of all seized items to the domestic
23 violence report.

24 (3) Weapons seized in accordance with the "Prevention of
25 Domestic Violence Act of 1991", P.L.1991, c.261 (C.2C:25-17 et
26 seq.) shall be returned to the owner except upon order of the
27 Superior Court. The prosecutor who has possession of the seized
28 weapons may, upon notice to the owner, petition a judge of the
29 Family Part of the Superior Court, Chancery Division, within 45
30 days of seizure, to obtain title to the seized weapons, or to revoke
31 any and all permits, licenses and other authorizations for the use,
32 possession, or ownership of such weapons pursuant to the law
33 governing such use, possession, or ownership, or may object to the
34 return of the weapons on such grounds as are provided for the initial
35 rejection or later revocation of the authorizations, or on the grounds
36 that the owner is unfit or that the owner poses a threat to the public
37 in general or a person or persons in particular.

38 A hearing shall be held and a record made thereof within 45 days
39 of the notice provided above. No formal pleading and no filing fee
40 shall be required as a preliminary to such hearing. The hearing
41 shall be summary in nature. Appeals from the results of the hearing
42 shall be to the Superior Court, Appellate Division, in accordance
43 with the law.

44 If the prosecutor does not institute an action within 45 days of
45 seizure, the seized weapons shall be returned to the owner.

46 After the hearing the court shall order the return of the firearms,
47 weapons and any authorization papers relating to the seized
48 weapons to the owner if the court determines the owner is not

1 subject to any of the disabilities set forth in **[N.J.S.2C:58-3c.]**
2 subsection c. of N.J.S.2C:58-3 and finds that the complaint has been
3 dismissed at the request of the complainant and the prosecutor
4 determines that there is insufficient probable cause to indict; or if
5 the defendant is found not guilty of the charges; or if the court
6 determines that the domestic violence situation no longer exists. At
7 least 10 days prior to returning the seized weapons, the prosecutor
8 shall notify each claimant or victim that the weapons will be
9 returned to the owner.

10 Nothing in this act shall impair the right of the State to retain
11 evidence pending a criminal prosecution. Nor shall any provision
12 of this act be construed to limit the authority of the State or a law
13 enforcement officer to seize, retain or forfeit property pursuant to
14 chapter 64 of Title 2C of the New Jersey Statutes.

15 If, after the hearing, the court determines that the weapons are
16 not to be returned to the owner, the court may:

17 (a) With respect to weapons other than firearms, order the
18 prosecutor to dispose of the weapons if the owner does not arrange
19 for the transfer or sale of the weapons to an appropriate person
20 within 60 days; or

21 (b) Order the revocation of the owner's firearms purchaser
22 identification card or any permit, license or authorization, in which
23 case the court shall order the owner to surrender any firearm seized
24 and all other firearms possessed to the prosecutor and shall order
25 the prosecutor to dispose of the firearms if the owner does not
26 arrange for the sale of the firearms to a registered dealer of the
27 firearms within 60 days; or

28 (c) Order such other relief as it may deem appropriate. When
29 the court orders the weapons forfeited to the State or the prosecutor
30 is required to dispose of the weapons, the prosecutor shall dispose
31 of the property as provided in N.J.S.2C:64-6.

32 (4) A civil suit may be brought to enjoin a wrongful failure to
33 return a seized firearm where the prosecutor refuses to return the
34 weapon after receiving a written request to do so and notice of the
35 owner's intent to bring a civil action pursuant to this section.
36 Failure of the prosecutor to comply with the provisions of this act
37 shall entitle the prevailing party in the civil suit to reasonable costs,
38 including attorney's fees, provided that the court finds that the
39 prosecutor failed to act in good faith in retaining the seized weapon.

40 (5) No law enforcement officer or agency shall be held liable in
41 any civil action brought by any person for failing to learn of, locate
42 or seize a weapon pursuant to this act, or for returning a seized
43 weapon to its owner.

44 (cf: P.L.2003, c.277, s.1)

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46 2. Section 7 of P.L.2018, c.35 (C.2C:58-26) is amended to read as
47 follows:

1 7. a. When a temporary or final extreme risk protective order is
2 issued pursuant to section 4 or 5 of P.L.2018, c.35 (C.2C:58-23 or
3 C.2C:58-24), the court shall order the respondent to surrender to the
4 local law enforcement agency all firearms and ammunition in the
5 respondent's custody or control, or which the respondent owns or
6 possesses, and any firearms purchaser identification card, permit to
7 purchase a handgun, or permit to carry a handgun held by the
8 respondent. The court also shall notify the respondent that the
9 respondent is prohibited from purchasing firearms or ammunition or
10 applying for a firearms purchaser identification card, permit to
11 purchase a handgun, or permit to carry a handgun.

