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|--------------------------------------------------------------------------------------------------------------|------------------------|-------------------------------------|-------------------------------------------------------------------------------------|
| <b>FORT LEE POLICE DEPARTMENT<br/>POLICY &amp; PROCEDURES</b>                                                |                        |                                     |  |
| <b>VOLUME: 4</b>                                                                                             | <b>CHAPTER: 13</b>     | <b># OF PAGES: 13</b>               |                                                                                     |
| <b>SUBJECT: DEALING WITH THE IMMIGRANT COMMUNITY</b>                                                         |                        |                                     |                                                                                     |
| <b>BY THE ORDER OF:</b><br><br>_____<br><b>Keith M. Bendul</b><br><b>Chief of Police</b>                     |                        | <b>REVISIONS:</b>                   |                                                                                     |
| <b>REFERENCE: AG Directive 2018-6,<br/>Homeland Security U and T Visa Law<br/>Enforcement Resource Guide</b> |                        | <b>ACCREDITATION STANDARDS: N/A</b> |                                                                                     |
| <b>EFFECTIVE DATE:</b><br><b>3/15/2019</b>                                                                   | <b>SUPERSEDES: N/A</b> |                                     |                                                                                     |

**PURPOSE** The purpose of this policy is to maintain procedures for dealing with the immigrant community in compliance with *New Jersey Attorney General Directive 2018-6*.

**POLICY** It is the policy of the Fort Lee Police Department to deal with the immigrant community in compliance with *New Jersey Attorney General Directive 2018-6*.

Immigrants are less likely to report a crime if they fear that the responding officer will turn them over to immigration authorities. This fear makes it more difficult for officers to solve crimes and bring suspects to justice.

Law enforcement officers protect the public by investigating state criminal offenses and enforcing state criminal laws. They are not responsible for enforcing civil immigration violations except in narrowly defined circumstances. Such responsibilities instead fall to the federal government and those operating under its authority.

Although officers should assist federal immigration authorities when required to do so by law, they should also be mindful that providing assistance above and beyond those requirements threatens to blur the distinctions between state and federal actors and between federal immigration law and state criminal law. It also risks undermining the trust between the law enforcement community and the public.

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this policy, the following terms are defined:

1. Judicial warrant – is a warrant one issued by a federal or state judge. It is not the same as an immigration detainer (sometimes referred to as an ICE detainer) or an administrative warrant, both of which are currently issued not by judges but, by federal immigration officers.
2. Non-public personally identifying information – includes a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number of any person. It may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.
3. Violent or serious offense – is defined as:
  - a. Any 1<sup>st</sup> or 2<sup>nd</sup> degree offense, as defined in N.J.S.A. 2C: 43-1;
  - b. Any indictable domestic violence offense defined in N.J.S.A. 2C: 25-19;
  - c. N.J.S.A. 2C: 12-1 – Assault;
  - d. N.J.S.A. 2C: 12-1.1 – Knowingly Leaving the Scene of a Motor Vehicle Accident Involving Serious Bodily Injury;
  - e. N.J.S.A. 2C:12-10 – Stalking;
  - f. N.J.S.A. 2C: 12-13 – Throwing Bodily Fluids at Officers;
  - g. N.J.S.A. 2C: 14-3 – Criminal Sexual Contact;
  - h. N.J.S.A. 2C: 16-1 – Bias Intimidation;
  - i. N.J.S.A. 2C: 17-1 – Arson;
  - j. N.J.S.A. 2C: 17-2 – Causing Widespread Injury or Damage;
  - k. N.J.S.A. 2C:18-2 – Burglary of a Dwelling;
  - l. N.J.S.A. 2C: 24-4 – Endangering the Welfare of Children;
  - m. N.J.S.A. 2C: 28-5 – Witness Tampering and retaliation;
  - n. N.J.S.A. 2C: 29-2b – Eluding a Law Enforcement Officer;
  - o. N.J.S.A. 2C: 29-3a(5) – Hindering Apprehension of Another Using Force or Intimidation;



- p. N.J.S.A. 2C: 29-9 – Criminal Contempt (violation of restraining orders, domestic violence orders, etc.);
- q. N.J.S.A. 2C: 40-3B – Aggravated Hazing; and
- r. Any indictable offense under the law of another jurisdiction that is the substantial equivalent to an offense described in this section.

B. The following terms are also defined for T visas and U visas:

- 1. Alien – Any person not a citizen or national of the United States.
- 2. Asylee – An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his/her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion
- 3. Certifying agency – includes all authorities responsible for the investigation, prosecution, conviction or sentencing of a person meeting the qualifying criminal activity including, but not limited to:
  - a. Federal, state and local law enforcement agencies;
  - b. Federal, state and local prosecutors' offices;
  - c. Federal, state and local judges;
  - d. Federal, state and local family protective services;
  - e. Federal and state departments of labor;
  - f. Equal Employment Opportunity Commission.
- 4. Helpful in the investigation or prosecution – means the victim was, is, or is likely to be assisting law enforcement in the investigation or prosecution of the qualifying criminal activity of which he/she is a victim.
  - a. This includes being helpful and providing assistance when reasonably requested.
  - b. This also includes an ongoing responsibility on the part of the victim to be helpful. Those who unreasonably refuse to assist after reporting a crime will not be eligible for a U visa. The duty to remain helpful to law enforcement remains even after a U visa is granted, and those victims who unreasonably refuse to provide assistance after the U visa has been granted may have the visa revoked by USCIS.
  - c. Detectives/officers should contact and inform USCIS of a victim's unreasonable refusal to provide assistance in the investigation or prosecution should this occur.

- d. A current investigation, filing of charges, a prosecution, and/or a conviction are not required to sign the law enforcement certification. Many instances may occur when the victim has reported a crime, but an arrest or prosecution cannot take place due to evidentiary or other circumstances. Examples of this include, but are not limited to:
    - 1) When the actor has fled or is otherwise no longer in the jurisdiction;
    - 2) The actor cannot be identified;
    - 3) Federal law enforcement officials have deported the actor.
  - e. There is no statute of limitations on signing the law enforcement certification. A law enforcement certification can even be submitted for a victim in a closed case
5. Nonimmigrant – An alien who is admitted to the United States for a specific temporary period of time. There are clear conditions on their stay. There are a large variety of nonimmigrant categories, each exists for a specific purpose and has specific terms and conditions. Nonimmigrant classifications include, but are not limited to:
- a. Foreign government officials;
  - b. Visitors for business and for pleasure;
  - c. Aliens in transit through the United States;
  - d. Treaty traders and investors;
  - e. Students;
  - f. International representatives;
  - g. Temporary workers and trainees;
  - h. Representatives of foreign information media;
  - i. Exchange visitors;
  - j. Fiancé(e)s of U.S. citizens;
  - k. Intra-company transferees;
  - l. NATO officials;
  - m. Religious workers.
  - n. NOTE: most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.



6. Permanent Resident Card (Form I-551) – Also known as a ‘green card’ or “alien registration card”, this card is issued by USCIS to aliens as evidence of their lawful permanent resident status in the United States. For Form I-9, it is acceptable as proof of both identity and employment authorization. Although some permanent resident cards contain no expiration date, most are valid for 10 years. Cards held by individuals with conditional permanent resident status are valid for two years.
7. Qualifying crime – (NOTE: the below list is taken from the *Victims of Trafficking and Violence Protection Act (VTVPA)* of 2000 and the Department of Homeland Security U and T Visa Law Enforcement Resource Guide and applies to all 50 states and U.S. territories. Some qualifying crimes are not defined in New Jersey statutes but, the closest equivalent crime in New Jersey shall apply (see the resource guide for full list of qualifying crimes). Qualifying crime also includes attempt, conspiracy, or solicitation to commit any of the below, and other related, crimes):
  - a. Abduction;
  - b. Aggravated assault;
  - c. Aggravated sexual assault;
  - d. Criminal sexual contact;
  - e. Criminal coercion (blackmail);
  - f. Criminal restraint;
  - g. Domestic violence related crimes;
  - h. Extortion;
  - i. False imprisonment;
  - j. Female genital mutilation;
  - k. Human trafficking;
  - l. Kidnapping;
  - m. Incest;
  - n. Manslaughter;
  - o. Murder;
  - p. Obstruction of justice;
  - q. Perjury;
  - r. Prostitution;
  - s. Sexual assault;

- t. Sexual exploitation;
  - u. Torture;
  - v. Witness tampering.
8. Trafficking:
- a. Sex trafficking – When someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age; or
  - b. Labor trafficking – the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
9. T visa – is an immigration benefit that can be sought by victims who:
- a. Is or has been a victim of a severe form of trafficking in persons (which may include sex or labor trafficking); and
  - b. Is in the United States due to trafficking;
  - c. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking; and
  - d. Would suffer extreme hardship involving unusual and severe harm if removed from the United States.
10. U visa – is an immigration benefit that can be sought by victims of certain crimes who are currently assisting or have previously assisted law enforcement in the investigation or prosecution of a crime, or who are likely to be helpful in the investigation or prosecution of criminal activity.
- a. A U visa provides eligible victims with nonimmigrant status in order to temporarily remain in the United States while assisting law enforcement.
  - b. If certain conditions are met, an individual with U nonimmigrant status may adjust to lawful permanent resident status. Congress has capped the number of available U visas to 10,000 per fiscal year.
11. Visa – A U.S. visa allows the bearer to apply for entry to the U.S. in a certain classification (e.g. student (F), visitor (B), temporary worker (H)). A visa does not grant the bearer the right to enter the United States. The Department of State (DOS) is responsible for visa adjudication at U.S. Embassies and Consulates outside of the U.S. The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) immigration inspectors determine admission into, length of stay and conditions of stay in, the U.S. at a port of entry. The information on a nonimmigrant visa only relates to



when an individual may apply for entry into the U.S.

