

***THIS SECTION PREPARED BY THE
DIVISION OF CRIMINAL JUSTICE***

This section has not been reviewed or endorsed by the Judiciary.

A. INTRODUCTION

DOMESTIC VIOLENCE STANDARDS

Domestic violence, a serious crime against society, must be affirmatively addressed by both law enforcement and the courts so that the victims and society are protected.

Prescribed procedures are necessary so that both law enforcement officers and the courts can promptly and effectively respond to domestic violence cases.

Because of the diversity of police resources in this State, county prosecutors, who are the chief law enforcement officers of their counties, should be responsible for procedures used in all the law enforcement agencies of their counties.

To promote uniformity in police response statewide, the county response procedure should conform to the format of the attached Standard.

The General Guidelines on Police Response in Domestic Violence Cases, promulgated by the Attorney General on April 12, 1988 have been expanded and revised. The revised Guidelines have been incorporated into this Standard.

The response procedures to be developed by county prosecutors for law enforcement officers should then be included in this Domestic Violence Procedures Manual. The Manual was jointly developed by the Administrative Office of the Courts and a committee of law enforcement officials convened by the Attorney General.

The Manual is intended to secure appropriate responses to domestic violence in this State. The unique unified approach will assure prompt assistance to the victims of domestic violence and demonstrate New Jersey's resolve that violent behavior will not be tolerated in public or in private.

Any questions regarding law enforcement procedures should be directed to the Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau, Justice Complex, Trenton.

PERFORMANCE STANDARDS

GOAL: The goal of this standard is to establish procedures for the proper and consistent handling of domestic violence incidents. The procedures will be established by the county prosecutor or by municipal law enforcement agencies as needed. Exceptions will be made for municipal law enforcement agencies as approved by the county prosecutor.

3. DOMESTIC VIOLENCE

3.1 Domestic violence policy and procedures. The agency shall adopt specific procedures for the handling of domestic violence and codify these procedures through policy.

3.1.1 The agency shall develop and implement written policy governing the handling of domestic violence incidents.

3.1.2 The agency shall develop and implement specific procedures for:

- A. Response to domestic violence incidents;
- B. Receipt and processing of domestic violence complaints and restraining orders;
- C. Domestic violence arrests;
- D. Weapons relating to domestic violence complaints and restraining orders;
- E. Reporting of domestic violence incidents;
- F. Training of officers in response to domestic violence incidents.

3.1.3 The agency shall clearly define and explain all relevant terms used in its domestic violence policy, including but not limited to:

- A. Domestic violence;
- B. Victim of domestic violence.

3.1.4 The agency shall insure that its domestic violence policy and procedures are in compliance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines.

- 3.2 Response to domestic violence incidents. The agency shall have clear policy and procedures on the response to domestic violence incidents realizing the importance and potential for additional violence of such incidents.
- 3.2.1 The agency shall insure that all allegations of domestic violence are responded **to** promptly and investigated thoroughly.
- 3.2.2 The agency shall insure that the safety of the victim and all individuals at the scene of domestic violence, including the officers, is **of** primary concern.
- 3.2.3 The agency shall insure that victims are notified of their domestic violence rights as required by statute.
- 3.2.4 The agency shall insure that all officers who respond to domestic violence incidents shall have available current and accurate information for referrals to appropriate social service agencies.
- 3.2.5 The agency shall establish or participate in an established domestic violence crisis team.
- 3.3 Receipt and processing of domestic violence complaints. When domestic violence incidents generate criminal **or** civil domestic violence complaints, or both, the processing of those complaints shall be explicitly defined.
- 3.3.1 The agency shall specify the procedure to be followed in filing of criminal charges stemming **from** domestic violence incidents.
- 3.3.2 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division, is open.
- 3.3.3 The agency shall specify the procedure to be followed in accepting **and** processing domestic violence complaints at times when the Superior Court, Family Division, is closed but the Municipal Court is open.
- 3.3.4 The agency shall specify the procedure to be followed in accepting and processing domestic violence complaints at times when the Superior Court, Family Division and the Municipal Court are closed.
- 3.4 Domestic violence arrests. The agency shall delineate, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, those domestic violence incidents in which the arrest of the actor is mandatory.

