
MONMOUTH COUNTY
UNIFORM POLICY

**Standard Operating Procedures
On Domestic Violence Cases**

Revised: July, 2015

**MONMOUTH COUNTY STANDARD OPERATING
PROCEDURES ON DOMESTIC VIOLENCE CASES**

I. DEFINITIONS: In order for a police officer to be able to enforce the provisions of N.J.S.A. 2C:25-17, et seq., the officer must be able to identify domestic violence and those relationships that are defined in N.J.S.A. 2C:25-19(d).

A. Domestic Violence - means the occurrence of one or more of the following acts inflicted upon a person protected under the Prevention of Domestic Violence Act of 1991 (PDVA):

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|----------------------------|----------------------------------|
| 1. Homicide | <u>N.J.S.A. 2C:11-1, et seq.</u> |
| 2. Assault | <u>N.J.S.A. 2C:12-1</u> |
| 3. Terroristic Threats | <u>N.J.S.A. 2C:12-3</u> |
| 4. Stalking | <u>N.J.S.A. 2C:12-10</u> |
| 5. Kidnapping | <u>N.J.S.A. 2C:13-1</u> |
| 6. Criminal Restraint | <u>N.J.S.A. 2C:13-2</u> |
| 7. False Imprisonment | <u>N.J.S.A. 2C:13-3</u> |
| 8. Sexual Assault | <u>N.J.S.A. 2C:14-2</u> |
| 9. Criminal Sexual Contact | <u>N.J.S.A. 2C:14-3</u> |
| 10. Lewdness | <u>N.J.S.A. 2C:14-4</u> |
| 11. Criminal Mischief | <u>N.J.S.A. 2C:17-3</u> |
| 12. Burglary | <u>N.J.S.A. 2C:18-2</u> |
| 13. Criminal Trespass | <u>N.J.S.A. 2C:18-3</u> |
| 14. Harassment | <u>N.J.S.A. 2C:33-4</u> |

B. Victim of Domestic Violence - means a person protected by the Prevention of Domestic Violence Act and includes any person:

1. Who is 18 years of age or older, or who is an emancipated minor, and who has been subjected to domestic violence by:

a. a Spouse or

b. a Former spouse, or

c. Any other person who is a present or former household member.

OR

2. 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, if one of the parties is pregnant (victim or abuser),

OR

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

- a. A victim may be below the age of 18.
- b. The domestic violence assailant must be age 18 or older, or emancipated at the time of the offense.

- 4. Special provisions for person(s) under 18 years of age:

- a. A victim may be under 18 years of age, provided he/she is emancipated. The victim may sign the Complaint/TRO and does not need the consent of a parent or guardian to file or withdraw a complaint or to request a modification of an existing order.

- b. While a restraining order is inapplicable to an unemancipated juvenile, the juvenile may be charged with specific acts of domestic violence under the Code of Juvenile Justice. These cases should be brought to the attention of a juvenile prosecutor for imposition of "pre" or "post" disposition "no-contact" conditions.

- c. Emancipated Minor - Under the Prevention of Domestic Violence Act, a minor is considered emancipated from his or her parents when the minor:

- 1. Reaches the age of 18;
- 2. Is or has been married;
- 3. Enters or has entered military service;
- 4. Is pregnant;
- 5. Has a child; or
- 6. Has been declared by a court to be emancipated.

When an un-emancipated minor (a juvenile) commits a violation of one of the enumerated acts of domestic violence on a protected person the occurrence shall not constitute "domestic violence," but may be the basis for filing a juvenile complaint pursuant to N.J.S.A. 2A:4A-30.

Defined Relationships

1. Spouse: One's wife or husband,
2. Former Spouse: One's former wife or husband,
3. Present/former household member: The term "household member" generally means a person who resides or resided in the same house or premises. If the officer has doubts that a person is a household member, the officer should determine if the person received mail at that location, has a driver's license or other official documents listing that address as his or her address.

An overnight or weekend guest would not be considered to be a household member because the person is not residing at that location, but is only visiting. The officer should inquire, if need be, as to whether the parties ever lived together to see if they are "former household members." If in doubt, the officer should contact his or her supervisor to determine if a person is to be considered a household member for purposes of a domestic violence complaint.

4. Victim child in common: Protected person and inflicting person have a child in common regardless of the age of the victim or defendant.
5. Dating Relationship - The definition of victim also has been expanded to include anyone, regardless of age, who has had a dating relationship with the alleged abuser.

The law does not define dating relationship so the following facts should be considered:

- (a) The type and nature of the dates/relationship (intimacy, sexual relations, etc.);
- (b) The length of the relationship;
- (c) The frequency of interactions between the parties; and,
- (d) If the relationship has been terminated, the length of time that has elapsed since the termination.

When there are questions as to whether a victim qualifies under this category for a restraining order, a judge will make the final decision.

Public Safety of the Elderly and Disabled: The Prevention of Domestic Violence Act also requires police officers to pay special attention to cases involving neglect and abuse of the elderly or disabled. It is incumbent that every law enforcement agency in Monmouth County be aware of the legislative intent in the protection of the elderly and disabled as stated in N.J.S.A. 2C:25-18 which is as follows:

The Legislature further finds and declares that the health and welfare of some of its vulnerable citizens, the elderly and disabled, are at risk because of incidents of reported and unreported domestic violence, abuse and neglect which are known to include acts which victimize the elderly and disabled emotionally, psychologically, physically and financially; because of age, disabilities or infirmities, this group of citizens frequently must rely on the aid and support of others; while the institutionalized elderly are protected under N.J.S.A. 52:27G-1, et seq., elderly and disabled adults in non-institutionalized or community settings may find themselves victimized by family members or others upon whom they feel compelled to depend.