## II. GENERAL

- A. Nothing in this policy or *New Jersey Attorney General Directive 2018-6* limits officers from enforcing state law and nothing in this policy or *New Jersey Attorney General Directive 2018-6* should be construed to imply that the State of New Jersey provides sanctuary to those who commit crimes in this state. Any person who violates New Jersey's criminal laws can and will be held accountable for their actions, no matter of their immigration status.
- B. Nothing in this policy or *New Jersey Attorney General Directive 2018-6* restricts officers from complying with the requirements of federal law or valid court orders, including judicially-issued arrest warrants for individuals, regardless of immigration status.
- C. Nothing in *New Jersey Attorney General Directive 2018-6* prohibits this agency from imposing its own additional restrictions on providing assistance to federal immigration authorities, so long as those restrictions do not violate federal or state law or impede the enforcement of state criminal law. This policy or *New Jersey Attorney General Directive 2018-6* does not *mandate* that officers provide assistance in any particular circumstance, even when, by the terms of *New Jersey Attorney General Directive 2018-6*, they are *permitted* to do so.
- D. Under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or civil detainers issued by federal immigration officers.
- E. Annually, the Chief of Police or his/her designee shall report to the Bergen County Prosecutor's Office, in a manner to be prescribed by the New Jersey Attorney General, any instances in which the agency provided assistance to federal civil immigration authorities for the purpose of enforcing federal civil immigration law in the previous calendar year

## III. ENFORCEMENT OF FEDERAL CIVIL IMMIGRATION LAW

- A. Except pursuant to subsections III.C and III.D below, no officer shall:
  - 1. Stop, question, arrest, search, or detain any individual based solely on:
    - a. Actual or suspected citizenship or immigration status; or
    - b. Actual or suspected violations of federal civil immigration law.
  - 2. Inquire about the immigration status of any individual, unless doing so is:
    - a. Necessary to the ongoing investigation of an indictable offense by that individual; *and*
    - b. Relevant to the offense under investigation; or



- c. Necessary to comply with the requirements of the *Vienna Convention on Consular Relations* (see this department's policy on *Consular Notification and Access*).
- B. Except pursuant to subsections III.C and III.D below, no officer shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:
  - 1. Participating in civil immigration enforcement operations;
  - 2. Providing any non-public personally identifying information (see definitions) regarding any individual;
  - 3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public;
  - 4. Providing access to a detained individual for an interview, unless the detainee signs the Immigration and Customs ("ICE") Enforcement Interview Request Consent form that explains:
    - a. The purpose of the interview;
    - b. That the interview is voluntary;
    - c. That the individual can decline to be interviewed; and
    - d. That the individual can choose to be interviewed only with his/her legal counsel present.
  - 5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
    - a. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in subsection I.A.3 of this policy; or
    - b. In the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
    - c. Is subject to a *Final Order of Removal* that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
  - 6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:
    - a. Is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in subsection I.A.3 of this policy; or
    - b. In the past five years, has been convicted of an indictable crime other than a violent or serious offense; or

- c. Is subject to a *Final Order of Removal* that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.
  - d. Any such detention can last only until 2359hrs on the calendar day on which the person would otherwise have been eligible for release.
- 7. Officers must notify a detained individual, in writing and in a language the individual can understand, utilizing the Immigration Notification to Detained Individual of Actions by Immigration and Customs Enforcement ("ICE") form, when federal civil immigration authorities request:
  - a. To interview the detainee;
  - b. To be notified of the detainee's upcoming release from custody;
  - c. To continue detaining the detainee past the time he or she would otherwise be eligible for release;
  - d. When providing such notification, officers shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.
- C. Nothing in subsections III.A or III.B shall be construed to restrict, prohibit, or in any way prevent an officer from:
  - 1. Enforcing the criminal laws of this state;
  - 2. Complying with all applicable federal, state, and local laws;
  - 3. Complying with a valid judicial warrant or other court order or responding to any request authorized by a valid judicial warrant or other court order;
  - 4. Participating with federal authorities in a joint law enforcement taskforce the primary purpose of which is unrelated to federal civil immigration enforcement;
  - 5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigative stop or detention;
  - 6. Asking an arrested individual for information necessary to complete the required fields of the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee's place of birth and country of citizenship;
  - 7. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it;
  - 8. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources;



9. Sending to, maintaining, or receiving from federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of any individual (See 8 U.S.C. §§ 1373, 1644).
- D. This agency shall not enter into, modify, renew, or extend any agreement to exercise federal immigration authority pursuant to Section 287(g) of the *Immigration and Nationality Act*, 8 U.S.C. § 1357(g), unless:
1. The Attorney General grants written approval; or
  2. The agreement is necessary to address threats to the public safety or welfare of New Jersey residents arising out of a declaration of a state or national emergency.
  3. This agency shall not otherwise exercise federal civil immigration authority outside the context of Section 287(g).
  4. Nothing in this policy or *New Jersey Attorney General Directive 2018-6* shall apply if this agency is party to an agreement to exercise federal immigration authority pursuant to Section 287(g) when they are acting pursuant to such agreement.
  5. Nothing in this policy or *New Jersey Attorney General Directive 2018-6* shall apply if this agency is currently party to an intergovernmental service agreement (IGSA) to detain individuals for civil immigration enforcement purposes when they are acting pursuant to such an agreement.

#### IV. U VISAS AND T VISAS

- A. Notwithstanding any provision in section III of this policy, officers can ask any questions necessary to complete a T Visa or U Visa certification.
1. Generally, officers cannot disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant.
  2. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent officers from sending to, maintaining, or receiving from federal immigration authorities any information regarding the citizenship or immigration status, lawful or unlawful, of any individual (see 8 U.S.C. §§ 1373, 1644).
- B. Non-citizens may be eligible for a U visa if:
1. They are the victims of qualifying criminal activity;
  2. They have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;
  3. They have information about the criminal activity;
  4. They were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime;



5. The crime occurred in the United States or violated U.S. laws.
  6. He/she is admissible to the United States. If not admissible, an individual may apply for a waiver on a *Form I-192, Application for Advance Permission to Enter as a Non-Immigrant*.
  7. If the person is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or friend may assist law enforcement on your behalf.
  8. NOTE: Given the complexity of U visa petitions, petitioners often work with a legal representative or a victim advocate.
- C. If an individual believes he/she may qualify for a U visa, then he/she or his/her representative will complete a *USCIS Form I-918, Petition for U Nonimmigrant Status (Form I-918)* and submit it to U.S. Citizenship and Immigration Services (USCIS) with all relevant documentation, including a *USCIS Form I-918B U Visa Law Enforcement Certification (Form I-918B)*.
  - D. This department's responsibilities are limited to certifying that an alien, who is or was the victim of a qualifying crime in Fort Lee, is, has, or will cooperate with the investigation and/or prosecution of such crime. Most queries will be referred to this department from the Bergen County Prosecutor's Office.
  - E. Aliens or their representatives seeking certification for a U visa or the Bergen County Prosecutor's Office shall be referred to the Record Bureau. The Record Bureau Supervisor or designee with consult with the detective bureau to determine if the alien has been:
    1. A victim of a qualifying crime under the jurisdiction of this department;
    2. Has specific knowledge and details of crime; and
    3. Has been, is being, or is likely to be helpful to law enforcement in the detection, investigation, or prosecution of the qualifying crime
  - F. Aliens or their representatives seeking certification for crimes occurring outside the jurisdiction of the Borough of Fort Lee shall be referred to the local jurisdiction or the county prosecutor's office in which the crime occurred.
  - G. The detective shall assign the inquiry a case number in RMS.
  - H. Upon determining that the alien has satisfied the above requirements, the detective shall execute *Form I-918, Supplement B, U Nonimmigrant Status Certification*.
  - I. The completed form shall be forwarded to the Chief of Police or his/her designee for signature.
    1. The original fully executed form shall be returned to the applicant or his/her representative or the Bergen County Prosecutor's Office; and

2. The detective shall forward a copy to the records bureau to be maintained in the case file.
- J. The Chief of Police or his/her designee may withdraw or disavow a Form I-918B at any time if a victim stops cooperating. The detective must notify the USCIS Vermont Service Center in writing (including as an email attachment) at:

[LawEnforcement\\_UTVAWA.vsc@uscis.dhs.gov](mailto:LawEnforcement_UTVAWA.vsc@uscis.dhs.gov); or mail to

USCIS—Vermont Service Center  
ATTN: Division 6  
75 Lower Welden Street  
St. Albans, VT 05479

- K. If the detective or the Chief of Police determines that USCIS should know something particular about a victim's criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim's criminal history with that law enforcement agency or his/her involvement in the crime.
- L. Such written notification regarding withdrawal or disavowal must include:
  1. This department's name and contact information (if not included in the letterhead);
  2. The name and date of birth of the individual certified;
  3. The name of the individual who signed the certification and the date it was signed;
  4. The reason the department is withdrawing/disavowing the certification including information describing how the victim's refusal to cooperate in the case is unreasonable;
  5. The signature and title of the official who is withdrawing/ disavowing the certification; and
  6. A copy of the signed initial certification.
- M. Non-citizens may be eligible for a T Visas if:
  1. Is or has been a victim of a severe form of trafficking in persons (which may include sex or labor trafficking); and
  2. Is in the United States due to trafficking;
  3. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking; and
  4. Would suffer extreme hardship involving unusual and severe harm if removed from the United States.
- N. The T visa declaration is supplementary evidence of a victim's assistance to law enforcement that an official can complete for a T visa applicant. The declaration



must be provided on Form I-914, Supplement B, and instructions are available on the USCIS website at <https://www.uscis.gov/i-914>.

- O. The Record Bureau Supervisor, in consultation with the Detective Bureau will process T Visas in the same way as U Visas.

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**DEPARTMENT RULES AND REGULATIONS/POLICIES AND PROCEDURES**

|                                                                 |                                         |                             |                |                 |                 |                                     |
|-----------------------------------------------------------------|-----------------------------------------|-----------------------------|----------------|-----------------|-----------------|-------------------------------------|
| <b>BOROUGH OF FORT LEE<br/>POLICE DEPARTMENT</b>                | <b>EFFECTIVE<br/>DATE:<br/>5/2/2001</b> | <b>REVISION<br/>DATE:</b>   | <b>PAGE #:</b> | <b>SECTION:</b> | <b>APPROVED</b> | <b>VOLUME<br/>IV</b>                |
| <b>VOLUME TITLE: AUTHORITY</b>                                  | <b># PAGES:<br/>6</b>                   |                             |                |                 |                 | <b>CHAPTER<br/>14</b>               |
| <b>ACCREDITATION STANDARD(S):</b>                               | <b>REFERENCE:<br/>V4C14x</b>            |                             |                |                 |                 |                                     |
| <b>SUBJECT: DEATH NOTIFICATION</b>                              |                                         |                             |                |                 |                 | <b>DISTRIBUTION</b>                 |
| <b>ISSUING AUTHORITY:</b><br><br><b>CHIEF THOMAS R. TESSARO</b> |                                         |                             |                |                 |                 | <b>ALL<br/>EVALUATION<br/>DATE:</b> |
| <b>ATTORNEY GENERAL:</b>                                        |                                         | <b>Special Instructions</b> |                |                 |                 |                                     |
| <b>PROSECUTOR'S OFFICE:</b>                                     |                                         |                             |                |                 |                 |                                     |
| <b>REFERENCE:</b>                                               |                                         |                             |                |                 |                 |                                     |
|                                                                 |                                         |                             |                |                 |                 |                                     |

**PURPOSE:**

To ensure that proper procedures are followed in the death notification to the next of kin.

**POLICY:**

One of the functions required of a police department is the handling of death notifications. This responsibility is extremely sensitive and therefore, it is most important that the officer assigned to this detail conduct himself in a compassionate, considerate and respectful manner. This policy will address the three major areas of sudden death situations; notification of death, release of information and property and the rendering of other assistance.

**PROCEDURE:**

**I. Notification of Death**

A. Whenever a decedent's next of kin lives in this municipality, a member of the department shall personally respond to the residence to make the notification of death.

1. This notification could be for a death that occurred in another jurisdiction and a request has been made for this department to notify a resident within our jurisdiction.



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- B. Before an officer responds to make a death notification, arrangements should be made for the uniform officer to be accompanied by a plain cloths detective, if a detective is on duty.
  - 1. In all instances, an attempt should be made to contact a member of the clergy, preferably one who is of the same denomination as the family, if clergyman can not be contacted, attempts should be made to have a friend , relative or neighbor present during or after the notification.
- D. If this department has information that the individual or individuals being notified may need medical attention, the Communications Center should notify the Ambulance corps of the notification so that they may stand-by at their headquarters.
- E. Information that shall be provided to the next of kin as follows:
  - 1. Place of Death.
  - 2. Circumstances of death.
  - 3. Who, in the department, they should contact for further information.
    - a. Write the officer's name and department's phone number on a piece of paper, or leave a business card.
  - 4. The exact location of the hospital where the decedent is located.
    - a. Provide all the directions and street address in writing.
  - 5. If the death occurred in another jurisdiction, the officer will also provide the following information:
    - a. Investigating department.
    - b. Name of Investigating Officer.
    - c. Directions to investigating department's headquarters.
- F. It is important that an officer attempt to have someone present at the residence before he leaves. Officers should avoid leaving the decedent's relatives alone.
  - 1. Attempt to have a relative, friend or neighbor respond to the location.
- G. At no time is a death notification to be made over the phone.
- H. Before a notification is made, proper identification should be made.

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1. Example: If there was a death in a motor vehicle accident, when the officer speaks to the decedent's relatives, he should advise them that a person who fits the description of your son/daughter/husband, etc. may have suddenly died in a motor vehicle accident. We would like you to make an identification.

**I. General Death Notification Guidelines**

1. Notifications of death should be made in person by a law enforcement officer conducting the investigation.
2. Where staffing levels permit, two officers should effectuate the notification, one of whom should be in uniform.
3. Notification should occur as soon as the deceased's identity has been established and the next of kin located.
4. An attempt should be made to ascertain pertinent medical information about the surviving family members prior to their being notified, so that the officers will be better able to react to potential medical emergencies.
5. Upon arriving at the survivor's residence, the officers should introduce themselves, present their credentials and request admission.
6. If a child answers the door, the officers should request to speak to the child's parents and ensure that notification is being made to the appropriate individual.
  - a. If the next of kin is not at home, a neighbor can be notified that the Police have important information for their neighbor, and they should leave contact information with the neighbor to call the Police Department when their neighbor arrives at home. They should not give the neighbor the information about the deceased.
  - b. If possible, information on where the next of kin might be should be obtained, if practical (someone else's home, workplace) officers should respond to that location.
  - c. Should the next of kin be at work, the officers should respond to that location and ask to speak to a supervisor of the next of kin and explain that they would like to speak to that person in private, and that they have important information for them. The supervisor should not be given information about the deceased.
7. Survivors should be informed of the death, simply and directly.
8. Upon the request of the survivors, the officer should provide as much information as possible regarding the circumstances of the death, without jeopardizing a criminal investigation.



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9. The officers should ask the survivors if there is anyone they would like to have called to provide assistance or comfort. The officers should not leave a survivor who resides alone until someone designated by him arrives.
10. The survivors should be informed that it may be necessary for them to identify the deceased. If identification is necessary, the officers should transport or arrange for transportation of the survivors to and from the hospital or morgue.
11. Survivors should be informed that state law may require an autopsy to establish the exact cause of death.
12. Survivors should be informed that other law enforcement officers may need to question them at a future time. If it is imperative that the survivors be questioned immediately after notification, questioning should be conducted compassionately.
13. Prior to departing the residence, the officers should provide the survivors with their names and telephone numbers.
14. If surviving family members reside outside of the jurisdiction of the law enforcement agency responsible for investigating the death, the investigating officer should contact the appropriate law enforcement agency in the other jurisdiction. That agency should be requested to make the "in person" notification as described herein.
15. If a victim is brought to a hospital, care should be taken to preserve and label the package containing the victims clothing and personal effects.
16. Where it is hospital policy to prepare the body for identification, investigating law enforcement personnel should allow hospital staff adequate time for preparation.
17. When possible, hospital staff should permit survivors sufficient time with the deceased or an explanation.

**II. Release of Information and Property**

- A. The officer in charge of records, the Chief of Police or his designee shall be the only members of the department authorized to release reports to anyone.
- B. Upon request, all information pertaining to a suicide or accidental death should be made available to the victim's next of kin.
  1. Authorization must be granted by the officer in charge of records and the Chief of Police.
- C. Information pertaining to homicide, including death by auto, and suspicious deaths should be made available by the County Prosecutor's Office.



