

# Looking Out For Your Legal Rights®

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Domestic violence law  
adds four more crimes.

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*Cuáles Son Sus  
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La versión en  
español la encontrará  
al reverso.



## More Protection from New Jersey's Domestic Violence Law

**NEW JERSEY LAW** protects people from domestic violence by making it possible to get a restraining order. The specific law that deals with restraining orders is the Prevention of Domestic Violence Act. People in certain types of relationships can get a restraining order if a crime has been committed against them. For detailed information on how to file a temporary restraining order, please visit [bit.ly/1RQFIAM](http://bit.ly/1RQFIAM).

Until August 10, 2015, 14 crimes could be considered domestic violence. Those crimes are:

- Homicide
- Assault
- Sexual assault
- Criminal sexual contact
- Kidnapping
- Criminal restraint
- False imprisonment
- Terroristic threats
- Harassment
- Stalking
- Criminal trespass
- Burglary
- Lewdness
- Criminal mischief

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As of August 10, 2015, four more crimes are considered domestic violence. The new crimes are:

- Criminal coercion
- Robbery
- Contempt of a domestic violence order
- Any other crime involving the risk of death or serious bodily injury.

This article will describe the new crimes and explain how they may be used in a domestic violence restraining order. It will also discuss a new case on criminal mischief.

### Criminal coercion

Criminal coercion means that someone tries to make you do something or tries to stop you from doing something by threatening that s/he will:

- Hurt you or someone else
- Commit a crime
- Accuse someone else of committing a crime

- Expose a secret that would damage your reputation or your credit
- Testify or not testify in court, or
- Do something to damage your health, safety, career, or personal relationships.

Criminal coercion is more than just a threat. The threat must be made in order to force you into doing something or not doing something.

*For example, the abuser says to you:*

- “If you testify against me, I will tell your boss a secret about you.” Or
- “If you don’t have sex with me, I will call child services and say that you abuse your children.”

### Robbery

Robbery occurs when someone steals something from you while at the same time hurting you, threatening to hurt you, using force, or committing or threatening to commit certain other crimes.

*For example:*

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**This newsletter is for general information only. If you have a legal problem, you should see a lawyer.**

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- The abuser twists your hand behind your back in order to steal your telephone and keep it for him/herself, or
- The abuser holds a knife to your neck and takes your wallet.

### **Contempt of a domestic violence restraining order**

If you already have a temporary restraining order or a final restraining order and the abuser contacts you by phone, text, email, etc., or comes to your home or job, that is a violation of the restraining order. Violations should result in the arrest of the defendant.

If you have a temporary restraining order, a violation would allow you to call the police to have the abuser arrested. It would also allow you to amend (add information to) the temporary restraining order by including contempt of a domestic violence order as an additional crime. (For more advice on amending your temporary restraining order, please visit [bit.ly/1RldG6h](http://bit.ly/1RldG6h).)

*Example:* You have a temporary restraining order against the abuser and:

- The abuser texts you and asks how you are doing. Not only can you call the police and have the abuser arrested for violating the restraining order, but you can also go back to family court and add to your temporary restraining order

the additional crime of contempt—something the court will consider at the final restraining order trial.

- The abuser shows up at your job. Again, you can call the police and have the abuser arrested for a violation, and you can go back to the family court and add this incident to your restraining order as contempt of a domestic violence restraining order.

### **Any other crime involving risk of death or serious bodily injury**

If someone has committed a crime against you that involves risk of death or serious bodily injury, it may be domestic violence.

*For example:*

- The abuser sets fire to your apartment while you are inside, or
- You are 60 years old or disabled. Your adult daughter, who has been your primary caretaker, abandons you or unreasonably fails to give you your necessary medication, which puts you at risk of being seriously harmed.

There are many situations that could fall under one of the new crimes in the Prevention of Domestic Violence Act and many types of cases that have not yet been tried or decided by the courts. If you believe you are a victim of domestic violence, contact a lawyer, the police, or the family court in your county.



