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DOMESTIC VIOLENCE VICTIM REPRESENTATION INFORMATION SESSION FOR ATTORNEYS

PRESENTED BY MEMBERS OF:

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
FAMILY LAW SECTION OF THE NEW JERSEY STATE BAR ASSOCIATION
PARTNERS FOR WOMEN AND JUSTICE
WOMANSPACE

GENERAL OVERVIEW OF THE LAW ON DOMESTIC VIOLENCE

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PREVENTION OF DOMESTIC VIOLENCE ACT

N.J.S.A 2C:25-17, ET SEQ.

- Domestic violence has a strict definition under the laws of the State of New Jersey.
- Victims of domestic violence are afforded significant protections under our law and domestic violence offenders are subject to severe consequences following a finding that an act of domestic violence has occurred and a restraining order is warranted.

PROTECTED RELATIONSHIPS

- In order for an incident to be defined as domestic violence, the parties to the incident must first meet the relationship requirements of the PDVA.
- Relationships protected under the PDVA include:
 - spouses,
 - former spouses,
 - present or former household members,
 - co-parents,
 - anticipated co-parents of a child in utero, and
 - parties to a dating relationship.

AGE RESTRICTIONS OF PDVA

- For the following protected relationships, the victim of domestic violence must be 18 years of age or older or an emancipated minor:
 - spouses,
 - former spouses, and
 - present or former household members.
- For the following protected relationships, there are no age requirements for the victim of domestic violence:
 - co-parents,
 - anticipated co-parents of a child in utero, and
 - parties to a dating relationship.
- The defendant in a domestic violence action must always be 18 years of age or older or an emancipated minor.
- Under the PDVA, an emancipated minor is defined as a person under 18 years of age who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or administrative agency to be emancipated.

PREDICATE ACTS OF DOMESTIC VIOLENCE

The PDVA specifically defines the following acts as domestic violence:

- Homicide
- Assault
- Terroristic Threats
- Kidnapping
- Criminal Restraint
- False Imprisonment
- Sexual Assault
- Criminal Sexual Contact
- Lewdness
- Criminal Mischief
- Burglary
- Criminal Trespass
- Harassment
- Stalking
- Criminal Coercion
- Robbery
- Contempt of a DV Order
- Cyber Harassment

The PDVA additionally provides a catchall category: “Any other crime involving risk of death or serious bodily injury to a person protected under the Prevention of Domestic Violence Act”.

ASSAULT

N.J.S.A. 2C:12-1

- A person is guilty of simple assault if he:
 - Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
 - Negligently causes bodily injury to another with a deadly weapon; or
 - Attempts by physical menace to put another in fear of imminent serious bodily injury.
- The statute further provides a series of aggravating factors which elevate the act to aggravated assault, none of which are necessary for a finding of assault under the PDVA.

HARASSMENT

N.J.S.A. 2C:33-4

- A person is guilty of harassment if, with purpose to harass another, he:
 - Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
 - Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
 - Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
- A communication may be deemed to have been made either at the place where it originated or at the place where it was received.

TERRORISTIC THREATS N.J.S.A. 2C:12-3

- A person is guilty of terroristic threats if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.
- A person is guilty of terroristic threats if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

STALKING

N.J.S.A. 2C:12-10

- A person is guilty of stalking if he purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for his safety or the safety of a third person or suffer other emotional distress.
 - “Course of conduct” means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device, or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person’s property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.
 - “Repeatedly” means on two or more occasions.
 - “Emotional distress” means significant mental suffering or distress.
 - “Cause a reasonable person to fear” means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

FALSE
IMPRISONMENT
N.J.S.A. 2C:13-3

A person commits a disorderly persons offense if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

CYBER- HARASSMENT N.J.S.A. 2C:33-4.1

- A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:
 - threatens to inflict injury or physical harm to any person or the property of any person;
 - knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or
 - threatens to commit any crime against the person or the person's property.

HOMICIDE

N.J.S.A 2C:11-1 ET SEQ.

- A person is guilty of homicide if he purposely, knowingly or recklessly causes the death of another human being.
- This act, while specifically included in the PDVA, is not likely to come up in a domestic violence case as you need a life in being to be a protected party under the PDVA.