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- D. Autopsy information can be requested in writing through the County Medical Examiner's Office.
- E. News releases shall be authorized through the Supervisor(s) in charge of news releases.
  - 1. The name of the victim should only be released after the next of kin have been notified and positive identification has been made.
  - 2. The circumstances of the case can be given.
  - 3. No opinion shall be released to the media.
- F. Property that has been seized in connection with a criminal investigation shall not be released to the next of kin until two (2) months after the disposition of the case.
  - 1. Authorization must be obtained through the County Prosecutor's Office when the investigation is:
    - a. Homicide
    - b. Death by Auto
    - c. Sexual Assault
    - d. Robbery
    - e. Burglary
    - f. Arson
    - g. Aggravated Assault
  - 2. Authorization by the Chief of Police must be granted.
- G. Property that has been seized as a result of an accidental death shall be released when the investigation has concluded.
  - 1. Authorization by the Chief of Police must be granted.
- H. General Guidelines
  - 1. Every law enforcement agency should designate an appropriate staff to coordinate the dissemination of information pertaining to all sudden and unexpected deaths.
  - 2. All information pertaining to a death which has been determined to be a suicide or otherwise accidental, should be made available to the victim's next of kin upon their request. Discretion should be exercised so that the survivors are not provided details which might produce additional trauma.

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3. In homicides, including death by auto, and cases involving suspicious death, information which will not jeopardize a criminal investigation should be provided by the County Prosecutor's Office to the survivors upon their request. Discretion should be utilized when providing details regarding the circumstances of the death which might further traumatize the survivors.
4. The State or County Medical Examiner shall provide a copy of the autopsy report upon written request of the next of kin except in homicides, death by auto or suspicious deaths, whereupon the medical examiner should consult with the County Prosecutor prior to its release.
5. The "Statement of Principles and Guidelines for the Reporting of Criminal Procedures" shall govern the release of information to the media. Information should be provided to survivors prior to its being released to the media. Information concerning details of the death should be scrutinized to insure that its release will not intensify the grief of the survivors.
6. Hospital staff and funeral service personnel should release only that information which is related to their specific area of responsibility. All other requests for information should be referred to the appropriate law enforcement agency.
7. In those cases involving accidental death, the victim's personal effects should be promptly returned. In homicides, including death by auto and suspicious deaths, property not deemed pertinent to a criminal investigation should be released promptly. Property which is determined to be essential to a criminal investigation and is normally retained should be photographed and returned upon the approval of the County Prosecutor. If it is determined that the property cannot be promptly released, a designated law enforcement officer should explain the reason for withholding property and ensure that it is returned when possible.

**I. Assistance to Survivors**

1. Law enforcement, funeral service and hospital personnel should attempt to meet the needs of survivors of sudden and unexpected death.
2. Where financial assistance is required, survivors should be referred to the appropriate agency.
3. Survivors of homicide, which includes manslaughter and death by auto, should be notified by the investigative division of the status and outcome of the criminal case.
4. Survivors should be informed of their right to effectuate victim impact statements which will be considered by the court prior to sentencing; and the parole boards prior to granting parole.

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| <b>SUBJECT: DECISION NOT TO ARREST</b>                          |                                           |                             |                |                 |                 | <b>DISTRIBUTION<br/><br/>ALL</b> |
| <b>ISSUING AUTHORITY:</b><br><br><b>CHIEF THOMAS R. TESSARO</b> |                                           |                             |                |                 |                 | <b>EVALUATION<br/>DATE:</b>      |
| <b>ATTORNEY GENERAL:</b>                                        |                                           | <b>Special Instructions</b> |                |                 |                 |                                  |
| <b>PROSECUTOR'S OFFICE:</b>                                     |                                           |                             |                |                 |                 |                                  |
| <b>REFERENCE:</b>                                               |                                           |                             |                |                 |                 |                                  |
|                                                                 |                                           |                             |                |                 |                 |                                  |

**PURPOSE:**

To provide a guide for officers to refer to in making decisions on whether to arrest or not to arrest an offender.

**POLICY:**

There are circumstances where although there are grounds for a lawful arrest, better police practice dictates that the offender not be arrested. However, in most cases, it is not the role of a police officer to decide whether an offense should be prosecuted, that is the responsibility of the court prosecutor. So any decision not to arrest must be reached only after the officer has carefully weighed the following guidelines.

**PROCEDURE:**

- I. When the arrest would cause a greater risk of harm to the general public than the offense that had been committed, the officer should refrain from effectuating an arrest. **Example:** In crowd situation, a police officer's decision to arrest may aggravate tension and lead to a riot or other serious disorder.
  - A. An officer would be justified to back away and wait for additional units.



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- B. An organized directed plan would be the first step, not arrest.
- II. There are situations where police resources are stretched to their limit, e.g., on a particularly busy night, arrests for minor offenses would take up officer's time to the point that they could not respond to really serious crimes.
  - A. Remember that even though there is no arrest at the time the offense is committed, at a later date, the officer may sign a complaint against the offender.
    - 1. The offender in such cases should be properly identified for later arrest or issuance of summonses.
    - 2. Should the offender(s) identity be known to the officer, and he has been arrested before, then his information can be obtained in the in-house computer system.
  - B. The issuance of traffic summonses, criminal complaints and disorderly complaints have workable time frames for charging individuals.
- III. A decision not to arrest is when the arrest would cause harm or embarrassment to an offender who poses no threat of danger to the public. The following are examples of this kind of situation:
  - A. The intoxicated person ( unless they are driving a vehicle ) who is harmless and at most, needs a little assistance home. See ATRA Policy and Procedure.
  - B. The juvenile offender whose wrong doing would best be handled through informal warnings, advice, etc., (for a very minor offense) and a talk with the parents. In this way, getting a record of any kind can be avoided.
  - C. As mentioned above, a decision not to arrest when there are grounds for arrest is considered good police practice only in the special circumstances given. Consequently, if there is doubt that those circumstances exist and if a supervisory officer is not readily available, **ARREST**.
- IV. **Drug Investigations, Confidential Investigations**
  - A. When the arrest would jeopardize an ongoing drug investigation, the officer should refrain from arresting and individual.
    - 1. This should be under the direction of a Division Commander.
  - B. During a vice investigation or organized crime investigation, it may be necessary to forego an arrest in order to develop adequate intelligence information that would result in major charges issued to multiple defendants at a later time.
    - 1. This should also be under the direction of a Division Commander.

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| ISSUING AUTHORITY:<br><br>_____                                   |                                  |                      |         |          |          | <b>EVALUATION<br/>DATE:</b>      |
| <b>CHIEF THOMAS R. TESSARO</b>                                    |                                  |                      |         |          |          |                                  |
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**PURPOSE:**

To outline the responsibilities of any administrative officer assigned to the Detective Division as Commander of that division.

**POLICY:**

There shall be a branch of the police department known as the Detective Division. The Chief of Police will designate a commander in charge of the Detective Division. The Detective Division Commander shall be under the direct control of the Operations Commander.

**PROCEDURE:**

**Detective Division Commander's Responsibilities.**

- I. Subject to the direction of The Chief of Police, the Division Commander has direct control over all members and employees within this command, and is to be held accountable for the management and good order in all matters pertaining to daily operations of the Detective Division, he/she shall:



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- A. Keep abreast of all operations of this division, and report to the Operations Commander any information of urgency or matters of unusual occurrence.
  - B. Support and carry out the orders of the Operations Commander in all areas of performance. If for any reason they are required to take action to the contrary, a written explanation will be submitted immediately to the Operations Commander.
  - C. Be responsible for the organization and assignment of duties within this division to assure proper performance of department functions and those of this command.
  - D. Coordinate manpower needs and, deploy personnel in the most effective interest of this division, the department and the Borough of Fort Lee.
- II.** The Division Commander shall coordinate all major investigative functions with proper agencies, (Bergen County Prosecutor's Office, Sheriff's Department, New Jersey State Police, FBI, DEA, and other departments and out of state agencies etc.)
- A. Shall attempt to meet with the prosecutor and judges of the courts at least every six months for coordination purposes.
- III.** The Division Commander shall maintain a complete and thorough knowledge of local ordinances, state and federal law.
- A. Shall be charged with the proper and efficient enforcement of all laws and ordinances within this area of responsibility and shall have direct managerial responsibility for the personnel and equipment assigned to this division.
  - B. Shall insure that all operations performed by members within this division have been properly conducted with thorough and complete reports submitted for proper recording, filing or further action.
- IV.** The Division Commander will have a thorough and complete knowledge of the Department Rules and Regulations, Policies and Procedures, Special Orders and other divisional information from a higher authority.
- A. Shall insure that the personnel under this command adhere to department rules and regulations, policies and procedures.
  - B. In dealings with the public and members of the department, he/she shall set an appropriate example and comply with all regulations in his/her daily performance.
- V.** The Division Commander shall communicate and coordinate all activities with other units of the department as may be received from time to time, and insure the smooth and efficient operation of the department. Shall also be responsible for the initiation of proper action in cases not regularly assigned to this division when delay to inform the proper unit might result in the failure to perform a records function.