### **Criminal mischief**

Criminal mischief was already included in the list of 14 crimes of domestic violence, but a recent case has resulted in special attention to

## The court said that criminal mischief occurs when one person damages another’s property, even if the wrongdoer also owns the property.

the issue. Criminal mischief is when one person damages “property of another.” Until now, some courts would not find that criminal mischief occurred if the damaged property was partly owned by the person who damaged it. A new case (*N.T.B. v. D.D.B.*) has made clear that the court should consider that criminal mischief. In this case, the court said that criminal mischief occurs when one per-

son damages another’s property, even if the wrongdoer also owns the property. The court stated that because a home that is bought during a marriage is joint property of both spouses, damage or destruction to part of the home by one spouse qualifies as damage to the “property of another.” □

*By Shoshana Gross, Staff Attorney, Legal Services of New Jersey Domestic Violence Representation Project*

### ***Where can I get more information or legal help?***

Many victims of domestic violence need additional support, safe housing, or legal help. Help is available for victims of domestic violence. You can contact the following organizations for additional assistance.

- The New Jersey Domestic Violence Hotline provides 24-hour confidential service, seven days a week, and can be reached at: 1-800-572-SAFE (7233) or [www.njcedv.org](http://www.njcedv.org).
- For more information about New Jersey law, please visit [www.lsnjlaw.org](http://www.lsnjlaw.org). Additional information about domestic violence rights, including access to Legal Services of New Jersey’s comprehensive guide to domestic violence law, is available at [bit.ly/1xfj51](http://bit.ly/1xfj51).
- For videos explaining how to file a temporary restraining order, please visit [bit.ly/Y2MMFk](http://bit.ly/Y2MMFk).
- For videos explaining how to represent yourself at a final restraining order hearing, please visit [bit.ly/Y6S82W](http://bit.ly/Y6S82W).
- If you have questions or need legal help, call LSNJLAW<sup>SM</sup>, Legal Services of New Jersey’s statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529), Monday through Friday, from 8 a.m. to 5:30 p.m. You may also apply online anytime at [www.lsnjlawhotline.org](http://www.lsnjlawhotline.org). Someone will get back to you within two business days.

## FAMILY LAW: Understanding the Results of Your DCP&P Investigation

**WHEN THE DIVISION** of Child Protection and Permanency (DCP&P, referred to as “the Division”—formerly the Division of Youth and Family Services, or DYFS) investigates a case, they will issue one of four findings:

1. Substantiated
2. Established
3. Not established
4. Unfounded

This finding of substantiated, established, not established, or unfounded will:

- Be a factor in the Division’s decision whether or not to remove children from your custody
- Determine what information about your case will be shared and with whom, and whether you will be barred from certain places or types of employment
- Impact your right to appeal

The focus of this article is on cases that are not in litigation (court). It will help you understand how the Division makes a finding and what it means for you. An article in the April issue of *Looking Out* and on our website, [www.lsnjlaw.org](http://www.lsnjlaw.org), will walk you through the steps of appealing the Division’s finding.

### ***How will I know the Division’s finding?***

When the Division receives a report of abuse or neglect, a caseworker will in-

vestigate the report within 24 hours. After this investigation, the Division will decide how to handle the case. You will receive a letter telling you the outcome, or decision, of the investigation 60 days after the Division investigates you and your family.

### ***What is a substantiated finding?***

If the Division finds evidence of child abuse or neglect, they will examine other circumstances to determine whether to classify the case as *substantiated*. First, they will look for “*absolutely substantiating circumstances*.” Some examples of absolutely substantiating circumstances are:

- Repeated instances of physical abuse
- Hospitalization
- Exposure to inappropriate sexual activity

If any of these circumstances exist, the case is substantiated.

