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DIVISION OF CRIMINAL JUSTICE

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ALL COUNTY PROSECUTORS
ALL POLICE CHIEFS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: DAVID SAMSON, ATTORNEY GENERAL 

DATE: May 7, 2002

SUBJECT: ATTORNEY GENERAL LAW ENFORCEMENT
DIRECTIVE NO. 2002-1

DRUG OFFENDER RESTRAINING ORDER ACT OF 1999, AS
AMENDED AND SUPPLEMENTED BY *P.L.* 2001, C. 365 – FORMS FOR
USE BY LAW ENFORCEMENT AGENCIES

EFFECTIVE DATE: MAY 7, 2002

Introduction

As you know, the Drug Offender Restraining Order Act of 1999 has been amended by *P.L.* 2001, c. 365, effective May 7, 2002. A copy of the amended Act is enclosed herewith. Also enclosed are two forms for use by law enforcement agencies in implementing this Act. These forms, which are discussed below, may be modified in order to include pre-printed county or agency specific information, or to allow your agency to print color-coded multi-part versions of these forms. However, in order to maintain uniformity, the substance of the forms should not be altered.

It is anticipated that the Administrative Office of the Courts will also promulgate standard Court Drug Offender Restraining Order forms for use with this Act.



Enclosed Forms

1. Certification of Offense Location and Application for Drug Offender Restraining Order

The Act has been amended to require that a law enforcement officer or the prosecuting attorney apply for a restraining order. *N.J.S.A. 2C:35-5.7a., b., c., and d;* see also *N.J.S.A. 2C:35-5.9.* This may be accomplished by filing the enclosed “Certification of Offense Location and Application for Drug Offender Restraining Order.” This one-page form has been designed for use in both juvenile and adult cases. The submission of this form constitutes the required application for a restraining order under the Act. The form includes check-off paragraphs that allow a law enforcement officer to request either the presumed 500 foot buffer zone, or a different buffer zone to be described in the form. Although the form contains citations to all of the offenses covered by the Act, it should be noted that juveniles may not be charged with violations of either *N.J.S.A. 2C:35-6* (employing a juvenile in a drug distribution scheme) or *N.J.S.A. 2C:35-8* (distribution to person under age 18) since an element of each offense is that the person charged must be at least 18 years of age.

A new section, to be codified as *N.J.S.A. 2C:35-5.10*, gives specific authority to law enforcement officers to not seek a restraining order if the defendant is charged with an offense resulting from the stop of a motor vehicle, or if the defendant was using public transportation. This is in keeping with the amended definition of a “place” which now excludes public rail, bus or air transportation lines and limited access highways from the definition of a “place.” *N.J.S.A. 2C:35-5.6b.* Law enforcement officers have also been given the authority to forego seeking a restraining order if the provisions of *N.J.S.A. 2C:35-5.7e* (1) “legitimate need” or (2) “serious injustice” are applicable.

2. Law Enforcement Notice of Restraining Order

The second new form is the “Law Enforcement Notice of Restraining Order.” This form is to be used only in those cases in which a person is charged as a juvenile and released without being detained. *N.J.S.A. 2C:35-5.7d.* Unless the juvenile applies to stay or modify the Order, the Family Court will enter a Drug Offender Restraining Order on the first court day following the release of the juvenile. **The first court day following the release of the juvenile must be filled in as the effective date of the order.** The acknowledgment at the end of the Order should be signed by both the juvenile and a parent or guardian.

Other Amendments

- ◆ *N.J.S.A. 2C:35-5.6b* has been amended to redefine the term “place” so as to exclude public rail, bus or air transportation lines and limited access highways.

