



## NEW JERSEY LAW REVISION COMMISSION

### **Draft Tentative Report Regarding the Use of the Term “Reasonable Cause” in the Context of a Domestic Violence Search Warrants**

**May 10, 2021**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **July 19, 2021**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

Samuel M. Silver, Deputy Director  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [sms@njlrc.org](mailto:sms@njlrc.org)  
Web site: <http://www.njlrc.org>

## Project Summary<sup>1</sup>

In *State v. Hemenway*, the New Jersey Supreme Court considered a court's use of the statutorily prescribed "reasonable cause" standard, when ordering the search for, and seizure of, weapons pursuant to a temporary restraining order (TRO).<sup>2</sup>

The Court held that use of the statutory reasonable cause standard for issuing a domestic violence order permitting a search for, and seizure of, weapons does not comport with the Fourth Amendment of the United States Constitution, or Article I, Paragraph 7, of the New Jersey Constitution, or the requirement that all warrants be based on probable cause, barring exigent circumstances.<sup>3</sup>

The use of the "reasonable cause" standard is not limited to the Prevention of Domestic Violence Act (PDVA).<sup>4</sup> The Commission recommends statutory modifications to adapt New Jersey's search and seizure statutes to reflect the probable cause standard found in both the State and Federal Constitutions.

## Statute Considered

**N.J.S. 2C:25-28. Complaint by victim; emergency relief; temporary restraining orders; service of process**

\* \* \*

(j) Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any such weapon at any location where the judge has **reasonable cause** to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief... [emphasis added].

\* \* \*

## Background

On June 28, 2012, D.S. filed a domestic violence complaint in which she alleged that Defendant Hemenway committed numerous criminal acts against her including: entering her apartment unannounced, directing "foul language" at her, pushing her and causing her to fall, attempting to strangle her; and, shocking her with a Taser gun.<sup>5</sup> D.S. requested that the court

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<sup>1</sup> Preliminary work on this subject was conducted by Benjamin M. Cooper, a former Legislative Intern with the N.J. Law Rev. Comm'n.

<sup>2</sup> *State v. Hemenway*, 239 N.J. 111 (2019).

<sup>3</sup> *Id.*

<sup>4</sup> N.J. STAT. ANN. §§ 2C:25-17 to -35 (West 2021).

<sup>5</sup> *Hemenway*, 239 N.J. 118-119.

issue a TRO barring the Defendant from having contact with her and her family, claiming he possessed “firearms, knives, and [a Taser].”<sup>6</sup> In response to questions from the Court, D.S. was unresponsive about whether the Defendant possessed firearms.<sup>7</sup> She did, however, confirm that the Defendant had switchblade knives.<sup>8</sup> The Court entered a TRO and issued a warrant to “search and seize” handguns, knives, and switchblades from Hemenway’s home and three specified vehicles.<sup>9</sup>

On June 29, 2012, outside of the Defendant’s apartment, two police officers explained to him that they possessed a TRO and warrant to search his residence for weapons.<sup>10</sup> Inside the apartment, officers found multiple controlled dangerous substances (CDS), cash, and bullets, but no weapons.<sup>11</sup> The Defendant was ultimately indicted for the CDS offenses.<sup>12</sup> He moved to suppress drug-related evidence from both his home and cars, by challenging the validity of both the domestic violence warrant and the criminal search warrant that had been obtained based on the drugs discovered in his apartment.<sup>13</sup>

The trial court determined that the family court that issued the TRO and related search and seizure warrant did so properly, since all four prongs of the Domestic Violence Act had been met.<sup>14</sup> The trial court also concluded that the “warrant to search for weapons was not used as a pretext to conduct a search for drugs.”<sup>15</sup> The court further determined that the criminal search warrant did not establish the required cause to search Hemenway’s vehicles, but that the domestic violence warrant provided “an adequate and independent basis for the search of those vehicles.”<sup>16</sup> On appeal, the Defendant challenged the validity of both warrants.<sup>17</sup>

The Appellate Division affirmed the decision of the trial court.<sup>18</sup> The Court noted Hemenway’s argument that “N.J.S. 2C:25-28(j) is facially unconstitutional because it allows the Family Part judge to issue a search warrant based only on a finding of ‘reasonable cause,’” a lower standard than the ‘probable cause’ standard required by the Fourth Amendment but declined to address the constitutional issue.<sup>19</sup> The Supreme Court granted the Defendant’s petition for certification.<sup>20</sup>

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<sup>6</sup> *Id.* at 119.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 121.