If there are no absolutely substantiating circumstances, the Division will look for “aggravating factors” and “mitigating factors.” Aggravating factors are circumstances that make the abuse or neglect more serious. For example, a pattern of abuse or neglect, or abuse that has left a lasting emotional or physical impact on the child, would be considered an aggravating factor. Mitigating factors are circumstances that would make the abuse or neglect seem less serious. If it is the first time you

have been involved with the Division, and you have a history of tending to your child's needs (for example, you have taken them for regular doctor visits) the Division would consider these strengths to be mitigating factors. The Division will try to balance these positive and negative factors. If there are more aggravating factors than mitigating factors, the case is substantiated. If the mitigating factors outweigh the aggravating factors, the case is established. Information about established cases is in the next section.

If the Division finds that your case is substantiated, your child(ren) may be taken from your home and you may need to follow up with the Division for more services. Your information will be permanently recorded in the Child Abuse Registry and will appear in a "CARI" (Child Abuse Registry Information) check. Once your information is on the registry, it can never be removed. CARI is not public, but having your name on the registry can still have a serious impact on you. You may not be able to work in certain places, such as adoption agencies, childcare facilities, and



**If it is the first time you have been involved with the Division, and you have a history of tending to your child's needs, the Division would consider these strengths to be mitigating factors.**

group homes. You may not be able to adopt a child or be a foster parent.

If you do not agree with the Division's substantiated finding, you can appeal the finding. If you are not already a defendant in a child abuse or neglect case in court, you should appeal the finding to the Office of Administrative Law. You can do this by contacting the office identified in the notice you receive from DCP&P within 20 days. There are several steps to the appeal process and during the process, you should try to talk with the Division and/or the District Attorney General (DAG) assigned to your case. You should tell them that you do not want your information on the Child Abuse Registry. In some cases, the Division and/or the DAG may be willing to change your substantiated finding to a finding of established or not established.

### ***What is an established finding?***

If, after the investigation, the Division finds that there is evidence of child abuse or neglect, but the mitigating factors outweigh the aggravating factors, the Division will classify your case as *established*.

If your case is established, your information will not go on the Child Abuse registry. However, the Division will keep the case information in its files and it cannot be expunged (erased). This information can prevent you from becoming a foster parent, and if you have several established cases on record, the Division may eventually decide your case is substantiated and put your information on the Child Abuse Registry.

The law does not provide a direct way to appeal an established finding. Unlike a substantiated finding, you may not

## In order to protect your rights as a parent, it is important that you understand the Division's finding.

appeal directly to the Office of Administrative Law. However, you may have the right to appeal to the Appellate Division of the Superior Court of New Jersey. If you would like advice or assistance on appealing established findings, please contact Legal Services of New Jersey's Family Representation Project.


### ***What is a not established finding?***

If the Division decides that abuse or neglect has not been proven, but the information they gather indicates that the child was still exposed to harm or risk, they will classify your case as *not established*. Your name will not be added to the Child Abuse Registry, but the Division will keep the information in the agency records and the information cannot be expunged (erased).

As with established findings, it is not clear how to challenge a not established finding. Unlike a substantiated finding, you do not have the right to appeal directly to the Office of Administrative Law. However, you may have the right to appeal to the Appellate Division of the Superior Court of New Jersey. If you would like advice or assistance on appealing not established findings, please contact Legal Services of New Jersey's Family Representation Project.

### ***What is an unfounded finding?***

If the Division finds that your child was not harmed or placed at risk of harm, they will classify your case as *unfounded*. Your name will not be added to the Child Abuse Registry, and in most cases, the information will be expunged (erased) from the agency's records after three years. The Division will keep the record for longer than three years in some cases, such as if it receives another report of child abuse or neglect during that time, another member of your child's household is being investigated by the Division, or if a court orders the agency to keep the records.

In order to protect your rights as a parent, it is important that you understand the Division's finding. If you have any questions about your investigation, findings, and your right to appeal, please contact Legal Services of New Jersey's Family Representation Project by calling LSNJLAW<sup>SM</sup>, LSNJ's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529), Monday through Friday between 8:00 a.m. and 5:30 p.m. You may also apply online at [www.lsnjlawhotline.org](http://www.lsnjlawhotline.org). 