The Legislature further finds and declares that violence against the elderly and disabled, including criminal neglect of the elderly and disabled under N.J.S.A. 2C:24-8, must be recognized and addressed on an equal basis as violence against spouses and children in order to fulfill our responsibility as a society to protect those who are less able to protect themselves.

In many situations the relationship between the abuser and elderly victim will be covered by the PDVA (ex. the parties are cohabitants). Even if there is no protected status in this situation, the provisions of the Criminal Neglect Statute N.J.S.A. 2C:24-8 may be applicable.

In every case when an allegation of abuse or neglect against an elderly person has occurred, Adult Protective Services of Monmouth County should be notified. The phone number is (732) 531-9191. The address is Adult Protective Services of Monmouth County, 191 Bath Avenue, Long Branch, New Jersey 07740.

II. PROCEDURE - DOMESTIC VIOLENCE CRIMINAL VIOLATIONS
RESPONSE/INVESTIGATION/ARREST:

CRIMINAL RESPONSE: When an officer has determined the incident that is being investigated is domestic violence, including elder abuse and/or neglect, and one or more of the crimes as enumerated in N.J.S.A. 2C:25-19(a) has been violated, then the appropriate action as indicated in the following sections shall be initiated by the responding investigating officer.

A. Mandatory Arrest - When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that an act of domestic violence has occurred, the law enforcement officer shall arrest the actor who subjected the victim to domestic violence and shall sign a criminal complaint/warrant and arrest the actor under any one or more of the following four circumstances: (3.8.1)

- (1) The victim exhibits signs of injury caused by an act of domestic violence (the word "exhibits" should be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Probable cause to arrest may also be established when the police officer observes manifestations of an internal injury suffered by the victim. N.J.S.A. 2C:25-21a(1)). (3.8.2)

Factors to consider where both parties exhibit signs of injury: In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of the domestic violence between the parties (check the DV Central Registry), if any, whether injuries appear to be defensive or offensive, the comparative size of the parties, intoxication, and any other relevant factors. No victim shall be denied relief or arrested, or charged under this act with an offense because the victim used reasonable force in self-defense against domestic violence by an attacker. (N.J.S.A. 2C:25-21c(3)).

- (2) A warrant is in effect; N.J.S.A. 2C:25-21a(2). (3.8.4)
- (3) There is probable cause to believe that the person has violated a Domestic Violence Restraining Order (N.J.S.A. 2C:29-9b), (If the victim does not have a copy of an order, the officer may verify the

existence of an order with the appropriate law enforcement agency); N.J.S.A. 2C:25-21a(3), (3.8.3), or

- (4) There is probable cause to believe that a weapon as defined in N.J.S.A. 2C:39-1(r) has been involved in the commission of an act of domestic violence. N.J.S.A. 2C:25-21a(4), (3.8.5).

B. Discretionary Arrest - A law enforcement officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the four mandatory arrest conditions listed above in subsection "II-A" of this section applies. N.J.S.A. 2C:25-21b, (3.9.1)

1. Probable cause may include the existence of physical evidence (such as damaged property) or witnesses' statements that an act of domestic violence has occurred. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.
2. There may be an arrest when there is probable cause to believe that a person who has a legal duty to care for a person 60 years of age or older or disabled, or a continuing responsibility for the care of a person 60 years of age or older or disabled, has unreasonably neglected to do so, or failed to permit to be done, any act necessary for the physical or mental health of the elderly or disabled person. (This neglect provision does not require cohabitant status). See N.J.S.A. 2C:24-8, effective 2/26/89.

Where domestic violence may be an issue but probable cause for arrest is lacking and the victim does not wish to file a TRO, officers must give and explain the domestic violence rights to the victim, as contained in the Victim Notification Form. N.J.S.A. 2C:25-23.

C. Initial Investigation - Whenever an officer investigates an incident resulting in an arrest that is determined to be a domestic violence incident as defined in this policy, the officer shall complete a Preliminary Investigation Report. The investigation of the incident shall include at least the following information:

1. Relationship of the parties involved;

2. Details of the type and extent of abuse or injury to the victim;
3. Weapons involved, if any;
4. Details of any injury to defendant;
5. Photographs of victim's or defendant's injuries; Take two photographs of each of victim's injuries if victim is applying for a temporary restraining order or indicates that he/she may do so in the near future. Give one copy to victim and retain one for evidence.

Note: When a victim does not want photographs taken of his/her injuries, the officer should note this in the report and not take photographs.

If any disrobing of the victim is required, an officer of the same sex as the victim should take the photographs, if possible. If not possible, the officer should take those photographs that do not require disrobing and should document all injuries as related by the victim in the report.

