

## DOMESTIC VIOLENCE

### Guidelines on Police Response Procedures in Domestic Violence Cases

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Introduction. These general guidelines consolidate the police response procedures for domestic violence cases, including abuse and neglect of the elderly and disabled, based on State law, Court Rules, and the Domestic Violence Procedures Manual which was jointly prepared by the New Jersey Supreme Court and the Attorney General through the Division of Criminal Justice.

#### I. Definitions.

A. Domestic Violence means the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act of 1990:

Homicide N.J.S.A. 2C:11-1

Assault N.J.S.A. 2C:12-1

Terroristic threats N.J.S.A. 2C:12-3

Kidnapping N.J.S.A. 2C:13-1

Criminal restraint N.J.S.A. 2C:13-2

False imprisonment N.J.S.A. 2C:13-3

Sexual assault N.J.S.A. 2C:14-2

Criminal sexual contact. N.J.S.A. 2C:14-3

Lewdness N.J.S.A. 2C:14-4

Criminal mischief. N.J.S.A. 2C:17-3

Burglary N.J.S.A. 2C:18-2

Criminal trespass N.J.S.A. 2C:18-3

Harassment N.J.S.A. 2C:33-4

Stalking N.J.S.A. 2C:12-10

B. Victim of Domestic Violence means a person protected by the domestic violence act and includes any person:

1. who is 18 years of age or older, or

2. who is an emancipated minor, and

who has been subjected to domestic violence by:

a. spouse

b. former spouse

c. any other person who is a present or former household member, OR

3. who, regardless of age, has been subjected to domestic violence by a person:

a. with whom the victim has a child in common, or

b. with whom the victim anticipates having a child in common, if one of the parties is pregnant, or

4. who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

a. A victim may be below the age of 18.

b. The domestic violence assailant must be over the age of 18 or emancipated at the time of the offense. See Paragraph C3 below for criteria for determining whether a person is emancipated.

C. Note:

1. The Prevention of Domestic Violence Act does not define a victim of domestic violence by age, physical or psychological condition or sex.

2. AN UNEMANCIPATED MINOR WHO COMMITS AN ACT OF DOMESTIC VIOLENCE MAY NOT BE PROSECUTED AS A DOMESTIC VIOLENCE DEFENDANT BUT CAN BE PROSECUTED UNDER THE JUVENILE DELINQUENCY LAWS. THE ENTRY OF PRE-OR POST-DISPOSITIONAL RESTRAINTS CAN ALSO BE CONSIDERED.

3. A minor is considered emancipated from his or her parents when the minor:

a. has been married;

b. has entered military service;

c. has a child or is pregnant; or

d. has been previously declared by a court or an administrative agency to be emancipated.

II. Mandatory Arrest. A police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if

A. The victim exhibits signs of injury caused by an act of domestic violence. N.J.S.A. 2C:25-21a(1).

1. The word, "exhibits," is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Probable cause to arrest also may be established when the police officer observes manifestations of an internal injury suffered by the victim.

2. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

3. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

a. the comparative extent of injuries suffered;

b. the history of domestic violence between the parties, if any, or

c. other relevant factors.

4. Police shall follow standard procedures in rendering or summoning emergency treatment of the victim, if required.

B. There is probable cause to believe that the terms of a no contact court order have been violated. If the victim does not have a copy of the court order, the officer may verify the existence of an order with the appropriate law enforcement agency.

C. A warrant is in effect.

D. There is probable cause to believe that a weapon as defined in N.J.S.A. 2C:39-1r has been involved in the commission of an act of domestic violence.

III. Discretionary Arrest. A police officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed but none of the conditions in Section II. above applies.

IV. Seizure of Weapons.

A. Seizure of a Weapon for Safekeeping.

A police officer who has probable cause to believe that an act of domestic violence has been committed may:

1. Question all persons present to determine whether there are weapons, as defined in N.J.S.A. 2C:39-1r, on the premises.

2. If an officer sees or learns that a weapon is present within the premises of a domestic violence incident and reasonably believes that the weapon would expose the victim to a risk of serious bodily injury, the officer should attempt to gain possession of the weapon.

3. If the weapon is in plain view, the officer should seize the weapon.

4. If the weapon is not in plain view but is located within the premises jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain the consent, preferably in writing, of the domestic violence victim to search for and to seize the weapon.