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- VI.** The Division Commander will have a thorough and complete knowledge of divisional equipment and its operation, and shall also assure that the equipment, supplies and material assigned to this division are correctly used and maintained.
- VII.** The Division Commander shall monitor and review the attendance of all personnel under this command, and shall report to the Operations Commander any abuse of sick time or any occurrence of prolonged illness.
- VIII.** The Division Commander shall be responsible for proper adherence to department Policies and Procedures for the appropriate handling of records and equipment.
- IX.** The Division Commander will be responsible for overseeing the investigation of and that proper written reports are prepared for all complaints against any member of the division when so designated by the Operations Commander. All statements and written investigative information sustaining facts pertaining to the complaint are to be compiled and forwarded to the Operations Commander.
- X.** The Division Commander shall be responsible for being available at all times to aid and assist personnel under this command as may be required.
  - A.** Shall aid and assist Detective Division Supervisors in their supervisory responsibilities.
  - B.** Shall be responsible for the development and maintenance of esprit de corps and loyalty to the department.
- XI.** The Division Commander will provide guidance and coordinate bi-annual evaluations for personnel in this division. Shall also evaluate the performance and effectiveness of the section supervisors under his/her control.
- XII.** The Division Commander shall be responsible for the preparation of required correspondence, reports and maintenance of records related to the activities of this command.
- XIII.** The Division Commander shall be responsible to insure that information is communicated up and down the chain of command as required.
- XIV.** The Division Commander shall be required to submit to the Operations Commander a yearly budgetary request for the Detective Division.
- XV.** The Division Commander shall be responsible for the coordination and approval of vacation time, personal days and other leaves to insure that there is sufficient personnel to efficiently and effectively perform the police functions that are his/her responsibility.

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| SUBJECT: <b>DETECTIVE RESPONSIBILITIES</b>           |                               |                             |         |          |          | DISTRIBUTION<br><br><b>ALL</b> |
| ISSUING AUTHORITY:<br><br><b>CHIEF THOMAS RIPOLI</b> |                               |                             |         |          |          | EVALUATION<br>DATE:            |
| ATTORNEY GENERAL:                                    |                               | <b>Special Instructions</b> |         |          |          |                                |
| PROSECUTOR'S OFFICE:                                 |                               |                             |         |          |          |                                |
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|                                                      |                               |                             |         |          |          |                                |

**PURPOSE:**

This policy was formulated so that each officer holding a position within the Detective Division would have basic procedures to follow in the performance of their investigative and supervisory duties.

**POLICY:**

There shall be a branch of the police department known as the Detective Division. The Chief of Police will designate a commander in charge of the Detective Division. The Detective Division Commander shall be under the direct control of the Operations Commander.

**PROCEDURE:**

**I. GENERAL INVESTIGATION DIVISION SUPERVISOR'S RESPONSIBILITIES**

Under the direct supervision of the Detective Division Commander, a general investigation supervisor has charge of all subordinates assigned to his/her particular section. Whenever necessary, he/she is also in direct supervision of the fraud squad detectives, the warrant squad detectives and the property and evidence unit detectives. When the Narcotics Bureau and Juvenile Bureau supervisor is not available, the general investigation supervisor will also oversee operations of these bureaus.



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- A. The General Investigations supervisor performs his/her duties within the confines of departmental rules and regulations, policies and procedures and state and federal statutes.
  - 1. When necessary, apprehends, warns or takes into custody violators of the law.
  - 2. Monitors and insures compliance with department rules and regulations, and investigation procedures. Makes any corrections and conducts training where needed.
  - 3. Keep detectives informed of new rules, regulations, procedures and legal changes.
- B. The general investigation supervisor assigns cases to detectives, considering nature of case and special abilities and/or areas of expertise of individual detectives. Assigns personnel as teams or stake out units to work on more serious cases as workloads require
  - 1. Will screen incidents occurring during the workday for cases needing investigation; such cases to be followed up until all investigative means have been exhausted in attempting to recover stolen property or identification and apprehension of a suspect.
  - 2. Will review reports of the previous shift for cases needing follow-up, but not yet assigned.
  - 3. Will monitor case loads of detectives, including review of cases in progress and supervising reports, statement preparation and the interrogation of suspects.
  - 4. Will review cases submitted for closeout for thoroughness and valid reasons for suspending investigation. Cases arising that come under the jurisdiction of other law enforcement agencies (i.e., FBI, Secret Service, CIA, Immigration, ATF or National Security Agency, INS etc) will be investigated until they properly and clearly come under another jurisdiction and with the approval of the County Prosecutor.
    - a. Decisions about extent of follow up will be made from detectives input, degree of seriousness and workloads.
  - 5. Will keep abreast of investigations and of detectives on opposite work schedules.
  - 6. Will assign to detectives all incidents requiring crime scene search and all incidents resulting in serious bodily injury or mass property destruction, destruction of all municipal, county, state or federal property.
  - 7. Will assign for investigation all incidents that occur in dwellings that have multiple separate families or living units, causing dislodging, injury or destruction in order to determine if a criminal act or public housing violation occurred, thereby fixing liability.
  - 8. Will assign all incidents in which a suspect has been identified but fled the scene. Cases in which suspects are not identified shall also be assigned for apprehension.



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9. Will assign cases on the need for urgency, prevention of escape of a suspect, the need for urgency in possible recovery of property or the prevention of further injury to victim.
  10. Cases of a non-violent or non-serious nature will be assigned for further investigation when a suspect has been identified or likelihood of apprehension is great.
  11. All cases assigned will first be screened by the detective supervisor to ensure it falls into the above categories to prevent loss of manpower on frivolous cases or cases that fall under another jurisdiction.
  12. The screening of cases for assignment, will be conducted on a daily basis and monitored during a supervisor's tour of duty by listening to dispatched patrols (if possible) or telephone request.
  13. All detectives' reports and completed case jackets must be checked by the supervisor in charge prior to being sent for processing.
- C. The general investigation supervisor will assist detectives when needed concerning investigative methods, applicable charges, etc.
1. Will respond to serious incidents when needed, and take charge of crime scenes.
  2. Will take part in investigative training when appropriate.
  3. Will supervise the daily activities of detectives, and assist with any cases or questions they might have, job related or not.
- D. Will authorize and approve all overtime requests and forward to the detective division commander.
- E. The general investigation supervisor will assist in and help to coordinate large-scale investigations and activities, including supervision of search warrants, liaison with the court system, etc.
1. Will maintain "Police Intelligence" exchanges with area departments to aid in investigations and keep abreast of criminal activity, crime trends and helpful investigation techniques and imparts such information to detectives.
  2. Will maintain open lines of communication with Bergen County Prosecutor's Office, Bergen County Sheriff's Department, New Jersey State Police, Federal Bureau of Investigations, etc., in areas of mutual benefit and need.
- F. The general investigation supervisor will monitor care of equipment and vehicles, and proper use of supplies.
1. Will supervise the operation and maintenance of all electronic equipment in the general investigative division.

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2. Will train all detectives in various areas of electronic equipment, identification work, and other surveillance equipment.
  3. Will review daily activity of detectives. A report will be forwarded to the Detective Bureau Commander upon his/her request.
  4. Will prepare performance evaluation reports for detectives and submit them to the Detective Bureau Commander upon request.
  5. Assumes duties of Detective Bureau Commander in his/her absence when needed.
- G. Assigns a detective to attend all patrol briefings, ensuring an exchange of information and ideas between patrol and the plainclothes division.
- H. Upon responding for his/her tour of duty, Will inform the communications center of vehicle assignments as soon as possible.
- I. The general investigation supervisor will conduct monthly physical inspections of the various functions of the unit as assigned by the Detective Division Commander.

**GENERAL INVESTIGATION DETECTIVE**

- I. Investigates assigned cases where the suspect has escaped apprehension.
- A. Interviews victims and witnesses of crimes.
1. Seeks out witnesses who may or may not know a crime was committed.
  2. Takes statements from victims and witnesses in instances where formal statements are needed.
  3. Attempts to have composites prepared of suspects, and sees that same are distributed to other agencies and departments.
  4. Prepares and conducts photographic line-ups for viewing by witnesses and victims, in an attempt to identify suspects.
  5. Seeks information needed during investigations by using all available sources such as; informants, street contacts, NCIC , motor vehicle records, business owners, and other Federal, State, County and local law enforcement agencies.
  6. Maintains contact with victims and witnesses of assigned cases and advises them of new developments and pending prosecutions when necessary.
  7. Assists the court in notifying and/or issuing subpoenas to witnesses and victims of crimes before scheduled court hearings to insure their availability to testify.