- 3.4.1 The agency shall specify those domestic violence incidents which require mandatory arrests:
- A. Act involving signs of injury;
 - B. Violation of a restraining order;
 - C. A warrant is in effect;
 - D. There is probable cause to believe a weapon was involved in the act of domestic violence.
- 3.4.2 The agency shall specify those domestic violence incidents in which arrest is discretionary.
- 3.4.3 The agency shall clearly delineate the procedure to be followed in cases involving violation of an existing restraining order.
- 3.4.4 The agency shall specify the procedure to be followed in processing an arrest for domestic violence, including:
- A. Signing of complaint;
 - B. Fingerprinting;
 - C. Photographing;
 - D. Bail.
- 3.4.5 The agency shall specify the procedure to be followed when a charge of domestic violence is filed against a law enforcement officer.
- 3.5 Weapons relating to domestic violence incidents. The agency shall identify the procedures to be followed by officers when weapons are involved in domestic violence incidents, in accordance with United States Constitution, New Jersey Constitution and statutes, court decisions, and Attorney General and county prosecutor directives and guidelines, and accepted police practice.
- 3.5.1 The agency shall specify the procedures to be followed by investigating officers when:
- A. Weapon(s) are used or threatened to be used in the domestic violence incident;
 - B. Weapon(s) are not used in the domestic violence incident but are in plain view to the officer;

- C. Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.
- 3.6** Reporting of domestic violence incidents. The agency shall fully document all complaints of and responses to domestic violence incidents.
 - 3.6.1** The agency shall insure that all domestic violence incidents are fully recorded and documented within the departmental reporting system.
 - 3.6.2** The agency shall insure that all domestic violence incidents are reported in accordance with state statute. This includes, but is not limited to, completion and submission of the UCR DV#1 form or its electronic data equivalent.
- 3.7** Training. The agency shall train its officers in the handling of domestic violence incidents as a matter of policy and procedure, and also from the standpoint of proper police protocol.
 - 3.7.1** The agency shall provide for the training of all officers in the appropriate handling, investigation and response procedures concerning reports of domestic violence.

B. GUIDELINES ON POLICE RESPONSE PROCEDURES IN DOMESTIC VIOLENCE CASES

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 prior editions of 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.

3.8 Mandatory Arrest

3.8.1 A police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if there exists probable cause to believe an act of domestic violence has occurred and

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

A. 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 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. *N.J.S.A. 2C:25-21c(1)*

B. 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. *N.J.S.A. 2C:25-21c(1)*

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

1. the comparative extent of injuries suffered;
2. the history of domestic violence between the parties, if any;
3. the presence of wounds associated with defense, or considered defensive wounds; or
4. other relevant factors, including checking the DV Central Registry. *N.J.S.A. 2C:25-21c(2).*
5. **NOTE:** The investigating officer must insure that “[n]o victim shall be denied relief or arrested or charged under this act with an

offense because the victim used reasonable force in self-defense against domestic violence by an attacker.” *N.J.S.A. 2C:25-21c(3)*.

D. If the officer arrests both parties, when each exhibit signs of injury, the officer should explain in the incident report the basis for the officer’s action and the probable cause to substantiate the charges against each party.

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

3.8.3 There is probable cause to believe that the terms of a **TRO** have been violated. If the victim does not have a copy of the restraining order, the officer may verify the existence of an order with the appropriate law enforcement agency. The officer should check the DVCR. *N.J.S.A. 2C:25-21(a)(3)*

3.8.4 A warrant is in effect. *N.J.S.A. 2C:25-21a(2)*

3.8.5 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. *N.J.S.A. 25-21a(4)*

3.9. DISCRETIONARY ARREST.

3.9.1 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. 3.8 above applies. *N.J.S.A. 2C:25-21b*

In any situation when domestic violence may be an issue, but there’s no probable cause for arrest and the victim does not wish to file a TRO, the police officers must give and explain to the victim the domestic violence notice of rights as contained in the Victim Notification Form. *N.J.S.A. 2C:25-23*

3.10 SEIZURE OF WEAPONS.

3.10.1 Seizure of a Weapon for Safekeeping.

A police officer who has probable cause to believe that **an** act of domestic violence has been committed shall pursuant to *N.J.S.A. 2C:25-21d(1)*:

- A. Question all persons present to determine whether there are weapons, as defined in *N.J.S.A. 2C:39-1r*, on the premises. *N.J.S.A. 25:21d(1)(a)*
 - B. 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 shall attempt to gain possession of the weapon. **If** a law enforcement officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence. *N.J.S.A. 2C:25-21d(1)(b)*
 - C. If the weapon is in plain view, the officer should seize the weapon.
 - D. If the weapon is not in plain view but is located within the premises possessed by the domestic violence victim or 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.
 - E. If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and domestic violence 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.
 - F. 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 19]
- 3.10.2 Seizure of a Weapon Pursuant to Court Order. *N.J.S.A. 2C:25-26* and *N.J.S.A. 2C:25-28j*.
- A. If a domestic violence Victim obtains a TRO or FRO directing that the domestic violence assailant surrender a named weapon, the officer should demand that the person surrender the named weapon.
 - B. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should:
 - 1. inform the person that the court order authorizes a search and . seizure of the premises for the named weapon, and

2. 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
 3. conduct a search of the named premises for the named weapon.
- 3.10.3. The officer must append an inventory of seized weapons to the domestic violence offense report. *N.J.S.A. 2C:25-21d(2)*
- 3.10.4 Weapons seized by a police officer, along with any seized firearms identification card or permit to purchase a handgun, 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. *N.J.S.A. 2C:25-21d(2)*

3.11 DOMESTIC VIOLENCE COMPLAINT PROCESS.

DEFINITIONS USED IN THIS SECTION

- A. Domestic Violence Civil Complaint means the multi page application and temporary restraining order issued by the Superior or Municipal Court. See Section 1.6. Referred to as TRO/Complaint.
 - B. Criminal Complaint refers to the criminal charges placed on a CDR-1 (summons) or CDR-2 (warrant). See Section 1.2.
- 3.11.1 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:
- A. A Complaint/TRO 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;
 - B. A criminal complaint alleging the defendant committed a criminal act. See Section, **3.8** Mandatory Arrest above as to when a police officer must sign the criminal complaint (CDR-1 (summons) or CDR-2 (warrant).); or
 - C. Both of the above.
- 3.11.2 Jurisdiction for filing domestic violence Complaint/TRO by the victim. *N.J.S.A. 2C:25-28* -

- A. During regular court hours,

1. The victim should be transported or directed to the Family Part of Superior Court. See Section 4.2.
 2. Where transportation of the victim to the Superior Court is not feasible, the officer should contact the designated court by telephone for **an** emergent temporary restraining order in accordance with established procedure.
- B. On weekends, holidays and other times when the court is closed,
1. The victim may file the domestic violence complaint with the police and request a TRO from a Municipal Court Judge specifically assigned to accept these complaints. *N.J.S.A. 2C:25-28a*.
- C. The victim may file a domestic violence complaint *.N.J.S.A. 2C:25-28a*:
1. where the alleged act of domestic violence occurred,
 2. where the defendant resides, or
 3. where the victim resides or is sheltered.
- 3.1 1.3. Jurisdiction for filing criminal complaint (CDR-1 or CDR-2) by the victim in connection with filing domestic violence complaint.
- A. A criminal complaint may be filed against the defendant in locations indicated in Paragraph 3.1 1.2 C above.
 - B. A criminal complaint filed pursuant to Paragraph 3.1 1.2 A above shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.
- 3.11.4 Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.
- A. The victim may file a criminal complaint as stated in section 3.11.2C above.
 - B. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim and shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to

the law enforcement agency where the offense occurred. That law enforcement agency shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. Where a victim has exhibited signs of physical injury, the agency receiving the documentation shall arrest the suspect in accordance with existing domestic violence procedure.

- C. **If** the police officer believes that a no-contact order should be issued, **as** a condition of bail, 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.
- D. If the officer believes that weapons should be seized, the officer should inform the court of the circumstances justifying such request that as a condition of bail, the defendant's weapons must be surrendered to the police for safe-keeping. All weapons seized must be safely secured or turned over to the county prosecutor.

3.1.1.5 Victim Notification Form [see appendix 5]

- A. When either a criminal or domestic violence complaint is signed, a Victim Notification Form is to be completed by the person assisting the victim, either the police officer or other appropriate staff.
- B. 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
 - 1. impending release **from** custody, or
 - 2. application to reduce bail.
- C. The victim should be provided with the telephone number of the
 - 1. Victim Witness Unit of the Prosecutor's Office when a criminal complaint or domestic violence contempt complaint is signed, or
 - 2. Family Division Domestic Violence Unit when a domestic violence complaint is signed.
- D. 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 Notification Form.

