



New Jersey Division of Criminal Justice

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***Legal Aspects  
Of  
Domestic Violence***

***Instructor Manual***

# Instructor Note

**Note:** This training module is for law enforcement use only. It is intended to serve as a summary of legal concepts. It does not constitute the creation of a prescribed legal standard. It should not be construed as evidential in any criminal or civil proceedings.

As with all training material that is date sensitive, the instructor should ensure that the most current training material is being used.

The Division of Criminal Justice has prepared the following domestic violence training programs, with both instructor and student manuals:

*Dynamics of Domestic Violence, Module 1*

*Legal Aspects of Domestic Violence, Module 2*

*Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases, Module 3*

*Interviewing Techniques in Domestic Violence Cases, Module 4*

*Handling a Domestic Violence Call, In-Service Training for Police Dispatchers*

Training Guide for Completing the Victim Notification Form

- ◆ Training Guide for Completing the Domestic Violence Complaint and Application for a Temporary Restraining Order

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**I. Introduction to the Legal Aspects of Domestic Violence**

This session will focus on the laws of domestic violence. It is important that law enforcement officers understand the legal aspects of domestic violence and their relationship to the criminal offenses in the State’s penal code.

Domestic violence is a very serious problem. It is a crime. Domestic violence is responsible for more injuries to women than any other reason, exceeding injuries due to rape, mugging, and traffic accidents combined. In some cases, battering escalates to homicide and suicide. Law enforcement officers are charged with the duty of enforcing the laws.

Law enforcement officers have an opportunity to stop the escalation of violence in the home. By enforcing the domestic violence laws, the officer provides the most effective deterrent to future abuse. Domestic violence is a learned behavior. About 85% of all abusive partners were battered as children or witnessed assaults on their mothers.

Children also are victims of abuse in half of the families in which the mother is abused. By enforcing the domestic violence laws, the officer may reduce the violence in the streets.

**II. Who is a Victim of Domestic Violence?**

**Definitions**

Reference: *N.J.S.A. 2C:25-19*

- ✓ Note: The provisions of the domestic violence laws should be liberally construed by the law enforcement officer in favor of action protecting a victim of domestic violence. If an officer is in doubt as to whether or not a person meets the criteria for being a victim of domestic violence, the officer should contact the supervising officer, the department’s legal advisor or the on-call judge in accordance with departmental procedure.

A. Victim of Domestic Violence means a person protected under this act and includes any person

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

The instructor should review the *Prevention of Domestic Violence Act & the Domestic Violence Procedures Manual* issued by the N.J. Supreme Court & the Attorney General to assure familiarity with the law and approved procedures.

The instructor also should review any applicable standard operating procedures by the county prosecutor or the department & include any relevant procedures in this training program.

The procedures covered in this instructional unit are based on the *Attorney General’s Guidelines on Police Response Procedures in Domestic Violence Cases*

Discuss Handout 1: flow chart for identifying victim of domestic violence

b. who is an emancipated minor, **and**

- ✓ Note: A minor under the age of 18 may not be considered a victim of domestic violence but may be a victim of a criminal offense. The officer should consider whether any criminal law was violated and take the appropriate action.

2. 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**

d. any person with whom the victim has had a dating relationship, **or**

e. any person whom the victim anticipates having a child in common because the victim or abuser is pregnant

**Or**

3. Anyone 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, because the victim or abuser is pregnant.

**Or**

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

**B. Household Member Defined.**

This determination of whether a person is or was a household member should be liberally construed by the police officer. In some cases, the dating relationship category will apply and the officer will not have to consider this category.

In determining whether a person is a former household member, the officer should consider the length of time since the two persons resided together as well as other relevant factors.

If an officer is in doubt as to whether or not a person meets this definition of a household member, the officer should contact the supervising officer, the department's legal advisor or the on-call judge.

### C. Emancipation Defined

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

- has been married,
- has entered military service,
- has a child or is pregnant, or
- has been previously declared by a court or an administrative agency to be emancipated.

### D. Dating Relationship Defined.

1. A victim of a dating relationship may be below the age of 18.
2. The domestic violence assailant must be over the age of 18 or emancipated at the time of the offense.
3. The New Jersey law does not list any criteria by which an officer can determine what is and what is not a dating relationship. This provision should be liberally construed. If the officer is in doubt about a particular relationship, the officer should review the matter with the officer's supervisor, the department's legal advisor or the on-call judge.

To assist the supervisor, legal advisor or judge in making this determination, the officer should obtain such information as:

- the length of time of the relationship

- the type of relationship
  - the frequency of interaction between the parties, and
  - if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.
4. Domestic violence is not limited just to persons who share or who shared a household. Dating and courtship can result in injuries, and at times, death.

“A Massachusetts study showed that of females between the ages of 15-19 that died as a result of homicide, 30% were murdered by boyfriends or ex-boyfriends. This the same percentage as for adult female homicide victims by a husband or boyfriend or ex.”<sup>1</sup>

Teen dating relationships have much in common with adult relationships. In neither case is violence limited to any particular socioeconomic class, ethnic group, or community.<sup>2</sup> In many cases, adult victims of domestic abuse indicate that they first experienced such violence while they were still in their teens.<sup>3</sup>

Factors common to violence in both adult and teen dating relationships are jealousy, control, threats, physical violence, and sexual violence. “Teenage abusers, like adult abusers, used intimidation, making frightening gestures, smash objects, drive dangerously, and kidnap or harm pets to obtain compliance<sup>4</sup> from the victim.”

Persons committing dating violence are more likely to use objects or criminal weapons during the abuse than those involved in marital violence.<sup>5</sup>

Although persons involved in a dating relationship do not normally reside together, a victim in a dating relationship can feel equally trapped in an abusive relationship, as does a victim in a marital relationship. The teenage abuser’s threats of revenge can be just as frightening as an adult batterer’s threats. Victims in a dating relationship also can be as emotionally and socially dependent on their abusers as are married victims.<sup>6</sup>

**Points to Emphasize:**

A large number of people are affected by dating violence.

Teenage dating violence is just as common as marital violence.

A victim of dating violence can be under the age of 18 but the assailant must be at least 18 years old or emancipated.

The provisions on a dating relationship should be liberally construed.

**E. Elderly Abuse & Neglect**

The elderly or disabled can be victims of domestic violence.

Abusers of elderly disabled persons tend to be close relatives, such as adult children involved in caring for the victims or persons who have a professional care giving relationship with the victim. For information regarding criminal acts or omission to act against the elderly or disabled, including criminal neglect of the elderly or disabled. See *N.J.S.A. 2C:24-8*.

**III. Criminal Offenses Which Constitute Domestic Violence**

A. The following criminal offenses constitute domestic violence if committed by an adult or an emancipated minor upon a person protected by the domestic violence laws:

Homicide	<i>N.J.S.A. 2C:11-1</i>
Assault	<i>N.J.S.A. 2C:12-1</i>
Terroristic Threats	<i>N.J.S.A. 2C:12-3</i>
Kidnapping	<i>N.J.S.A. 2C:13-1</i>
Criminal Restraint	<i>N.J.S.A. 2C:13-2</i>
False Imprisonment	<i>N.J.S.A. 2C:13-3</i>
Sexual Assault	<i>N.J.S.A. 2C:14-2</i>
Sexual Contact	<i>N.J.S.A. 2C:14-3</i>

Handout 2: Review overview of Police Response to Domestic Violence Call



Lewdness	<i>N.J.S.A. 2C:14-4</i>
Criminal Mischief	<i>N.J.S.A. 2C:17-3</i>
Burglary	<i>N.J.S.A. 2C:18-2</i>
Criminal Trespass	<i>N.J.S.A. 2C:18-3</i>
Harassment	<i>N.J.S.A. 2C:33-4</i>
Stalking	<i>N.J.S.A. 2C:12-10</i>

While an unemancipated minor may not be prosecuted as a domestic violence defendant, the minor may be prosecuted under the juvenile delinquency laws if he or she committed a criminal offense against a victim of domestic violence

**B. Stalking Law**

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

**1. Definitions**

a. Course of conduct means

- (1) repeatedly maintaining a visual or physical proximity to a person, or
- (2) repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person

b. Repeatedly means on two or more occasions

c. Immediate family means a spouse, parent, child, sibling or other person who regularly resides in the household or who within the prior six months regularly resided in the household.