12 b. If the petition for the temporary extreme risk protective order
13 indicates that the respondent owns or possesses any firearms or
14 ammunition, the court shall issue a search warrant with the temporary
15 or final extreme risk protective order and the law enforcement officer
16 who serves the order shall request that all firearms and ammunition
17 immediately be surrendered.

18 (1) The respondent immediately shall surrender, in a safe manner,
19 all firearms and ammunition in the respondent's custody or control, or
20 which the respondent owns or possesses, and any firearms purchaser
21 identification card, permit to purchase a handgun, or permit to carry a
22 handgun held by the respondent to the control of the law enforcement
23 officer.

24 (2) The respondent may request that the law enforcement agency
25 sell all firearms and ammunition in a safe manner to a federally
26 licensed firearms dealer pursuant to section 8 of
27 P.L.2018, c.35 (C.2C:58-27).

28 (3) The law enforcement officer or licensed firearms dealer taking
29 possession of any firearms or ammunition pursuant to this subsection
30 shall issue a receipt identifying all firearms and ammunition that have
31 been surrendered by the respondent. The officer or dealer shall
32 provide a copy of the receipt to the respondent at the time of surrender.

33 (4) If the respondent surrenders firearms and ammunition to a law
34 enforcement officer pursuant to paragraph (1) of this subsection or
35 surrenders or sells firearms and ammunition to a licensed dealer
36 pursuant to paragraph (2) of this subsection, the respondent shall,
37 within 48 hours after being served with the order, file the receipt with
38 the county prosecutor. Failure to timely file the receipt or copy of the
39 receipt shall constitute contempt of the order.

40 c. The court which issued the protective order may issue a search
41 warrant for a firearm or ammunition that is in the custody or control
42 of, owned, or possessed by a respondent who is subject to a temporary
43 or final protective order issued pursuant to section 4 or 5 of P.L.2018,
44 c.35 (C.2C:58-23 or C.2C:58-24) if the respondent has lawfully been
45 served with that order and has failed to surrender the firearm or
46 ammunition as required by this section.

47 d. The respondent may petition the agency for the return of any
48 surrendered firearms or ammunition upon termination of an order

1 pursuant to section 6 of P.L.2018, c.35 (C.2C:58-25). Within 30 days
2 of receiving a petition for the return of surrendered firearms or
3 ammunition and after the termination of the order, the agency shall
4 return the firearm or ammunition unless:

5 (1) the firearm has been reported as stolen; or

6 (2) the respondent is prohibited from possessing a firearm under
7 State or federal law.

8 At least 10 days prior to returning the firearms or ammunition, the
9 local law enforcement agency shall notify the family or household
10 member that the firearms or ammunition will be returned to the owner.

11 ¹If the firearms or ammunition were seized by the State Police, the
12 county prosecutor's office where the protective order is venued shall
13 notify the family or household member that the firearms or
14 ammunition will be returned to the owner.¹ Nothing in this act shall

15 prohibit revocation and seizure of a person's firearms purchaser
16 identification card, permit to purchase a handgun, permit to carry a
17 handgun, and weapons as authorized pursuant to applicable law.

18 e. If a person other than the respondent claims title to any firearm
19 or ammunition surrendered pursuant to this section, and the law
20 enforcement agency determines that the person is the lawful owner of
21 the firearm or ammunition, the firearm or ammunition shall be
22 returned to that person.

23 f. If the respondent has surrendered a firearm or ammunition to a
24 federally licensed firearms dealer, after termination of the order, the
25 respondent may request the law enforcement agency, in writing, to
26 authorize the return of the firearm or ammunition from the dealer. The
27 dealer shall transfer the firearm or ammunition to the respondent in
28 accordance with procedures required when a firearm or ammunition is
29 being sold from the dealer's inventory in accordance with
30 N.J.S.2C:58-2.

31 (cf: P.L.2018, c.35, s.7)

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33 3. This act shall take effect on the first day of the seventh
34 month following the date of enactment.

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40 Requires certain family or household members and victims be
41 notified when firearms are returned to persons charged with
domestic violence or subject to extreme risk protection order.