Digital photographs should be taken whenever possible. All digital images of injuries suffered by the victim should be electronically forwarded to the "secured mailbox" in the Family Court. The "secured mailbox" e-mail address is: **monfamilydv.mailbox@judiciary.state.nj.us.**

6. Photographs and a description of the crime scene if it shows bloodstains, evidence of a physical struggle, signs of forced entry, violence, disarray or damage to property or any other evidence of the offense;
7. Any spontaneous verbal statement(s) of the victim and/or defendant; these statements should be placed between "quotations marks" and include recording of any admission offered by defendant;
8. Any spontaneous verbal statement(s) of any children at the scene (children at the scene statements are invaluable evidence);
9. 911 tapes: Call and briefly interview dispatch concerning the time and nature of the original call. Request that the tape segment be duplicated and preserved and document the date and time of your request. Please remember these tapes are invaluable evidence and are often reused quickly;

10. Sworn, written, signed statement of victim and witness(es) at the scene whether the charge is a disorderly persons offense, including any Restraining Order Violation charges, or an indictable offense;
 11. Written or sound recorded statement of defendant, if any, following administration of Miranda warnings;
 12. Document emergency medical response as well as name of hospital and, where appropriate, name of treating physician and initial diagnosis;
 13. A State Police domestic violence offense report must be filed; and,
 14. A Victim Notification Form must be completed.
- D. Follow-up Investigation - The follow-up investigation should include all investigative steps described above regarding the initial response/investigation and the following:
1. Follow-up photographs a few hours later if appropriate (some bruises/injuries are more visible/serious at this later time);

Follow procedures above, under subsection c(5), regarding digital photographs;
 2. Obtain/preserve the original and a copy of 911 tape involving the call for assistance; and,
 3. Obtain sworn written statements of victim and any witnesses in any disorderly persons or indictable case, if such as statements could not be obtained during initial response.
- E. Arrest Procedure - When an arrest is made as a result of an act of domestic violence the following procedures shall be followed:
1. The specific violation will be charged i.e., assault, harassment, terroristic threats, etc., and the charge should include a brief specific description of the defendant's illegal action(s).
 2. The charges shall be placed on a CDR-2/warrant if it is a mandatory or discretionary arrest situation and the warrant conditions in Court Rule 3:13-1 or 3:4-1 et seq. apply. The investigating officer (and NOT the victim) shall be designated

as the Complainant and sign the Complaint. The court, and not the responding officer, will determine whether a summons should be used rather than a warrant.

3. When a defendant charged with a crime or an offense involving domestic violence is subject to release on bail, the judge can order any of the following conditions of release and should be urged to do so by the officer when appropriate:
 - (a) The defendant be prohibited from stalking the victim or victim's relatives in any way;
 - (b) A no-contact condition: That the defendant be prohibited from contacting the victim at home, work, school or business. This condition may include when appropriate, suspension of visitation rights pending a hearing;
 - (c) That the defendant be prohibited from harassing the victim or victim's relatives in any way;
 - (d) That the defendant be prohibited from having contact with a victim's friends and coworkers;
 - (e) That the defendant be prohibited from possessing any firearm or other weapons enumerated in subsection r. of N.J.S.A. 2C:39-1;
 - (f) That the police search and seize any weapon at any location that the judge has reasonable cause to believe any weapon is located. The judge must state with specificity the reasons for the scope of the search and seizure; and,
 - (g) A psychiatric evaluation of the defendant as to the issue of dangerousness prior to the defendant's release with a provision that the court review the evaluation prior to defendant's release.

If there is a threat or possibility of continued violence, the above factors should be given to the Court so that the Court can take the subject's action into account in determining bail and/or the conditions of bail.

Any conditions of a defendant's release must be put in writing by the court. A copy of the order must be provided to the victim. These conditions can be placed in the

miscellaneous box of the warrant or summons or on a separate attached order. If the automated complaint system CDR warrant/summons is used, place the conditions of release in the "Other Court Action" section of the CDR.

4. The CDR-1 or CDR-2 that is prepared shall have on the complaint, "THIS WAS THE RESULT OF AN ACT OF DOMESTIC VIOLENCE." Should a CDR-2 (complaint warrant) be issued, the narrative block of the complaint shall include the "probable cause" statement.
 5. Any time a mandatory arrest is made of an emancipated minor, Juvenile Intake should be contacted for approval for placement in detention.
- F. Absconding Defendant: A law enforcement officer shall make every effort to apprehend the actor. This includes giving out his or her description, checking out possible locations, and periodically checking the victim's residence. This also includes extending this wanted notice to subsequent shifts to continue the search.
- G. CONFIDENTIALITY: When the victim's location is confidential, it shall remain confidential and shall not appear on any documents or records to which the defendant has access. These documents include the police investigation report and victim witness statements. The standard victim witness confidential form should be completed in all domestic violence cases in which charges are filed, regardless of whether defendant is committed to the county jail in default of bail. This document should be forwarded to the Prosecutor with the victim's confidential name, address and phone number.