KIDNAPPING

N.J.S.A 2C:13-1

- Holding for ransom, reward, or as a hostage. A person is guilty of kidnapping if he unlawfully removes another from the place where he is found or if he unlawfully confines another with the purpose of holding that person for ransom or reward or as a shield or hostage.
- Holding for other purposes. A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes:
 - To facilitate commission of any crime or flight thereafter;
 - To inflict bodily injury on or to terrorize the victim or another;
 - To interfere with the performance of any governmental or political function; or
 - To permanently deprive a parent, guardian or other lawful custodian of custody of the victim.
- “Unlawful” removal or confinement. A removal or confinement is unlawful if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or is incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

CRIMINAL RESTRAINT N.J.S.A. 2C:13-2

- A person is guilty of criminal restraint if he knowingly:
 - Restrains another unlawfully in circumstances exposing the other to risk of serious bodily injury; or
 - Holds another in a condition of involuntary servitude.
- The creation by the actor of circumstances resulting in a belief by another that he must remain in a particular location shall for purposes of this section be deemed to be a holding in a condition of involuntary servitude.

SEXUAL ASSAULT N.J.S.A. 2C:14-2

- An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.
- An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
 - The actor uses physical force or coercion, but the victim does not sustain severe personal injury;
 - The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;
 - The victim is at least 16 but less than 18 years old and:
 - The actor is related to the victim by blood or affinity to the third degree; or
 - The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or
 - The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
 - The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim;
 - The victim is a pupil at least 18 but less than 22 years old and has not received a high school diploma and the actor is a teaching staff member or substitute teacher, school bus driver, other school employee, contracted service provider, or volunteer and the actor has supervisory or disciplinary power of any nature or in any capacity over the victim.
- The statute further provides a series of aggravating factors which elevate the act to aggravated sexual assault, none of which are necessary for a finding of sexual assault under the PDVA.

CRIMINAL SEXUAL CONTACT N.J.S.A. 2C:14-3

- An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in the preceding slide's definition of sexual assault.
- The primary distinction between sexual assault and criminal sexual contact is the penetration requirement.

LEWDNESS

N.J.S.A. 2C:14-4

- A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.
- “Lewd acts” shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

CRIMINAL MISCHIEF N.J.S.A. 2C:17- 3

- A person is guilty of criminal mischief if he:
 - Purposely or knowingly damages tangible property of another or damages tangible property of another recklessly or negligently in the employment of fire, explosives or other dangerous means listed in subsection a. of N.J.S.A.2C:17-2; or
 - Purposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property, including the damaging or destroying of a rental premises by a tenant in retaliation for institution of eviction proceedings.

BURGLARY

N.J.S.A. 2C:18-2

- A person is guilty of burglary if, with purpose to commit an offense therein or thereon he:
 - Enters a research facility, structure, or a separately secured or occupied portion thereof unless the structure was at the time open to the public or the actor is licensed or privileged to enter;
 - Surreptitiously remains in a research facility, structure, or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so; or
 - Trespasses in or upon utility company property where public notice prohibiting trespass is given by conspicuous posting, or fencing or other enclosure manifestly designed to exclude intruders.

CRIMINAL TRESPASS N.J.S.A. 2C:18-3

- **Unlicensed entry of structures.** A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters or surreptitiously remains in any research facility, structure, or separately secured or occupied portion thereof, or in or upon utility company property, or in the sterile area or operational area of an airport.
- **Defiant trespasser.** A person commits a petty disorderly persons offense if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:
 - Actual communication to the actor; or
 - Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
 - Fencing or other enclosure manifestly designed to exclude intruders.
- **Peering into windows or other openings of dwelling places.** A person commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, he peers into a window or other opening of a dwelling or other structure adapted for overnight accommodation for the purpose of invading the privacy of another person and under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed.

CRIMINAL COERCION N.J.S.A. 2C:13-5

- A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens to:
 - Inflict bodily injury on anyone or commit any other offense, regardless of the immediacy of the threat;
 - Accuse anyone of an offense;
 - Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute;
 - Take or withhold action as an official, or cause an official to take or withhold action;
 - Bring about or continue a strike, boycott or other collective action, except that such a threat shall not be deemed coercive when the restriction compelled is demanded in the course of negotiation for the benefit of the group in whose interest the actor acts;
 - Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
 - Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

ROBBERY

N.J.S.A. 2C:15-1

- A person is guilty of robbery if, in the course of committing a theft, he:
 - Inflicts bodily injury or uses force upon another; or
 - Threatens another with or purposely puts him in fear of immediate bodily injury; or
 - Commits or threatens immediately to commit any crime of the first or second degree.
- An act shall be deemed to be included in the phrase “in the course of committing a theft” if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

CATCHALL

- Any other crime involving risk of death or serious bodily injury to a person protected under the Prevention of Domestic Violence Act.

