

# Chapter 1

## Introduction and Principles of *The New Jersey Prevention of Domestic Violence Act*

### **I. Introduction**

This book is designed to help a practitioner prepare a domestic violence case. Because many cases do not involve attorneys, the language of this book hopefully reads easily enough so that a non-lawyer can also understand the law as they prepare their own case. The New Jersey Institute for Continuing Legal Education has kindly agreed to provide reduced cost copies to public libraries so that the general public may use this book as a resource.

The specific statute sections are reproduced in Appendices at the end of this book. Other Appendices set out related statutes, the New Jersey Supreme Court Domestic Violence Procedures Manual, and brochures for clients. We have also provided a short section in the appendices (Appendix V) which we believe will help non-lawyers understand some legal terminology used throughout the book.

The book is organized around the natural progression of a case, beginning with the Temporary Restraining Order (TRO) complaint, followed by the Final Restraining Order (FRO) hearing and later motions, and concluding with dismissals and appeals. Chapter 2 provides an overview of the social and psychological aspects involved with the “cycle of violence” so that people reading the book understand the context and dynamics of domestic violence relationships. Police procedures are mentioned in parts, but primarily this is a book about the courthouse process regarding domestic violence.

### **II. Terminology Choices**

For consistency and ease of distinction, other than where we discuss actual court procedures, we have chosen to use the terms “*victim*” and “*aggressor*” to differentiate between the parties. Although “plaintiff” and “defendant” are appropriate terms when discussing court procedures and although those terms may appear more neutral, they also can be confusing, because parties may file cross complaints against each other (making each party both a plaintiff and a defendant) and because sometimes the plaintiff is the actual aggressor. Moreover, non-lawyers reading the book might have to take an extra step translating the legal terms in a situation where “plaintiff” might actually mean “person being abused.”

The authors in no way intend to pass legal judgment that every situation brought before the courts merits a restraining order or that everyone seeking a restraining order actually qualifies as a “*victim*” in terms of the legal definitions set out in the *New Jersey Prevention of Domestic Violence Act*. We have also chosen the term “*aggressor*” over “*batterer*” because not every act of domestic violence involves physical assault.

The terms “trial court” and “family court” are used somewhat interchangeably, though in some cases the trial court is actually a criminal court (i.e., in cases dealing with contempt or related criminal charges).

We have also tried to keep the terminology as gender-neutral as possible. According to national statistics, approximately 1.3 million women and 835,000 men are physically assaulted by an intimate partner annually in the United States. Patricia Tjaden & Nancy Thoennes, *Full Report*

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*of the Prevalence, Incidence, and Consequences of Intimate Partner Violence Against Women: Findings from the National Violence Against Women Survey*, U.S. Dep't of Just., NCJ 183781, at iv (2000), <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> Further, in New Jersey in 2006, 78.5 percent of victims filing domestic violence complaints were female, which means that 21.5 percent of the victims filing were male. *Report on the Prevention of Domestic Violence Act, January 1, 2006-December 31, 2006*, New Jersey Judiciary, <http://www.judiciary.state.nj.us/family/dvreport2006.pdf>. Thus, wherever possible, we have employed the plural pronouns “they” and “their” and sometimes “them,” rather than use the much more cumbersome “he/she” and “his/her.”

We also use “TRO” to abbreviate the term “Temporary Restraining Order” and “FRO” to abbreviate “Final Restraining Order.” The shortened phrase “The Act” refers to “*The New Jersey Prevention of Domestic Violence Act*.”

### III. Statistics and Other Resources

Domestic violence, whether physical, financial, or emotional, occurs frequently in this country. Most of us can call to mind at least a few celebrated murder or assault cases involving related parties yet we may not immediately think of them as “domestic violence.” The FBI statistics state that physical violence happens between related or dating adults once every 18 seconds. Sadly, the violence may occur even more often than those grim numbers reflect. The FBI figures include only physical violence and only cases where the victim reports the physical abuse. According to the National Violence Against Women Survey, only approximately one-fourth of all physical assaults, one-fifth of all rapes, and one-half of all stalkings perpetrated against females by intimate partners are reported to the police. Still other cases are not classified as “domestic violence” and thus are hidden within divorce, medical, school, law enforcement, or other records. In contrast, some experts in domestic violence instead estimate that violence will occur in over 60 percent of all marriages, and that as many as half of all women are abused at some point in their lives.

