

§4108. Temporary orders

1. Temporary orders. The court may enter temporary orders authorized under subsection 2 that it considers necessary to protect a plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes good cause. A temporary order remains in effect pending a hearing pursuant to section 4109. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

2. Interim relief. The court, in an ex parte proceeding, may enter temporary orders:

A. Concerning the parental rights and responsibilities relating to minor children for whom the parties are responsible; [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

B. Enjoining the defendant from engaging in the following:

- (1) Imposing a restraint upon the person or liberty of the plaintiff;
- (2) Threatening, assaulting, molesting, harassing, attacking or otherwise disturbing the peace of the plaintiff;
- (3) Entering the family residence or the residence of the plaintiff, including the land immediately surrounding and associated with the residence;
- (4) Repeatedly and without reasonable cause:
 - (a) Following the plaintiff; or
 - (b) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;
- (5) Taking, converting or damaging property in which the plaintiff may have a legal interest;
- (6) Having any direct or indirect contact with the plaintiff;
- (7) Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or
- (8) Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession; or [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

C. Concerning the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household and may enjoin the defendant from injuring or threatening to injure any such animal. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

[PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

3. Temporary orders; possession of dangerous weapons. The court may direct the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the temporary order if the complaint demonstrates:

A. Abuse that involves a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon; or [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

B. A heightened risk of immediate abuse to the plaintiff or a minor child. In determining whether a heightened risk of immediate abuse is present, the court shall consider, but is not limited to consideration of, whether:

- (1) The temporary order of protection is not likely to achieve its purpose in the absence of such a condition;

- (2) The defendant has violated orders of protection;
- (3) Past or present abuse to a victim resulted in injury;
- (4) The abuse occurred in public; and
- (5) The abuse includes:
 - (a) Threats of suicide or homicide;
 - (b) Killing or threatening to kill any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household;
 - (c) An escalation of violence;
 - (d) Stalking behavior or extreme obsession;
 - (e) Sexual violence;
 - (f) Excessive alcohol or drug use; and
 - (g) Abuse against a pregnant victim. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification of a temporary order pursuant to subsection 6, the court shall hear and decide the motion as expeditiously as possible and shall issue a written decision on the motion within 24 hours after a hearing on that motion.

If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow in a temporary order, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the temporary order on the defendant or such earlier time as the court specifies in the temporary order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the temporary order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the temporary order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms, muzzle-loading firearms, bows, crossbows and other dangerous weapons at any location if there is probable cause to believe such firearms, muzzle-loading firearms, bows, crossbows or dangerous weapons have not been relinquished by the defendant. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

4. Emergency relief. Emergency relief is available as follows.

A. When there is no judge available in the District Court having venue or the District Court courthouse is closed and no other provision can be made for the shelter of an abused family or household member or minor child, a complaint may be presented to another District Court Judge or Superior Court Justice. Upon a showing of good cause, as described in subsection 1, the court may enter temporary orders authorized under this section that it considers necessary to protect the plaintiff or minor child from abuse. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

B. If a complaint is presented under this subsection, that complaint and any temporary order issued pursuant to it must be forwarded immediately to the clerk of the District Court having venue for filing. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

C. A temporary order under this subsection remains in effect pending a hearing pursuant to section 4109. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]
[PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

5. Denial of relief. Before a request for temporary, emergency or interim relief is denied, the judge shall:

A. Allow the plaintiff the opportunity to be heard in person to support the complaint. The plaintiff may be accompanied by a person of the plaintiff's choice; and [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

B. Advise the plaintiff of reasons for the denial. [PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]
[PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

6. Dissolution or modification. Notwithstanding any provision of law to the contrary, upon 2 days' notice to the plaintiff or upon such shorter notice as the court may order, a person who is subject to a temporary order may appear and move the dissolution or modification of the temporary order and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. At that hearing, the plaintiff has the burden of justifying a finding in the temporary order that the defendant has challenged by affidavit. This subsection may not be construed to abolish or limit any means otherwise available by law for obtaining dissolution, modification or discharge of a temporary order.

[PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

7. Extension. If a hearing on the complaint is continued, the court may make or extend temporary orders it considers necessary. Notwithstanding any provision of this section to the contrary, if a final protection order is issued pursuant to section 4110, the temporary protection order issued pursuant to this section remains in effect pending service of the final protection order.

[PL 2021, c. 647, Pt. A, §3 (NEW); PL 2021, c. 647, Pt. B, §65 (AFF).]

SECTION HISTORY

PL 2021, c. 647, Pt. A, §3 (NEW). PL 2021, c. 647, Pt. B, §65 (AFF).

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