III. PROCEDURE - OBTAINING RESTRAINING ORDERS

CIVIL RESPONSE: When a police officer responds to a call of domestic violence , the officer must give and explain to the victim the domestic violence notice of rights which advises the victim of available court action; i.e. availability to apply for a Temporary Restraining Order. (3.11.1)

Domestic Violence Civil Complaint/TRO: Page "one" of the four page form which allows a plaintiff (victim) to initiate a lawsuit against the defendant. (3.11)

- A. Where to Obtain a TRO: Family Court or Municipality

A victim of domestic violence must have access to the courts at all times. Law enforcement, Municipal and Superior Court staff must be advised that victims should never be turned away because of the inconvenience of arranging after-hours emergency relief. (2.1.1)

A law enforcement officer responding to a domestic violence call must provide the victim with the necessary assistance to file either a criminal or civil complaint/TRO or both. Under no circumstances should an officer prevent or discourage a victim from seeking immediate relief merely because the domestic violence occurs after regular business hours. (2.1.2)

1. If an order is sought during the time when the Family Part of the Superior Court is in operation, the person will be directed to apply for a restraining order through the Family Part, Freehold. Please note that Family Court will not accept applications for Temporary Restraining Orders after 3:00 p.m. Family Court cannot accept applications on weekends or holidays. Whenever possible the Police Departments will be notified in advance of any anticipated court closures or holidays via e-mail to the Chief of Police. (2.2.2)
2. When the Family Part is not in session, a temporary restraining order may be obtained through a Municipal Court Judge with the assistance of the police. The law enforcement officer shall fill out the domestic violence complaint with the cooperation of the victim and complete the temporary restraining order if the Judge approves and issues a temporary restraining order. (3.11.2). The police should:
 - a. Assist the victim in preparing the complaint and a statement to be made to the judge,
 - b. Explain that the Judge will put the person under oath and will ask questions about the incident,
 - c. Sign for the Judge if the Judge issues the Temporary Restraining Order,
 - d. Print the Judge's name on the Order, and
 - e. Serve the Order to the defendant. (3.13.1)
3. Under no circumstances shall a victim be turned away from immediately applying for a restraining order at the police station when Family Court is closed.
4. The Municipal Court Judge may grant a temporary restraining order in person or by telephone. The law enforcement officer will indicate to the Judge the immediate circumstances of the incident so the Judge

may make the determination whether or not the order will be issued. A hearing to make the temporary order a final order is generally held within 10 business days in Superior Court, Family Part, in Freehold. Monmouth County has designated days and times for final hearings depending on the municipality.

5. When a Temporary Restraining Order is denied, the court must state with specificity the reason(s) for the denial in the "Comments" portion of the TRO, and the victim shall be notified of his/her right to re-apply for a Restraining Order in Family Court. N.J.S.A. 2C:25-28(i).
- B. When the Family Court is closed, a victim may apply for a temporary restraining order in any one of four locations: (2.2.1) (3.11.2)
 1. Where the act of domestic violence occurred;
 2. Where the defendant resides;
 3. Where the victim/plaintiff resides; or,
 4. Where the victim/plaintiff is sheltered or is temporarily staying.

A criminal complaint does not preclude the victim from filing a domestic violence complaint and seeking a TRO. Companion criminal charges can be signed in any of these venues for the convenience of the victim but shall be transferred to the jurisdiction where the offense occurred for investigation and prosecution. In a mandatory arrest situation, criminal charges should be in the municipality where the offense occurred. Coordination between police departments should be done to make it as easy as possible for the victim. (2.3.1)(2.4.1)

There are four acceptable courses of action when a law enforcement agency is faced with an out-of-jurisdiction criminal complaint/ investigation:

1. Complete investigation where victim reports crime, sign complaint, forward complaint to municipality where crime occurred. NOTE: A blank CDR should be used, without the court's name or municipality code. This will be filled in when filed. (2.3,2-4)
2. Complete investigation and have police officer go to municipality where incident occurred and sign complaint in that municipal court.
3. Complete Investigation and forward all paperwork to municipality where crime occurred for local police to file the complaint.

4. Provide transportation for victim to Police Department where incident occurred for investigation to be completed.

It is entirely unacceptable to send a victim to the police department where the incident took place without further police assistance.

- C. Service: a police officer shall serve the defendant with a copy of the temporary or final restraining order, indicating on the return of service section of the form that service was made. Under no circumstances should a victim/plaintiff be requested to serve a restraining order. (3.14.1) The police should:
1. Escort the victim to his/her home;
 2. Read the conditions of the Order to the defendant;
 3. Order the defendant to vacate the premises, if part of the Order;
 4. Allow defendant reasonable time to obtain personal belongings (the officer shall remain with the defendant as he/she gathers personal belongings; and,
 5. Arrest the defendant if he/she refuses to comply with the Order.

Whenever possible law enforcement should use the Electronic Temporary Restraining order (E-TRO) computerized system, to electronically complete and file the TRO. If the TRO is not prepared through the E-TRO system then a copy of the temporary or final order indicating service was made shall be sent to the Family Court Intake Unit, in Freehold, immediately. Copies must be faxed immediately if the originals cannot be brought to the Intake Unit. For temporary restraining orders issued Friday evenings or Saturdays that have the upcoming Tuesday as the return date for the final restraining order, the originals must be faxed to Family Court by Monday 10:00 a.m. If court is closed Monday, fax copies immediately and bring the original on Tuesdays by 10:00 a.m. In all cases, the originals must be received by Family Court no later than 9:00 a.m. by the day prior to the final hearing. A final hearing must be scheduled within 10 days of the Complaint/TRO in the county where the TRO/complaint was issued unless good cause is shown to be held elsewhere. Monmouth County has designated days and times for final hearings depending on the municipality. Law Enforcement must always check that the return date given to the victim is a date that court is in session and does not fall on a Court holiday or closure.