The statistics in New Jersey alone, however, are alarming. According to the 2007 New Jersey Uniform Crime Report issued by the New Jersey State Police, there were 71,901 domestic violence offenses reported by the police in 2007. Arrests were made in 31 percent of those cases. Overall, females were victims in 76 percent of all domestic violence offenses. The most frequent day of domestic violence occurrences was Sunday. Alcohol and/or drugs were involved in 28 percent of the reported offenses occurring in 2007. For the twenty-fifth consecutive year, the most frequent hours of domestic violence incidents were between 8:00 p.m. and midnight, when 27 percent of the offenses were reported. Children were involved or present during 33 percent of all domestic violence offenses occurring in 2007. Disturbingly, if viewed as a ratio of its occurrence to a fixed time interval, one act of domestic violence would occur every 7 minutes and 19 seconds. To see these statistics, plus many others, visit the New Jersey State Police website and specifically the 2007 Uniform Crime Report (Section 11, Domestic Violence) at [http://www.state.nj.us/njsp/info/pdf/2007\\_domestic\\_violence.pdf](http://www.state.nj.us/njsp/info/pdf/2007_domestic_violence.pdf).

Unfortunately, these numbers cannot be the actual figures. They include only those cases where the police were called in to provide law enforcement support. The numbers do not reflect the number of cases where the victim did not contact the police but instead filed a private action at

the county courthouse during normal business hours. Nor do the numbers include the cases where the victim did not seek intervention because of fear, social or cultural issues, or the belief that the aggressor would somehow “change” and not do it again.

For quick reference, two organizations cull a great deal of information, including cites to national research and many other resources. See the National Coalition Against Domestic Violence, <http://www.ncadv.org>, and the American Bar Association Commission on Domestic Violence, <http://www.abanet.org/domviol/>. The United States Department of Justice, Office of Violence Against Women, also provides statistical information. Visit <http://www.ovw.usdoj.gov/index.html>.

#### IV. Legal Remedies

The legal response to domestic violence has historically involved a tension between the general feeling that “what goes on behind closed doors” is a family-only issue, and the move to punish aggressors and protect victims. Under common law and until the enactment of the Married Women Acts, women lost their independent legal and financial identities with marriage. Since the husband was legally responsible both for her keep and for her negligent acts towards others, the law permitted husbands to control their wives, even by physical force. The popular saying “rule of thumb” derives from the common law tenet that a man could not beat his wife with a stick wider in circumference than his thumb.

Today, however, domestic violence is a crime in all states. In addition, all states provide civil remedies to protect victims who are in a domestic relationship with their aggressors. Domestic violence statutes acknowledge the special circumstances involved with abuse in household situations including the victim’s love for the aggressor, economic dependency on the aggressor, the victim’s belief that she can help or change the abusive behavior, the dynamics of having children in common, and the victim’s isolation from family and other support systems. In addition, domestic violence statutes provide civil remedies in order to combat the traditional view that these types of situations were not as serious as “stranger” violence.

#### V. The New Jersey Prevention of Domestic Violence Act

In order to meet this goal, the New Jersey Legislature passed the *New Jersey Prevention of Domestic Violence Act* in 1982. The Act was substantially revised in 1991. The Act specifically seeks to protect those who are in abusive domestic relationships as opposed to violence between strangers, neighbors, co-workers, or other acquaintances. The Domestic Violence Act does not apply to child abuse situations. Recognizing the accepted psychology, the New Jersey Legislature has sought to “assure the victims of domestic violence the maximum protection from abuse the law can provide.” *N.J.S.A. 2C:25-18*. In adopting the Act the New Jersey Legislature has further declared that domestic violence is a serious crime and that there are thousands of persons in New Jersey who are regularly victimized by their spouses or cohabitants. *N.J.S.A. 2C:25-18; Brennan v. Orban*, 145 N.J. 282, 298 (1996) (“There is no such thing as an act of domestic violence that is not serious.”).

The Act is both broad in application and gender neutral. *N.J.S.A. 2C:25-18*. The Act is liberal in its construction of remedies to afford victims the maximum protection the law can provide. *Cesare v. Cesare*, 154 N.J. 394 (1998). In addition to protecting spouses and ex-spouses, the Act applies to dating situations, relationships where the parties have a child or