



## NEW JERSEY STATE BAR ASSOCIATION

**Statement On S1517 (Greenstein)/A2770 (Stanley)  
Senate Judiciary Committee  
January 30, 2023**

The New Jersey State Bar Association is appreciative of the opportunity to speak on S1517 (Greenstein)/A2770 (Stanley), which authorizes the issuance of restraining orders for situations in which domestic violence statutes do not apply. The NJSBA is aware of the concerns by the sponsors regarding the limitations of the Prevention of Domestic Violence Act (PDVA) and the goal of the sponsors to incorporate remedies for those who do not fit within the PDVA's reach. However, the bill as currently written has the potential for broad overreach beyond the intent of the PDVA. The NJSBA respectfully submits that there may be other alternatives to achieve the aim of the sponsors by recognizing that there are remedies in the form of sentencing conditions for defendants who commit criminal acts against victims and possibly amending those laws; and considering the expansion of the Sexual Assault Survivor Protection Act (SASPA) to incorporate further predicate acts such as stalking, cyber harassment and/or harassment.

The difference between the PDVA and SASPA is the relationship of the parties. In the legislative findings of the PDVA, it is made clear that the Act protects "victims of violence that occurs in a family or family-like setting." An alleged victim seeking civil restraints under SASPA need not know or have a relationship with the person who caused the harm. It may be more appropriate to add predicate acts to SASPA as it would encompass those individuals who do not have a relationship with each other.

It bears noting that New Jersey's final restraining order (FRO) is permanent, unlike many other states. In other states, such as California, the law gives a judge discretion to determine the duration of the civil restraining order with a maximum of three to five years. In New Jersey, however, civil restraining orders may only be withdrawn by the plaintiff and upon a showing of "just cause." The same applies to domestic violence restraining orders. To expand the issuance of civil restraining orders within the context of this current bill, without the right to discovery prior to the hearing and where the hearing occurs on an expedited basis, poses potential constitutional infirmities without affording due process protections for the alleged perpetrator.

For this reason, it would be helpful to include parameters for when an FRO would issue. For example, in SASPA, there is a standard for adjudication in N.J.S.A. 2C:14-16, which states that at the FRO hearing, the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence. The statute directs the court to consider, but not be limited to, the following factors: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and (2) the possibility of future risk to the safety or well-being of the alleged victim.

In the PDVA, a standard for adjudication before the issuance of an FRO is found in N.J.S.A. 2C:25-29, which enumerates factors to be considered by a preponderance of the evidence. Those factors include, but are not limited to: (1) the previous history of domestic violence between the plaintiff and the defendant, including threats, harassment and physical abuse; (2) the existence of immediate danger to person or property; (3) the financial circumstances of the plaintiff and defendant; (4) the best interests of the victim and any child;

(5) in determining custody and parenting time, the protection of the victim's safety; and (6) the existence of a verifiable order of protection from another jurisdiction.

In section 1(g) of the bill, it states that the standard for issuing a permanent restraining order is by a preponderance of the evidence. But it does not provide any information to the court as to what additional factors should be considered in issuing the order. This may be problematic because it could be viewed as an attempt to reduce the burden of proof for certain crimes.

We are mindful that the sponsors are attempting to fix an apparent hole in the law with regard to specific criminal acts. To that end, we stand ready to work with the sponsors to more narrowly tailor the bill in order to protect alleged victims, as well as maintain the constitutional rights of the accused.

Thank you for the opportunity to present our concerns.