- D. Service of County Domestic Violence Restraining Order (DVRO) on Residents of Other Counties: When requested to serve a restraining order (either temporary or final) by any court when the defendant resides outside of Monmouth County, a law enforcement officer in Monmouth County shall contact the police department or other appropriate law enforcement agency in the municipality (or county) of the defendant's residence to coordinate service of the restraining order. The Monmouth County law enforcement officer shall fax the restraining order to the appropriate law enforcement agency in the municipality of defendant's residence so that the order can be served in person to the defendant, and weapons searched for and seized. The officer in Monmouth County shall request, via return fax, proof of service in the restraining order and return of the completed weapons seizure form. A copy of the temporary or final order indicating that service was made or what attempts were made shall be sent or faxed to the Family Court Domestic Violence Unit in Freehold. (3.14.3)
- E. Service of Out of County DV RO on Monmouth County Residents: Anytime a law enforcement officer is requested to serve an order that was issued outside of Monmouth County, the law enforcement officer shall serve the restraining order, seize any weapons ordered and/or found at the scene and document service and any seizure to the agency that requested service.
- F. Filing of DV RO and Proof of Service:
After service of any restraining order, a copy of the restraining order will be forwarded to the Dispatcher and/or Records office of the Municipal police department for inclusion on the listing of active restraining orders.
- G. Verification of Orders:
A temporary restraining order that has not been amended or replaced with a final order will be considered active and in force until further action by the court regardless of the issue date. If there is a question regarding a particular order, the Clerk of the Family Part may be contacted during regular business hours to ascertain the status of the order. If contact with the Clerk of the Family Part cannot be made, contact will be made with the duty prosecutor. If no contact can be made, then the officer will proceed with appropriate enforcement action (as if an active restraining order was in place).
- H. Reconciling Two Different Orders:
If both parties are in possession of court orders, the officers shall follow the most recently issued order.

I. Amended Temporary Restraining Order:

In cases where a defendant within the County Superior Court's jurisdiction fails to appear for the scheduled final hearing and the defendant's present whereabouts are unknown, the Superior Court Judge may issue an "Amended Temporary Restraining Order" which is extended until the defendant can be served and a final hearing scheduled.

The following procedure shall be followed by all officers having occasion to make service of such order:

1. The officer who serves the order shall sign his/her name and date served. A copy of the order, along with the domestic violence complaint should be given to the defendant.
2. On the very next Superior Court business day, the domestic violence liaison officer, or his/her designee, shall fax a copy of the Return of Service to the Family Court Domestic Violence Unit to enable court staff to schedule the hearing and contact the plaintiff to inform him/her of the impending final hearing date.

J. Requests for Dismissals:

Withdrawals of Complaint/TRO by the victim/plaintiff - when a victim seeks to withdraw a complaint/TRO after it has been entered but before entry of the final order, the victim should do so in person and before a judge. Victims do not need to wait until the final hearing to request a dismissal. FROs can be dismissed by plaintiff/victim in the same manner. Professional staff from the Courthouse, need to meet with the victim to ascertain that the victim understands the meaning of the dismissal and the consequences of it.

Dismissal of FRO at Request of Defendant must be done by Notice of Motion and "upon good cause shown." N.J.S.A. 2C:25-29(d).

IV. PROCEDURE: RESTRAINING ORDER VIOLATIONS,
N.J.S.A. 2C:29-9(b)

- A. Where Filed: Violations of both temporary and final restraining orders are prosecuted in the county where the offense occurred. Charges should be filed in the municipality where the offense occurred.

- B. Grading - Disorderly Persons or Indictable: If the specific offense giving rise to the violation is a disorderly persons offense or fourth degree crime or higher, then the fourth degree contempt charge is filed. If the specific offense giving rise to the violation is a petty disorderly person offense or non-chargeable conduct except for the Restraining Order violation, the proper gradation for the contempt charge is a disorderly persons offense. Once a probable cause determination is made, all charges involving a violation of a restraining order must be placed on a warrant as per Court Rule 3:3-1(b)(3) and 3:4-1(d)(2) where a reasonable basis to determine that defendant may be dangerous to others, particularly to the victim, is present. The warrant must also include the "Probable Cause" statement and the docket number of the restraining order violated. The Court, and not the Police Officer, shall make the determination whether a summons will be used rather than a warrant. All Restraining Order violation charges and related charges will be forwarded to the Prosecutor's Office.

NOTE: SPECIAL BAIL CONSIDERATION(S) FOR RESTRAINING ORDER VIOLATIONS

If the defendant is charged with [a disorderly persons offense and contempt] or [a petty disorderly persons offense and contempt], bail may be set by a MUNICIPAL COURT JUDGE. If the defendant is charged with an indictable offense, the Contempt is a fourth degree, and bail shall be set by a SUPERIOR COURT JUDGE.

NOTE: Contempt will be a DP if charged alone or charged with a PDP. Contempt will be a 4th degree if charged with a DP or any indictable offense.

- C. Caution: Do not charge person with violating a restraining order if that person has not been served with the restraining order. If an officer arrives at a location and there is a reasonable doubt that the defendant ~~has been served with a copy of the~~ restraining order, the officer will then and there serve the defendant by reading the copy of the order to the defendant and allowing the defendant adequate time to comply with provisions of the order. The officer serving the order will sign all known copies and date the order as served and will make a copy available to the defendant as soon as possible thereafter, and will also forward a copy to records, dispatch office or appropriate unit for inclusion on the restraining order listing. The officer shall also sign a complaint and make a mandatory arrest if there is evidence of any

other offense, i.e. simple assault. The Plaintiff in whose favor a Restraining Order is entered may not be charged with violating the order because she/he has voluntarily allowed contact with a defendant.

