

Looking Out For Your Legal Rights®

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

Are you a Senior Citizen Receiving SSI Benefits?

The Department of Human Services is reaching out to seniors on SSI, who may not be receiving SNAP benefits. You may receive a letter about this, with a one-page application form. If you are already getting SNAP benefits, you will not get this letter. The program is called the *New Jersey Simplified Nutritional Assistance For Seniors (SNAS)*. The form asks for basic information about your age, who you live with, and your housing expenses. If you get this letter and fill out the form and return it to your county welfare

If you qualify, you will be automatically enrolled in SNAP and will receive a set amount of benefits.

agency, you may be able to easily get nutrition assistance benefits from the SNAP program. If you qualify, you will be automatically enrolled in SNAP and will receive a set amount of benefits—either \$83 or \$141 per month, depending on your housing costs. Some people may be eligible for more SNAP benefits if they complete a longer SNAP application and provide more information and documents than this one-page form. The SNAS program is a way to easily get benefits using a simple application process. *Continued on page 2*

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If you have questions about the SNAP program, you can contact your county welfare agency (bit.ly/1RNBv09). You can also call LSNJLAWSM, Legal Services

of New Jersey’s statewide, toll-free legal hotline, Monday through Friday, 8:30 a.m. to 5:30 p.m., at 1-888-LSNJ-LAW (1-888-576-5529) or apply for help online at www.lsnjlawhotline.org. □

When is a Man a Father? Paternity in New Jersey

IN NEW JERSEY, a woman is considered the legal mother of a child if she gave birth to the child or if she adopted the child. For a man, creating a legal parent-child relationship with a child (called “paternity”) can be a little more complicated.

Legally Established Paternity

Paternity can be legally proven in two ways:

1. A court enters a *Judgment of Paternity* or *Judgment of Adoption* declaring the man to be the child’s father.
2. If the man and the mother are not married, legal paternity is established (proven) if both parents sign a form called a *Certificate of Parentage* (COP) and file it with the state Reg-

istrar. A COP is a sworn statement that both parties believe him to be the biological father of the child. Parents may complete a COP before, or long after, the birth of the child. Hospitals in New Jersey offer unmarried parents the opportunity to sign a COP when they complete the birth certificate application, if it has not already been done. Once signed, a COP is enforceable proof of paternity and carries the same weight in court as a court-ordered judgment of paternity—even if the male is a minor when he signs it. A COP can be rescinded (canceled) within 60 days of the date of signing *if* a child support order has not already been entered.

Looking Out For Your Legal Rights®

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Legal Services of New Jersey
P.O. Box 1357
Edison, NJ 08818-1357
publications@lsnj.org

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

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Legal Presumption of Paternity

If paternity is not legally established, certain legal presumptions apply. A “legal presumption” is a fact that a court will assume to be true unless evidence admitted in court proves it untrue. For example, in criminal cases, the court presumes that the defendant is innocent until there is sufficient evidence to prove the defendant is guilty.

There are a number of situations that result in a presumption of paternity.

Parents who were married within 300 days of the child’s birth. The husband of the child’s mother at the time of birth is presumed to be the father of child. The law also presumes paternity for a man who was married to the mother but either divorced her or died within 300 days before the birth.

Couples who marry after the birth of the child. If a man marries the mother after the child is born, a legal presumption arises *only if*

- He acknowledges the paternity in writing to the state Registrar,
- He seeks to have his name added as the father on the child’s birth certificate,
- He tells people that the child is his biological child, **and**
- He agrees to or is court ordered to pay child support for the child.

Unmarried parents. A man not married to the mother is legally presumed to be the father of the child if he both tells people that he is the father of the child **and** he provides support for the child, before the child turns 18.



If paternity is not legally established, certain legal presumptions apply.

Husband who is not biological father.

If a child is born during a marriage, but the biological father is not the husband, paternity will be presumed *if*

- The biological father and the mother sign the COP;
- The husband and the mother sign a form called a *Denial of Parentage*, acknowledging that the husband is not the biological father of the child; **and**
- They file both forms with the state Registrar.

Artificial Insemination. New Jersey law provides a path for a married couple to be named the legal parents of a child created through artificial insemination *if*

- The man and woman are married,
- The husband consents to the procedure, **and**
- The insemination takes place under the supervision of a licensed physician.

When a woman who is in a civil union or marriage with another woman gives birth by artificial insemination, her

female partner or spouse is presumed to also be the legal parent of the child.