- ◆ The Act has been amended to add a “buffer zone.” The “buffer zone” is presumed to be 500 feet pursuant to *N.J.S.A. 2C:35-5.7f*, unless the court determines otherwise.
- ◆ *N.J.S.A. 2C:35-5.7b* has been amended to specifically apply the law to those instances where a summons is issued and requires that the restraining order be issued at the defendant’s first appearance.
- ◆ *N.J.S.A. 2C:35-5.7g* has been amended to authorize various forms of posting, publication or distribution of an order or an equivalent notice.
- ◆ *N.J.S.A. 2C:35-5.7h* specifically allows for the order issued upon conviction or adjudication of delinquency to be memorialized in the judgment of conviction or a separate order. The subsection further incorporates the mandate of a “buffer zone” as noted in subsection f. It also allows, in addition to the pre-disposition distributions authorized in subsection g., for a law enforcement agency to post, publish and distribute a photograph of the defendant or juvenile upon conviction or adjudication of delinquency.
- ◆ *N.J.S.A. 2C:35-5.7j* requires that upon the entry of a sentencing or dispositional order, the court must forward a copy of the same to the law enforcement agency that made the arrest as well as to the county prosecutor.
- ◆ *N.J.S.A. 2C:35-5.7k* mandates that any applications to stay or modify a restraining order be made in the Superior Court and that the court must notify the county prosecutor of such applications.

Conclusion

Any questions regarding procedures under the Act should be directed to your County Prosecutor’s Office. Inquiries from County Prosecutor’s Offices should be directed to DAG Thomas J. Fiskien, Prosecutors and Police Bureau, at (609) 984-2814.

enclosures (3)

c: Peter C. Harvey, First Assistant Attorney General, Director, Division of Criminal Justice
Vaughn L. McKoy, First Deputy Director
All County Prosecutors
Superintendent Joseph Santiago, New Jersey State Police
AAG Ronald Susswein
DAG Jessica Oppenheim, Acting Chief, Prosecutors and Police Bureau
DAG Thomas J. Fiskien, Deputy Attorney General, Prosecutors and Police Bureau

***Certification of Offense Location and Application for
Drug Offender Restraining Order***
(Juvenile or Adult Offenders)
(N.J.S.A. 2C:35-5.4 et seq.)

State of New Jersey

Complaint # _____

v. (or in the Interest of)

Police Case # _____

(Defendant or Juvenile)

CDR # _____

I, _____, a member of the _____, hereby certify that the offense charged against defendant/juvenile _____, described in Complaint No. _____, Police Case No. _____, occurred at the following location(s):

I hereby request that the court issue an Order prohibiting the defendant/juvenile, who is charged with any of the following:¹ *N.J.S.A. 2C:35-3, N.J.S.A. 2C:35-4, N.J.S.A. 2C:35-4.1, N.J.S.A. 2C:35-5, N.J.S.A. 2C:35-5.2 or N.J.S.A. 2C:35-5.3, N.J.S.A. 2C:35-6, N.J.S.A. 2C:35-7 or N.J.S.A. 2C:35-7.1, N.J.S.A. 2C:35-8, N.J.S.2C:35-9*, or the unlawful possession or use of an assault firearm as defined in subsection w. of *N.J.S.A. 2C:39-1*, from entering: *(check one)*

- ___ 1. the premises, residence, business establishment, location or specified area set forth above, and an additional buffer zone of 500 feet surrounding the area
- OR
- ___ 2. the premises, residence, business establishment, location or specified area set forth above, and an additional buffer zone as described below:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Date: _____

Signature: _____

Print Name: _____

¹Juveniles may not be charged with violations of either *N.J.S.A. 2C:35-6* or *N.J.S.A. 2C:35-8* since an element of each offense is that the person charged must be at least 18 years of age.