- D. Charging Decision: An additional charge shall be filed for the specific act that created the violation of the temporary or final restraining order, i.e. simple assault.
- E. Probable Cause: When a Probable Cause determination cannot be made, the victim shall be advised of his/her right to sign a complaint charging the defendant with a violation of the Restraining Order. The Investigation protocol should be followed in this circumstance. This will include obtaining the victims written statement and completing an investigation report.
- F. Investigation Procedure: The procedure set forth for investigating Domestic Violence crimes and offenses, shall be followed in all cases where a defendant is arrested for a Restraining Order Violation.
- G. Out-of-State Restraining Orders: Law enforcement officers should recognize and enforce out-of-state domestic violence restraining orders or "orders of protection" so that such restraining orders will have the same force and effect as if they were Restraining Orders issued in the State of New Jersey.
 - 1. Out-of-State domestic violence restraining orders (also known as "foreign") or orders of protection include any court order issued by any other state, Indian tribe, territory or possession of the United States, Puerto Rico or the District of Columbia, whether or not the order is similar to a restraining order issued in the State of New Jersey.
 - 2. The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C. 2265, requires that a foreign domestic violence restraining order or orders of protection be recognized and enforced as if they were orders of a New Jersey court. The out-of-state order is to be enforced in this State even if:
 - a. the victim would not be eligible for a restraining order or an order of protection in this state.
 - b. the foreign order grants the named applicant more relief than the person would have received under New Jersey law.

3. Mutual Orders of Protection are orders entered against both parties requiring both parties to abide by the conditions of the order.
4. Response Procedures for Out-of-State Orders and Emergent Situations:
 - a. Emergency Situation: In an emergency situation, the restraining order or order of protection should be presumed valid when presented to an officer. The primary responsibility of the officer should be to ensure the safety of the holder of the out-of-state order, and secondarily, to verify the validity of the order.
 - b. If the named defendant in the court order committed a criminal offense under New Jersey law against the victim, the officer should arrest the defendant and sign the criminal complaint against the defendant if the officer determines that there is probable cause to substantiate the criminal offense.
 - c. If the named defendant committed no criminal offense but appears to be in violation of the out-of-state no-contact order, the officer should ask the victim whether the defendant was a resident of the jurisdiction where the restraining order or the order of protection was issued and whether the defendant appeared at the hearing in which the court issued the order.
 - i. If the court order appears to be facially valid, the officer should arrest the defendant for violation of the terms of the court order. The defendant should be charged with contempt under N.J.S.A. 2C:29-9a.
 - ii. An order will be considered facially valid if:
 - (1) the order contains the names of the correct parties, and
 - (2) the order has not expired.
 - iii. In most states, a restraining order or an order of protection has a specified expiration date. The officer must

review the court order to determine whether it remains valid.

iv. Defects on the face of the order, such as boxes indicating no service checked, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defects.

d. If the victim does not have a copy of the out-of-state court order and the officer cannot determine the existence of the court order, the officer should explain to the victim the procedure to be followed to obtain a domestic violence restraining order in New Jersey. In an emergent situation, the officer should assist the victim in obtaining a temporary restraining order.

5. Non-Emergent Situations: In a non-emergent situation, the officer should refer the victim to the appropriate court so the victim may seek to obtain appropriate relief in accordance with the foreign restraining order or order of protection. (See Section III).

6. Mutual Orders of Protection: A mutual order of protection from another state is entitled to full faith and credit in this State under limited conditions. The officer should make an arrest based on the presentation of a valid mutual order of protection if it can be determined that:

(a) the victim had filed a written pleading seeking this protective order, and

(b) the court had made specific findings on the record that the victim was entitled to the order.

V. VIOLATIONS OF FEDERAL LAW: If the responding officer determines that the defendant in the out-of-state restraining order or order of protection traveled across a state line with the intent to engage in conduct that violates a portion of the court order or to injure, harass, or intimidate the named victim in the court order, the officer should report this fact to the designated Assistant County Prosecutor who will determine whether the case should be referred to the U.S. Attorney's Office for appropriate action pursuant to 18 U.S.C. 2261. Likewise, Federal law prohibits possession of firearms by persons who are subject to a Domestic Violence Restraining Order, or who have been convicted of certain crimes involving Domestic Violence. Any such circumstance should also be reported to the duty Assistant Prosecutor.

IMMUNITY FROM CIVIL LIABILITY: N.J.S.A. 2C:25-22 provides that a law enforcement officer shall not be held liable in any civil action brought by a party for an arrest based on probable cause when the officer acted in good faith and enforced a court order. Under the qualified immunity doctrine, a law enforcement officer may also assert immunity to federal actions brought under 52 U.S.C. 1983.

VI. PROCEDURE - DOMESTIC VIOLENCE BAIL:

A. Bail on Domestic Violence Crimes and Offenses

1. Bail should be set:

- a. By the municipal court judge of the municipality where the arrest occurred; or,
- b. By the regularly scheduled back-up municipal court judge;
- c. Cases in which a Superior Court Judge must set the bail are listed N.J. Court Rule 3:26-2 and are as follows: Murder, Kidnapping, Manslaughter, Aggravated Manslaughter, Aggravated Sexual Assault, Sexual Assault, Aggravated Criminal Sexual Contact or a person arrested in any extradition proceeding;
- d. Bail on all Restraining Order Violations accompanied by an indictable offense must be set by a Superior Court Judge.