<sup>12</sup> *Id.* at 118.

<sup>13</sup> *Id.* at 118, 121.

<sup>14</sup> *Id.* at 121.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 122.

<sup>17</sup> *Id.* at 118.

<sup>18</sup> *Id.* at 122.

<sup>19</sup> *State v. Hemenway*, 239 N.J. at 122.

<sup>20</sup> *Id.* at 123. (236 N.J. 42 (2018)).

## Analysis

In *State v. Hemenway*, the New Jersey Supreme Court considered “whether the issuance of a search warrant for weapons on less than probable cause pursuant to N.J.S. 2C:25-28(j) of the Domestic Violence Act comports with the dictates of our Federal and State Constitutions.”<sup>21</sup> Both provide that, “no Warrants shall issue, but upon probable cause” in virtually identical language.<sup>22</sup> The warrant and probable cause requirements of the Fourth Amendment and the New Jersey Constitution apply to criminal, civil, and administrative searches of homes.<sup>23</sup> The physical entry of the home by a government official is described as “the chief evil against which the wording of the Fourth Amendment is directed.”<sup>24</sup>

The Court declined to apply the “special needs doctrine” in this case, explaining that the doctrine is only applied “in exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.”<sup>25</sup> The Court observed that, “the language of the Domestic Violence Act, standing alone, lacks clear standards to guide a court in ordering a civil warrant for the seizure of weapons.”<sup>26</sup>

Instead of the ‘probable cause’ utilized in the Fourth Amendment, a judge issuing a TRO and related weapons search warrant need only find “reasonable cause to believe the weapon is located.”<sup>27</sup> *State v. Johnson* recognized four “Operating Standards”, approved by the New Jersey Supreme Court as part of the “Best Practices” effort, that are applicable to cases involving the use or threatened use of weapons in domestic violence cases.<sup>28</sup> In *Hemenway*, neither these standards, nor the probable cause findings requirement of *State v. Dispoto*, were used when the Court issued the search and seizure warrant.<sup>29</sup>

The Court acknowledged that a search warrant for weapons authorized by N.J.S. 2C:25-28(j) is directed not at recovering evidence of a crime, but rather at the seizure of weapons that may pose a threat to the victims of domestic violence.<sup>30</sup> The Court noted that “[a]pplying the probable cause standard in a flexible and commonsense way -- guided by the standard of reasonableness that generally governs the legality of all searches and seizures” allows for the

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<sup>21</sup> *Id.* at 125.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 126.

<sup>24</sup> *Id.* at 126 (quoting *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972)).

<sup>25</sup> *Id.* at 127.

<sup>26</sup> *Id.* at 130.

<sup>27</sup> *Id.*

<sup>28</sup> *State v. Johnson*, 352 N.J. Super. 15, 41 (App. Div. 2002), disapproved of by *State v. Dispoto*, 189 N.J. 108 (2007).

<sup>29</sup> *Hemenway*, 239 N.J. at 130, citing *State v. Dispoto*, 189 N.J. 108, 122 (2007) (no finding of probable cause can be supported where the sole support that defendant committed the offense was provided by an assertion, later contradicted, of a confidential informant of unknown reliability and whose source of knowledge was never placed before the judge who issued the warrant).

<sup>30</sup> *Id.* at 131.

maintenance of “the heightened right of privacy attach[ed] to the home while protecting domestic violence victims from imminent danger.”<sup>31</sup>

When issuing a search warrant for weapons, there must be a well-grounded suspicion that the defendant committed an act of violence, and that a seizure of weapons is a necessary act to protect the well-being of the victim.<sup>32</sup>

To ensure that N.J.S. 2C:25-28(j) “conforms to our Federal and State Constitutions, while safeguarding domestic violence victims[,]” the New Jersey Supreme Court adopted standards to be applied before a court issues a search warrant for weapons as part of a TRO under the Domestic Violence Act.<sup>33</sup> Under such circumstances, “a court must find that there is (1) probable cause to believe that an act of domestic violence has been committed by the defendant,<sup>34</sup>... (2) probable cause to believe that a search for and seizure of weapons is ‘necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought’<sup>35</sup>... ; and (3) probable cause to believe that the weapons are located in the place to be searched.”<sup>36</sup>