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*By Mary B. Picarella, LSNJ Legal Intern, supervised by Jey Rajaraman, Chief Counsel, Legal Services of New Jersey Family Representation Project*

## Changes to Expungement Statute Good News for Rehabilitated Drug Offenders

**RECENT CHANGES** to New Jersey's expungement law are a step in the right direction. Below are some specific changes that will help many individuals looking for a fresh start.

### Drug Court Graduates

The biggest change in the law affects people who have completed a drug court or court-ordered rehabilitation program. If this situation applies to you, your entire record will automatically be expunged (cleared) when you graduate from the program.

The court will grant expungement as long as:

- You have no pending charges;
- You have not been convicted of a non-expungeable offense (see LSNJ's *Clearing Your Record* manual at [bit.ly/1njPZ6T](http://bit.ly/1njPZ6T) for more information);
- The need for your records to be available to the public does not outweigh the court's desire to grant your expungement; and
- You have not committed any crimes or offenses during or any crimes after your completion of the program.

There are no fees associated with this expungement, and it will happen automatically if you complete drug court after April 18, 2016 (the day this law takes effect). If you completed drug court before April 18, 2016, your expungement won't happen automatically, but you may make a request for expungement and the waiting periods previously asso-

ciated with those applications will no longer apply.

### Expungement of Indictable and Disorderly Person's Convictions

Another change allows people with one indictable conviction and up to two disorderly persons convictions to expunge their entire record. A conviction for an indictable offense no longer disqualifies you from expunging disorderly persons convictions.

In addition, those having disorderly persons convictions may be eligible for early pathway expungement. Early pathway expungement permits the court to expunge a record of disorderly persons convictions before the end of the waiting period if

- At least three years have passed since your latest conviction, payment of fine, release from incarceration, successful completion of probation or parole—whichever is later;
- There were no new indictable, disorderly persons or petty disorderly persons convictions; and
- The court decides that expungement is in the public interest

The court will consider the nature of the offense and the offender's character and conduct since conviction. Previously, this type of relief was only available for people with indictable convictions. Now, it is also available to those with disorderly persons convictions.



A separate petition is required for each conviction, but you may file multiple petitions in a single application. You must file your petition in the county where the indictable conviction was heard. If there was no indictable conviction, the petition must be filed where the most recent disorderly persons conviction was entered.

### Automatic Expungement of Dismissed Cases

Beginning April 18, 2016, the Superior Court will automatically expunge records of arrests, case dismissals, and acquittals that do not lead to a conviction. For municipal court matters, the expungement will not happen automatically, but you may request an expungement application from municipal court and send it to the Superior Court. There are no fees associated with this expungement.

If you had a case dismissed before April 18, 2016, you will need to apply for expungement. It will not happen automatically.

### Identity Theft

Another law, effective March 1, 2016, authorizes deleting, sealing, or labelling certain records of identity theft victims. Specifically, victims of identity theft may petition the court for a conviction or pending charge if

- The perpetrator was arrested, cited for, or convicted of a crime, offense, or violation under the victim's identity;
- A complaint for a crime, offense, or violation has been filed against



Another law, effective March 1, 2016, authorizes deleting, sealing, or labeling certain records of identity theft victims.

the perpetrator in the victim's name; or

- The victim's identity has been mistakenly associated with a record of conviction.

The bill also permits the Motor Vehicle Commission to amend driver history records of identity theft victims and refund insurance premiums.

LSNJ's Prisoner Reentry Project assists eligible inmates and those with criminal records to successfully transition back into society. A toolkit including forms, videos, and a manual is available on [www.lsnjlaw.org](http://www.lsnjlaw.org). If you need additional assistance, you may contact LSNJLAW<sup>SM</sup>, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (1-888-576-5529). Hotline hours are Monday through Friday, 8:00 a.m. to 5:30 p.m. You may also apply online at [www.lsnjlawhotline.org](http://www.lsnjlawhotline.org). If you are not eligible for assistance from Legal Services, the hotline will refer you to other possible resources. □

*By Akil S. Roper, Chief Counsel,  
Legal Services of New Jersey Prisoner Reentry Project*

## Urgent SNAP Client Information

### Exemptions to New Time Limits for People Ages 18 through 49

The SNAP (Food Stamp) program has work requirements, and time limits on how long "able-bodied" adults without dependents (called "ABAWDs") can receive SNAP benefits without meeting those work requirements. For many years, these time limits have been "Waived" (not enforced) by the federal and state governments. A recent state decision, however, now means if you are considered an ABAWD, you may only receive SNAP benefits for a total of 3 full months during any 36-month period, unless you are exempt.