Warning about informal insemination and parental rights. Some women or couples have chosen to use donated sperm, either from a sperm bank or from someone they know, to become pregnant without medical supervision. In New Jersey, when a woman becomes pregnant from artificial insemination, the legal presumptions do not apply

- If the mother is not married or in a civil union, or
- If the insemination procedure is not supervised by a licensed physician.

In that case, the sperm donor, who is the biological father, is considered the legal father of the child, even if that is not what the donor or mother intended.

Challenging a Legal Presumption

When a man is legally presumed to be the father of a child, the mother, the child, or another man who believes himself to be the father may ask the court to decide paternity. Paternity challenges must take place before the child turns 23. The person challenging a legal presumption of paternity must present evidence that is “clear and convincing.” Clear and convincing is a legal standard of evidence that is higher than that required in most civil cases, but lower than the standard of evidence required in criminal cases.

DNA/Genetic Paternity Testing

In a contested paternity case, the court may order the child and other parties to submit to a DNA test. The results will determine the likelihood that the

presumed father is, in fact, the biological father of the child. DNA paternity tests often result in greater than 95% certainty of paternity. Note that a home paternity test kit is generally not admissible evidence in court. A home test kit requires collection of samples (usually by swabbing the inside of the cheek) and mailing the samples to a lab. Court-ordered DNA testing requires the parties and the child to go to a lab to have the sample (swab) collected and tested.

In deciding whether to order DNA testing, a court will consider a number of factors:

- The length of time between the proceeding to decide parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the biological father;
- The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
- The facts surrounding the presumed or acknowledged father’s discovery of his possible nonpaternity;
- The nature of the relationship between the child and the presumed or acknowledged father;
- The nature of the relationship between the child and any alleged father;
- The age of the child;
- The degree of physical, mental, and emotional harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
- The extent to which the passage of time reduces chances of establishing the paternity of another man

and a child-support obligation in favor of the child;

- The extent, if any, to which uncertainty of parentage exists in the child’s mind;
- The child’s interest in knowing family and genetic background, including mental and emotional history; and
- Other factors that may arise from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of harm to the child.

The parties should focus on these fac-

tors in either seeking DNA testing or asking the court to deny DNA testing.

No Legal Presumption

When there is no legal presumption of paternity, the legal standard to establish paternity is preponderance of the evidence. “Preponderance of the evidence” means that when all of the sworn testimony and items admitted into evidence are taken into consideration, a fact is more likely to be true than untrue. This is the typical civil court standard of evidence. □

By Mary M. McManus-Smith, Legal Services of New Jersey, Chief Counsel, Family Law

New Protection for Victims of Sexual Offenses

ON MAY 9, 2016, a new law, The Sexual Assault Survivor Protection Act, went into effect to provide greater protection to victims of sexual offenses. The law will allow victims of sexual offenses to obtain a protective order. You can read the law at *N.J.S.A. 2C:14-13 et seq.*

What is a protective order?

Protective orders are intended to provide safety to victims of a sexual offense (described below). A victim of a sexual offense does not have to report the crime to the police. It is possible to receive a final protective order without ever speaking with the police. Victims may report the crime to the police, but it is not required.

A protective order is a court order that forbids an offender from having *any* contact with a victim. Contact includes in-person, written, electronic, telephonic, or through third parties. In

addition to not contacting the victim, the offender also cannot contact their family, household members, employer, or co-workers. It also prohibits the offender from entering the victim’s home, school, or job.

A protective order also prohibits an offender from committing any future sexual offense against the victim. The protective order tells the offender that he or she cannot stalk (keep an eye on)



Protective orders are intended to provide safety to victims of a sexual offense.

To apply for a protective order, you should go to the Superior Court between 8:30 a.m. and 3:30 p.m., Monday through Friday.

or follow the victim. The offender cannot threaten to stalk or follow the victim. The offender cannot harass the victim in person or online by contacting them through social media or other ways online.

A protective order is a two-step process. First, a temporary protective order is granted. Second, a hearing or trial is held approximately 10 days later to determine if a final protective order should be entered to provide the victim with permanent protection from abuse. More information about how to get a protective order is described below.

Who can get a protective order?

A protective order is like a domestic violence restraining order except you don't have to have a relationship with the offender. Any victim of a sexual offense, regardless of whether or not they knew the offender, can apply for this new protective order. This law allows a victim to get a protective order even if the victim and offender were strangers, neighbors, or co-workers. If the offender was a stranger, you will need to give the court some identifying information so the court can serve the order (make sure the person receives the legal document) on the offender.