### **Domestic Violence Reporting in New Jersey**

In New Jersey, every law enforcement officer who responds to a domestic violence call is required to complete a domestic violence offense report.<sup>37</sup> This report must be forwarded to the appropriate county bureau of identification and the State Police’s Bureau of Records and Identifications in the Department of Law and Public Safety.<sup>38</sup>

The PDVA requires that a domestic violence report include certain information gathered by the law enforcement officer who responds to such an event.<sup>39</sup> This information must include, but is not limited to:

- (1) The relationship of the parties;
- (2) The sex of the parties;
- (3) The time and date of the incident;
- (4) The number of domestic violence calls investigated;
- (5) Whether children were involved, or whether the alleged act of domestic violence had been committed in the presence of children;
- (6) The type and extent of abuse;
- (7) **The number and type of weapons involved;**
- (8) The action taken by the law enforcement officer;
- (9) The existence of any prior court orders issued pursuant to this act concerning the parties;
- (10) The number of domestic violence calls alleging a violation of a domestic violence restraining order;
- (11) The number of arrests for a violation of a domestic violence order; and
- (12) Any other data that

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<sup>31</sup> *State v. Hemenway*, 239 N.J. at 135.

<sup>32</sup> *Id.* at 136.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* citing *State v. Dispoto*, 189 N.J. 108, 120 (2007).

<sup>35</sup> *Id.* citing N.J. STAT. ANN. § 2C:25-28(f) (West 2021).

<sup>36</sup> *Id.* citing Albin, J., dissenting in *State v. Harris*, 211 N.J. 566, 601 (2012).

<sup>37</sup> N.J. STAT. ANN. § 2C:25-24a. (West 2021).

<sup>38</sup> *Id.*

<sup>39</sup> N.J. STAT. ANN. § 2C:25-24b. (West 2021).

may be necessary for a complete analysis of all circumstances leading to the alleged incident of domestic violence. [emphasis added]<sup>40</sup>

The Superintendent of the State police is required by the Legislature to “report annually to the Governor, the Legislature[,] and the Advisory Council on Domestic Violence on the tabulated data from the domestic violence reports classified by county.”<sup>41</sup> The Domestic Violence Offense Report is prepared with the assistance of the Division of Systems and Communications in the Department of Law and Public Safety.<sup>42</sup>

In 2019, there were 59,645 acts of domestic violence reported by the police.<sup>43</sup> Of the nearly 60,000 acts of domestic violence reported, 217 of these acts – or .36% - involved guns.<sup>44</sup> The 2019 Report does not, however, provide a statistical analysis of the number of guns that were forfeited to the State.<sup>45</sup>

Since less than one-half of one percent of domestic violence incidents involved weapons, finding anecdotal evidence<sup>46</sup> regarding the frequency and the proportion of cases in which the surrender of a firearm is ordered in domestic violence cases presents a significant challenge. An examination of the procedural mechanisms contained in the PDVA may lend some insight into this line of inquiry.

### **Seizure of Weapons<sup>47</sup>**

#### *• When Victim Calls for Law Enforcement Assistance*

A victim of domestic violence may contact law enforcement to ask for assistance. Once at the scene, the officer will gather information to determine whether an incident of domestic violence has occurred, and identify those involved. Where the officer finds probable cause to believe that domestic violence has occurred, the officer is required to arrest the alleged assailant and sign a complaint if: the victim exhibits signs of injury caused by an act of domestic violence;

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<sup>40</sup> *Id.*

<sup>41</sup> N.J. STAT. ANN. § 2C:25-24c. (West 2021).

<sup>42</sup> *Id.*

<sup>43</sup> 2019 ATT’Y GEN. THIRTY-SEVENTH ANN. DOM. VIOLENCE. OFFENSE REP., Statistical Summary, at 8. Available at [https://www.njsp.org/ucr/pdf/domesticviolence/2019\\_NJ\\_Domestic\\_Violence.pdf](https://www.njsp.org/ucr/pdf/domesticviolence/2019_NJ_Domestic_Violence.pdf) (last visited Mar. 04, 2021).

