

## **5.1 WEAPONS IN GENERAL**

5.1.1 Weapons of varying types are defined generally in *N.J.S.A. 2C:39-1*, and more specifically in *N.J.S.A. 2C:39-1r*. The Attorney General and County Prosecutors delineate law enforcement procedures through directives and guidelines in accordance with the United States Constitution, New Jersey Constitution, statutes and court decisions.

5.1.2 Weapons relating to domestic violence incidents can be categorized in several ways including but not limited to:

- A. Weapon(s) used or threatened to be used in a domestic violence incident.
- B. Weapon(s) not used in a domestic violence incident but in plain view of an officer.
- C. Weapon(s) not used in a domestic violence incident, not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household.

## **5.2 MANDATORY ARREST**

See Sections 3.10 and 3.17.

## **5.3 SEIZURE OF WEAPONS FOR SAFEKEEPING**

See Sections 3.10 and 3.17.

## **5.4 SEIZURE OF WEAPONS PURSUANT TO COURT ORDER**

See Sections 3.10 and 3.17.

## **5.5 SEIZURE OF WEAPONS USED IN COMMISSION OF A CRIMINAL OFFENSE**

See Sections 3.10 and 3.17.

## **5.6 SEIZURE OF WEAPONS PURSUANT TO *N.J.S.A. 2C:25-21d***

See Sections 3.10 and 3.17.

## **5.7 SEIZURE OF WEAPONS OUTSIDE THE COUNTY WHERE THE DOMESTIC VIOLENCE RESTRAINING ORDER WAS ISSUED**

See Sections 3.10 and 3.17.

5.8 SEIZURE OF WEAPONS FROM LAW ENFORCEMENT OFFICERS INVOLVED IN A DOMESTIC VIOLENCE INCIDENT

See Sections 3.10 and 3.17.

5.9 RESTRICTIONS ON RETURN OF FIREARMS

5.9.1 Where the defendant is a Law Enforcement Officer:

If a law enforcement officer is subject to an FRO, pursuant to the provisions of the federal *gun* control law, 18 *U.S.C.A.* 922(g), the court may, if necessary for the protection of the plaintiff, prohibit any defendant who is a law enforcement officer from possessing any weapon, firearm or firearm identification card, including those provided by his/her department. If the court determines that a prohibition on possession of weapons by defendant who is a law enforcement officer is not necessary, the provisions of the Attorney General's *Directive Implementing Procedures for the Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents* shall apply. Where the court permits the return of weapons while on duty, the procedures in section 3.17 still apply. See Appendix 17.

5.9.2 All Others:

If an FRO is issued, the named defendant may not be permitted to own or possess any firearm for the duration of the order or for two years, whichever is greater.

5.10 WARRANT FOR THE SEARCH AND SEIZURE OF WEAPONS

5.10.1 The purpose of the issuance of a search warrant is to protect the victim of domestic violence from further violence and not to discover evidence of criminality. There must be sufficient facts and information presented to satisfy the judicial *reasonable cause* requirement. The scope of the warrant and the times during which it may be served must be set forth with specificity on the warrant.

5.10.2 When granting a TRO, the court should grant relief that includes forbidding the defendant from possessing any firearm or other weapon as defined by N.J.S.A. 2C:39-1r. The possession of a weapon by a defendant may pose a danger to the victim even though the alleged act of domestic violence did not involve the use or threatened use of a weapon **and** even though there was no testimony or evidence that the defendant had previously used or threatened to use a weapon against the victim.

5.10.3 *N.J.S.A.2C:25-28j* authorizes the issuance of a search warrant as a form of *ex parte* relief at the time of the issuance of a TRO. *N.J.S.A.2C:25-29b(16)* contains identical language authorizing similar relief at the time of the issuance of a FRO. Both statutes are intended to protect the victim **from** the **risk** of serious bodily injury.