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- B. Assists with crime scenes when called to investigate, and preserves evidence that needs to be processed.
  - 1. Records crime scenes in notes.
  - 2. Photographs crime scenes and evidence when necessary.
    - a. When photographs are not taken, or where physical evidence is not recovered from the scene of a serious crime against person or property, the Detective assigned will prepare a written report giving the reasons why. This report will be forwarded to the Detective Division Commander.
    - b. When BCI has responded, he/she will assist and document actions taken, evidence seized, BCI case number, investigators etc.
  - 3. Diagrams serious crime scenes.
  - 4. Detectives who have been sufficiently trained, collect physical evidence and marks, labels, tags and packages as needed.
    - a. Logs evidence on departmental forms. Prepares lab requests and evidence for examination by proper laboratories.
    - b. Forwards evidence to Identification Bureau.
    - c. Always protects the chain of evidence.
    - d. Transports evidence to the proper laboratory if needed.
    - e. Returns evidence to owners when no longer needed and upon the consent of the Bergen County Prosecutors Office.
  - 5. Requests the Bergen County Prosecutors Office and/or the Bergen County Sheriffs Department Bureau of Criminal Identification to respond when the preservation or collection of evidence cannot properly be accomplished by our own personnel, or where special equipment is needed.
  - 6. During and after investigations are completed, prepares NLETS and/or NJLETS messages for the Communications Center to advise other departments of our crimes, stolen property, and wanted persons, and to seek their aid.
- C. Prepares search warrant applications if needed.
- D. Reviews and updates active case files regularly, and closes out cases when appropriate.

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- II.** Investigates non-assigned cases that may have leads available, or where likelihood of solving cases is seen; or those that may need follow-up for various other reasons.
  - A.** Cultivates street contacts and informants to aid in the investigation of known crimes, and the investigation of crimes not yet committed or being planned.
  - B.** Maintains " Police Intelligence " exchanges with area departments to aid in investigations and keep abreast of criminal activity, crime trends, and helpful investigative techniques.
- III.** Treats suspects properly.
  - A.** Apprehends and subdues suspects and reads them their Constitutional Rights according to Miranda.
    - 1.** Searches the body and clothing of suspects for possible weapons and contraband, in accordance with the New Jersey Attorney General's guidelines, using physical and visual means in order to insure the safety of the officer and others.
    - 2.** Transports arrested persons to Headquarters, or detention facilities, using handcuffs and other security measures necessary in order to process them according to proper procedures.
  - B.** Interrogates suspects properly.
    - 1.** Completes reports necessary to substantiate an arrest, on appropriate forms in order to document and arrest.
    - 2.** Fingerprints and/or photographs violators, or suspects, using equipment in the booking room, in order to process a standard arrest.
  - C.** Takes formal statements of suspect, if possible, when necessary.
    - 1.** Reads Constitutional Rights to suspect and obtains signature from suspect on the written statement of the rights, in order to take a lawful statement.
    - 2.** In coordination with the Tour Commander ensures that the appropriate Municipal Court Judge is contacted by telephone to facilitate arraignment hearings in order to determine the amount of bail or bond required to release the accused.
    - 3.** Transports arrested persons, when necessary, to appropriate detention facility (ie, Bergen County Jail or Bergen County Juvenile Detention Center).
  - D.** Guards prisoners and arrested persons by appropriately positioning self in relation to prisoners, and by using handcuffs when necessary in order to prevent escape and to protect the prisoners from harm.



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- E. Refers juvenile cases to the Juvenile Bureau Detective by submitting known details in order to have the case handled by appropriately trained personnel.
- F. Prepares to testify in court by collecting documents, reports and other evidence related to the case, reading all reports and notes, and talking with other officers, supervisors, solicitors, and witnesses, in order to insure the accuracy and effectiveness of testimony.
- G. Testifies in court by presenting facts and /or evidence related to the case and by answering attorney and magistrate's questions in order to help insure the proper disposition of the case.
  - 1. Transports prisoners to and from jail and court and remains with prisoners during court, when necessary. Returns prisoner to jail if serving time or held on detainer, when necessary.
  - 2. Picks up prisoners arrested in other jurisdictions on our warrants, when needed, and processes as in other arrests.
- IV. Assists other Detectives where aid is needed.
  - A. Knows what cases other Detectives are involved in.
  - B. Calls on other Detectives and/or police personnel when needed to accomplish the police objective. Employs the proper chain of command when needed to secure the aid of such other personnel.
- V. Assists the other divisions in the department where aid is needed.
  - A. Augments the Patrol Division when called on for crowd control, disaster control, serious incidents or the need for additional manpower.
  - B. Liaison with Patrol Division, exchanges information between the General Investigation Division and the Patrol Division, with special emphasis on wanted persons, suspects active in our area, crime trends. Reports to Supervisor and other Detectives on any information that is of an important nature.
  - C. Assists the Patrol Division in making arrests, typing complaints and securing arrest warrants and search warrants, gathering evidence, determining proper charges, proper procedure and paperwork on arrests and for processing prisoners, interrogations, interviews, unknown persons, answering questions on criminal law and procedures, and photographing fatal/serious motor accident scenes.
  - D. Assisting other supervisors when needed.
- VI. Assists other agencies.
  - A. When mutual aid is requested and approved through supervisory personnel.

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1. Directs requests for service to proper agencies when outside our jurisdiction.
  2. Alerts appropriate agencies to violations outside our scope or jurisdiction.
  3. Investigates information on suspected criminal activity that comes to our attention from citizens, known sources or anonymously.
  4. Reviews reports and teletypes daily to keep abreast of activities and crime in our town, and in others, to search for information pertinent to investigations.
- B. Provides information on suspects known to us or residing in our town.
- C. Helps when making arrests in our town or conducting investigations in our town.
- D. Assists when executing search warrants in our town.
- VII.** Properly care for and operate all equipment, vehicles and supplies, and advise supervisors when supplies are low or maintenance is required. Have vehicles washed, checked and add gas when needed.
- A. Maintain proficiency in operating vehicles.
- B. Upkeep and use of duty weapons.
- C. Maintain care in the use of other equipment assigned, such as bulletproof vests, radio, pagers etc.
- VII.** Check any suspicious activity noted while out of the confines of the General Investigation Division office.
- A. Take necessary actions when encountering emergency situations or crimes while out of the confines of the office. Notify Headquarters if needed.
- B. Notify Headquarters of miscellaneous conditions of a non-emergency nature that warrant Patrol Division or other Borough department attention.
- IX.** Maintain radio contact with Headquarters and/or General Investigation Division, or advise supervisor of his/her whereabouts and how to be contacted if needed.
- X.** Advise supervisor when leaving the building.
- A. Whenever leaving the building, the Detective will notify his/her immediate supervisor that he/she is leaving and what vehicle he/she will be in. Will also sign out on the in/out board located in the G.I. office. When leaving the vehicle, he/she will call in his/her location or give some other form of communication that he/she may be contacted if



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needed. When returning to his/her vehicle, he/she will advise that Communications Center that he/she is back in service.

- XI.** Conducts background investigations on police applicants.
- XII.** Prepares daily entries into investigative management documenting the work performed each day.
- XIII.** Maintains the uniform of the day and class "A" uniform and has them readily accessible.

|                                                                                          |                    |                                                |                                                                                     |
|------------------------------------------------------------------------------------------|--------------------|------------------------------------------------|-------------------------------------------------------------------------------------|
| <b>FORT LEE POLICE DEPARTMENT<br/>POLICY &amp; PROCEDURES</b>                            |                    |                                                |  |
| <b>VOLUME: 3</b>                                                                         | <b>CHAPTER: 24</b> | <b># OF PAGES: 7</b>                           |                                                                                     |
| <b>SUBJECT: DIPLOMATIC AND CONSULAR IMMUNITY</b>                                         |                    |                                                |                                                                                     |
| <b>BY THE ORDER OF:</b><br><br>_____<br><b>Keith M. Bendul</b><br><b>Chief of Police</b> |                    | <b>REVISIONS:</b><br><br>                      |                                                                                     |
| <b>REFERENCE: Diplomatic Relations Act of 1978, AG Directive 2004-1</b>                  |                    | <b>ACCREDITATION STANDARDS: 3.1.2b, 3.6.4e</b> |                                                                                     |
| <b>EFFECTIVE DATE:</b><br><b>06/17/2016</b>                                              |                    | <b>SUPERSEDES: All Previous</b>                |                                                                                     |

**PURPOSE**     The purpose of this policy is to comply with international, federal and state laws concerning the privileges, rights and immunities accorded to duly accredited diplomatic and consular officials.

**POLICY**       It is the policy of the Fort Lee Police Department to comply with the U.S. Department of State obligations and applicable law with regard to diplomatic officials, consular officials, and legislators.

Diplomatic and consular officers shall be accorded their respective privileges, rights, and immunities as directed by international law and federal statute. These officials should be treated with the courtesy and respect that befit their positions. At the same time, it is a well-established principle of international law that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect local laws and regulations.