#### What You Can Do

Use the form at [bit.ly/20x9wMV](http://bit.ly/20x9wMV) to describe your situation so your County Welfare Agency can determine if you are exempt from the time limit or if you are already meeting the ABAWD work requirements. Give the completed form and any verification to your County Welfare Agency, and also the One Stop Career Center if you have been told to go there. Be sure to keep a copy of the form and anything you submit with it for your records.

#### If You Need Help

If you need help getting a SNAP time limit exemption, call LSNJLAW<sup>SM</sup>, Legal Services of New Jersey's statewide legal hotline, at 1-888-LSNJLAW for legal advice, information, and referral. You may also apply for help online at [www.lsnjlawhotline.org](http://www.lsnjlawhotline.org).

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# Cuáles Son Sus Derechos Legales

Marzo 2016

Publicado por Los Servicios Legales de Nueva Jersey

Información urgente para todo cliente de SNAP: Las exenciones a los nuevos límites de tiempo para las personas con edades entre los 18 y los 49 años. *Página 1*

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*Looking Out  
For Your Legal Rights*

Flip issue over for the English edition of *Looking Out for Your Legal Rights*.

## Información urgente para todo cliente de SNAP

Las exenciones a los nuevos límites de tiempo para las personas con edades entre los 18 y los 49 años

**EL PROGRAMA SNAP** (cupones para alimentos) tiene requisitos laborales y límites de tiempo respecto a cuánto tiempo puede un adulto “sano” sin dependientes (llamado “ABAWDs”) recibir los auxilios de SNAP sin tener que cumplir los requisitos de tener un trabajo. Durante muchos años, los gobiernos federal y estatal han “exonerado” (no aplicado) estos plazos. No

*continúa en la página 2*

***El boletín de educación jurídica para los habitantes de Nueva Jersey***

obstante, una reciente decisión estatal indica que si usted es considerado ser un ABAWD, sólo puede recibir SNAP en un total de tres meses completos durante cualquier período de 36 meses, a menos que sea exento.

**¿Qué puede hacer?**

Utilice el formulario que se encuentra en [bit.ly/1UJsBGs](http://bit.ly/1UJsBGs) para describir su situación, de modo que la agencia del bienestar público, *welfare*, en su condado pueda determinar si está exento del límite de tiempo o si ya

cumplió el requisito laboral para los ABAWD. Entregue el formulario lleno y cualquier verificación a la agencia del bienestar público en su condado, y también al centro *One Stop Career Center* si le han indicado ir allí.

Si necesita ayuda con la obtención de una exención de SNAP para el límite de tiempo, puede llamar a la línea directa de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado, marcando el 1-888-LSNJ-LAW donde encontrará asesoramiento jurídico, información y referencias. □

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### Cuáles Son Sus Derechos Legales

**Con respecto a *Looking Out***

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**Suscripciones**

La suscripción cuesta \$20 dólares por año.

**Números atrasados**

Puede ver números atrasados en [www.lsnj.org/espanol](http://www.lsnj.org/espanol).

**Cambio de dirección**

Si se muda, envíenos su nueva dirección y una copia de la etiqueta pegada al último ejemplar de *Looking Out*.

**Comentarios**

Si tiene alguna sugerencia o comentario con respecto a *Looking Out*, nos gustaría oírlo. Envíe toda correspondencia a:

Editor, *Looking Out*  
 Legal Services of New Jersey  
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**Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.**

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