Victims under the age of 18 or those with a developmental disability must have their parent or guardian file the protective order on their behalf. Protective orders cannot be filed against offenders under the age of 18. A sexual

offense committed by a minor offender should be reported to the police.

The court must enter a protective order when it is likely that the order will protect the safety and well-being of a victim.

Victims are not eligible for a protective order if they can get a domestic violence restraining order. If the offender who committed a sexual offense against you is someone to whom you are or were married, share a child, were or are dating, or someone you ever lived with, then you should file a domestic violence restraining order. The protection you receive from the court is the same.

What is a sexual offense?

In order to get a protective order, the victim has to be a victim of nonconsensual sexual contact. This means that you did not agree or give permission for the other person to sexually touch or expose themselves to you. For information about what this contact may include, please see bit.ly/1Y2JQoi.

How do I get a protective order?

To apply for a protective order, you should go to the Superior Court between 8:30 a.m. and 3:30 p.m., Monday through Friday. If the court is closed, you will not be able to file a protective order.

You can go to the county courthouse where the offense occurred, where either you or the offender lives, or where you are sheltered. If you cannot get to the courthouse, an exception can be made to still allow you to apply for the

order. So, if you are in the hospital and cannot travel, you can still ask for this protection from the court. You do not have to report the crime to the police, but you may do so. You will not be turned away by the court if you have not reported the crime to the police.

What happens after I get a temporary protective order?

The offender will be served with a copy of the order. This means that they will be given a copy either by the police or a sheriff's officer. Once they are given a copy of the order, they must follow it. If the offender does not follow the protections in the order, you should notify the police immediately to report a violation of the order.

After you receive a temporary protective order, a hearing in front of a judge will be scheduled approximately 10 days later. To decide if the temporary order should be made final, the judge considers:

- The sexual offense committed, and
- The possibility of future risk to the victim's safety or well-being.

These two elements must be proven true by a preponderance of the evidence. A preponderance of the evidence simply means that it is more likely that they oc-

curred than that they did not.


The protective order will **not** be denied for any of the following reasons:

- A victim did not report the act to the police,
- A victim was intoxicated,
- The victim did not leave the location to avoid the sexual contact, or
- There is no physical injury.

The trial may not involve any testimony regarding the victim's previous sexual conduct nor the victim's dress when the incident occurred.

If a final protective order is entered, it lasts for the rest of the victim's lifetime or until there is a further order of the court. Final protective orders are placed on a central registry. This registry is confidential and accessible only by specified agencies including police, court, and the Division of Child Protection and Permanency.

LSNJLAWSM

If you are the victim and would like legal advice regarding a protective order, please call LSNJLAWSM, 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 a.m. to 5:30 p.m. You may also apply for help online at www.lsnjlawhotline.org. 

LSNJ on YouTube, Facebook, and Twitter

Legal Services of New Jersey's YouTube channel features client stories about legal disputes and how LSNJ has helped, self-help videos in many languages that explain the law and actions you can take, and information on closing the justice gap.

www.youtube.com/user/LegalServicesNJ

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Cuáles Son Sus Derechos Legales

Mayo 2016

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El programa SNAS es una forma sencilla de obtener beneficios mediante un proceso sencillo. *Página 1*

A partir del 10 de agosto de 2015, cuatro delitos más se consideran como violencia doméstica. *Página 3*

*Looking Out
For Your Legal Rights*

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

¿Es usted una persona mayor recibiendo el SSI?

EL DEPARTAMENTO de Servicios Humanos está contactando a las personas de la tercera edad recibiendo prestaciones del SSI, que tal vez no reciban asistencia de SNAP. Tal vez se le envíe una carta refiriéndose a este tema, junto con un formulario para la solicitud. Si ya le adjudicaron los cupones SNAP, no recibirá dicha carta. El programa simplificado de asistencia nutricional se llama *New Jersey Simplified Nutritional Assistance For Seniors (SNAS)*. El formulario le pide información básica acerca de su edad, quién vive con usted y sus

continúa en la página 2

El boletín de educación jurídica para los habitantes de Nueva Jersey



continúa de la página 1

gastos de vivienda. Si le llega esta carta y llena el formulario y lo devuelve a la agencia de asistencia social en el condado donde reside, tal vez pueda obtener fácilmente los auxilios de asistencia nutrición brindados por el programa SNAP. Si usted reúne los requisitos, quedará automáticamente inscrito en SNAP y se le enviará una cantidad fija en auxilios ya sea de \$83 o de \$141 dólares por mes, dependiendo de sus gastos de vivienda. A algunas personas se les podría adjudicar más auxilios SNAP, si estos completan una solicitud de SNAP más larga y

proporcionan más información y documentos a parte de este formulario de una página. El programa SNAS es una forma sencilla de obtener beneficios mediante un proceso sencillo.