**2. A person violates this law if that person**

- a. engages in a course of conduct directed at a specific person
- b. that would cause a reasonable person to fear
  - (1) bodily injury to himself, or
  - (2) bodily injury to a member of his immediate family, or
  - (3) the death of a member of his immediate family; and

Stalking does not require that the suspect follow the victim.

Some prohibited acts could include:

Sending letters or other mailings, or making persistent phone calls with or without messages

- c. Knowingly, recklessly or negligently places the specific person in reasonable fear of
  - (1) bodily injury to himself, or
  - (2) bodily injury to a member of his immediate family, or
  - (3) the death of himself or a member of his immediate family.
- 3. A person is guilty of a crime of the third degree if that person commits the crime of stalking in violation of an existing court order prohibiting the behavior.
- 4. If the elements of stalking are not met, the law enforcement officer should consider the following charges which may be appropriate under the circumstances:

Simple assault	<i>N.J.S.A. 2C:12-1</i>
Terroristic threats	<i>N.J.S.A. 2C:12-3</i>
Criminal coercion	<i>N.J.S.A. 2C:13-5</i>
Criminal mischief	<i>N.J.S.A. 2C:17-3</i>
Tampering with witnesses	<i>N.J.S.A. 2C:28-5 &amp; 29-3</i>
Harassment	<i>N.J.S.A. 2C:33-4</i>

**5. Stalkers and Their Behaviors**

“Stalking is a complex social problem. The uncertain motives and intentions of the suspected stalker and his obsessive and unpredictable behavior place his victim at great risk of bodily injury or death, as well as psychological trauma.”<sup>7</sup>

“In many cases, early intervention by police officials may hold the key to protecting the stalking victim from bodily injury or death. The police are likely to receive a stalking victim’s first formal complaint concerning an alleged stalker’s activities and, therefore, may have the first or only opportunity to intervene in the suspected stalker’s behavior before that behavior becomes violent.”<sup>8</sup>

Stalking behavior may vary from case to case or even from incident to incident in a single case. One stalker may be angry with his victim for some real or perceived injury and pursue his victim through threatening letters and telephone calls.

Another stalker may be enamored of his victim and make his interest known by sending flowers and gifts. The behavior of a third stalker toward his victim initially may be benign and motivated by affection but may become violent when the stalker perceives that his overtures have been rejected.

“The stalker’s motives and intent, his mental state, and the nature of this behavior toward his victim likewise will affect how the stalker responds to intervention by the police. One stalker may be deterred from further harassing his victim by a restraining order. Another stalker may consider the restraining order an affront and escalate his stalking behavior.”<sup>9</sup>

Law enforcement officers must keep in mind that:

Stalking victims are likely to suffer intense psychological anxiety.<sup>10</sup>

#### 6. Advice to Victims

Victims of stalking have been advised by the Department of Community Affairs, Division on Women, to

- Call the police where they live, work, or where the incidents occurred and to
- File a police report, get the officer’s name and badge number, and to contact that officer for any later incident of stalking.
- Keep a notation of filed criminal complaints, indicating the municipality, the investigating officer, the date and the incident report number,
- Ask the police about the possibility of obtaining a restraining order, and to
- Preserve any evidence.<sup>11</sup>

**Points to Emphasize:**

Stalking behavior places the victim at great risk of bodily injury or death, as well as the psychological trauma.

Early police intervention, in many cases, can hold the key to protecting the victim from bodily injury or death.

Police officers should review other criminal offenses to determine if those offenses are met if the elements of the stalking law are not met.

Victims of stalking are not challenging police officers when they ask questions about stalking or attempt to provide assistance to the officer.

**IV. Arrest – N.J.S.A. 2C:25-21a**

- ✓ **Note:** A statement of a victim can be considered reliable or trustworthy and can be the basis for probable cause for the officer to take appropriate action.<sup>12</sup>

A. **Mandatory Arrest.** A law enforcement officer must make an arrest and sign the criminal complaint when:

1. **Signs of Injury.** The victim shows signs of injury caused by an act of domestic violence. Signs of injury can be any indication that a victim has suffered bodily injury, including:
  - Physical pain, or
  - Any impairment of physical condition

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

- Officer sees signs or manifestations of an internal injury suffered by the victim.
- Witnesses inform the officer that the victim had been assaulted, punched or kicked.

The term “signs of injury” should be liberally construed. If in doubt, the officer could arrange to have the victim transported to a hospital for examination. An observant officer may detect indications that the victim has suffered internal injury. Police shall follow standard procedures in rendering or summoning emergency treatment of the victim, if required.

a. in determining the appropriate assault charge, the responding officer should consider the nature of the injuries:

b. **Definitions:**

(1) bodily injury means physical pain, illness or any impairment of physical condition.

*N.J.S.A. 2C:11-1a*

(2) significant bodily injury means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.

*N.J.S.A. 2C: 11-1d*

(3) serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

*N.J.S.A. 2C:11-1b*

c. **Simple assault**

*N.J.S.A. 2C:12-1a*

(1) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(disorderly persons offense)

(2) negligently causes bodily injury to another with a deadly weapon; or

(3) attempts by physical menace to put another in fear of imminent serious bodily injury.

d. **Aggravated assault**

*N.J.S.A. 2C:12-1b(7)*

(1) attempts to cause significant bodily injury to another, or

(3d degree)

(2) causes significant bodily injury purposely or knowingly, or

- (3) under circumstances manifesting extreme indifference to the value of human life recklessly causes such significant bodily injury.

e. **Aggravated assault**

*N.J.S.A. 2C:12-1b*

- (1) attempts to cause serious bodily injury to another, or causes such injury purposely or knowingly or under circumstances manifesting extreme indifference to the value of human life recklessly causes such injury.

(2d degree)

- (2) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.

(3d degree)

- (3) recklessly causes bodily injury to another with a deadly weapon; or

(4<sup>th</sup> degree)

- (4) knowingly under circumstances manifesting extreme indifference to the value of human life points a firearm at or in the direction of another, whether or not the actor believes it to be loaded.

(4<sup>th</sup> degree)

✓ **Note:** Where the victim of abuse is an elder or a person with a disability, the officer must consider whether the victim can be safely left alone if the officer makes a custodial arrest of the defendant. If the victim cannot be safely left alone, the officer should contact the appropriate agencies to arrange for the temporary care of the victim.

2. **A warrant is in effect.** A police officer must make an arrest when the officer knows there is an outstanding arrest warrant or bench warrant for the arrest of a person for violating the Domestic Violence Act.<sup>13</sup>

3. **Violated no contact order.** There is probable cause to believe that the person had been served with a no-contact court order and has violated that order.

4. **Used a weapon.** 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.<sup>14</sup>

***Points to Emphasize:***

If certain conditions, exist, a law enforcement officer must make an arrest, regardless of the desires of the victim

An officer must arrest and sign the criminal complaint against the domestic violence defendant when:

- There are signs of injury
- A warrant is in effect
- A no contact order was violated
- A weapon was used.

B. **Discretionary Arrest.** A law enforcement officer may make an arrest or may sign a criminal complaint against a person if the officer has probable cause to believe that an act of domestic violence has been committed and none of the above criteria applies. If the officer does not have probable cause to arrest and sign a complaint against the accused, the officer should inform the victim that the victim may sign a criminal complaint. If the victim will sign the complaint, the officer should make an arrest and take the suspect into custody.<sup>15</sup>

C. **When Both Parties Are Injured.** Where both parties in a domestic violence incident are injured, the officer should consider the following factors to determine which of the two should be arrested as the domestic violence assailant:

- The comparative extent of injuries suffered
- The history of domestic violence between the parties, if any, or
- Each person's fear of physical harm, if any, which resulted from the other person's threatened or actual use of force
- Whether a person was acting in self defense and inflicted injuries upon the aggressor
- Other relevant factors.