<sup>44</sup> 2019 ATT’Y GEN. THIRTY-SEVENTH ANN. DOM. VIOLENCE OFFENSE REP., Excel Spreadsheet, “Weapons” Tab. Available at [https://www.njsp.org/ucr/pdf/domesticviolence/2019\\_NJ\\_Domestic\\_Violence\\_Report.xlsx](https://www.njsp.org/ucr/pdf/domesticviolence/2019_NJ_Domestic_Violence_Report.xlsx) (last visited Mar. 04, 2021). This number is comprised of the following weapons and their automatic counterparts: firearms; handguns; rifles; shotguns; and other firearms.

<sup>45</sup> Voicemail from Mark Talbot, Admin. Office of the Courts, Family Practice Div. to Samuel M. Silver, Dep. Dir. N.J. Law Rev. Comm’n, (Mar. 16, 2021) (providing that information regarding weapons seizures ordered in temporary restraining orders is not readily available and that information is going to be included in future annual domestic violence reports).

<sup>46</sup> Information regarding anecdotal evidence regarding the proportion of cases in which the surrender of a firearm is ordered and searches conducted was requested from the Family Practice Division of the Administrative Office of the Courts, the New Jersey Police Traffic Officers Ass’n, and several private practitioners.

<sup>47</sup> *See supra* note 27.

a warrant is in effect; the assailant is in contempt of a court order; or a weapon was involved in the incident.<sup>48</sup>

If a weapon is involved in a domestic violence incident, a law enforcement officer may question all persons present to determine whether there are weapons on the premises.<sup>49</sup> If the officer sees the weapon in “plain view” or learns that a weapon is present on the premises, the officer must “seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury.”<sup>50</sup>

A weapon owned by an assailant may not always be visible to an officer. Under such circumstances the Attorney General recommends that the officer obtain consent from the victim of domestic violence to search the premises and to seize the weapon.<sup>51</sup> If the weapon is not located on the premises, then the officer “should attempt to obtain possession of the weapon from the possessor of the weapon by a voluntary surrender of the weapon.”<sup>52</sup> If the assailant or the possessor of the weapon refuses to surrender the weapon or allow the officer to enter the premises to search for the named weapon, the office can apply to the court for a “Domestic Violence Warrant for the Search and Seizure of Weapons.”<sup>53</sup>

- *Pursuant to Court Order*

A victim of domestic violence may seek the protection of the Court in the form of a temporary restraining order (TRO) or a final restraining order (FRO).<sup>54</sup> Within either order, the Court may direct the assailant to surrender a named weapon or authorize a law enforcement officer to search for and seize the named weapon.<sup>55</sup> The purpose of such a search warrant, however, is solely to protect the victim from the risk of serious bodily injury.<sup>56</sup> The issuance of such a warrant does not provide the officer with *carte blanche* to discover evidence of criminality.<sup>57</sup>

Before a judge issues a search warrant there must be sufficient facts and information presented to satisfy the statutory ***reasonable cause*** requirement.<sup>58</sup> A Court must be satisfied that there is reasonable cause to believe that the defendant: has committed an act of domestic violence; possesses or has access to a firearm or other weapons; and that access to the weapons poses a heightened or increased risk of danger or injury to the victim.<sup>59</sup> The Court must make findings on the record and “state with specificity the reasons for and scope of the search and

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<sup>48</sup> N.J. STAT. ANN. §§ 2C:25-21a.(1) – (4) (West 2021).

<sup>49</sup> N.J. STAT. ANN. § 2C:25-21d.(1)(a) (West 2021).

<sup>50</sup> N.J. STAT. ANN. § 2C:25-21d.(1)(b) (West 2021).

<sup>51</sup> N.J. DOMESTIC VIOLENCE PROCEDURES MANUAL, §3.10.1, subsec. D. (2004). Available at [https://www.nj.gov/oag/dcj/agguide/directives/dv\\_manual.htm](https://www.nj.gov/oag/dcj/agguide/directives/dv_manual.htm) (last visited Mar. 04, 2021).

<sup>52</sup> *Id.* at subsec. E.

<sup>53</sup> *Id.* at subsec. F & app. 19.

<sup>54</sup> N.J. STAT. ANN. §§ 2C:25-26 & 2C:25-28j. (West 2021).