Si usted tiene preguntas acerca del programa SNAP, puede ponerse en contacto con la agencia del bienestar público en el condado donde reside (bit.ly/1RNBv09). También puede llamar a LSNJLAWSM, la línea directa gratuita de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado, marcando el 1-888-LSNJ-LAW, (1-888-576-5529). □

LSNJ en YouTube, Facebook y Twitter

El canal YouTube de los Servicios Legales de Nueva Jersey muestra historias de los clientes respecto a disputas legales que encaran y la forma en que LSNJ les ha ayudado, contiene vídeos de auto ayuda, en varios idiomas, que explican las leyes y las acciones que puede tomar, al igual que información sobre cómo cerrar la brecha que existe en la justicia.

www.youtube.com/user/LegalServicesNJ

También puede conectar con LSNJ en Facebook y Twitter para actualizaciones sobre los desarrollos legales y los nuevos recursos disponibles en el dispositivo.



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Suscripciones

La suscripción cuesta \$20 dólares por año.

Números atrasados

Puede ver números atrasados en 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:

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Legal Services of New Jersey
P.O. Box 1357
Edison, NJ 08818-1357
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Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

La ley estatal contra la violencia doméstica hace más protecciones disponibles

LA LEY DE NUEVA Jersey protege contra la violencia doméstica al hacer posible que una víctima obtenga un orden de restricción. La ley que trata en específico con las órdenes de restricción es la Ley para la Prevención de la Violencia Doméstica. Las personas que tienen ciertos tipos de relaciones pueden obtener un orden de restricción si se ha cometido un delito en su contra. Para obtener información detallada sobre cómo solicitar un orden temporal de restricción, visite bit.ly/1UeWzhM.

Hasta el 10 de agosto de 2015, había catorce delitos que podían considerarse como violencia doméstica. Esos delitos son:

- El homicidio.
- La agresión.
- La agresión sexual.
- El contacto sexual ilícito.
- El secuestro.
- La retención ilícita.
- La privación ilegal de la libertad.
- Las amenazas terroristas.
- El hostigamiento.
- El acecho.
- La entrada ilícita.
- El allanamiento de morada.
- La lujuria.
- Los daños a la propiedad ajena.

A partir del 10 de agosto de 2015, cuatro delitos más se consideran como violencia doméstica. Estos son:

- La coacción ilícita.
- El robo.
- El desacato de un orden por violencia doméstica.

- Cualquier otro delito que implique el riesgo de lesiones personales graves o la muerte.

En este artículo describiremos los nuevos delitos y explicaremos cómo estos se pueden utilizar en la obtención de un orden de restricción por violencia doméstica. También se mencionará un nuevo caso de daños a la propiedad ajena.

La coacción ilícita

La coacción quiere decir que alguien ilícitamente intenta hacer que usted haga algo, o intenta impedirle a hacer algo por medio de una amenaza que va a:

- Lesionarle a usted o a alguien más.
- Cometer un delito.
- Acusar a otra persona de haber cometido un delito.
- Exponer un secreto que podría dañar su reputación o su crédito.
- Declarar o no declarar ante el tribunal, o
- Hacer algo para causar daño a su salud, seguridad, carrera, o relaciones personales.

La coacción ilícita es algo más que una amenaza. La amenaza se tiene que haber hecho con el fin de obligarle a hacer algo o no hacer algo.

Por ejemplo, el agresor le dice

- “Si testifica en mi contra, le voy a decir a su jefe un secreto suyo”.
- “Si no tiene relaciones sexuales conmigo, voy a llamar a los

servicios para el menor y les voy a decir que usted maltrata a sus hijos”.

El robo

El robo ocurre cuando alguien le quita algo suyo, mientras que al mismo tiempo le lastima, le amenaza con hacerle daño, utiliza la fuerza, o comete o amenaza con cometer cualquier otro delito.

Por ejemplo:

- El agresor le tuerce la mano por detrás de la espalda con el fin de robarle el teléfono y dejárselo para él/ella, o
- El agresor le pone un cuchillo en el cuello y se lleva su billetera.