- E. Whenever a defendant charged with a crime or an offense involving domestic violence is released from custody the prosecuting agency shall notify the victim immediately.

3.12. PROCEDURE FOR FILING REPORTS.

- 3.12.1 A copy of the domestic violence offense report and Victim Notification Form must be attached to all criminal complaints and to the TRO when these documents are forwarded to the appropriate court. *N.J.S.A. 2C:25-24a*

3.13 TEMPORARY RESTRAINING COURT ORDERS.

- 3.13.1. When a victim requests a court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer should:
 - A. Assist the victim in preparing the complaint and a statement to be made to the judge.
 - B. Explain that the judge will place the person under oath and will ask questions about the incident.
 - C. If the judge issues a temporary restraining order, the police officer will be instructed to enter the judge's authorization on a prescribed form.
 - D. The officer also will be instructed to print the judge's name on the temporary restraining order.
 - E. The officer also will be instructed to serve the TRO upon the alleged offender.

3.14 SERVICE OF TEMPORARY RESTRAINING ORDER

- 3.14.1 When the victim obtains a restraining order but the defendant had not been arrested by police and is present at the scene, the officer should:
 - A. Escort the victim to his or her home.
 - B. Read the conditions of the court order to the defendant if the defendant is present.
 - C. Order the defendant to vacate the premises, where that is part of the Order.

- D. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration. *N.J.S.A. 2C:25-28k*. The officer shall remain with the defendant as he or she gathers personal belongings pursuant to the terms of the temporary restraining order
- E. Arrest the defendant if required by the TRO or if defendant refuses to comply with the order.

3.14.2 Where a TRO 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 **3.14.1 A-E**.

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

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

1. The sheriff's department in the issuing county must similarly bring or transmit by facsimile the order and related documents to the sheriff's department in the county of the defendant's residence or business.

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

a. execute service on the defendant or

b. will immediately bring or transmit by facsimile 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.

3. The return of service should then be transmitted by facsimile back to the sheriff's department in the issuing county, which in **turn** must immediately deliver or transmit by facsimile the return of service to the Family Division in the issuing county.

B. When the service of a restraining order results in the seizure of weapons;

1. The weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.

2. 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.
- C. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO 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.

3.15 COURT ORDER VIOLATIONS.

- 3.15.1. 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
 - A. Arrest and transport the defendant to the police station.
 - B. Sign a criminal contempt charge concerning the incident on a complaint-warrant (CDR-2).
 - C. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint (CDR-2) form that contain the contempt charge.)
 - D. Telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt charge. *N.J.S.A. 2C:25-31b.*
 1. During regular court hours, bail should be set by the emergent duty Superior Court judge that day. *N.J.S.A. 2C:25-31d.*
 2. 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.
 3. When bail is set by a judge when the courts are closed, the officer shall manage 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. *N.J.S.A. 2C:25-25-31d.*

4. If a Municipal Court judge sets the bail, the arresting officer shall notify the clerk of that Municipal Court of this information. *N.J.S.A. 2C:25-31d.*
 5. The DVCR must be checked prior to bail being set. *N.J.S.A. 2C:25-31a.*
- E. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at police headquarters or the county jail. *N.J.S.A. 2C:25-31c.*
- 3.15.2 Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a TRO, the officer must advise the victim of the procedure for completing and signing a
- A. Criminal complaint alleging a violation of the court order. *N.J.S.A. 2C:25-32*
 1. 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. *N.J.S.A. 2C:25-32*
 2. On weekends, holidays and other hours when the court is closed.
 - a. the officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint;
 - b. the alleged offender shall be charged with contempt of a domestic violence restraining court order, *N.J.S.A. 2C:29-9*;
 - c. the officer in charge shall check the DVCR prior to contacting the on duty Superior Court Judge for a probable cause determination for the issuance of the criminal complaint. If the judge finds sufficient probable cause for the charges, the officer must prepare a complaint-warrant (CDR-2).
 - d. the officer in charge shall follow standard police procedure in arranging to have a court set bail.
 - e. the officer who had determined that there was no probable cause to arrest or sign a criminal complaint

against the defendant for a violation of a TRO must articulate in the officer's incident report the reasons for the officer's conclusions.