<sup>55</sup> *Id.*

<sup>56</sup> N.J. DOM. VIOLENCE. PROC. MANUAL, at §5.10.1 and §5.10.3.

<sup>57</sup> *Id.*

<sup>58</sup> See *supra* for a discussion of the constitutional deficiencies of this requirement.

<sup>59</sup> N.J. DOM. VIOLENCE PROC. MANUAL, at §5.10.1, §5.10.3 & §5.10.4.

seizure authorized by the order.”<sup>60</sup> A specific description of the weapon and its believed location should, as much as practical, be set forth in the Order.<sup>61</sup>

Where emergency relief has been ordered, and the order requires the surrender of any firearm or other weapon, a law enforcement officer is required to proceed to the location of the weapon to ensure that the defendant does not gain access to it.<sup>62</sup> The officer shall either accompany the defendant, or may proceed without the defendant if necessary to ensure that the defendant does not gain access to any weapon and that the firearm or weapon is appropriately surrendered in accordance with the order.<sup>63</sup>

The failure of the defendant to surrender the firearm may result in the defendant’s arrest for contempt.<sup>64</sup> Within 10 days of the filing of a complaint pursuant to N.J.S. 2C:25-28, a hearing shall be held in the Family Part of the Chancery Division of the Superior Court on the issue of domestic violence.<sup>65</sup>

### **Other Statutory Uses of Reasonable Cause**

The appearance of the “reasonable cause” standard in the context of a search warrant is not limited to the four statutes found in the PDVA.<sup>66</sup>

- *Explosive or Destructive Devices*

Police officers are permitted, under the Code of Criminal Justice, to search and seize explosive or destructive devices from individuals.<sup>67</sup> A police officer who has “reasonable cause to believe that any person is possessed of ammunition, explosive, or destructive device shall investigate, under a proper search warrant when necessary, and shall seize the same.”<sup>68</sup>

- *Duty to Warn*

In New Jersey, “[a]ny person who is licensed... to practice psychology, psychiatry, medicine, nursing, clinical social work, or marriage and family therapy... has... a duty to warn and protect [a] potential victim” from harm.<sup>69</sup> A search warrant may be issued in the context of the State’s duty to warn statute.<sup>70</sup> If a court determines that a patient is subject to any of

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<sup>60</sup> N.J. STAT. ANN. §§ 2C:25-26a. & 2C:25-28j. (West 2021).

<sup>61</sup> N.J. DOM. VIOLENCE PROC. MANUAL, at §5.10.5. For information regarding the role of the Domestic Violence Hearing Officer (DVHO) see §5.10.6. See <https://www.njsp.org/firearms/firearms-faqs.shtml> (providing that the New Jersey firearms database is only for criminal justice purpose and is not available to members of the public) (last visited Mar. 05, 2021).

<sup>62</sup> N.J. STAT. ANN. § 2C:25-28j. (West 2021).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* See N.J. STAT. ANN. § 2C:25-21a.(3) (there is probable cause to believe that the person has violated 2C:29-9); N.J. STAT. ANN. § 2C:29-9 (West 2021); and, N.J. DOM. VIOLENCE PROC. MANUAL, at § 3.10.2B(2).

<sup>65</sup> N.J. STAT. ANN. § 2C:25-29a. (West 2021).

<sup>66</sup> N.J. STAT. ANN. §§ 2C:25-26; 2C:25-27; 2C:25-28j.; & 2C:25-29 (West 2021).

<sup>67</sup> N.J. STAT. ANN. § 2C:58-7 (West 2021).

<sup>68</sup> *Id.*

<sup>69</sup> N.J. STAT. ANN. § 2A:62A-16(a). (West 2021).

<sup>70</sup> N.J. STAT. ANN. § 2A:62A-16(e). (West 2021).



disabilities set forth in the licensing provisions related to the purchase of a firearm, a court may “order a search for and removal of [... a firearm] at any location where the judge has reasonable cause to believe these items are located.”<sup>71</sup>

- *Alcohol and Beverage Control*

It is the duty of a law enforcement officer who “know[s] or ha[s] reasonable cause to believe, that any person is engaged in unlawful alcoholic activity ... to investigate, under proper search warrant when necessary... and to seize all [such unlawful] property....”<sup>72</sup> The same standard applies to officers who are investigating “any still or distilling apparatus or any parts thereof [which] constitute[s] such unlawful property.”

