

DOMESTIC VIOLENCE

Directive Implementing Procedures for the Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents

Issued August 1995

TO: DIRECTOR, DIVISION OF CRIMINAL JUSTICE
ALL COUNTY PROSECUTORS
ALL LAW ENFORCEMENT CHIEF EXECUTIVES

FROM: DEBORAH T. PORITZ, ATTORNEY GENERAL

DATE: AUGUST 14, 1995

RE: DIRECTIVE IMPLEMENTING PROCEDURES FOR THE SEIZURE OF WEAPONS FROM LAW ENFORCEMENT OFFICERS INVOLVED IN DOMESTIC VIOLENCE INCIDENTS

I. INTRODUCTION

When law enforcement officers are charged with committing acts of domestic violence, it is important that the matters be uniformly and expeditiously handled. To achieve these objectives, it is necessary that there be a statewide policy governing the seizure of weapons from a law enforcement officer who is charged with committing an act of domestic violence.

The Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., requires the Attorney General "to provide for the general supervision of criminal justice" in this State. All law enforcement agencies and law enforcement officers in the State are required to cooperate with the Attorney General "to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the state." N.J.S.A. 52:17B-98. Accordingly, it is directed that all law enforcement agencies and law enforcement officers who are authorized to carry weapons pursuant to N.J.S.A. 2C:39-6 are to comply with this directive.

II. GUIDELINES FOR THE SEIZURE OF WEAPONS FROM A LAW ENFORCEMENT OFFICER INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

A. Whenever an act of domestic violence as defined in N.J.S.A. 2C:25-19 has been alleged to have been committed by a law enforcement officer all weapons, department issued and personal, possessed by that officer shall immediately be

1. seized by the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury, or

2. surrendered by the officer involved when served with a domestic violence restraining order, search warrant or bail condition which requires the surrender of weapons.

B. Whenever an act of domestic violence as defined in N.J.S.A. 2C:25-19 has been alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must

1. immediately report that fact to the officer's departmental supervisor who must promptly notify the Prosecutor's Office in the county where the officer is employed.

2. voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.

C. Where weapons have been seized from an officer, the arresting officer shall immediately report the police response to the domestic violence incident involving a law enforcement officer to the arresting officer's departmental supervisor who must notify the prosecutor's office in the county where the charge had been filed.

III. CUSTODY AND CONTROL OF SEIZED OR SURRENDERED WEAPONS

A. Any department-issued weapon, which is seized or surrendered in connection with a domestic

violence incident, is to be returned to the custody and control of the department which issued that weapon.

B. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the county Prosecutor's Office in the county where the seizure of weapons took place in accordance with procedures set forth in the Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases and the County Prosecutor's Procedures for the seizure and transportation of firearms to the Prosecutor's Office in accordance with the provisions of N.J.S.A. 2C:25-21d.

C. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to N.J.S.A. 2C:25-21d, the County Prosecutor's Office(1) where the civil and/or criminal charge was filed or incident occurred shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings.

D. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph IVD, listed below, should be followed for the return of the weapons to the law enforcement officer.

E. The chief of the law enforcement agency where the officer is employed shall

1. conduct an investigation into the officer's background and shall recommend to the appropriate County Prosecutor's Office(2) whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons.

2. if necessary, re-assign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.

F. The appropriate County Prosecutor's Office(3) generally should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the County Prosecutor, not the victim or the law enforcement agency where the officer is employed.

IV. RETURN OF SEIZED WEAPONS

A. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic violence warrant for the seizure of weapons, or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.

B. When a court order, either criminal or civil, which prohibits a law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph IVD, listed below, should be followed.

C. If it is determined by the County Prosecutor(4) that the officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the County Prosecutor may recommend to the appropriate court that:

1. the officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and

2. the officer be directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining order, while armed.

3. the department owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.

D. When a weapon has been seized from a law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, a County Prosecutor(5) may authorize the return of the seized weapons subject to conditions, if any, the Prosecutor determines necessary.

V. RESTRICTIONS ON RETURN OF FIREARMS

Pursuant to the provisions of the federal crime bill, 18 U.S.C.A. 922(g), if a final domestic violence restraining order is issued, and for the duration of that order,

A. a law enforcement officer may be authorized by a court to possess a department-issued firearm under conditions recommended by the appropriate county prosecutor, and

B. the officer may not possess any personally owned firearms.

VI. PURPOSE AND EFFECT OF THIS DIRECTIVE

This directive is binding upon all county prosecutors and all law enforcement officers in this State. This directive and the procedures set forth herein are implemented solely for the purpose of guidance within the criminal justice community. They are not intended to, do not, and may not be invoked to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.

1. Where the officer involved is a member of the State Department of Corrections, the Division of Criminal Justice, or the State Police, the Operations Bureau, Division of Criminal Justice, shall be notified and shall conduct the investigation and determine what conditions, if any, should be recommended to the court for the return of the weapon to the officer pending disposition of the proceedings.

2. Where the officer involved is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, the Operations Bureau, Division of Criminal Justice, shall receive the report from the officer's agency.

3. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, the Operations Bureau, Division of Criminal Justice, shall confer with the domestic violence victim and shall be responsible for determining or recommending whether the weapon shall be returned to the officer.

4. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, it shall be the responsibility of the Operations Bureau, Division of Criminal Justice, in consultation with the officer's agency, to determine whether the officer may carry weapons in accordance with the officer's duty assignment while the domestic violence proceedings are pending court action and what conditions, if any, should be recommended to the court.

5. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice, or the State Police, it shall be the responsibility of the Operations Bureau, Division of Criminal Justice, to determine whether a seized weapon shall be returned to the officer and what conditions, if any, should be imposed for the return of the weapon to the officer.