The officer should not automatically arrest both parties in a domestic violence incident. An officer should attempt to determine who was the victim and who was the assailant.<sup>16</sup>

Where an officer is not able to determine who was the primary aggressor and arrests both parties, the officer should note in the incident report the reason for the dual arrest.

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***Point to Emphasize:***

If an officer makes an arrest without having probable cause to support the arrest, the officer could be subject to a lawsuit for false arrest.

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**D. Completing the Criminal Complaint**

Where the defendant has committed an act of violence or a threatened act of violence against the victim, the officer should prepare complaint-warrant (CDR-2), unless otherwise directed by the judge, clerk or deputy clerk, municipal court administrator or deputy court administrator to complete a complaint-summons (CDR-1). An act of violence supports a basis to reasonably conclude that the defendant could be dangerous to the victim,<sup>17</sup> especially when criminal charges are filed against the defendant or when the victim obtains a domestic violence restraining order.

1. If a complaint-warrant has been prepared, the officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, municipal court administrator or deputy court administrator who has been granted authority to set bail for the offense charged.
2. Bail for any criminal offense may be set by a municipal court judge, municipal court administrator or deputy court administrator except for the following which can only be set by a Superior Court judge:
  - Murder
  - Kidnapping
  - Manslaughter
  - Aggravated manslaughter
  - Aggravated sexual assault
  - Sexual assault
  - Aggravated criminal sexual contact
  - A person arrested in any extradition proceeding, or
  - A person arrested under *N.J.S.A. 2C:29-9b* for violating a domestic violence restraining order<sup>18</sup>



3. Bail shall be set as soon as is feasible, but in all cases within 24 hours of arrest.<sup>19</sup>
  4. The criminal complaint form contains several provisions that can be approved by the court as a condition of bail or release of the suspect. These are:
    - No phone or personal contact
    - No harassing or stalking
    - No possession of firearms or other weapons
    - Seizure of weapons – where a domestic violence search warrant had been issued
- ✓ **Note:** If the responding officer believes the suspect presents a risk of serious bodily injury to the victim and the victim does not want to obtain a temporary restraining order, the officer could request the judicial officer to impose as a condition of bail or release that the defendant not have any contact with the victim until further order of the court.
- ✓ **Note:** Where conditions of bail had been recorded on the criminal complaint form, it will be the responsibility of the officer who later is called to the scene to determine whether the conditions remain in effect. Once bail has been set, it cannot be reduced without prior notice to the county prosecutor and the victim.<sup>20</sup>

## V. Seizure of Weapons – *N.J.S.A. 2C:25-21*

- A. **Used in Committing a Crime.** A law enforcement officer is empowered to seize any weapon that is considered to be contraband, evidence or an instrumentality of a crime. There is no change in this procedure, even in a domestic violence incident.
- B. **For Safekeeping.** Where an officer has probable cause to believe that an act of domestic violence has been committed and a weapon was not used or threatened to have been used, the officer shall:
  - Question all persons present to determine whether there are weapons on the premises, and

- Upon seeing or learning that a weapon is present on the premises, seize any weapon that the officer reasonably believes would expose the victim to a risk of serious bodily injury.<sup>21</sup>
- The officer shall also seize any firearms purchaser identification card, permits to carry a handgun or applications to purchase firearms

The officer must be able to demonstrate a reasonable belief that a particular weapon may be used by the suspect because the definition of weapon in *N.J.S.A. 2C:39-1r* includes just about every possible object in a residence that could cause serious bodily injury. Weapons are not limited to just firearms or knives. In some cases, victims have been threatened with household objects and other objects that are readily available to the batterer.

1. **Weapons in the Premises.** If a weapon is not in plain view but is located in the premises jointly shared by the domestic violence victim and assailant, the officer should ask the victim for consent to search for and to seize the weapon. The officer should obtain the consent in writing, if circumstances permit. If the weapon is in an area of the premises that are jointly shared by both the victim and assailant, consent of the victim will be sufficient, even if the assailant objects to the seizure.

The responding officers should separate the domestic violence victim and the assailant when asking the victim for consent to search. The officer asking the victim for consent is not required to inform the assailant that consent to take the weapon had been given by the victim.

The officer should ask the victim if he or she knows where the weapon is located. The officer should ask that person to show the officer where the weapon is located. The officer should remove the weapon from where it is stored.

However, if the weapon is in a secured container and the victim does not have access to the container, the victim's consent may not be sufficient. In such cases, the investigating officer should either seize the container, if possible, or call a supervisor to determine what further action may be warranted under the circumstances.

2. **Weapons Not in the Premises.** If the weapon is not located within the premises jointly possessed by both the victim and assailant but is located in premises solely occupied by the domestic violence assailant, 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.

The officer should explain to the possessor of the weapon that he or she will have an opportunity to explain to the court why the weapon should be returned and that the officer is only taking the weapon at this point as a means of protecting the interests of both parties, the domestic violence victim and the possessor of the weapon.

### C. **The Seizure of a Weapon Pursuant to Restraining Order or as Condition of Bail**

The domestic violence laws permit a court to order a search for and seizure of any weapon at any location where the judge has reasonable cause to believe the weapon is located. The judge is to state with specificity the reasons for and the scope of the search and seizure authorized by the order. The court can order the search and seizure of weapons in the following situations:

1. as a condition of bail when a domestic violence assailant is released from custody before trial on bail or personal recognizance.<sup>22</sup>
2. on an emergent temporary restraining order<sup>23</sup>
3. on a final restraining order.<sup>24</sup>

See Training Guide for *Completing the Domestic Violence Complaint and Application for a Temporary Restraining Order* for procedures for completing the search warrant portion of the restraining order

A refusal by the defendant to turn over the named weapons in the court order constitutes an act of contempt pursuant to *N.J.S.A. 2C:29-9b*. The officer should advise the defendant that if he or she refuses to comply with the court order, the officer will arrest that person and will conduct the search in accordance with the authority of the court order. The officer should accompany the person within the premises to obtain possession of the weapons. The officer should ask the person to indicate where the weapons are located and the officer should physically remove the weapons from that location.

#### D. The Domestic Violence Warrant Process

The *Domestic Violence Warrant for the Search and Seizure of Weapons* was designed to provide the officer with a means of removing a weapon from the domestic violence premises to prevent injury to the victim or to others when no court order was issued authorizing such a search and seizure.

The forms have been designed to aid the officer in completing them quickly.

This Domestic Violence Warrant is an administrative warrant to remove the named weapon for safekeeping purposes. This warrant is not a criminal search warrant and should not be used as a pretext to conduct a criminal search of the premises. If the officer wants to search for evidence of a crime, the officer must apply for a standard criminal search warrant.

The form provides for a situation where the officer arrives at the domestic violence scene and finds probable cause to believe that the victim is threatened by the possession of a weapon by the domestic violence assailant and the officer is not able to obtain possession of the weapon by consent of the parties involved, there is insufficient probable cause to arrest the assailant for committing a criminal offense, and the victim does not want a temporary restraining order.