The New Jersey Supreme Court in *State v. Hemenway*, observed that, “[w]hether a government official is armed with a criminal warrant or a civil or administrative warrant, ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed’.”<sup>73</sup> Thus, “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.”<sup>74</sup>

### **Pending Legislation**

Currently, no pending legislation seeks to amend the “reasonable cause” standard in the PDVA, specifically, N.J.S. 2C:25-28(j).

### **Conclusion**

The Commission recommends the removal of statutory references to the term “reasonable cause” to adapt New Jersey’s search and seizure statutes to reflect the probable cause standard identified in both the State and Federal Constitutions.

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<sup>71</sup> *Id.*

<sup>72</sup> N.J. STAT. ANN. § 33:1-66a. (West 2021).

<sup>73</sup> *Id.* citing See *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972). Compare N.J. STAT. ANN. § 5:15-79 (West 2021) & N.J. STAT. ANN. § 24:21-32 (West 2021) (permitting entry and administrative inspections without a warrant in gaming enforcement and dangerous substances, respectively, “where there is reasonable cause to believe that mobility of the conveyance makes it impracticable to obtain a warrant.”). See *Application of Martin*, 90 N.J. 295, 312-313 (1982) (noting that an exception to the Fourth Amendment safeguard to privacy and security of individuals against arbitrary invasions by governmental officials has been recognized for “pervasively regulated businesses” such as casinos).

<sup>74</sup> *Hemenway*, 239 N.J. 126 (2019) citing See *Camara v. Mun. Court*, 387 U.S. 523 (1967) and *DEP v. Huber*, 213 N.J. 338, 358-59, 367-68 (2013).

## Appendix

The proposed modifications to the following statutes are shown with underlining and ~~strike~~through, as follows:

### **N.J.S. 2A:62A-16. Health, mental health, and marriage and family therapy professionals; immunity from liability; duty to warn; disclosure of privileged communications**

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e. In addition to complying with subsection c. of this section, a licensed practitioner shall notify the chief law enforcement officer of the municipality in which the patient resides or the Superintendent of State Police if the patient resides in a municipality that does not have a full-time police department that a duty to warn and protect has been incurred with respect to the patient and shall provide to the chief law enforcement officer or superintendent, as appropriate, the patient's name and other non-clinical identifying information. The chief law enforcement officer or superintendent, as appropriate, shall use that information to ascertain whether the patient has been issued a firearms purchaser identification card, permit to purchase a handgun, or any other permit or license authorizing possession of a firearm. [...]

If the court, upon motion of the prosecutor, finds probable cause that the patient has failed to surrender any firearm, card, or permit, the court may order a search for and removal of these items at any location where the judge has ~~reasonable~~ probable cause to believe these items are located. The judge shall state with specificity the reasons and the scope of the search and seizure authorized by the order.

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Credits: L.1991, c. 270, § 1, eff. Aug. 27, 1991. Amended by L.2009, c. 112, § 21, eff. Aug. 11, 2010; L.2018, c. 34, § 1, eff. June 13, 2018; L.2019, c. 59, § 27, eff. Aug. 1, 2019.

#### **Comment**

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

### **N.J.S. 2C:25-26. Release from custody before trial; restraining orders; confidentiality of victim's location; bail**

a. When a defendant charged with a crime or offense involving domestic violence is released from custody before trial on bail or personal recognizance, the court authorizing the release may as a condition of release issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking

the victim or the victim's friends, co-workers, or relatives in any way. The court may also enter an order prohibiting the defendant from having any contact with any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. In addition, the court may enter an order directing the possession of the animal and providing that the animal shall not be disposed of prior to the disposition of the crime or offense. The court may enter an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has ~~reasonable~~ probable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.

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Credits: L.1991, c. 261, § 10, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 3, eff. Aug. 11, 1994; L.1999, c. 421, § 2, eff. Jan. 18, 2000; L.2011, c. 213, § 1, eff. Jan. 17, 2012.

