

ASSEMBLY, No. 1217

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Co-Sponsored by:

Assemblyman Benson

SYNOPSIS

Authorizes gun violence restraining orders and firearm seizure warrants.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT authorizing gun violence restraining orders and firearm
2 seizure warrants and supplementing Title 2C of the New Jersey
3 Statutes.

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

7
8 1. For the purposes of this act:

9 “Firearm seizure warrant” shall mean a court order regarding a
10 person who is subject to a gun violence restraining order and who is
11 known to own or possess one or more firearms, that directs a law
12 enforcement officer to seize any firearms in the possession of the
13 person and to bring the unloaded firearm before the judge.

14 “Gun violence restraining order” shall mean a court order
15 prohibiting a person from purchasing, owning, possessing, or
16 controlling a firearm for a period of up to one year.

17
18 2. Any person may submit an application to the court setting
19 forth the facts and circumstances necessitating the issuance of a gun
20 violence restraining order. The Administrative Office of the Courts
21 shall prescribe the manner and form of the application.

22 a. A gun violence restraining order shall be issued to prohibit a
23 person from possessing a firearm if an affidavit, signed by the
24 applicant under oath, and any additional information provided to the
25 court demonstrates, to the satisfaction of the court, that the person
26 poses a significant risk of personal injury to himself or others by
27 possessing a firearm.

28 b. In determining whether a gun violence restraining order
29 should be issued, the judge may examine, under oath, the person
30 seeking the order and any witnesses the person produces.

31 (1) In determining whether grounds for a gun violence
32 restraining order exist, the judge shall consider all of the following:

33 (a) a recent threat or act of violence by the person
34 directed toward others;

35 (b) a recent threat or act of violence by the person
36 directed toward himself;

37 (c) a recent violation of a restraining order; and

38 (d) a conviction for a weapons offense under the provisions of
39 chapter 39 of Title 2C of the New Jersey Statutes.

40 (2) In determining whether grounds for a gun violence
41 restraining order exist, the judge may consider any of the following:

42 (a) the reckless use, display, or brandishing of a firearm by the
43 person;

44 (b) the history of use, attempted use, or threatened use of
45 physical force by the person against other persons;

46 (c) any prior arrest of the person for a crime or offense;

47 (d) any history of a violation by the person of a restraining
48 order;

1 (e) evidence of recent or ongoing abuse of controlled substances
2 or alcohol by the person; or
3 (f) evidence of recent acquisition of firearms or other deadly
4 weapons.
5 (3) The affidavit shall set forth the facts establishing the
6 grounds of the application, or probable cause for believing that they
7 exist. In lieu of the required written affidavit, the judge may take
8 an oral statement under oath.
9 c. If the judge is satisfied of the existence of the grounds of the
10 application, or that there is probable cause to believe their
11 existence, the judge shall issue a gun violence restraining order.
12 d. A gun violence restraining order shall include:
13 (1) a statement of the grounds asserted for the order;
14 (2) the date and time the order expires;
15 (3) the address of the Superior Court for the county in which the
16 restrained party resides; and
17 (4) a statement to the restrained person stating: the time and
18 date that the order expires; that the person may not own, possess,
19 purchase, or receive, or attempt to purchase or receive a firearm
20 while this order is in effect; that the person is entitled to submit one
21 written request for a hearing at any time during the effective period
22 of the order for an order permitting the person to own, possess,
23 purchase, or receive a firearm; that the person may seek the advice
24 of an attorney as to any matter connected with the order; and that
25 the attorney should be consulted promptly so that the attorney may
26 assist the person in any matter connected with the order.
27 e. When serving a gun violence restraining order, the law
28 enforcement officer shall inform the person that the person may
29 submit one written request for a hearing, pursuant to section 5 of
30 this act, at any time during the effective period of the order and
31 provide the person with a form to request the hearing.
32
33 3. If there is probable cause to believe that a person who has
34 been issued a gun violence restraining order possesses or owns a
35 firearm, the judge shall issue a firearm seizure warrant to the
36 appropriate law enforcement officer directing the officer to seize
37 any specified firearm and to retain the firearm subject to the order
38 of the court.
39 a. A firearm seizure warrant shall be issued upon probable
40 cause, supported by an affidavit, naming or describing with
41 reasonable specificity the facts and circumstances justifying the
42 court order and listing any firearm to be seized pursuant to the court
43 order.
44 b. A firearm described in the firearm seizure warrant may be
45 taken from any place, or from any person in whose possession the
46 firearm may be.
47 c. When a law enforcement officer takes property under a
48 firearm seizure warrant, the officer shall give a receipt for the