1. A close look at the affidavit

Handout 3: Review Domestic Violence Search Warrant & Affidavit for seizure of weapons

- a. Description of weapons to be seized. To complete Paragraph 3, the officer should attempt to obtain from the victim the number of weapons involved, the type of weapons involved, and the location of the weapons. If the weapons are firearms, the officer should try to obtain as much information as possible from the victim regarding the type of firearms the assailant has.
  - b. A victim may not be able to identify the firearms by caliber or type, such as revolvers or semi-automatics. However, the victim may be able to state whether the firearms are handguns or long guns, such as rifles or shotguns.
  - c. Paragraph 8 of the affidavit is where the officer would list any special facts pertaining to this warrant, such as a no knock provision or entry at special hours.
  - d. The affidavit must be reviewed by either a designated assistant county prosecutor or deputy attorney general. The review of the affidavit can be accomplished either in person or by telephone, depending upon the emergency of the situation and the county prosecutor's or departmental policy.
2. **The Domestic Violence warrant.** The format of this warrant follows the typical format of a criminal search warrant. However, this Domestic Violence Warrant is an administrative warrant which is designed solely to remove weapons in a domestic violence incident for safekeeping purpose. The standard search warrant receipt and return must be completed upon execution of this warrant.

#### E. Weapons Seizure Procedure

1. The officer must append an inventory of all seized weapons to the officer's report of the domestic violence incident.
2. All weapons seized must be promptly delivered to the county Prosecutor.<sup>25</sup>
3. Weapons seized for safekeeping purposes cannot be returned to the owner by the police.<sup>26</sup>

***Points to Emphasize:***

Police may seize weapons in domestic violence cases:

- When it is an instrumentality of a criminal act, or
- For safekeeping purposes

If weapons are present at the scene of a domestic violence incident, the officer should attempt to obtain possession of the weapons by consent of either party.

In some cases, a court will order the search and seizure of weapons on the Temporary Restraining Order.

A court can order the seizure of a weapon in any location within the jurisdiction of the court at which the court has reasonable cause to believe the weapon is located.

In some cases, an officer may use the Domestic Violence Warrant for the Search and Seizure of Weapons to obtain possession of the weapons.

Weapons that are seized for safekeeping purposes must be promptly delivered to the County Prosecutor's Office in accordance with that Prosecutor's Standard Operating Procedure

Weapons seized for safekeeping purposes cannot be returned to the owner by the police.

**VI. Response to Domestic Violence Incident**

A. **Victim Rights Form.** A law enforcement officer must give and explain to the victim a written notice, which shall be written in both English and Spanish, explaining what remedies are available to the victim. This notice will inform the victim that he or she may file:

- A domestic violence complaint alleging the defendant committed an act of domestic violence and asking for court assistance to prevent its recurrence.
- A criminal complaint alleging the defendant committed a criminal act.
- Both of the above.

B. **Victim Notification.** State law requires that a victim of domestic violence be notified whenever a defendant charged with a crime or criminal offense involving domestic violence is released from custody.<sup>27</sup> In addition, a victim is to be notified when the defendant is to be heard in court on a motion to establish or reduce bail, when a plea agreement is to be submitted to the court, the trial date and when the defendant is to be sentenced.<sup>28</sup>

A form has been approved by the Attorney General and the State Supreme Court for notification of the victim. This form should be used when a domestic violence complaint is filed.

The form has been designed for quick information entry with its “check the box” and “fill in the blank” format. It has been designed to reduce the time it takes to complete the form. The top portion of the form is to be completed by the responding officer. The middle portion can be completed by the victim. The bottom portion is to be completed when the defendant is released from custody.

The victim should be informed that:

- The defendant will be eligible for bail and may be released from custody, and
- Once bail is set, it cannot be reduced without notice to the county prosecutor and the victim.<sup>29</sup>
- The prosecutor must have the ability to contact victims on short notice and inform them about the defendant’s impending release from custody, or application to reduce bail.

The victim should be provided with the telephone number of the Victim Witness Unit of the Prosecutor’s Office. The victim should be instructed to provide new telephone numbers if the victim changes telephone numbers from the numbers listed on the form.

***Points to Emphasize:***

Stress the importance of obtaining the victim's telephone number and address so that the victim can be notified when the defendant makes an application to reduce bail or when the defendant posts bail and is about to be released from custody.

This form must accompany the criminal complaint when it is forwarded to the county jail.

**B. Safety Planning Strategies Form.** A form has been approved by the State Supreme Court Domestic Violence Working Group. It is not a comprehensive, individualized safety plan. Its purpose is to encourage the domestic violence victim to plan for his or her safety in an emergency. This form should be distributed to victims of domestic violence by:

- Family and Municipal court personnel
- Prosecutor or Victim/witness staff
- Police who responded to domestic violence, or
- Others in the court and law enforcement communities who interact with victims

Police officers should be cautioned that a woman may be in danger of serious bodily injury or death from her abuser when she seeks to end an abusive relationship. Consequently, this safety plan should not be casually handed to every victim of domestic violence as a matter of procedure.



***Points to Emphasize:***

A woman is more in danger of injury or death when she seeks to put an end to an abusive relationship. As many as 75% of the domestic violence assaults reported to police occur after the victim has left her home.

Police officers must be careful in handing out a safety plan to domestic violence victims. The officer should ask the victim if she wants this information and, if so, then give her a copy of the plan.

The officer should inform the victim not to leave this plan out in the open where the assailant can find it.

The officer should inform the victim that the officer cannot give the victim advice on the plan and that the victim should discuss the plan with domestic violence professionals.

**VII. Procedure for the Victim to Obtain a Temporary Restraining Order<sup>30</sup>**

A domestic violence complaint alleges that the named defendant committed one of the listed criminal offenses against the victim. In the complaint, the victim asks the court for various types of relief. A victim of domestic violence is seeking a temporary restraining order when filing a domestic violence complaint. A temporary restraining order is often referred to as a TRO or a no contact order.

- A. **Regular Court Hours.** During regular court hours, the domestic violence complaint may be filed with the Family Part of the Superior Court. The Family Division will accept domestic violence complaints only until 3:30 p.m. when the courts are in session.<sup>31</sup>
- B. **When the Court is Closed.** On weekends, holidays and other times when the court is closed, the domestic violence complaint may be filed with a municipal court judge specifically assigned to accept these complaints. Each police department should have a list from the municipal court of names and telephone numbers of municipal court judges and alternate judges to be contacted when emergent domestic violence relief is necessary.<sup>32</sup>

C. **Where the Complaint Can be Filed.** The domestic violence complaint may be filed:

- Where the alleged act of domestic violence occurred
- Where the defendant resides, or
- Where the victim resides or is sheltered<sup>33</sup>

D. **Removal of Belongings.** When a court order is issued, the court may order the police officer to accompany either party to the residence to supervise the removal of personal belongings to insure the personal safety of the victim. The judge may:

- Specify a time limit for the removal of defendant's belongings, and
- Describe what belongings may be removed from the residence or any shared business premises.
- Require that police supervise the removal of defendant's belongings from the residence or other premises.<sup>34</sup>

## VIII. Service of a Temporary Restraining Order

A. When the victim obtains a temporary restraining order which prohibits the defendant from having any contact with the victim and the defendant was not arrested by police beforehand, the officer should:

- Escort the victim to his or her home.
- Read the conditions of the court order to the defendant if the defendant is present.
- Order the defendant to vacate the premises.
- Give the defendant a reasonable period of time to gather personal belongings.
- Arrest the defendant if required by the court order or if defendant refuses to comply with the order.

- B. Where a court order has been issued but not served upon the defendant because the defendant could not then be located but who is not at the scene, the officer should follow the above procedure where appropriate.
- C. If the defendant cannot immediately be located, the following police shifts should continue to try and locate the defendant. The domestic violence complaint/TRO should be forwarded to the Family Court indicating that service could not be made. Copies of these documents should be kept at headquarters to serve on the defendant when the defendant is located.
- D. Whenever a defendant is served, the TRO should be completed, indicating that service was made. A copy of these documents should be kept at headquarters and one copy should be sent to the Family Court.
- E. When a temporary or final restraining order is issued that requires service outside the issuing county, police should follow approved departmental procedure in notifying the appropriate agency in the municipality in which the defendant resides or works so that the order can be served upon the defendant.
  - 1. 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 agency.
    - b. The weapons themselves, along with any licenses, identification 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 the weapons and documentation

## **IX. Procedure for the Victim to File a Criminal Complaint**

Where a victim only wants a to file a criminal complaint against the subject, the complaint may be filed with the municipal court or the police in the jurisdiction where the offense occurred in accordance with departmental procedure.