## PROCEDURES

### I. Diplomatic Immunity

- A. Diplomatic Immunity is a principle of international law that is broadly defined as the freedom from local jurisdiction that is accorded to accredited diplomatic agents and members of their immediate household.
- B. The Vienna Convention on Diplomatic Relations (1961) contains the current law on the subject of diplomatic privileges and immunities and is incorporated into federal law by the Diplomatic Relations Act of 1978 (22 USC § 254).
- C. Ambassadors and Ministers are the highest-ranking diplomatic representatives of foreign governments. They and their families are protected by unlimited immunity from arrest, detention, or prosecution with respect to any civil or criminal offense. Other diplomatic titles are Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. These officials are typically headquartered in either Washington, D.C. or in New York City.
- D. The Vienna Convention applies to members of the staff of a foreign diplomatic mission that includes the diplomatic, administrative, technical, and service staffs of foreign embassies in the United States. It does not include consular personnel, whose privileges and immunities are governed by the Vienna Convention on Consular Relations.
- E. Foreign diplomatic agents and members of their families have full immunity from arrest, detention, or prosecution for any criminal violation unless such immunity is expressly waived by the sending state. The above individuals also enjoy immunity from civil process except in certain actions involving private activities outside their official function.
- F. The administrative and technical staff of a foreign mission and members of their families who are not U.S. nationals or permanent residents of the United States have full immunity from arrest, detention or prosecution for any criminal offense. Such employees enjoy immunity from civil process only for those actions carried out in their official capacity. Family members of these employees are not immune from civil jurisdiction.
- G. Members of the service staff of a foreign diplomatic mission, including drivers, messengers, and security guards, enjoy immunity only for actions carried out in the course of their official duties. Family members of such individuals have no immunity. Private servants of embassy personnel have no immunity.
- H. Associated with this personal diplomatic immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent or member of the administrative or technical staff. Such inviolability extends to his or her property, papers and correspondence. Inviolability means secure from violation; impregnable to assault or trespass.
  - 1. However, personal inviolability is qualified by the understanding that the host country does not give up its right to protect the safety and welfare of its populace and retains the right, in extraordinary circumstances, to prevent the commission of a crime.

2. Thus, in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.
- I. It is the responsibility of the person claiming immunity or protected status to advise law enforcement personnel of his/her status. Persons with diplomatic or other immunity should have in their possession a picture ID issued by the United States Department of State, Office of Protocol. A passport, visa, license, or diplomatic tag alone is not enough to verify diplomatic immunity.
1. There are three types of identification cards that are 3¾"x 2½" and contain a photograph of the bearer.
    - a. Diplomatic Identification – blue border.
    - b. Official Identification (employees) – green border.
    - c. Consular Identification – red border.
  2. The cards also contain the bearer's name, title, mission, city and state, date of birth, identification number, and expiration date. A United States Department of State seal appears on the front of the card and a brief description of the bearer's immunity is printed on the back.
  3. Upon encountering a person asserting diplomatic immunity, officers have a right to temporarily detain the individual, using reasonable force, until verification of the status and extent of the individual's immunity can be determined.
  4. Diplomatic officials asserting diplomatic immunity should be treated with respect and courtesy in recognition of their diplomatic status.
  5. There may be situations where an individual who has been granted diplomatic privilege or immunity does not have this identification card in his or her possession. In such situations, the officer should verify the individual's diplomatic status by contacting the appropriate point of contact as indicated below.
- J. All claims of diplomatic immunity should be verified through the United States Department of State before taking further action. During normal business hours, officers should call the number listed on the back of the individual's US Department of State identification card or any one of the following points of contact:
1. Diplomatic agents and family members – (202) 647-1985, (202) 647-1664, (202) 647-2122, (202) 647-1523.
  2. Administrative, technical, and service staff members, and their families – (202) 647-1405
  3. Consular personnel and family members -- (202) 647-1404
  4. International organizations – (202) 647-1402



5. To check the status of federal diplomatic license plates, registrations, or other motor vehicle information – (202) 895-3532.
  6. To check the status of United States Department of State driver's licenses and general licensing information – (202) 895-3521.
  7. To report traffic accidents or incidents, issuance of citations, etc. involving diplomatic personnel (202) 895-3521.
  8. A 24-hour hotline for the Command Center of the Bureau of Diplomatic Security is available to verify such claims after business hours – (202) 647-7277.
- K. To verify information associated with United Nations personnel, utilize the following points of contact:
1. To check the status of federal diplomatic license plates, registrations, or other motor vehicle information – (212) 685-1301.
  2. For verification of diplomatic status during normal business hours contact the Host Country Section of the U.S. Mission to the United Nations at (212) 415-4131.
  3. For verification of diplomatic status during non-business hours contact the Communications Section of the U.S. Mission to the United Nations at (212) 415-4444.
- L. For diplomats enjoying full immunity from detention or arrest, reasonable restraints may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
1. This does not mean the individual is subject to arrest, but the officer is expected to preserve public safety, within reasonable limits.
  2. This may at times require the removal of the individual from the scene, a temporary detention, etc. The Tour Commander or Road Supervisor shall be consulted prior to any action whenever possible.
  3. Officers have the right to take any authorized legal action that may be required to prevent property loss, injury, or death, and to preserve the peace, whether or not the subject is claiming diplomatic immunity.
- M. Under the provisions of N.J.S.A. 39:5-54, whenever a person with diplomatic immunity is stopped by a law enforcement officer who has probable cause to believe that the person has violated N.J.S.A. 2C:11-5, N.J.S.A. 2C:12-1c, N.J.S.A. 39:4-50, N.J.S.A. 39:4-50.4a or N.J.S.A. 39:6B-2, or has committed a motor vehicle moving violation, the official shall:
1. As soon as practicable, contact the United States Department of State office to verify the person's status and immunity;
    - a. Contact the Diplomatic Security Command Center, Department of State, 24/7 at 1-866-217-2089 or 1-571-345-3146.

- b. A listing of alternate telephone numbers concerning immunity can be found at <http://www.state.gov/m/ds/immunities/c9125.htm>
- 2. Record all relevant information from the person's driver's license or identification card, including a driver's license or identification card issued by the United States Department of State;
  - a. Fax copies of all investigation reports and citations to the Diplomatic Security Service, Protective Liaison Division at 1-202-895-3613.
- 3. Within five working days after the date of the stop, forward to the N.J. Motor Vehicle Commission the following information:
  - a. A copy of any citation or other charging document that was issued, if any; and
  - b. An Incident Report describing the incident if no citation or charging document was issued.
- 4. Personnel who have detained persons with diplomatic immunity who have been stopped on a suspicion of N.J.S.A. 39:4-50 are still subject to the provisions of John's Law N.J.S.A. 39:4-50.22 & N.J.S.A. 39:4-50.23, and **Attorney General's Directive 2004-1** regarding their release and the subsequent release of their vehicle.

## **II. Consular Immunity**

- A. Consular Officials are Consuls General, Vice Consuls, Deputy Consuls and Consular Agents. They are also official representatives of foreign governments. Consular Officials are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom, or dignity.
- B. Foreign career consular officials are not liable to arrest or detention pending trial except in the case of a grave crime (indictable arrest that would endanger the public safety), and pursuant to a decision by judicial authority. Their immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.
- C. Career consular officials can be identified by credentials issued by the U.S. State Department and by other locally issued identification papers. The U.S. State Department credential bears its seal, the name of the officer, title, and the signatures of the Department of State Officials.
- D. Often, nationals or permanent residents of the receiving state are appointed and received as honorary consular officials to perform the functions generally performed by career consular officials. Such officials do not receive identification cards from the U.S. State Department, although they may exhibit reduced sized copies of the diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions.



- E. Appropriate steps must be provided to afford such officials with the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of honorary consuls and persons working with them.
- F. Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post, designee, or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.
- G. The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, meaning all correspondence relating to the consular post and its functions, is likewise inviolable.
- H. When a consular official is stopped for a moving traffic violation, the officer on the scene, upon being advised by the driver that he/she is a Consular Officer and ascertaining that he/she possesses the proper credentials, should exercise discretion based on the nature of the violation and either let him/her go with a warning or issue the appropriate summons. Mere issuance of a traffic summons does not constitute arrest or detention in the sense referred to above.
- I. Unless consular officials are considered a serious danger to themselves or others, they should not be physically restrained or subjected to a sobriety test. It should be impressed upon them that the law enforcement official's primary responsibility is to care for their safety and the safety of others.
  - 1. If personnel having detained a consular official on a motor vehicle stop have probable cause to suspect that the official is in violation of N.J.S.A. 39:4-50, personnel shall take the official into protective custody.
  - 2. Personnel shall advise the official that he/she is not under arrest, but is being detained for safety reasons.
  - 3. Personnel shall make immediate contact with the official's consul for arrangements to have him/her picked up. Officers may take the person home if the person resides within Fort Lee.
  - 4. Personnel shall not charge the official with any motor vehicle or other violations.
  - 5. Personnel who have detained consular officials who had been stopped on a suspicion of N.J.S.A. 39:4-50 are still subject to the provisions of John's Law N.J.S.A. 39:4-50.22 & N.J.S.A. 39:4-50.23, and **Attorney General's Directive 2004-1** regarding their release and the impound and subsequent release of their vehicle.
- J. Family members of a consular official are not entitled to immunity. However, consideration should be given to the special nature of this type of case. A violation should be handled, whenever possible, through the seeking of a complaint. The individual should be released once positive identification is made and the relationship with the consular official is verified. If the relative is a juvenile, the subject should be released to the parent.