- 5.10.4 The **test** to be applied by the Court is whether there exists *reasonable cause* to believe that:
- A. The defendant has committed an act of domestic violence;
  - B. The defendant possesses or has access to a firearm or other weapon(s) as enumerated in *N.J.S.A. 2C:39-1r*; and
  - C. The defendant's possession or access to the weapon poses a heightened or increased risk of danger or injury to the victim.
- 5.10.5 A specific description of the weapon and its believed location should, as much as practical, be set forth in the Order. The Court must make findings **on** the record and state with specificity the reasons for its decision and the scope of the search. The original return of the search warrant shall be delivered to the Court within ten (10) days.
- 5.10.6 When a search warrant is recommended by a Domestic Violence Hearing Officer (DVHO), the affidavit in support of the warrant shall set forth precise facts constituting the basis for the conclusion that the defendant's possession of a weapon exposes the plaintiff/victim to a risk of serious bodily injury. Once the TRO hearing is completed, the recommended TRO, along with the Weapons Seizure Affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and signature. After reviewing the TRO, affidavit and DVHO Case Notes, any questions regarding the sufficiency of the information contained in the affidavit should be resolved by sworn testimony by the victim before the judge. If the affidavit in support of the warrant for the search and seizure of weapons recommended by the DVHO contains sufficient information, the judge shall confirm with appropriate findings on the record and enter the order. The reasonable cause determination regarding weapons seizure should be placed on the record, along with the docket number and other identifying case information.
- 5.10.7 After reviewing the TRO, affidavit and DVHO Case Notes, the judge shall consider and be satisfied **as** to the following:
- A. the basis upon which plaintiff believes that the defendant possesses a prohibited weapon or firearm;
  - B. the reasons plaintiff believes that the defendant's possession of a prohibited weapon or firearm poses a heightened or increased risk of danger or **injury** to the plaintiff, which may include the past history if any of domestic violence between the parties;
  - C. a description of the weapon or firearm which the defendant possesses;

- D. a specific description of the location where the weapons or firearms are located, the owner **of** those premises, if not the defendant; and,
- E. other relevant factors that the particulars of the circumstances require.

5.10.8 When an *ex parte* application is made regarding seizure of weapons, whether before the Court or the DVHO, the affidavit must be completed with the reasons for the seizure specified.

5.10.9 When the service of a restraining order results in the seizure of weapons, the weapons inventory should be attached to the return of service that is brought/faxed back to the Family Part in the issuing county. The weapons themselves, along with any licenses, identification. cards, other paperwork or documentation shall be secured for storage by the prosecutor in the seizing county. At such time that the seized property is needed by the prosecutor or the Family Court in the issuing county, the prosecutor in the seizing county shall make arrangements for the delivery of forward same.

#### **5.11 NOTICE TO THE PROSECUTOR**

In order to ensure that the prosecutor is aware of the existence of the pending domestic violence Complaint/TRO, in addition to having received the seized weapon(s), a copy of every TRO or FRO in which the “seizure” box is checked should be forwarded immediately to the County Prosecutor’s Office. In addition, where seizure has not yet occurred but is ordered as part of an order prohibiting weapons possession pursuant to *N.J.S.A. 2C:25-29b(1)*, a copy of that order, with the appropriate boxes checked, should also be forwarded immediately to the Prosecutor’s Office.

#### **5.12 HEARING REGARDING WEAPONS**

5.12.1 **When** the prosecutor intends to proceed with forfeiture, notice shall be provided to the plaintiff, the defendant and the Family Part. The court shall hold a hearing within 45 days of receipt of the notice provided by the prosecutor, as set forth in *N.J.S.A. 2C:25-21d(3)*. No formal pleading and no filing fee shall be required. The hearing shall be summary in nature. The hearing must be held even if the plaintiff withdraws or seeks dismissal of the domestic violence Complaint/TRO or FRO.

5.12.2 At the hearing, the Family Part Judge must decide whether the weapon(s) should be forfeited, along with any related permit(s) or license(s), or whether the weapon(s) should be returned; or whether legal rights to **own** should be revoked and/or defendant should be ordered to dispose of the weapon, based on the factors contained in *N.J.S.A. 2C:25-21d*.

**5.12.3** In addition to any other provisions, **any FRO** issued shall bar the defendant from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun pursuant during the period in which the restraining order **is** in effect or two years, whichever is greater, except for military and law enforcement personnel, see *N.J.S.A. 2C:25-29b*.