If the victim wants to file both a criminal complaint and a domestic violence complaint, both may be filed where

- The alleged act of domestic violence occurred
- The defendant resides, or
- The victim resides, or is sheltered.

While a criminal complaint is normally filed in the municipality where the offense occurred or the suspect resides,<sup>35</sup> a criminal complaint in a domestic violence incident may be filed in the same locations where the domestic violence complaint may be filed. If a criminal complaint is filed in a location other than where the defendant resides, the officer should follow approved departmental practice in notifying the police department where the defendant resides of the signed arrest warrant.

However, the criminal complaint must be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. The criminal complaint will be transferred to the jurisdiction where the offense occurred.<sup>36</sup>

## **X. Procedure for the Victim to File Both a Criminal Complaint and a Domestic Violence Complaint**

- A. During Regular Court Hours.** A victim may go to the Family Division to file a domestic violence complaint and obtain a temporary restraining order and may file a criminal complaint with the police department where the alleged domestic violence offense occurred.
- B. When the Courts are Closed.** A victim may file a domestic violence complaint before a municipal court judge specifically assigned to accept these complaints. The criminal complaint is to be filed with the police department in accordance with departmental procedure.

## **XI. Obtaining a Temporary Restraining Order Through the Police Department**

- A. If the victim qualifies for a TRO and requests an immediate court order, the officer shall contact the designated judge by telephone, radio or other means of electronic communication. The officer shall:

1. Assist the victim in preparing a statement which the victim will make to the judge.
  2. Explain to the victim that the judge will place him or her under oath and will ask questions about the incident.
  3. Complete the domestic violence complaint.
  4. Have the victim sign the domestic violence complaint.
- B. If the judge issues a temporary restraining order, the officer will enter the judge's authorization on a prescribed form. The officer also will print the judge's name on the temporary restraining order. The officer will then be instructed to serve the restraining order upon the alleged offender.<sup>37</sup>

## **XII. Court Order Violations (contempt)**

- A. **Charging/Arrest.** If a police officer determines that there is probable cause to conclude that a party has violated an existing restraining order by:
- Committing a new act of domestic violence, or
  - Violating the terms of a no-contact order

### **The officer must**

1. arrest the defendant and transport the defendant to the police station
  2. sign a criminal contempt charge concerning the incident on a complaint warrant (CDR-2)
  3. include any related criminal charges on this complaint warrant.
- B. Bail.
1. The officer should telephone, communicate in person or by facsimile with the appropriate judge or bail unit and request bail be set on the contempt and related criminal charges.

- During regular court hours, bail should be set by the emergent duty Superior Court judge that day.
  - 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 by the assignment judge to set bail for non-indictable contempt charges.
2. When bail is set by a judge when the courts are closed, the officer shall arrange to have the clerk of the Family Part of the Superior Court notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details.
  3. If a municipal court judge sets the bail, the arresting officer shall notify the clerk of the municipal court of this information.
  4. If the defendant is unable to post bail, the officer should take appropriate steps to have the defendant incarcerated at police headquarters or the county jail.<sup>38</sup>
- C. **No Probable Cause to Arrest.** If the officer determines that there is no probable cause to arrest the defendant for a violation of a temporary or final restraining order, the officer must advise the victim of the procedure for completing and signing a criminal complaint, civil complaint, or both:
- During regular court hours, the officer should advise the victim that the complaint must be filed with the Family Part of the Superior Court.
  - On weekends, holidays and other hours when the court is closed, the officer should transport or arrange for transportation to have the victim taken to headquarters to sign the complaint.

The alleged offender should 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. The officer in charge shall follow standard police procedure in arranging to have a court set bail.<sup>39</sup>

- D. **Mutual Reconciliation.** Although a court order may have been issued prohibiting the defendant from contacting the victim, the parties may have attempted to resume living together or seeing one another. This is still a violation of the no-contact court order.

Once a court order has been issued, only the court can modify the terms or vacate the order. The parties cannot mutually dissolve the prohibitions of a court order. In such cases, the officer should arrest the defendant for violating the terms of the court order. The victim should not be arrested. A court order specifically prohibits the defendant from engaging in certain conduct; it does not prohibit the victim from engaging in the conduct.

- E. **No Restraining Order Issued or defendant Not Served.** If an officer determines that no restraining order exists or that an order had not been properly served on the defendant, the officer cannot arrest the defendant for violating a court order.

If the defendant is at the scene, the officer should determine if any criminal offenses were violated and take appropriate action. If no laws were violated, the officer should consider asking the defendant to leave the premises to prevent the domestic disturbance from escalating into a serious situation.

### XIII. Police Reports

- ✓ **Note:** A police report in a domestic violence case is extremely important. In a pro-prosecution or evidence based prosecution, the State will go forward in many instances with the case even if a victim does not want to testify for the State. Spontaneous statements made by the parties should be noted in the officer's report.

- A. As with any incident an officer response to, the officer must complete an incident report in accordance with departmental regulations. In addition, when an officer responds to a domestic violence call, the officer must complete a Supplementary Domestic Violence Offense Report (UCR-DV-1). This report must be forwarded to:
- The appropriate county Bureau of Identification
  - The state Bureau of Records and Identification in the Division of State Police

- B. A copy of the report is to be forwarded to the municipal court where the offense was committed unless the case had been transferred to the Superior Court.<sup>40</sup>

#### **XIV. Fingerprinting the Defendant<sup>41</sup>**

Defendants in domestic violence cases must be fingerprinted in the following cases, including non-indictable offenses:

- Upon arrest in a mandatory arrest situation pursuant to N.J.S.A. 2C:25-21a
  - Upon conviction for domestic violence simple assault or harassment, and
  - Upon the issuance of a final domestic violence restraining order.
- ✓ **Note:** Fingerprints taken at the time of arrest or conviction for criminal offenses involving domestic violence must be taken on State and federal Criminal Fingerprint Cards. A defendant must be fingerprinted for the domestic violence offenses, even if the victim does not obtain a restraining order. Fingerprints taken upon the issuance of a final restraining order must be taken on a State Applicant Fingerprint Card.

If a defendant had been fingerprinted at the time of arrest, the defendant should not be re-fingerprinted upon conviction of simple assault or harassment

#### **XV. Police Liability**

A police officer will not be held liable in a civil action for enforcing the domestic violence act by:

- Making an arrest based on probable cause
- Enforcing a court order in good faith, or
- Any other act or omission in good faith under the domestic violence act.

This immunity from civil liability has been extended to a member of a domestic crisis team or any other person who in good faith reports a possible incident of domestic violence to the police.<sup>42</sup>



## XVI. Services Available for Victims and Batterers

Violent behavior does not stop just because the police are called to the scene or make an arrest in a domestic violence incident. The reduction of violent behavior is a gradual process. The person must develop alternative behavior strategies for dealing with everyday conflicts. Mandatory counseling for the batterer as a condition of probation has proven successful in a number of programs. The officer should be aware of the various domestic violence programs that are offered for both the victim and the batterer. The New Jersey Coalition for Battered Women have published a directory of such organizations.

The following case studies should be discussed with the class.

### Case 1

A 15-year-old girl wants to file a domestic violence complaint against her 18-year-old boy friend. She maintains that he has been calling her at 3 a.m. every day for the past two weeks because she had broken up with him. She said that during these telephone calls to her he threatens to beat up any body she dates. She adds that her former boy friend follows her when she goes out on weekends and she is terrified that he will kill her for leaving him. She said that she told him to stop bothering her and to leave her alone. She said that he just laughs at her and tells her that she will come crawling back to him. She has never filed a criminal complaint against anyone and does not understand the criminal justice system. What will you tell her?