#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

#### **N.J.S. 2C:25-27. Conditions of sentence**

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c. (1) When a defendant is found guilty of a crime or offense involving domestic violence, the court shall inform the defendant that the defendant is prohibited from purchasing, owning, possessing, or controlling a firearm pursuant to section 6 of P.L.1979, c. 179 (C.2C:39-7) and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant to N.J.S.2C:58-3. The court shall order the defendant to arrange for the immediate surrender to a law enforcement officer of any firearm that has not already been seized or surrendered and any firearms purchaser identification card or permit to purchase a handgun possessed by the defendant. No later than five business days after the order is entered, however, the defendant may arrange to sell any surrendered firearm to a licensed retail dealer of firearms who shall be authorized to take possession of that purchased firearm from the law enforcement agency to which it was surrendered no later than 10 business days after the order is entered. Any card or permit issued to the defendant shall be deemed immediately revoked. The court shall establish a process for notifying the appropriate authorities of the conviction requiring the revocation of the card or permit. A law enforcement officer accepting a surrendered firearm shall provide the defendant with a receipt listing the date of surrender, the name of the defendant, and any item that has been surrendered, including the serial number, manufacturer, and model of the surrendered firearm. The defendant shall provide a copy of this receipt to the prosecutor within 48 hours of service of the order, and shall attest under penalty that any firearms owned or possessed at the time of the order have been transferred in accordance with this section and that

the defendant currently does not possess any firearms. The defendant alternatively may attest under penalty that he did not own or possess a firearm at the time of the order and currently does not possess a firearm. If the court, upon motion of the prosecutor, finds probable cause that the defendant has failed to surrender any firearm, card, or permit, the court may order a search for and removal of these items at any location where the judge has ~~reasonable~~ probable cause to believe these items are located. The judge shall state with specificity the reasons for and the scope of the search and seizure authorized by the order.

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Credits: L.1991, c. 261, § 11, eff. Nov. 12, 1991. Amended by L.1999, c. 236, § 1, eff. Oct. 13, 1999; L.2011, c. 213, § 2, eff. Jan. 17, 2012; L.2016, c. 91, § 1, eff. Aug. 1, 2017.

#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

#### **N.J.S. 2C:25-28. Complaint by victim; emergency relief; temporary restraining orders; service of process**

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j. (1) Emergency relief may include forbidding the defendant from returning to the scene of the domestic violence, forbidding the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for and seizure of any firearm or other weapon at any location where the judge has ~~reasonable~~ probable cause to believe the weapon is located and the seizure of any firearms purchaser identification card or permit to purchase a handgun issued to the defendant and any other appropriate relief.

(2) If the order requires the surrender of any firearm or other weapon, a law enforcement officer shall accompany the defendant, or may proceed without the defendant if necessary, to the scene of the domestic violence or any other location where the judge has ~~reasonable~~ probable cause to believe any firearm or other weapon belonging to the defendant is located, to ensure that the defendant does not gain access to any firearm or other weapon, and that the firearm or other weapon is appropriately surrendered in accordance with the order.

(3) If the order prohibits the defendant from returning to the scene of domestic violence or any other location where the judge has ~~reasonable~~ probable cause to believe any firearm or other weapon belonging to the defendant is located, any firearm or other weapon located there shall be seized by a law enforcement officer.

(4) The order shall include notice to the defendant of the penalties for a violation of any provision of the order, including but not limited to the penalties for contempt of court and unlawful possession of a firearm or other weapon pursuant to N.J.S.2C:39-5.

(5) Other appropriate relief may include but is not limited to an order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household and providing that the animal shall not be disposed of prior to entry of a final order pursuant to section 13 of P.L.1991, c. 261 (C.2C:25-29).

(6) The judge shall state with specificity the reasons for and scope of any search and seizure authorized by the order.

(7) The provisions of this subsection prohibiting a defendant from possessing a firearm or other weapon shall not apply to any law enforcement officer while actually on duty, or to any member of the Armed Forces of the United States or member of the National Guard while actually on duty or traveling to or from an authorized place of duty.

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Credits: L.1991, c. 261, § 12, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 4, eff. Aug. 11, 1994; L.1999, c. 421, § 3, eff. Jan. 18, 2000; L.2003, c. 277, § 5, eff. Jan. 14, 2004; L.2011, c. 213, § 3, eff. Jan. 17, 2012; L.2016, c. 91, § 2, eff. Aug. 1, 2017.

#### Comment

Subsection j. consists of three unnumbered block paragraphs. These paragraphs are proposed to be divided further into subsections to improve clarity and accessibility.