5. If the weapon is not located within the premises jointly possessed by the domestic violence victim and assailant but is located upon other premises, the officer should attempt to obtain possession of the weapon from the possessor of the weapon, either the domestic violence assailant or a third party, by a voluntary surrender of the weapon.

6. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon or to allow the officer to enter the premises to search for the named weapon, the officer should obtain a Domestic Violence Warrant for the Search and Seizure of Weapons. [See Appendix 13]

#### B. Seizure of a Weapon Pursuant to Court Order.

1. If a domestic violence victim obtains a court order directing that the domestic violence assailant surrender a named weapon, the officer should demand that the person surrender the named weapon.

2. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should

a. inform the person that the court order authorizes a search and seizure of the premises for the named weapon, and

b. arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, N.J.S.A. 2C:29-9, and

c. conduct a search of the named premises for the named weapon.

C. The officer must append an inventory of seized weapons to the domestic violence offense report.

D. Weapons seized by a police officer must be promptly delivered to the county prosecutor along with a copy of the domestic violence offense report and, where applicable, the domestic violence complaint and temporary restraining order.

#### V. Domestic Violence Complaint.

A. Notice. When a police officer responds to a call of a domestic violence incident, the officer must give and explain to the victim the domestic violence notice of rights which advises the victim of available court action. N.J.S.A. 2C:25-23. The victim may file

1. A domestic violence complaint alleging the defendant committed an act of domestic violence and asking for court assistance to prevent its recurrence by asking for a temporary restraining court order (TRO) or other relief;

2. A criminal complaint alleging the defendant committed a criminal act. See Section II. Mandatory Arrest above when a police officer must sign the criminal complaint;

3. Both of the above.

B. Jurisdiction for filing domestic violence complaint by the victim.

1. During regular court hours,

a. The victim should be transported or directed to the Family Part of the Superior Court.

b. Where transportation of the victim to the Superior Court is not feasible, the officer should telephone the designated court by telephone for an emergent temporary restraining order in accordance with established procedure.

2. On weekends, holidays and other times when the court is closed.

a. The victim may file the domestic violence complaint before a municipal court judge specifically assigned to accept these complaints.

3. The victim may file a domestic violence complaint:

a. where the alleged act of domestic violence occurred.

b. where the defendant resides, or

c. where the victim resides or is sheltered.

C. Jurisdiction for filing criminal complaint by the victim in connection with filing domestic violence complaint.

1. A criminal complaint may be filed against the defendant in locations indicated in Paragraph B3 above.

2. A criminal complaint filed pursuant to Paragraph C.1 above shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.

3. A domestic violence complaint may be filed pursuant to the provisions of Paragraph B above.

D. Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.

1. During normal court hours, the victim may file a criminal complaint with the municipal court or police department where the alleged act occurred in accordance with departmental procedure.

2. On weekends, holidays and other times when the court is closed, the victim may file a criminal complaint with the law enforcement agency where the alleged act occurred.

3. If the police officer believes that a no-contact order should be issued, the officer should inform the court of the circumstances justifying such request when the criminal complaint is being processed and bail is about to be set. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.

E. Victim/Witness Notification Form [See Appendix 1]

1. When either a criminal or domestic violence complaint is signed, a Victim/Witness Notification Form is to be completed by the person assisting the victim, either the police officer or a member of the court staff.

2. The victim should be informed that for the victim's protection, the prosecutor or the court must have the ability to contact the victim on short notice to inform the victim about the defendant's

a. impending release from custody, or

b. application to reduce bail.

3. The victim should be provided with the telephone number of the

a. Victim Witness Unit of the Prosecutor's Office when a criminal complaint or domestic violence contempt complaint is signed, or

b. Family Division Case Management Office/Domestic Violence Unit when a domestic violence complaint is signed.

4. The victim should be instructed to contact the appropriate office to provide new telephone numbers if the victim changes telephone numbers from the numbers listed on the Victim/Witness Notification Form.

F. Procedure for filing Reports.

A copy of the domestic violence offense report must be attached to all criminal complaints and to the civil domestic violence complaint when these documents are forwarded to the appropriate court.

VI. Emergent Temporary Restraining Court Orders.

A. Where a police officer determines that an immediate court order is necessary to protect the victim from further acts of domestic violence or the victim requests an immediate court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer should:

1. Assist the victim in preparing a statement to be made to the judge.



2. Explain that the judge will place the person under oath and will ask questions about the incident.

3. If the judge issues a temporary restraining order, the police officer will be instructed to enter the judge's authorization on a prescribed form.