**Answer:** The 15-year-old girl qualifies as a victim under the domestic violence laws. She has had a dating relationship with a person over the age of 17. The officer should explain to the victim her rights under the domestic violence laws: she may file a domestic violence complaint and seek a temporary restraining order to prohibit the former boy friend from having any contact with her and she may file a criminal complaint charging him with stalking, terroristic threats and harassment. The officer should advise the victim that she can file a domestic violence complaint and a criminal complaint against the boy friend with the Family Part of the Superior Court.

## Case 2

A 25-year-old woman wants to file a domestic violence complaint against a 28-year-old man whom she had dated for the past six months. She said that the man wants to get married but that she is not interested in marriage at this time. She said that she has tried breaking up with him a week ago but that he persists in calling her, asking for a date. She said that the man even rented a billboard signs asking her to marry him. What will you tell her?

**Answer:** The woman is not entitled to protection under the domestic violence laws. Although she has had a dating relationship with the man, no act of domestic violence had been committed by the man. The officer should question the woman further to determine whether the elements of harassment, *N.J.S.A. 2C:33-4*, have been met. If the acts of conduct by the boy friend were purposely done to harass her, then the woman may be entitled to pursue a domestic violence complaint against him.

## Case 3

A 16-year-old girl is accompanied by her parents to police headquarters. The parents insist on filing a domestic violence complaint and getting a no contact order against their daughter's 17-year-old boy friend who had enlisted in the Marine Corps. The parents claim that he young man is harassing their daughter by sending her gifts in the mail and by frequently calling her on the telephone. The parents do not want their daughter dating a Marine.

The girl wants to continue to see her boy friend and does not want a court order. She tells the officer that she loves her boy friend and will continue to talk to him and see him regardless what her parents try to do to prevent it. What do you advise the parents in this case?

**Answer:** In this case, the domestic violence act would not apply. No criminal act has occurred that would trigger the protection of the domestic violence laws. If one of the enumerated criminal offenses had been committed, the girl would have been entitled to protection under the act. In this case, there is a dating relationship between the girl and her boy friend. Since the boy friend is in the military, he would be considered emancipated. The fact that the parents want a temporary restraining order is not controlling. Their daughter appears competent, is not in fear of her boy friend and does not want a restraining order. This matter should be referred to the Family Crisis Unit.

#### Case 4

A 49-year-old woman wants to sign a domestic violence complaint and to obtain a no contact order to prohibit another woman from having any contact with her husband. The woman says that she has learned that her husband is having an affair with another woman and she wants this activity stopped. What will you tell her?

**Answer:** The woman is not entitled to protection under the domestic violence act. A victim of domestic violence must be a spouse, former spouse or a former household member or a dating partner.

#### Case 5

A police officer is dispatched to 555 Crooked Lane at 2 a.m. in response to a domestic violence call. At the scene, the officer is told by a woman that her husband repeatedly punched her in the face and stomach, dragged her around the house by her hair and threatened to kill her. The officer sees traces of blood and signs of bruises on her face. The woman added that earlier that night her husband pointed a handgun at her head and told her he was going to kill her. He pulled the trigger. She heard a click and fainted.

She said that her husband had been abusing her for years but now he has started threatening to kill her. She said she is afraid of him. She quickly added that she still loves him but wants the abuse to stop. She said that her husband was not home, that he probably left when she fainted but that he probably would return shortly. What do you tell her? What do you do?

**Answer:** The officer should advise the woman of her rights under the domestic violence laws; she is entitled to file a domestic violence complaint and obtain a no contact order and she can file a criminal complaint against her husband. However, since the officer saw signs of injury on the woman, the officer must arrest and must sign a criminal complaint against the man. The officer has probable cause to seize the firearm because it is evidence of a crime. The officer should inform the woman that the officer must take possession of the firearm. The officer should ask permission to search for the firearm. Because of the emergent situation, the officer should assist the victim in seeking an emergent temporary restraining order from the designated on call judge.

If the woman is in need of medical assistance, the officer should either contact the first aid squad or make arrangements for the victim to be taken to the hospital for treatment. As part of the officer's investigation, the officer should photograph the woman's injuries and the condition of the house. The officer should inform the victim about the need to contact her if and when her husband is released from custody and to inform her of court hearing dates. If the husband returns while the officer is still at the scene, the officer should arrest him and transport him to headquarters for processing.

### Case 6

Police respond to a domestic violence call at 555 Crooked Lane at 6 p.m. on Saturday. The distraught woman told the officers that she has a court order prohibiting her husband from contacting her and the children. However, she had invited him to the house that evening because it was their daughter's birthday. She said that during the birthday dinner, her husband became abusive and started to push her around, ordering her to withdraw the court order.

She said that he picked up a kitchen knife and held it against her throat, threatening to kill her if she did not comply. She showed the officer a superficial cut on her throat with traces of fresh blood still visible. Her husband was in the family room playing games with his daughter. What should the officer do?

**Answer:** The officer should advise the husband that he is under arrest for violating the terms of a restraining order and for assaulting his wife with a weapon. Once a court order is issued, only a court can dissolve or modify the terms of the order. The fact that the wife had invited the husband to the home does not negate the fact that the husband violated the terms of the court order.

### Case 7

Police respond at 4 a.m. to a domestic violence call at 555 Crooked Lane. A woman at that address told police that her estranged husband had just threatened to kill her with a handgun if she does not return to him. She said that her husband had stopped by her home and was banging on the door demanding to be let into the house. She said that he pointed the handgun at her bedroom window, shouting that he will kill her. She told the officer that her husband is residing at 10 Maple Court. Two children in the house confirm what the woman told the officer about the threat with the gun. She said that she is terrified that her husband will kill her. What should the officer do?

**Answer:** The officer should advise the woman of her rights under the domestic violence act: to file a domestic violence complaint and obtain a no contact order and to file a criminal complaint. Since a weapon was used in this incident, the officer must arrest the husband. The officer has sufficient probable cause to make the arrest and to sign a criminal complaint. Since it is likely that the husband would be in his residence at this hour, the officer should obtain a complaint-warrant so the officer can enter the residence, if necessary, to make the arrest.

The officer also should obtain a criminal search warrant to search for the firearm that was used in the commission of this criminal act. The officer would not need the Domestic Violence Warrant for the Search & Seizure of Weapons because that warrant is only used when a weapon is to be removed for safekeeping purposes and when the weapon was not used in the commission of a criminal offense.