2. Before bail is set, the defendant's prior record should be considered by the court. Bail should be set in all cases within 24 hours of arrest.

3. Conditions of Bail - When a defendant charged with a crime or offense involving domestic violence is released on bail, the judge can order any of the following conditions as a condition of release and should be urged to do so by the officer where appropriate: (2.4.2)

- a. That the defendant be prohibited from stalking the victim or victim's relatives in any way;
- b. That the defendant be prohibited from contacting the victim at home, work, school, and/or business;
- c. That the defendant be prohibited from harassing the victim or victim's relatives in any way;

- d. That the defendant be prohibited from having contact with the victim's friends and co-workers;
- e. That the defendant be prohibited from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.A. 2C:39-1;
- f. That the police search and seize any weapon at any location where the judge has reasonable cause to believe that a weapon is located. The judge must state with specificity the reasons for and scope of the search and seizure; and,
- g. That the defendant obtain a psychiatric evaluation prior to release and that the evaluation is reviewed by the court.

If there is a threat or possibility of continued violence, such factors should be given to the Court so that the Court can take the subject's actions into account in determining bail, the conditions of bail or whether the defendant should be held.

Any condition of the defendant's release must be put in writing by the court. A copy of the order must be provided to the victim. These conditions can be placed on the miscellaneous box of the warrant or summons or on a separately attached written order. If the automated complaint system CDR warrant/summons issued the condition of release, it should be written in the "other court action" section of the CDR.

- 4. Victim Notification - If the defendant makes bail from the municipal jail or the arresting authority is notified of the defendant's release from the County Jail, then the arresting authority shall immediately notify the victim of the defendant's release. The victim should be notified by phone or in person or by leaving written notification at her/his residence. The method of notification and time of notification shall be noted on the bottom portion of the victim notification form by the person making notification. If a copy of the victim's notification form is needed from the County Jail, one will be faxed upon request. (3.11.5)

VII. PROCEDURE: WEAPONS SEIZURE

A. Seizure of Weapons as Evidence (3.17.1)

1. The seizure of any domestic violence weapon that is contraband, evidence or an instrumentality of a crime, shall be marked as evidence and retained by the seizing law enforcement agency. This includes any weapon used or threatened to be used in an act of domestic violence.
2. Any weapon that is illegal to possess pursuant to N.J.S.A. 2C:39-3, 2C:39-4, and/or 2C:39-5, shall be retained as evidence and the possessor charged with unlawful possession of a weapon pursuant to N.J.S.A. 2C:39-3, 2C:39-4, and/or 2C:39-5.

B. Safekeeping Weapons Seizure (3.10.1)

1. At the Time of the Police Response:
When an officer has probable cause to believe that an act of domestic violence has been committed regardless of whether or not the act involved the threat or actual use of a weapon/firearm, the officer shall:
 - a. Question all persons present to determine whether there are weapons on the premises; and,
 - b. Upon seeing or learning that a weapon is present on the premises, seize all weapons that the officer reasonably believes would expose the victim to a risk of serious bodily injury. Weapons not in plain view or not located within the premises possessed by the domestic violence victim and assailant but located on other premises, should be obtained in writing by the consent of the domestic violence victim if the victim jointly possesses the property, or by voluntary surrender.
 - c. Additionally, seize any firearms purchaser identification cards and permits to purchase or carry handguns from the weapons owner and/or defendant.
 - d. Third-party consent should be obtained if and when weapons are located off-premises.
2. Safekeeping - Seizure of Weapons Pursuant to Direction in a Temporary or Final Restraining Order (3.10.2)

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.

a. Whenever a police officer serving a restraining order is directed to seize weapons, that officer shall:

(1) Direct the defendant to turn over any and all weapons or firearms described in the order wherever these weapons are located.

(2) Direct the defendant to turn over any other weapons or firearms not specifically described in the order that he or she may have, wherever the weapons are located.

(3) Seize any firearm purchaser identification cards and permits to purchase or carry handguns from the weapons owner and/or the defendant.

b. Whenever a police officer is directed by a restraining order to seize the weapons and the defendant is not present on the premises, the officer shall:

(1) Request that the victim or any person with common authority turn over all of the weapons described in the order to the investigation officer; and,

(2) If the victim or defendant is not available, the investigating officer or another member of that police department shall make repeated and well-documented attempts to serve the order and seize the weapons. If a temporary restraining order cannot be served and weapons not seized prior to the return date for the final hearing, then the Family Court Clerk's Office must be notified at least two days prior to the final hearing.

c. Whenever the officer learns that the weapons are located at a premises owned by a third party, the officer should determine if the third party will cooperate and turn over the weapons. If so, seize the weapons.

3. Refusal to Surrender Safekeeping Weapons

- a. Whenever an officer attempting to seize weapons from their owner and the owner refuses to cooperate, the officer shall attempt to obtain consent to search from the victim or other person who has common authority to search.