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

#### **N.J.S. 2C:25-29. Hearing; factors considered; orders for relief**

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b. ... At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief: ...

(16) In addition to the order required by this subsection prohibiting the defendant from possessing any firearm, the court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of N.J.S.2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has ~~reasonable~~ probable cause to believe the weapon is located. The judge shall state with specificity the reasons for, and scope of, the search and seizure authorized by the order.

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Credits: L.1991, c. 261, § 13, eff. Nov. 12, 1991. Amended by L.1994, c. 94, § 5, eff. Aug. 11, 1994; L.1994, c. 137, § 2, eff. Oct. 31, 1994; L.1995, c. 242, § 1, eff. Sept. 1, 1995; L.1997, c. 299, § 8, eff. Jan. 8, 1998; L.1999, c. 236, §

2, eff. Oct. 13, 1999; L.1999, c. 421, § 4, eff. Jan. 18, 2000; L.2003, c. 277, § 2, eff. Jan. 14, 2004; L.2011, c. 213, § 4, eff. Jan. 17, 2012; L.2016, c. 91, § 3, eff. Aug. 1, 2017.

#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

### **N.J.S. 2C:58-7. Persons possessing explosives or destructive devices to notify police**

a. Any person who becomes the possessor of any explosive, destructive device, or ammunition therefor, which is or may be loaded or otherwise dangerous, except such as is possessed for any lawful commercial or other purpose in connection with which the use of explosives is authorized or as is authorized in subsection d. of N.J.S. 2C:39-6, shall within 15 days notify the police authorities of the municipality in which he resides or the State Police that the same is in his possession and shall present the same to them for inspection.

b. When any such ammunition, explosive or destructive device is presented for inspection it shall be inspected to ascertain whether or not it is loaded or of a dangerous character, and if it is found to be loaded or of dangerous character, it shall be destroyed or be unloaded or so processed as to remove its dangerous character before being returned to the possessor.

c. Any police officer having ~~reasonable~~ probable cause to believe that any person is possessed of any such ammunition, explosive, or destructive device shall investigate, under a proper search warrant when necessary, and shall seize the same for the purpose of inspection, unloading, processing or destruction, as provided in this section, and the same shall not be returned to the possessor thereof until it has been unloaded or so processed.

Credits: L.1978, c. 95, § 2C:58-7, eff. Sept. 1, 1979. Amended by L.1983, c. 479, § 5, eff. Jan. 12, 1984.

#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

### **N.J.S. 33:1-66. Seizure of unlawful property; bond or cash for return; replevin; forfeiture, sale, etc., of unclaimed property; hearing; certain property subject to seizure; manufacture, sale, etc., of unlawful property; return of seized property; liens upon seized property**

a. Any officer knowing, or having ~~reasonable~~ probable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize

all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this chapter and to make complaint against such persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the Director of the Division of Alcoholic Beverage Control subject to this chapter.

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#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

### **N.J.S. 33:2-3. Seizure of unregistered stills; search warrant; arrest of offenders**

Any officer knowing or having ~~reasonable~~ probable cause to believe that any still or distilling apparatus or any parts thereof constitute such unlawful property, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize such still or distilling apparatus or parts thereof, together with all articles, implements or paraphernalia used or adaptable for use in connection therewith and all personal property of whatsoever kind, found in a building or in any yard or ~~inclosure~~ enclosure connected with a building or on the premises in which such still or distilling apparatus or parts thereof are found, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this chapter and to make complaint against such persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the commissioner.

#### Comment

The New Jersey Supreme Court in *State v. Hemenway*, 239 N.J. 111, 126 (2019) noted that “[t]he warrant and probable cause requirements of the Fourth Amendment [to the United States Constitution] and Article I, Paragraph 7 [of the New Jersey Constitution] apply to both criminal-investigatory and civil- and administrative-regulatory searches of the home.” The proposed statutory modification utilizes the “probable cause” standard in place of the “reasonable cause” standard set forth in the statute.

L.1934, c. 84, § 3, p. 216, amended by L.1935, c. 255, § 3, p. 782, utilizes the word “inclosure.” No longer considered a standard variant and often perceived as a misspelling, the term “inclosure” has been replaced with the more common form of the word, “enclosure.”