4. The officer also will be instructed to print the judge's name on the temporary restraining order.

5. The officer will then be instructed to serve the restraining order upon the alleged offender.

## VII. Service of Temporary Restraining Order (no-contact order)

A. When the victim obtains a no-contact court order but the defendant had not been arrested by police and is present at the scene, the officer should:

1. Escort the victim to his or her home.

2. Read the conditions of the court order to the defendant if the defendant is present.

3. Order the defendant to vacate the premises.

4. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration.

5. Arrest the defendant if required by the court order or if defendant refuses to comply with the order.

B. Where a court order had been issued but was not served upon the defendant because the defendant could not then be located but the defendant is now at the scene, police should follow Paragraphs A.2-5 above.

C. When a temporary or final restraining order is issued that requires service outside the issuing county,

1. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be brought or faxed to the sheriff's department in the issuing county.

a. The sheriff's department in the issuing county must similarly bring or fax the order and related documents to the sheriff's department in the county of the defendant's residence or business.

b. The sheriff's department in the receiving county, pursuant to local policy, will either

(1) execute service on the defendant or

(2) will immediately bring or fax the order and related documents to the police department in the municipality in which the defendant resides or works so that it can execute service accordingly.

c. The return of service should then be faxed back to the sheriff's department in the issuing county, which in turn must immediately deliver or fax the return of service to the Family Division in the issuing county.

2. When the service of a restraining order results in the seizure of weapons,

a. The weapons inventory should be attached to the return of service that is brought or faxed back to the issuing county.

b. The weapons themselves, along with any licenses, I.D. cards, or other paperwork or documentation shall be secured by the prosecutor in the seizing county for storage. At such time that the seized property is needed by the prosecutor or Family Division in the issuing county, the prosecutor in the seizing county shall forward same.

3. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO (located on the back of the last page of the multipart TRO form) must be filled out by the police or sheriff's department and immediately returned to the Family Division prior to the scheduled final hearing date.

VIII. Court Order Violations.

A. Where a police officer determines that a party has violated an existing restraining order either by committing a new act of domestic violence or by violating the terms of a court order, the officer must

1. Arrest and transport the defendant to the police station.
2. Sign a criminal contempt charge concerning the incident on a complaint-warrant (CDR-2).
3. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint form that contain the contempt charge.)
4. Telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt charge.
  - a. During regular court hours, bail should be set by the emergent duty Superior Court judge that day.
  - b. On weekends, holidays and other times when the court is closed, bail should be set by the designated emergent duty Superior Court judge except in those counties where a municipal court judge has been authorized to set bail for non-indictable contempt charges by the assignment judge.
  - c. When bail is set by a judge when the courts are closed, the officer shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details.
  - d. If a municipal court judge set the bail, the arresting officer shall notify the clerk of that municipal court of this information.
5. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at police headquarters or the county jail.

B. Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of no contact court order, the officer must advise the victim of the procedure for completing and signing a

1. criminal complaint alleging a violation of the court order.

a. During regular court hours, the officer should advise the victim that the complaint must be filed with the Family Part of the Chancery Division of Superior Court.

b. On weekends, holidays and other hours when the court is closed.

(1) the officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint;

(2) the alleged offender shall be charged with contempt of a domestic violence court order, N.J.S.A. 2C:29-9. The victim must sign the complaint. A complaint-warrant (CDR-2) must be prepared;

(3) the officer in charge shall follow standard police procedure in arranging to have a court set bail.

2. civil complaint against the defendant for violations of a court order pertaining to support or monetary compensation, custody, visitation or counselling. The victim should be referred to the Family Division Case Management Office to pursue this civil enforcement of the court order.

#### IX. Criminal Offenses Against the Elderly and Disabled.

A. Where an elderly or disabled person is subjected to a criminal offense listed as an act of domestic violence, police shall follow the appropriate procedure listed above.

B. Where the actions or omissions against an elderly or disabled person do not meet the domestic violence conditions, police may file appropriate criminal charges against the offender.

C. A person may be charged with Endangering the Welfare of the Elderly or Disabled, N.J.S.A. 2C:24-8, if the person has:

1. a legal duty to care for or has assumed continuing responsibility for the care of a person who is:

a. 60 years of age or older, or

b. emotionally, psychologically or physically disabled, and

2. the person unreasonably neglects or fails to permit to be done

3. any act necessary for the physical or mental health of the elderly or disabled person.