**LAW ENFORCEMENT
NOTICE OF RESTRAINING ORDER**

EFFECTIVE _____ DAY OF _____, _____, a Restraining Order will be entered by the Court, pursuant to the *Drug Offender Restraining Order Act of 1999*. Unless you apply to modify or stay the Order, it will read as follows:

**SUPERIOR COURT OF NEW JERSEY - _____ COUNTY
CHANCERY DIVISION, FAMILY PART**

FJ -

**State of New Jersey
In the Interest of**

RESTRAINING ORDER

(Juvenile)

Police Department: _____

Police Case No.: _____

Offense Date: _____

- Juvenile, _____, having been charged in the above complaint with
- violation(s) of: N.J.S.A. 2C:35-3, N.J.S.A. 2C:35-4, N.J.S.A. 2C:35-5, N.J.S.A. 2C:35-9, N.J.S.A. 2C:35-4.1, N.J.S.A. 2C:35-5.2, N.J.S.A. 2C:35-5.3, N.J.S.A. 2C:35-7, or N.J.S.A. 2C:35-7.1,
 - or
 - Unlawful possession or use of an assault firearm as defined in N.J.S.A. 2C:39-1w

A law enforcement officer or prosecuting attorney having requested an Order and having submitted a certification describing the location of the offense,

It is on this _____ day of _____, 20____ hereby Ordered, pursuant to the *Drug Offender Restraining Order Act of 1999, as amended and supplemented by P.L. 2001, c. 365*, (the Act) that the juvenile is prohibited and restrained from entering and/or returning to the place and returning to within 500 feet of the place or other surrounding buffer zone(s), as described below:

Special Conditions: _____

- Map Attached

LIMITED ACCESS TO LOCATION

It is further Ordered that the juvenile is permitted to return to the following place to retrieve the juvenile's personal belongings and effects, in accordance with the time and duration restrictions indicated below:

Address: _____ Time: _____ Duration: _____

- Police Supervision Required

DURATION OF ORDER

It is Ordered that if the prosecutor administratively dismisses or downgrades the charge supporting issuance of this Order, this Order is vacated effective on the date of the administrative dismissal or downgrade of the complaint by the prosecutor. It is further Ordered that this Order shall remain in effect until the case has been adjudicated or dismissed, or for not less than 2 years from the date of the alleged offense, whichever is less.

Notice to Juvenile:

- (1) Violation of the provisions of this Order constitutes criminal contempt pursuant to *N.J.S.A. 2C:29-9* and may result in your arrest and prosecution and can also result in a violation of probation. This may result in your detention. All applications to stay or modify this Order shall be made only in the Superior Court.
- (2) If you want to make an application to stay or modify this Order, you must notify the Superior Court, Family Part and a hearing will be scheduled. Contact the Superior Court, Family Part _____, Team Leader at () - _____, or _____, Team Leader at () - _____.
- (3) The *Drug Offender Restraining Order Act of 1999* permits law enforcement to post a copy of this Order or an equivalent notice in appropriate locations for the purpose of informing the public, to publish it in newspapers and to distribute it. After an adjudication of delinquency, the notice may include a photograph.

I acknowledge that I received a copy of this Notice of Restraining Order. I understand that a Restraining Order containing the above terms and conditions will issue unless a Superior Court judge orders further modifications.

Juvenile's Name (Print)

Juvenile's Signature and Date

Juvenile's Parent/Guardian's Name (Print)

Juvenile's Parent/Guardian's Signature and Date

Name and Title of Person Issuing Notice and Date

CHAPTER 365

AN ACT concerning restraining orders for certain offenders, amending and supplementing P.L.1999, c.334 and making an appropriation.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1999, c. 334 (C.2C:35-5.6) is amended to read as follows:

C.2C:35-5.6 Definitions relative to removal, restraint of certain offenders.

3. Definitions.

As used in this act:

a. "Person" means any person charged with or convicted of a criminal offense or any juvenile charged with delinquency or adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense.

b. "Place" includes any premises, residence, business establishment, location or specified area including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the person is charged. "Place" does not include public rail, bus or air transportation lines or limited access highways which do not allow pedestrian access.

c. "Criminal offense" means:

(1) any of the following: N.J.S.2C:35-3, N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6, N.J.S.2C:35-8, N.J.S.2C:35-9, P.L.1997, c.185 (C.2C:35-4.1), sections 3 or 5 of P.L.1997, c.194 (C.2C:35-5.2 or C.2C:35-5.3), P.L.1987, c.101 (C.2C:35-7) or P.L.1997, c.327 (C.2C:35-7.1), or

(2) the unlawful possession or use of an assault firearm as defined in subsection w. of N.J.S.2C:39-1.

