

# **NEW JERSEY DOMESTIC VIOLENCE PROCEDURES MANUAL**

## **JULY 2004**

### **INTRODUCTION**

In August 1994, then-Governor Christine Todd Whitman signed into law amendments to The Prevention of Domestic Violence Act of 1990. Those amendments further strengthened New Jersey's already strong Domestic Violence laws and the protective process for victims of domestic violence. The Supreme Court and the Office of the Attorney General recognized the need to incorporate those legislative amendments into the existing Domestic Violence Procedures Manual in order to maintain standardized domestic violence procedures and guidelines for use both by the courts and law enforcement. A revised Manual was jointly issued in September 1994. That Manual has been updated from time to time, most recently in November 1998.

Subsequent to that time, there have been additional statutory and rule amendments, as well as new case law, which necessitate further revisions to the Manual. This new edition once again provides in one volume the guidance both for law enforcement **and** for judges and Judiciary staff in order to provide a seamless description of the management of domestic violence cases from initiation to conclusion. However, it should be noted that the law enforcement section (Section III and its associated appendices) has not been reviewed or endorsed by the Judiciary.

The Conference of Family Presiding Judges, along with the Conference of Family Division Managers and the Family Practice Division of the Administrative Office of the Courts, with input from judges and staff in the Criminal and Municipal Practice Divisions and the State Domestic Violence Working Group, prepared the Judiciary portion of this updated version of the Domestic Violence Procedures Manual to conform to the statutory and rule amendments. This Judiciary portion of the revised Manual has been endorsed by the Judicial Council and approved by the Supreme Court.

Section 3 and its associated appendices are intended to provide guidance for law enforcement personnel. It was prepared by the Department of Law and Public Safety, Division of Criminal Justice under the authority of the Attorney General.

The new Manual, with its distinct sections for Judiciary and law enforcement personnel, supersedes in its entirety the previous edition of the Manual issued in 1998.

The statutory and rule amendments since 1998 are summarized as follows:

- **Rules** 1:4-4(c), 4:42-1(e) and 5:7A were relaxed in 2002 and again in 2003 to authorize an experimental program for electronic filing of complaints and temporary restraining orders in certain towns, first in Burlington county and now in five counties.

- The domestic violence statute was amended to require annual training and retraining of police, judges and judicial staff.
- A statewide Domestic Violence Central Registry was created to provide round-the-clock access by law enforcement to Domestic Violence information.
- The domestic violence statute was amended to provide for notification to the victim whenever a defendant is released from custody.
- The statute was amended to provide for a civil penalty of \$50 to \$500 upon entry of Final Restraining Order, which is forwarded to the Domestic Violence Victims' Fund.
- The statute was also amended to provide for payment of a surcharge of \$100 upon conviction of **an** act of Domestic Violence for use by the Department of **Human** Services to fund grants for domestic violence prevention, training and assessment.
- A further statutory amendment prohibits anyone against whom a restraining order has been entered from owning a weapon for the duration of the order or two years, whichever is greater.
- A new statute requires that any person against whom a Final Restraining Order has been entered shall be subject to fingerprinting and other identification procedures.

Any questions regarding law enforcement procedures relating to domestic violence should be directed to the Department of Law **and** Public Safety, Division of Criminal Justice, Prosecutors Supervision and Coordination Bureau.

Any questions regarding Judiciary domestic violence procedures should be directed to the Administrative Office **of** the Courts, Family Practice Division.

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- 1.1 “Child in common” – the child of the plaintiff and the defendant.
- 1.2 “Criminal Complaint” – formal process under the Code of Criminal Justice of New Jersey (*N.J.S.A. 2C*) using a CDR-1 (summons) or CDR-2 (warrant); must comport with all rules and procedures under the criminal code.
- 1.3 “Defendant” – (**as** used in this Manual) a person at least **18** years old or emancipated who is alleged to have committed or has been found to have committed an act(s) of domestic violence under the Prevention of Domestic Violence Act (PDVA). See also section 2.1.3C.
- 1.4 “Domestic Violence” – the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act of 1991:
  - Homicide..... *N.J.S.A. 2C:11-1 et seq.*
  - 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*
- 1.5 “Domestic Violence Central Registry” or DVCR – statewide registry established under *N.J.S.A. 2C:25-34* (See Appendix 22).
- 1.6 “Domestic Violence Civil Complaint” – A multi page application (the civil complaint) and temporary restraining order issued by the Superior Court or Municipal Court. Referred to **as** “Complaint/TRO.”
- 1.7 “Domestic Violence Response Team” – Law Enforcement agencies are required by *N.J.S.A. 2C:25-20b(3)* to establish such teams of persons trained in counseling, crisis intervention or in the treatment of domestic violence and neglect and abuse of the elderly and disabled victims. Also **known** as Domestic Violence Crisis Teams.

- 1.8** “Emancipated Minor” – Under the PDVA, a minor is considered emancipated from his or her parents when the minor:
- A.** is or has been married,
  - B.** has entered military service,
  - C.** has a child or is pregnant, or,
  - D.** has been previously declared by the court or an administrative agency to be emancipated.
- 1.9** “*Ex parte*” – as used in this manual, an application for a TRO where the judge or hearing officer takes testimony only from the plaintiff without notice to the defendant of the application.
- 1.10** “Final Restraining Order” or FRO – A civil order under the PDVA restraining defendant (Appendix 10); entered after a hearing when defendant has been served with a TRO; remains in effect until further order of the court and is enforceable under the federal full faith and credit provision of Violence Against Women Act (VAWA), see Section VII.
- 1.11** FM or FD docket - A case which is opened by a complaint for divorce or separate maintenance is given a docket number by Family Court starting with FM; a case which is opened by a complaint for custody, support, paternity or parenting time is given an FD docket number.
- 1.12** FV or FO docket number – A case that is opened by signing and filing a civil complaint under the PDVA is given an FV docket number. A case which is opened by filing of criminal charges for a violation of an order issued under the PDVA is given an FO docket number; a weapons forfeiture matter is also given an FO docket.
- 1.13** “Law Enforcement Officer” A person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.
- 1.14** “Prevention of Domestic Violence Act” or PDVA– *N.J.S.A. 2C: 25-18 to 2C:25-35*.
- 1.15** “Plaintiff”-A person who seeks or has been granted relief under the PDVA.
- 1.16** “Personal Service” – Service that requires a law enforcement officer or other authorized person to personally serve the defendant and/or plaintiff with a TRO, FRO or other order issued under the PDVA.
- 1.17** “Petitioner” – Plaintiff or victim who seeks to enforce or register an out of state Order of Protection in New Jersey.

- 1.18 “Temporary Restraining Order” or TRO an order entered pursuant to a complaint under the PDVA; is temporary by its terms and requires that a full hearing be scheduled within 10 days. A TRO shall continue in effect until further order of the court (Appendix 2).
- 1.19 “Victim Advocate” – also known as domestic violence program liaison; a person who is specially trained in domestic violence, both the dynamics and the law, employed by or working as a volunteer of any domestic violence project, shelter, woman’s program or the like.
- 1.20 “Victim of Domestic Violence” – a person protected by the PDVA and includes any person:
- A. who is 18 years of age or older, or who is an emancipated minor, and who has been subjected to domestic violence by:
- spouse
  - former spouse
  - any other person who is a present or former household member, or
- B. who, regardless of age, has been subjected to domestic violence by a person:
- with whom the victim has a child in common, or
  - with whom the victim anticipates having a child in common, if one of the parties is pregnant, or
- C. who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.
- 1.21** Weapons -- means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air. *N.J.S.A 2C:39-1r.*