- B.** Civil complaint against the defendant for violations of a court order pertaining to support or monetary compensation, custody, visitation or counseling. The victim should be referred to the Family Division Domestic Violence Unit to pursue enforcement of litigant's rights.

3.16 CRIMINAL OFFENSES AGAINST THE ELDERLY AND DISABLED.

- 3.16.1 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.
- 3.16.2 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.
- 3.16.3 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 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
 - C. the person unreasonably neglects or fails to permit to be done any act necessary for the physical or mental health of the elderly or disabled **person.**

3.17 Guidelines on Prosecutorial Procedure Regarding Weapons Seized in Domestic Violence Cases

Introduction. These general guidelines outline the procedure a County Prosecutor should establish regarding the disposition of weapons seized in domestic violence cases.

3.17.1. Seizure of Weapons Used in Commission of a Criminal Offense.

Any weapon used in the commission of a criminal offense or is contraband or evidence of criminal activity shall be seized by police and processed in accordance with established procedures for the handling of such evidence.

3.17.2. Seizure of Weapons for Safekeeping Purposes.

Any weapon seized by police in a domestic violence incident pursuant to *N.J.S.A. 2C:25-21d* cannot be returned to the owner by the police.

- A.** The police must promptly deliver to the County Prosecutor's Office:
1. the weapon involved in a domestic violence incident; along with any seized firearms identification card or permit to purchase a handgun;
 2. the domestic violence offense report which includes an inventory of all weapons seized, and
 3. where applicable, a copy of the TRO or FRO, the criminal complaint, the Victim Notification Form and the police incident report.
 4. where seizure of weapons is pursuant to a TRO or FRO, the weapon inventory should also be forwarded to the Family Division Domestic Violence Unit.
- B.** When a weapon was seized at the scene pursuant to *N.J.S.A. 2C:25-21d*,
1. the County Prosecutor shall determine within **45** days of the seizure:
 - a. whether the weapon should be returned to the owner of the weapon, or
 - b. whether to institute legal action against the owner of the weapon.
 2. If the County Prosecutor determines not to institute action to seize the weapon and does not institute an action within 45 days of seizure, the seized weapon shall be returned to the owner. *N.J.S.A. 2C:25-21d(3)*.
 3. If the County Prosecutor determines to institute action to seize the weapon, the Prosecutor shall, with notice to the owner of the weapon,
 - a. file a petition with the Family ~~Part~~ of the Superior Court, Chancery Division, to obtain title to the weapon, or

- b. seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license and other authorization for the use, possession, or ownership of such weapons. (See *N.J.S.A. 2C:58-3f, 2C:58-4f* and/or *2C:58-5* governing such use, possession, or ownership), or
- c. object to the return of the weapon on such grounds:
 - (1) as are provided for the initial rejection or later revocation of the authorizations pursuant to *N.J.S.A. 2C:58-3c*; or
 - (2) that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular; or
 - (3) seek a court order that defendant must dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.

C. Any weapon seized by police:

- 1. pursuant to a temporary or final domestic violence restraining order, or
- 2. pursuant to a Domestic Violence Warrant for the Search & Seizure of Weapons, or
- 3. as a condition of bail for a criminal offense involving domestic violence,

should be returned to the owner by the appropriate court specifically authorizing the return of the weapon if the order or criminal complaint is in effect. If the order or complaint is withdrawn or dismissed prior to a hearing, the provisions in Paragraph, 3.17.2B2 *supra*, should be followed.

3.17.3 Seizure of Weapons Outside the County Where the Domestic Violence Restraining Order Was Issued.

When the service of a domestic violence restraining order results in the seizure of weapons,

- A. the weapons inventory should be attached to the return of service that is brought or transmitted by facsimile back to the issuing county.
- B. the weapons themselves, along with any firearms identification card, purchasers permit, licenses, identification cards, or other paperwork or documentation shall be secured by the County Prosecutor in the seizing county for storage. At such time that the seized property is needed by the County Prosecutor or Family Division in the issuing county, the Prosecutor in the seizing county shall make arrangements for the delivery of same.