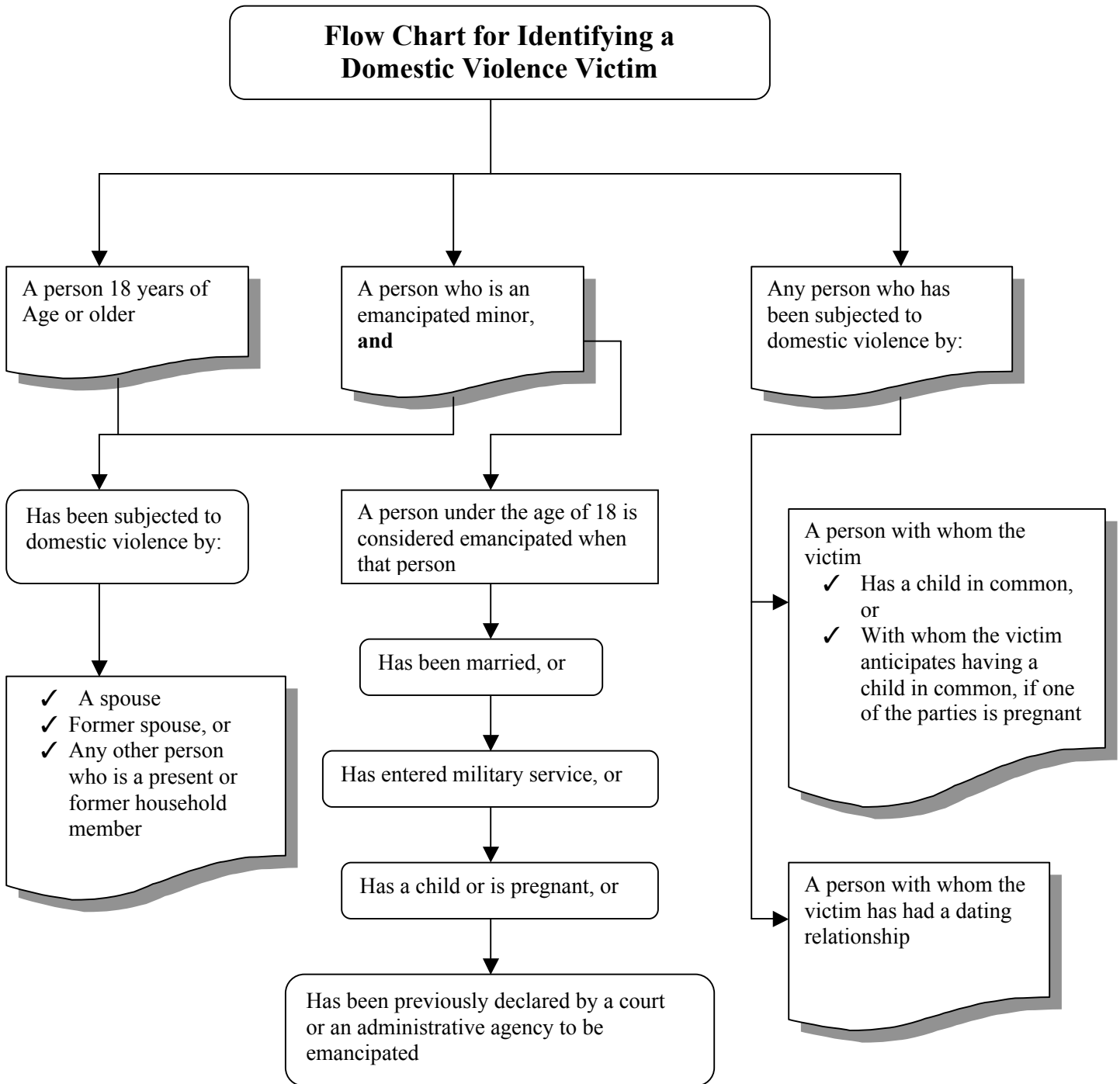
### Case 8

Police respond to a domestic violence call at 555 Crooked Lane at 1 a.m. The woman at the residence told the officers that she had an argument earlier that night with her husband and he had threatened to shoot her. In response to questions, the woman said that her husband has a handgun locked in a footlocker and that he has the only key. She said that the gun looked something like the type the officers were carrying. She said that she is terrified that he will kill her.

She said that she does not want to sign a criminal complaint against him after the officers advised her of her rights under the domestic violence laws. She does not want a restraining order at this time. The husband summarily dismissed his wife's allegations and refused to give the officers permission to open the footlocker and to seize the handgun. What should the officers do?

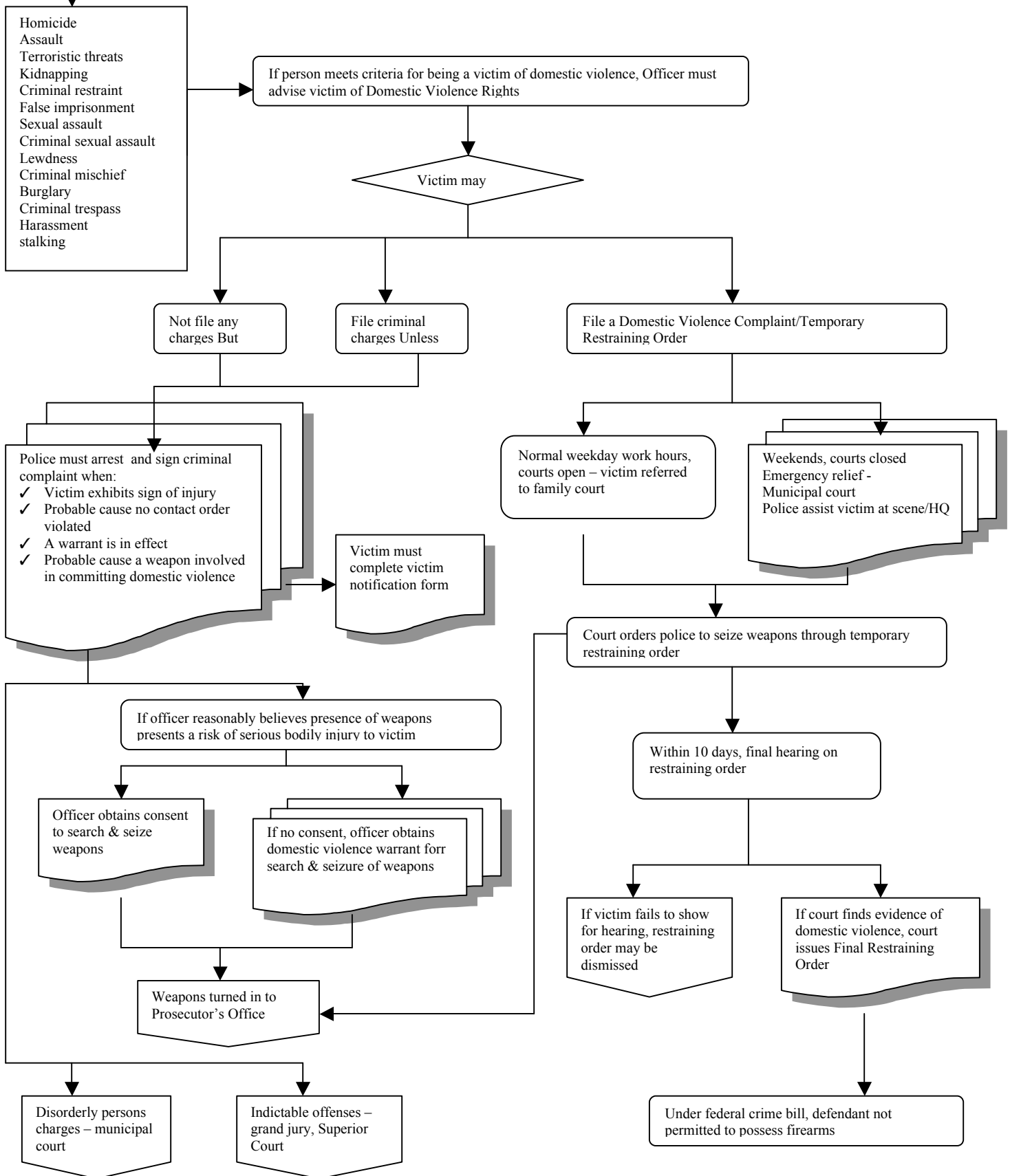
**Answer:** The officers have sufficient probable cause to believe that the presence of a weapon in the residence presents a threat to the woman's life. While no crime had been committed with the handgun, the officers should apply for a Domestic Violence Warrant for the Search & Seizure of Weapons so that they can gain possession of the handgun. Since the handgun was locked in an area that the woman did not have control over, she could not have consented to a search. If the woman had wanted an emergent court order, the officers could have asked the judge to include in the court order authorization to search for and to seize the handgun.