El desacato de una orden de restricción por violencia doméstica

Si usted ya tiene una orden de restricción, temporal o final y el agresor se pone en contacto con usted por teléfono, le envía mensajes de texto, por correo electrónico, etc., o llega a su casa o empleo, eso es una violación de la orden de restricción. Las violaciones deben dar como resultado la detención del acusado.

Si usted tiene una orden temporal, una violación le permitirá llamar a la policía para que el agresor sea detenido y también ir al tribunal para modificar (agregar información a) la orden de restricción, al incluir el desacato de una orden por violencia doméstica como un delito adicional para que el juez considere durante el juicio para la orden final de restricción. Para obtener más asesoría sobre cómo modificar su orden temporal de restricción, visite bit.ly/1qp5he6. *Por ejemplo, usted tiene una*

orden temporal de restricción y

- El agresor le envía mensajes de texto y le pregunta que cómo le está yendo. No sólo puede llamar a la policía y hacer detener al agresor por violar la orden de restricción, sino que también puede regresar al tribunal de familia y añadir a su orden temporal el delito adicional de desacato—lo cual es algo que el juez considerará durante el juicio para la orden final de restricción.
- El agresor se aparece en su trabajo. De nuevo, usted puede llamar a la policía y hacer detener al agresor por quebrantamiento y después puede regresar al tribunal de familia y agregar este incidente a su orden como desacato de una orden de restricción por violencia doméstica.

Cualquier otro delito que implique un riesgo de muerte o lesiones físicas graves

Si alguien ha cometido, en su contra, un delito que implique un riesgo de muerte o de lesiones físicas graves, esto se podría catalogar como violencia doméstica.

Por ejemplo:

- El agresor le prende fuego a su casa mientras usted está dentro, o
- Usted tiene 60 años de edad o es discapacitada. Su hija adulta, la cuidadora principal encargada de atenderla, la abandona o injustificadamente no le da los medicamentos necesarios, y esto le pone a usted en un riesgo de sufrir un daño grave.

El juez indica que el daño a la propiedad ajena ocurre cuando una persona daña la propiedad de otra, incluso si el infractor también es dueño de los bienes.

Hay muchas situaciones que podrían incluirse en uno de los nuevos delitos comprendidos en la Ley para la Prevención de la Violencia Doméstica y muchos tipos de casos que aún no han sido juzgados o fallados por los jueces. Si usted cree que es víctima de violencia doméstica, póngase en contacto con un abogado, la policía o el tribunal de familia en el condado donde vive.

Los daños a la propiedad ajena

Daños a la propiedad ajena ya estaba incluido en la lista de los 14 delitos catalogados como violencia doméstica, pero un caso reciente ha dado como resultado que se le brinde una atención especial al asunto. Los daños a la propiedad ajena ocurren cuando una persona daña la “propiedad de otro”. Hasta ahora, algunos jueces indicaban que si los bienes dañados pertenecían parcialmente al infractor, no se

consideraría que hubiera ocurrido un daño a la propiedad ajena. Un nuevo caso (*N.T.B. v. D.D.B.*) ha dejado claro que el juez debe considerar dicha acción como daños a la propiedad ajena. En este caso, el juez indica que el daño a la propiedad ajena ocurre cuando una persona daña la propiedad de otra, incluso si el infractor también es dueño de los bienes. El juez afirmó que, debido a que una casa comprada durante el matrimonio es propiedad compartida por ambos cónyuges, los daños o destrucción de parte de la casa a manos de uno de los cónyuges se constituye como “daños a la propiedad de otro”. Un juez puede fácilmente dar el fallo que una de las partes llevó a cabo dicha acción incluso si ambas partes son los propietarios de las pertenencias dañadas. □

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.



Escanee el código QR con su teléfono para tener acceso a la solicitud electrónica de la línea directa.

¿Si no puedo encontrar un abogado, a dónde puedo acudir?
Llame a LSNJLAWSM, la línea directa gratuita de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado, al 1-888-LSNJ-LAW (1-888-576-5529) o solicite por medio de la Internet (sólo en inglés por el momento) en www.lsnjlawhotline.org. El horario de la línea directa es de lunes a viernes, desde las 8 de la mañana hasta las 5:30 de la tarde. Si no llena los requisitos para recibir asistencia de los Servicios Legales, la línea directa le enviará a otras posibles fuentes de información.