CONTEMPT OF A DOMESTIC VIOLENCE ORDER

- Violation of the “No Contact” provisions of an existing domestic violence restraining order is a recent addition to the PDVA.
- Defendant must have actual notice of the existence of the restraining order.
- This may be a basis to amend the TRO to include additional predicate acts while a TRO is pending adjudication, but in and of itself will likely not form a sufficient basis for the initial TRO filing.

AMENDING TEMPORARY RESTRAINING ORDER PRIOR TO TRIAL

- If there is a mistake or if something is omitted from the TRO, it should be amended; omitted crimes from being checked on the TRO; or because some prior incidents of violence were left out, the TRO should be amended to make those corrections.
- Amendment of a TRO must be done at the courthouse in the county where the domestic violence action is venued.
- While amendment is possible up until the trial date, if the defendant has not had enough time to prepare to defend the changes, the trial may be postponed.

CIVIL RESTRAINTS

- A civil restraint is an alternative to a final restraining order. These orders can occur in a divorce or custody and child support action and includes restraints against future acts of domestic violence.
- Violations of civil restraints orders in New Jersey do not have the same effect as violating a temporary or final restraining order, which would be a criminal offense.
- Civil restraints can include:
 - Parenting time provisions; possession of the marital home; limits of communication to only a non-harassing nature and only about the children, requirement of a risk assessment, obligation to attend anger management, and interim support.

DISCOVERY AND SUBPOENA

What to request in subpoena to custodian of records at municipality of where the predicate act took place:

- All police reports;
- All witness statements collected by any law enforcement agency;
- Any and all photographs taken of the alleged victim;
- A recording of the alleged victim's testimony in applying for a temporary restraining order;
- MVR, "dashcam," or body camera videos;
- Any and all handwritten, recorded, or telephonic statements made by the alleged victim to law enforcement regarding the incident;
- Contact information of any and all police and lay witnesses to the incident underlying the above-captioned case;
- The criminal history of the alleged victim as well as any record that the alleged victim committed a prior false accusation;
- The criminal history of any witnesses who provided statements to any law enforcement agency investigating this matter;
- The criminal history of the defendant;
- Recordings of civilian calls made to 9-1-1 or non-emergency calls made to police agencies in relation to the above-captioned case;
- Surveillance videos capturing the incident, regardless of whether said videos were created by the State or by private parties; and
- Radio transmissions and recorded inter-agency communications between police and prosecutorial agencies during the response to and investigation of the above-captioned case.

SILVER V. SILVER, 387 N.J. SUPER. 112 (2006)

- The restraining order analysis does not stop with the relationship and predicate act.
- In order to prove that a restraining order is warranted, the facts must further be analyzed pursuant to the Silver test to determine whether the court should enter a final restraining order.
- The test requires a showing that either the restraining order is necessary to protect the victim from an immediate danger or to prevent further abuse.

TIPS FOR TRIAL

- Call the police officer, if one responded to a 9-1-1 call, as a witness.
- Have your evidence organized. Assuming trials resume to being in-person, you do not share them with your adversary prior to trial.
- Know what relief you can request:
 - Support,
 - Counsel fees,
 - Method of communication between parents,
 - Parenting time schedule, and
 - Risk Assessment.

COUNSEL FEES

- Under the Prevention of Domestic Violence Act, counsel fees are available only for victims and not for prevailing parties; this is to avoid a chilling effect on the willingness of domestic violence victims to come forward with their complaints and have their day in court.
- However, where a domestic violence complaint is filed and pursued in bad faith, i.e., based on perjured or suborned testimony, a claim for attorney fees may be made under the frivolous litigation statute, but not under the Prevention of Domestic Violence Act. N.J.S.A. 2A:15–59.1, 2C:25–29, subd. b(4).

WHEN TO APPEAL A FINAL RESTRAINING ORDER

- Some of the potential grounds for appeal are as follows:
- The judge did not get the facts right, i.e. the judge erred in his or her findings and in their decision that were contrary to what the parties testified to at trial.
- The judge misapplied the law, i.e. the judge found harassment (or any other predicate act) but did not apply the harassment statute appropriately and issued a finding that is inconsistent with the statutory requirements of harassment or misapplied Silver.
- The judge failed to properly rule on objections, i.e. the judge erroneously considered evidence that should have not been considered and was objected to in court at trial or the judge did not permit evidence that was permissible and relevant to the statutory requirements or both prongs of Silver.
- The judge's finding were incomplete, i.e. the judge's opinion and finding failed to address the reasons why the final restraining order was entered against the defendant, including the predicate act, any prior history of domestic violence, and that the final restraining order was necessary to protect the plaintiff from harm.