After explaining the purpose of the safekeeping seizure, if the officer is unable to obtain any consent to search and a Restraining Order with Search Warrant provisions has not been entered, a Search Warrant may be applied for. Only a Criminal Division Judge can enter a Search Warrant. The officer should contact the duty assistant prosecutor for search warrants. The officer should complete the Search Warrant Affidavit.

- b. Whenever an officer is attempting to seize weapons pursuant to directions in a restraining order and the weapons owner refuses to comply with the order, the officer shall:

- i. Carefully and calmly explain to the defendant the purpose of safekeeping seizures and the defendant's ability to explain his side to the court at a weapons hearing.

- ii. Explain to the defendant that failure to comply with the court order will result in the defendant's arrest and that a search and seizure of the weapons will take place.

- iii. After explaining the situation in Sections (a) and (b) above, offer the defendant a last clear chance to comply with the order and surrender the weapons.

- iv. Arrest the defendant once he/she confirms his/her refusal to comply with the order pursuant to authorization in the restraining order, and charge the defendant with a violation of N.J.S.A. 2C:29-9b.

- v. If the TRO or FRO provides for seizure of weapons at a third party location and the third party refuses to surrender weapons at their premises, the officer

should explain that the restraining order authorized the search and that failure to comply with turning over the weapons will result in an arrest and search for the weapons.

- vi. Any time a TRO or FRO does not authorize a needed search or does not specify a location needed to be searched and consent to search cannot be obtained, the officer shall then attempt to clarify and amend the terms of the TRO or FRO with the issuing Judge or apply for a Search Warrant.

4. Seizure of Weapons Located Outside of Monmouth County

- a. Anytime a restraining order that requires weapons seizure has to be executed outside of Monmouth County, the officer shall contact the appropriate law enforcement agency to coordinate service of the restraining order and weapons seizure. If weapons are seized, the Monmouth County officer shall fax the County Weapons Seizure form to the seizing agency, request service of the seizure order and obtain via return fax proof of the service.(3.14.3)
- b. The out-of-county agency shall be requested to hold the weapons and any firearms ID cards or permits and be informed that a weapons hearing will be held in Monmouth County. If the agency cannot hold the weapons, arrangements should be coordinated to obtain the weapons.

5. Seizure of Weapons Pursuant to a Restraining Order Issued Outside of Monmouth County but Requested to be Served in County

- a. Whenever a law enforcement agency in Monmouth County is requested by a law enforcement agency outside of Monmouth County to serve a restraining order and seize weapons in Monmouth County, the seizing officer shall serve the restraining order and seize the weapons following all weapons seizure procedures set forth in this policy.
- b. The officer shall document the search and any seizure and return this information by fax or mail to the requesting agency.

- c. Any weapons seized pursuant to out of county restraining orders must be transported to the County Prosecutor's Office of the county issuing the order.

6. Administrative Requirements for Safekeeping Weapons Seizure:

- a. Seized weapons, and weapons voluntarily surrendered by the domestic violence defendant or victim, including any Permits or identification cards, are to be retained by the police department in accordance with their evidence procedures, and shall be delivered to the Monmouth County Prosecutor's Office only upon request of the Prosecutor's Office.
- b. Within 72 hours of the seizure or voluntary surrender of weapons, the police department must forward to the Family Division of the Monmouth County Prosecutor's Office (Fax # 732-866-3644) the following:
 - (1) Fully completed Weapons Seizure Reporting Form;
 - (2) An inventory of seized weapons;
 - (3) The domestic violence offense report and any related police investigation reports; and,
 - (4) Photocopies of the domestic violence complaint, restraining order, and criminal complaints, if any, issued in connection with the incident.
- c. Weapons seized by the police cannot be returned except by court order or written authorization from the Monmouth County Prosecutor's Office.

7. Seizure of weapons from Law Enforcement Officers as Domestic Violence Defendants:

All procedures set forth in this policy regarding weapons seizure shall apply to all law enforcement officers and shall include the seizure of duty, off-duty and personally owned weapons. Duty weapons seized shall not be given to the officer while he/she is on duty except upon authorization

of the Monmouth County Prosecutor's Office and/or the Attorney General's Office.

Whenever a weapon is seized from a law enforcement officer, the Chief of Police which employs the officer and the Supervisor of the Professional Responsibility and Bias Crime Unit of the Monmouth County Prosecutor's Office shall immediately be notified.

C. Restrictions on Return of Firearms

1. If a final domestic violence restraining order has been issued, the named defendant shall not be permitted to possess, purchase, own or control any firearm for the duration of the order or for a period of two years, whichever is greater. (3.17.5)
2. If a "law enforcement officer" is subject to a temporary or final restraining order, the Monmouth County Prosecutor may permit the municipal or county officer to possess the firearm while on duty, to be surrendered at the end of the duty shift. The Attorney General shall decide such matters for State law enforcement officials.
3. A "misdemeanor/disorderly persons" conviction involving domestic violence shall bar possession of a firearm, even by a law enforcement official. Disorderly Persons offenses are most common.

No weapons shall be returned to the owner/third party without authorization of the Prosecutor's Office.

The Prosecutor's Office has 45 days from the date of seizure to determine whether the weapon should be returned to the owner or whether to institute legal action against the owner of the weapon. If the Prosecutor's Office does not institute action within 45 days of seizure, the seized weapon shall be returned to the owner. N.J.S.A. 2C:25-21d(3).

Once legal action has been initiated, a Court must decide the issue of return of the weapons at a hearing.