1 property taken, specifying it in detail, to the person from whom it
2 was taken. In the absence of a person, the officer shall leave the
3 receipt in the place where the property was found.

4 d. All firearms seized pursuant to a firearm seizure warrant by
5 a law enforcement officer shall be delivered to the county
6 prosecutor.

7 e. If the location to be searched during the execution of a
8 firearm seizure warrant is jointly occupied by multiple parties and a
9 firearm located during the execution of the seizure warrant is owned
10 by a person other than the person in the firearm seizure warrant, the
11 firearm shall not be seized if the firearm is stored in a manner that
12 the person named in the firearm seizure warrant does not have
13 access to or control of the firearm and there is no evidence of
14 unlawful possession of the firearm by the owner.

15 f. If the location to be searched during the execution of a
16 firearm seizure warrant is jointly occupied by multiple parties and a
17 gun safe that is owned by a person other than the person named in
18 the firearm seizure warrant is located therein, the contents of the
19 gun safe shall not be searched except in the owner's presence, or
20 with the owner's consent, or unless a valid search warrant has been
21 obtained.

22
23 4. Except as provided in subsection f. of this section, no later
24 than 14 days after the execution of a gun violence restraining order
25 and a firearm seizure warrant, if applicable, the court that issued the
26 order and seizure warrant shall hold a hearing to determine whether
27 the person who is the subject of the order may possess, own,
28 purchase, or receive a firearm and, when applicable, whether a
29 seized firearm should be returned to the person named in the
30 warrant.

31 a. At the hearing, the State shall have the burden of proving, by
32 clear and convincing evidence, that the person poses a significant
33 risk of personal injury to himself or others by owning or possessing
34 the firearm.

35 b. If, at the hearing, the person is found to pose a significant
36 risk of personal injury to himself or others by purchasing, owning,
37 possessing, or controlling a firearm, the firearm seized pursuant to
38 the warrant shall be retained by the law enforcement agency for a
39 period not to exceed one year or until ownership of the firearm is
40 transferred to a licensed firearms dealer. The person shall be
41 prohibited from purchasing, owning, possessing, or controlling a
42 firearm for a period not to exceed one year.

43 c. If the person violates subsection b. of this section, the person
44 commits a crime of the fourth degree.

45 d. The court shall notify the Department of Law and Public
46 Safety of the gun violence restraining order no later than two
47 business days after issuing the order. The court also shall notify the
48 department of any order restoring the person's ability to own or

1 possess firearms no later than two business days after issuing the
2 order to restore the person's right to own or possess any type of
3 firearm that may be lawfully owned and possessed. Any notice or
4 report submitted pursuant to this subsection shall be in an electronic
5 format, in a manner prescribed by the department.

6 e. If the court finds that the State has not met the required
7 standard of proof, the firearm seized pursuant to the warrant shall
8 be returned to the person.

9 f. If the person is prohibited by law from purchasing, owning,
10 possessing, or controlling a firearm for a period of one year or more
11 by any other provision of State or federal law, a hearing pursuant to
12 this section shall not be required and the court shall issue an order
13 to hold the firearm until either the person is no longer prohibited
14 from owning a firearm or the person sells or transfers ownership of
15 the firearm to a licensed firearms dealer.

16 g. If any other person claims title to a firearm seized pursuant
17 to the warrant, the firearm shall be returned to the lawful owner.