3.17.4 Seizure of Weapons from Law Enforcement Officers Involved in a Domestic Violence Incident. See Attorney General Directives 2000-3 and 2000-4 (Appendix 17)

- When a law enforcement officer, who is authorized to carry weapons pursuant to *N.J.S.A. 2C:39-6*, is involved in an act of domestic violence, the seizure of weapons shall be governed by the Attorney Generals Directives 2000-3 and 2000-4. (See Appendix 17.)¹

- A. If a law enforcement officer is required by departmental regulations to personally purchase his or her official duty firearm, that firearm shall be considered the same as if it had been departmentally issued for purposes of applying the provisions of the Attorney General Directives 2000-3 and 2000-4 and the provisions of the federal gun control law, **18 U.S.C.A. 922(g)**.
- C. When a personal firearm is seized from a member of a state law enforcement officer, which includes members of the State Police, the State Department of Corrections, the Division of Criminal Justice, Rutgers University Campus Police, state college and university police, N.J. Transit Police, Division of Parole, Juvenile Justice Commission, Human Services Police, any officer of Fish, Game and Wildlife

¹ The Directives are similar in content: Directive 2000-3 *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers* is applicable to municipal and county law enforcement and requires the county prosecutor to investigate whether a police officer, having his firearms seized pursuant to the Prevention of Domestic Violence Act of 1990, should and under what conditions, would have his firearms, agency owned and personal, returned to him. Directive 2000-4, *Revision to August 14, 1995, Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers Involved in Domestic Violence Incidents* places the responsibility of determining the conditions upon which a state law enforcement officer would have his right to carry a firearm restored with the Division of Criminal Justice.

authorized to carry a firearm, State Commission of Investigation, and Division of Taxation;

1. the county Prosecutor's Office must inform the Division of Criminal Justice whether it will or will not institute forfeiture proceedings pursuant to *N.J.S.A. 2C:25-21d* for the seizure of the member's approved off-duty firearms and ~~other~~ personally owned firearms,
2. the Division of Criminal Justice will determine whether that officer shall be authorized to carry that firearm or any firearm either on duty or off duty and whether conditions should be imposed for such authorization pursuant to the Attorney General Directive 2000-4 at IVD.
3. the Division of Criminal Justice will inform the County Prosecutor's Office of its decision whether that officer would be authorized **to** carry a firearm either on duty or off duty and whether conditions had been imposed for carrying a firearm.

3.17.5 Restrictions on Return of Firearms.

- A. If a final domestic violence restraining order is issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A. 2C:39-7b(3)* & *18 U.S.C.A. 922(g)*, the named defendant shall not be permitted to possess, purchase, own, or control any firearm for the duration of the order or for two years, whichever is greater. *N.J.S.A. 2C:25-29b*
- B. If a law enforcement officer is subject to a temporary or final restraining order issued pursuant to the provisions of both New Jersey and federal gun control laws, *N.J.S.A. 2C:39-7b(3)* & *18 U.S.C.A. 922(g)* and sec 925, the County Prosecutor may permit a municipal or county police officer to be armed while actually on duty provided that the restraining order specifically permits the possession of a firearm on duty, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty. In the event a state law enforcement officer is subject to a final restraining order, the Attorney General, by the Division of Criminal Justice, may permit a subject officer to be armed while on duty provided said restraining order specifically permits, and the firearm is issued to the officer upon reporting for a scheduled tour of duty and surrendered upon completion of the tour of duty.
- C. A law enforcement officer who has been convicted of a misdemeanor domestic violence offense anywhere in the nation is prohibited from possessing a firearm pursuant to *18 U.S.C. 922(g)(8)*. This federal law applies to offenses that have as an element (1) the use or attempted use of physical force, 9r (2) the threatened use of a deadly weapon. Under New Jersey law, a disqualifying offense would

be:

1. Harassment, *N.J.S.A. 2C:33-4b* by striking, kicking, shoving
 2. Simple assault, *N.J.S.A. 2C:12-1a(1)* by attempting to or purposely knowingly or recklessly causing bodily injury
 3. Simple assault, *N.J.S.A. 2C:12-1a(2)* by negligently causing bodily injury to another with a deadly weapon
- D. A law enforcement officer who **has** been convicted of stalking, or a crime or disorderly persons offense involving domestic violence may not purchase, own, possess or control a firearm, and may not be issued a permit to purchase a handgun or firearms identification card. *N.J.S.A. 2C:39-7 & 2C:58-3.*