2. Section 4 of P.L.1999, c.334 (C.2C:35-5.7) is amended to read as follows:

C.2C:35-5.7 Issuance of order by court.

Issuance of order by court.

4. a. When a person is charged with a criminal offense on a warrant and the person is released from custody before trial on bail or personal recognizance, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall as a condition of release issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

b. When a person is charged with a criminal offense on a summons, the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

c. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released from custody at a detention hearing pursuant to section 19 of P.L.1982, c.77 (C.2A:4A-38), the court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

d. When a person is charged with a criminal offense on a juvenile delinquency complaint and is released without being detained pursuant to section 15 or 16 of P.L.1982, c.77 (C.2A:4A:34 or C.2A:4A-35), the law enforcement officer or prosecuting attorney shall prepare an application pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) for filing on the next court day.

The law enforcement officer releasing the juvenile shall serve the juvenile and his parent or guardian with written notice that an order shall be issued by the Family Part of the Superior Court on the next court day prohibiting the juvenile from entering any place defined by

subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section.

The court shall issue such order on the first court day following the release of the juvenile. If the restraints contained in the court order differ from the restraints contained in the notice, the order shall not be effective until the third court day following the issuance of the order. The juvenile may apply to the court to stay or modify the order on the grounds set forth in subsection e. of this section.

e. The court may forego issuing a restraining order for which application has been made pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) only if the defendant establishes by clear and convincing evidence that:

(1) the defendant lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place. In such an event, the court shall not issue an order pursuant to this section unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. If the balance of the interests of the person and the public so warrants, the court may issue an order imposing conditions upon the person's entry at, upon or near the place; or

(2) the issuance of an order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of persons residing in or having business in the place.

f. A restraining order issued pursuant to subsection a., b., c., d. or h. of this section shall describe the place from which the person has been barred and any conditions upon the person's entry into the place, with sufficient specificity to enable the person to guide his conduct accordingly and to enable a law enforcement officer to enforce the order. The order shall also prohibit the person from entering an area of up to 500 feet surrounding the place, unless the court rules that a different buffer zone would better effectuate the purposes of this act. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours. When appropriate, the court may append to the order a map depicting the place. The person shall be given a copy of the restraining order and any appended map and shall acknowledge in writing the receipt thereof.

g. (1) The court shall provide notice of the restraining order to the local law enforcement agency where the arrest occurred and to the county prosecutor.

(2) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, the local law enforcement agency may post a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, upon one or more of the principal entrances of the place or in any other conspicuous location. Such posting shall be for the purpose of informing the public, and the failure to post a copy of the order shall in no way excuse any violation of the order.

(3) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may publish a copy of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, in a newspaper circulating in the area of the restraining order. Such publication shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

(4) Notwithstanding the provisions of section 1 of P.L.1982, c.79 (C.2A:4A-60), prior to the person's conviction or adjudication of delinquency for a criminal offense, any law enforcement agency may distribute copies of any orders issued pursuant to this section, or an equivalent notice containing the terms of the order, to residents or businesses located within the area delineated in the order or, in the case of a school or any government-owned property, to the appropriate administrator, or to any tenant association representing the residents of the affected area. Such distribution shall be for the purpose of informing the public, and the failure to publish a copy of the order shall in no way excuse any violation of the order.