18

19 5. A person who is the subject of a court order pursuant to
20 subsection b. of section 4 of this act may submit one written request
21 at any time during the effective period of the order for a hearing for
22 an order permitting the person to possess, own, purchase, or receive
23 a firearm.

24 The request shall be submitted in a form and manner as
25 prescribed by the Administrative Office of the Courts.

26

27 6. a. If a law enforcement agency has probable cause to believe
28 that a person subject to a gun violence restraining order continues to
29 pose a significant risk of personal injury to himself or others by
30 purchasing, owning, possessing, or controlling a firearm, the agency
31 may initiate a request for a renewal of the order, setting forth the
32 facts and circumstances necessitating the request.

33 The request shall be submitted in a form and manner as
34 prescribed by the Administrative Office of the Courts.

35 (1) A hearing held pursuant to this section shall be held in
36 Superior Court to determine if a request for renewal of the order
37 shall be issued.

38 (2) The person named in the restraining order shall be given
39 written notice and an opportunity to be heard.

40 b. A judge may, upon his own motion, or upon request of
41 another person, issue a renewal of a gun violence restraining order
42 when there is probable cause to believe that a person subject to the
43 order continues to pose a significant risk of personal injury to
44 himself or others by purchasing, owning, possessing, or controlling
45 a firearm, after written notice to the person named in the restraining
46 order and after the person has been given an opportunity for a
47 hearing.

1 7. This act shall take effect on the first day of the seventh month
2 after enactment.

3

4

5

STATEMENT

6

7 This bill authorizes courts in this State to issue gun violence
8 restraining orders to persons who pose a significant risk of personal
9 injury to themselves or others by possessing or owning a firearm.
10 The bill also authorizes courts to issue a firearm seizure warrant
11 authorizing a law enforcement officer to seize a firearm from a
12 person who has been issued a gun violence restraining order.

13 Specifically, the bill authorizes any person, including family
14 members or friends, to submit an application to the court setting
15 forth the facts and circumstances necessitating the issuance of a gun
16 violence restraining order. Under the bill, the court is to issue the
17 restraining order if it finds, based upon the applicant's sworn and
18 signed affidavit and other information received, that the person
19 poses a significant risk of personal injury to himself or others by
20 possessing a firearm. The bill defines a gun violence restraining
21 order as a court order prohibiting a person from owning,
22 purchasing, possessing, or receiving any firearms for a period of up
23 to one year.

24 Under the bill, the court also is authorized to issue a firearm
25 seizure warrant if there is probable cause to believe that a person
26 who has been issued a gun violence restraining order possesses or
27 owns a firearm. The warrant is to be issued to the appropriate law
28 enforcement officer directing that officer to seize any specified
29 firearm and to retain the firearm subject to the order of the court.
30 The bill defines a "firearm seizure warrant" as a court order
31 regarding a person who is subject to a gun violence restraining
32 order and who is known to own or possess one or more firearms,
33 that directs a law enforcement officer to seize any firearms in the
34 person's possession and to bring the unloaded firearm to the county
35 prosecutor.

36 The bill requires the court to hold a hearing within 14 days of the
37 execution of a gun violence restraining order and firearm seizure
38 warrant, if applicable, to determine whether the person who is the
39 subject of the order may possess, own, purchase, or receive a
40 firearm and whether a seized firearm should be returned to the
41 person.

42 A person who is the subject of a gun violence restraining and
43 firearm seizure warrant may submit one written request at any time
44 during the effective period of the order for a hearing for a
45 subsequent order permitting the person to possess, own, purchase,
46 or receive a firearm.

47 If a law enforcement agency has probable cause to believe that a
48 person subject to a gun violence restraining order continues to pose

A1217 MCKEON

7

1 a significant risk of personal injury to himself or others by
2 possessing a firearm, the agency may initiate a request for a renewal
3 of the order. A judge also may, upon his own motion or upon the
4 request of another person, issue a renewal of a gun violence
5 restraining order under these circumstances.

6 The purpose of this bill is to provide law enforcement officers in
7 this State with the means to take away firearms from persons whose
8 friends or family have reported as being mentally unstable.