- <sup>1</sup> Dating Violence, Unit IV, Research Review, compiled by the New Jersey Coalition for Battered Women
- <sup>2</sup> Suarez, Kathryn E., Teen Dating Violence, 82 California Law Review 423, 429, March 1994 citing Robin Abcarian, Jenny's Story: Parents Were the Last to Know, L.A. Times, Oct. 13, 1991, at E14 (Dating violence can happen to any adolescent, anywhere.)
- <sup>3</sup> Id. at 430, supra citing Nona K. O'Keeffe et al., Teen Dating Violence 31 Soc. Work 465, 468 (1998)
- <sup>4</sup> Id. at 430, supra citing Denise Gamache, Domination and Control: The Social Context of Dating Violence.
- <sup>5</sup> Id. at 430, supra, citing David B. Sugarman & Gerald T. Hotaling, Dating Violence: Prevalence, Context, and Risk Markers, in Violence in Dating Relationships: Emerging Social Issues 3, 5-11 (Maureen A. Pirog-Good & Jan E. Stets eds., 1989).
- <sup>6</sup> Id. at 431, supra.
- <sup>7</sup> Project to Develop a Model Anti-Stalking Code for states, National Institute of Justice, Research Report, 1993, at 69.
- <sup>8</sup> Id. at 74, supra.
- <sup>9</sup> Id. at 93, supra.
- <sup>10</sup> Id. at 81, supra.
- <sup>11</sup> Stalking in New Jersey, A Handbook for stalking Victims and Law Enforcement, N.J. Department of Community Affairs, Division on Women, May, 1994 (Revised Edition).
- <sup>12</sup> Wildoner v. Borough of Ramsey, 316 N.J.Super. 487 (App. Div. 1998), rev'd 162 N.J. 375 (2000)
- <sup>13</sup> See State v. Jones, 143 N.J. 4 (1995) where the Court said that an officer must make an arrest when the officer knows there is an outstanding arrest warrant or bench warrant for the defendant.
- <sup>14</sup> N.J.S.A. 2C:25-21a(1) – (4)
- <sup>15</sup> N.J.S.A. 2C:25-21b.
- <sup>16</sup> N.J.S.A. 2C:25-21c(2).
- <sup>17</sup> R. 3:3-1, 3:4-1 & 7:1-1.
- <sup>18</sup> R. 3:26-2
- <sup>19</sup> N.J.S.A. 2C:25-26d
- <sup>20</sup> N.J.S.A. 2C:25-261e
- <sup>21</sup> N.J.S.A. 2C:25-21d(a)(a) & (b).
- <sup>22</sup> N.J.S.A. 2C:25-26a
- <sup>23</sup> N.J.S.A. 2C;25-28j.
- <sup>24</sup> N.J.S.A. 2C:25-29b(16).
- <sup>25</sup> N.J.S.A. 2C:25-21d(b)(2).
- <sup>26</sup> N.J.S.A. 2C:25-33.
- <sup>27</sup> N.J.S.A. 2C:25-26.1.
- <sup>28</sup> P.L. 1994, c. 131, 10/31/94.
- <sup>29</sup> N.J.S.A. 2C:25-26e.
- <sup>30</sup> N.J.S.A. 2C:25-28.
- <sup>31</sup> Domestic Violence Procedures Manual, revised 9/94 Issued under the authority of the Supreme Court of New Jersey and the Attorney General of the State of New Jersey, at 26.
- <sup>32</sup> Id. at 26.
- <sup>33</sup> N.J.S.A. 2C:25-28a.
- <sup>34</sup> See footnote 25, supra, at 31.
- <sup>35</sup> R. 3:3-1.
- <sup>36</sup> N.J.S.A. 2C:25-28a.
- <sup>37</sup> N.J.S.A. 2C:25-28.
- <sup>38</sup> N.J.S.A. 2C:225-28k & 2C:25-29b(12).
- <sup>39</sup> N.J.S.A. 2C:25-31.
- <sup>40</sup> N.J.S.A. 2C:25-24
- <sup>41</sup> N.J.S.A. 53:1-15.
- <sup>42</sup> N.J.S.A. 2C:25-24.



	<p><b>Note:</b> an offender must be 18 years of age or older or emancipated before the Domestic Violence Provisions can be applied. A person who does not meet the above criteria can be charged with juvenile delinquency under <i>N.J.S.A. 2A:4A-30</i></p>	
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# Police Response to Domestic Violence Call





Superior Court of New Jersey  
\_\_\_\_\_ Division  
\_\_\_\_\_ County

**DOMESTIC VIOLENCE WARRANT FOR  
THE SEARCH & SEIZURE  
OF WEAPONS**

**TO: ANY LAW ENFORCEMENT OFFICER HAVING JURISDICTION**

1. The Court, having reviewed the affidavit or testimony of \_\_\_\_\_  
under oath against \_\_\_\_\_, finds good cause to believe  
that the life, health, and well-being of \_\_\_\_\_ have been and are  
endangered by defendant's acts of violence and finds good cause to believe that the defendant may not be  
qualified to possess firearms pursuant to *N.J.S.A. 2C:58-3c*. The Court finds probable cause to believe  
that the below listed weapons in defendant's possession may present a risk to plaintiff:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. **YOU ARE HEREBY COMMANDED** to search the premises described as \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

for the above described weapons and to serve a copy of this warrant upon the person at that address.

- You are further commanded to seize from defendant any issued permit to carry a firearm,  
firearms purchaser identification card and any outstanding applications to purchase handguns.

3. **YOU ARE HEREBY ORDERED**, in the event you seize any of the above described weapons, to  
give a receipt for the property so seized to the person from whom they were taken or in whose  
possession they were found, or in the absence of such person, to leave a copy of this warrant together  
with such receipt in or upon the said structure from which the property was taken.

4. **YOU ARE AUTHORIZED** to execute this warrant within 10 days from the issuance hereof:

- Between the hours of \_\_\_\_\_ m. and \_\_\_\_\_ m., or  
 Anytime

After the execution of this warrant, you are ordered to forthwith make prompt return to this Court with  
a written inventory of the property seized hereunder.

5. Given and issued under my hand at \_\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_\_\_\_ m. this day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Signature)  
Judge of the Superior Court of New Jersey

Superior Court of New Jersey  
\_\_\_\_\_  
\_\_\_\_\_  
Division  
County

**AFFIDAVIT IN SUPPORT OF A  
DOMESTIC VIOLENCE WARRANT FOR  
THE SEARCH & SEIZURE OF WEAPONS**

State of New Jersey :  
County of \_\_\_\_\_ : SS

I, \_\_\_\_\_, of \_\_\_\_\_, being  
(Name of Officer) (Department)  
of full age and having been duly sworn upon my oath according to law, depose and say:

1. On \_\_\_\_\_ at \_\_\_\_\_ .m., I was dispatched to the following  
premises: \_\_\_\_\_  
\_\_\_\_\_ in response to a domestic violence Incident.

2. I was told by \_\_\_\_\_, the victim of the  
domestic violence incident, that he or she believes that his or her life, health or well-  
being is in imminent danger by the domestic violence assailant, \_\_\_\_\_  
\_\_\_\_\_, by one of the weapons listed in paragraph 3. The victim said:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

3. The victim has described the weapons as follows:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

4. The victim of domestic violence has informed this officer that the domestic violence  
assailant has the weapons listed in paragraph 3 at  
\_\_\_\_\_  
(Describe Premises in Detail and identify owner of premises if not person listed in Paragraph 1)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

5. The domestic violence assailant or the possessor of the weapons has refused to  
surrender the above stated weapons or to allow a law enforcement officer to enter the  
premises, described in paragraph 4 to search for the named weapons.

- 6. Based on the above, this officer has probable cause to believe that the presence of the weapons described in paragraph 3 exposes the victim to a risk of serious bodily injury and I cannot obtain possession of the weapons from the possessor of the named weapons.
- 7. I want to search the premises described in paragraph 4 for the weapons described in paragraph 3 and to seize any of the above named weapons found at that location for safekeeping purposes. I also want to seize from the defendant any issued permit to carry a firearm, firearms purchaser identification card and any outstanding applications to purchase handguns.

8. \_\_\_\_\_  
(If Requesting a No Knock Warrant or Entry at Special Hours, Explain Reason here or on Attached Sheet , or enter any additional information here)

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\_\_\_\_\_

\_\_\_\_\_  
(Signature of Affiant )

Sworn and subscribed to before  
me this \_\_\_\_\_ day of  
\_\_\_\_\_. 20\_\_\_\_.

\_\_\_\_\_  
Judge of the Superior Court of  
New Jersey

Search Warrant Application approved by \_\_\_\_\_ (DAG) (AP)