h. When a person is convicted of or adjudicated delinquent for any criminal offense, the

court, upon application of a law enforcement officer or prosecuting attorney pursuant to section 3 of P.L. 2001, c.365 (C.2C:35-5.9) and except as provided in subsection e. of this section, shall, by separate order or within the judgment of conviction, issue an order prohibiting the person from entering any place defined by subsection b. of section 3 of P.L.1999, c.334 (C.2C:35-5.6), including a buffer zone surrounding the place or modifications as provided by subsection f. of this section. Upon the person's conviction or adjudication of delinquency for a criminal offense, a law enforcement agency, in addition to posting, publishing, and distributing the order or an equivalent notice pursuant to paragraphs (2), (3) and (4) of subsection g. of this section, may also post, publish and distribute a photograph of the person.

i. When a juvenile has been adjudicated delinquent for an act which, if committed by an adult, would be a criminal offense, in addition to an order required by subsection h. of this section or any other disposition authorized by law, the court may order the juvenile and any parent, guardian or any family member over whom the court has jurisdiction to take such actions or obey such restraints as may be necessary to facilitate the rehabilitation of the juvenile or to protect public safety or to safeguard or enforce the rights of residents of the place. The court may commit the juvenile to the care of the Department of Human Services under the responsibility of the Division of Youth and Family Services until such time as the juvenile reaches the age of 18 or until the order of removal and restraint expires, whichever first occurs, or to such alternative residential placement as is practicable.

j. An order issued pursuant to subsection a., b., c. or d. of this section shall remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whichever is less. An order issued pursuant to subsection h. of this section shall remain in effect for such period of time as shall be fixed by the court but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense or offenses. When the court issues a restraining order pursuant to subsection h. of this section and the person is also sentenced to any form of probationary supervision or participation in the Intensive Supervision Program, the court shall make continuing compliance with the order an express condition of probation or the Intensive Supervision Program. When the person has been sentenced to a term of incarceration, continuing compliance with the terms and conditions of the order shall be made an express condition of the person's release from confinement or incarceration on parole. At the time of sentencing or, in the case of a juvenile, at the time of disposition of the juvenile case, the court shall advise the defendant that the restraining order shall include a fixed time period in accordance with this subsection and shall include that provision in the judgment of conviction, dispositional order, separate order or order vacating an existing restraining order, to the law enforcement agency that made the arrest and to the county prosecutor.

k. All applications to stay or modify an order issued pursuant to this act, including an order originally issued in municipal court, shall be made in the Superior Court. The court shall immediately notify the county prosecutor in writing whenever an application is made to stay or modify an order issued pursuant to this act. If the court does not issue a restraining order, the sentence imposed by the court for a criminal offense as defined in subsection b. of this section shall not become final for ten days in order to permit the appeal of the court's findings by the prosecution.

l. Nothing in this section shall be construed in any way to limit the authority of the court to take such other actions or to issue such orders as may be necessary to protect the public safety or to safeguard or enforce the rights of others with respect to the place.

m. Notwithstanding any other provision of this section, the court may permit the person to return to the place to obtain personal belongings and effects and, by court order, may restrict the time and duration and provide for police supervision of such a visit.

C.2C:35-5.9 Certification of offense location.

3. Certification of Offense Location.

The court shall issue a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) only upon request by a law enforcement officer or prosecuting attorney and submission of a certification describing the location of the offense.

C.2C:35-5.10 Discretion to not seek restraining order.

4. Discretion to Not Seek Restraining Order.

A law enforcement officer or prosecuting attorney shall have discretion to not seek a restraining order pursuant to P.L.1999, c.334 (C.2C:35-5.4 et seq.) if the defendant is charged with an offense resulting from the stop of a motor vehicle, if the defendant was using public transportation, or if the provisions of paragraph (1) or (2) of subsection e. of section 4 of P.L.1999, c.334 (C.2C:35-5.7) are applicable.

5. There is appropriated from the General Fund to the Administrative Office of the Courts \$50,000 for the modification of the judiciary's automated systems in accordance with the implementation of this act.

6. This act shall take effect on the 120th day following enactment except for section 5, which shall take effect immediately.

Approved January 7, 2002.