### **III. Notification and Reporting Requirements**

- A. All incidents involving persons asserting diplomatic, consular, or legislative immunity or their families must be fully documented on an Investigation Report and such report must be forwarded through the chain of command to the Office of the Chief of Police.
- B. Contacts with persons asserting diplomatic immunity must be immediately reported to the staff duty officer. The United States Department of State must also be informed of the contact and the circumstances surrounding the encounter. (202) 647-7277
- C. In the event that a Consular Officer or member of his family or personal staff becomes involved in any actions taken by members of this department, the Office of the Governor shall be immediately furnished with all pertinent information through the Office of the Chief of Police or designee.
- D. In the event that a consular official, employee of, members of their families, or personal staff should become involved in a serious incident, the Tour Commander/Road Supervisor or designee should notify the Office of Protocol, Department of State, Washington, D.C. (Consular Officers 1-202-632-0706, Consular Employees 1-202-632-0605, Off Hours 1-202-632-2412).
  - 1. The Diplomatic Security Command Center, Department of State, is available 24/7 at 1-866-217-2089 or 1-571-345-3146 to assist with any investigation or to make notifications.



**SERVICE  
DOG COMPLAINTS AND CONTROL  
VOL X CH 2**

**DEPARTMENT RULES AND REGULATIONS/POLICIES AND PROCEDURES**

|                                                                          |                                           |                             |                |                 |                 |                                                           |
|--------------------------------------------------------------------------|-------------------------------------------|-----------------------------|----------------|-----------------|-----------------|-----------------------------------------------------------|
| <b>BOROUGH OF FORT LEE<br/>POLICE DEPARTMENT</b>                         | <b>EFFECTIVE<br/>DATE:<br/>01-15-2003</b> | <b>REVISION<br/>DATE:</b>   | <b>PAGE #:</b> | <b>SECTION:</b> | <b>APPROVED</b> | <b>VOLUME<br/>X</b>                                       |
| <b>VOLUME TITLE: SERVICE</b>                                             | <b># PAGES:<br/>4</b>                     |                             |                |                 |                 | <b>CHAPTER<br/>2</b>                                      |
| <b>ACCREDITATION STANDARD(S):</b>                                        | <b>REFERENCE:<br/>V#C#</b>                |                             |                |                 |                 |                                                           |
| <b>SUBJECT: DOG COMPLAINTS AND CONTROL</b>                               |                                           |                             |                |                 |                 | <b>DISTRIBUTION<br/><br/>ALL<br/>EVALUATION<br/>DATE:</b> |
| <b>ISSUING AUTHORITY:</b><br><br>_____<br><b>CHIEF THOMAS R. TESSARO</b> |                                           |                             |                |                 |                 |                                                           |
| <b>ATTORNEY GENERAL:</b>                                                 |                                           | <b>Special Instructions</b> |                |                 |                 |                                                           |
| <b>PROSECUTOR'S OFFICE:</b>                                              |                                           |                             |                |                 |                 |                                                           |
| <b>REFERENCE:</b>                                                        |                                           |                             |                |                 |                 |                                                           |
|                                                                          |                                           |                             |                |                 |                 |                                                           |

**PURPOSE:**

To establish procedures for handling animal calls involving dogs.

**POLICY:**

The Borough of Fort Lee Council adopted an ordinance to register and regulate dogs. The ordinance is in the Borough of Fort Lee Boro Ordinance Book, Chapter # 138. Most requests for service relating to dogs are received through the Police Department for assistance or action. It is important that the police officer receiving a request for assistance provide the person requesting, courteous and effective aid. To meet the needs of Chapter # 138, the following procedures will be adhered to by all personnel of the department.

**PROCEDURE:**

**I. DOGS AT LARGE**

A. Respond to the call for assistance.

I. Attempt to catch the dog.

a. Animal snares are kept in vehicles ESU-1, ESU-2, 461 and in the Tac-room.

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2. If successful, check for license.
  - a. Call owner to pick up.
  - b. If owner is not available or there is no license, have communications call animal control.
- B. Check the department's records on all dogs caught and ID for any violations, the officer may issue an ordinance violation for BH:6-8 dog leash violation.

**II. DOG BITE AND ANIMAL BITE**

- A. Respond to call
  1. Assist the person bitten and have the bitten person get medical attention.
  2. Attempt to locate and catch the dog.
  3. Advise the owner of the dog to quarantine the dog for ten (10) days.
    - a. Deliver the appropriate Board of Health form to the owner
  4. If no owner can be reached or there is none, have animal control pick up dog and quarantine for ten (10) days.
  5. Officer answering call will complete an investigation report with all information of incident, and fill out a dog bite form.
  6. If the dog or animal is dead, the officer will arrange through animal control to have the head removed and sent to Trenton for testing.
  7. The officer answering the call will provide the Borough of Fort Lee Board of Health with necessary information to complete the Notice of Bite and Quarantine of Animal Report.
    - a. The Borough of Fort Lee Board of Health will issue the ordinance violation summons.
  8. Should it become necessary to destroy a vicious animal, which presents a danger to the public, care should be taken to refrain from damaging the animals head, so that it may be medically examined at a later time.

**III. BARKING DOGS**

- A. Respond to call.
  1. Make out incident report.



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2. Officer will stop at location where disturbance is coming from and advise owner to take action to stop disturbance.
3. Advise complainant to keep track of times and dates of disturbance.
4. If there is a continuing problem, have the complainant sign a Borough of Fort Lee Ordinance Violation for the disturbance.
5. If the officer can show cause by department records or his own knowledge, he should sign a Complaint Ordinance Violation.

**IV. INJURED DOGS**

- A. Whenever an officer responds to a call for an injured dog (or cat), he will do the following:
  1. Protect the dog in every way possible.
  2. Always try to contact the owner and have them handle the treatment. If owner can't be located, have communications call Animal control.
  3. Complete an Incident Report.
- B. Whenever an officer responds to a call for a dead dog, he will do the following:
  1. Remove dog from roadway.
  2. Attempt to ID owner and contact. If owner is contacted, have them come to scene and pick up the dog.
  3. If no owner can be contacted, contact animal control
    - a. State Highways, call State Department of Transportation.
  4. Complete an Incident Report.

**V. TRANSPORTATION:**

- A. The patrol officer may transport dogs or animals in the patrol vehicle if the vehicle is equipped with a cage.
- B. Have dogs or animals transported by:
  1. State Department of Transportation.
  2. Animal control
  3. Owner

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- C. Should an animal be released to a third party wishing to take control of a stray dog or cat,
  - a. All pertinent information will be taken from individual taking the animal
  - b. They will be informed that if an owner claims the animal, they are to turn it over to the owner on request
  - c. All information will be documented on the investigation report
- D. Should an animal be transported to headquarters,
  - a. It will whenever possible be placed in the holding pen in the police yard
  - b. The tour commander shall ensure that it is properly fed and given water
  - c. When the animal is released to animal control, a confirmation number will be given and entered on the report
  - d. If the animal is picked up by the owner, a property release form will be filled out
  - e. In any event, the investigation report will reflect what happened to the animal
- E. Should the case be unresolved at the end of the tour, the off-going tour commander will notify the incoming tour commander of the situation.



COMMUNITY ASSISTANCE  
DOMESTIC VIOLENCE  
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|                                                  |                                  |                                              |                              |                                          |          |                         |
|--------------------------------------------------|----------------------------------|----------------------------------------------|------------------------------|------------------------------------------|----------|-------------------------|
| <b>BOROUGH OF FORT LEE<br/>POLICE DEPARTMENT</b> | EFFECTIVE<br>DATE:<br>06-18-2001 | REVISION<br>DATE:<br>10-04-2002<br>3-26-2004 | PAGE #:<br>6, 7, 13<br>3, 35 | SECTION:<br>II, c. 13 b(3)<br>I H, VII K | APPROVED | VOLUME<br>III           |
| VOLUME TITLE: <b>AUTHORITY</b>                   | # PAGES:<br>38                   |                                              |                              |                                          |          | CHAPTER<br>1            |
| ACCREDITATION STANDARD(S):                       | REFERENCE:                       |                                              |                              |                                          |          |                         |
| <u><b>SUBJECT: DOMESTIC VIOLENCE</b></u>         |                                  |                                              |                              |                                          |          | DISTRIBUTION<br><br>ALL |
| ISSUING AUTHORITY:<br><br>_____                  |                                  |                                              |                              |                                          |          | EVALUATION<br>DATE:     |
| <b>ACTING CHIEF BENARD HART</b>                  |                                  |                                              |                              |                                          |          |                         |
| ATTORNEY GENERAL:<br>AG 5-1                      |                                  | <b>Special Instructions</b>                  |                              |                                          |          |                         |
| PROSECUTOR'S OFFICE:<br>14 V-3 C-1 1-4           |                                  |                                              |                              |                                          |          |                         |
| REFERENCE:                                       |                                  |                                              |                              |                                          |          |                         |
|                                                  |                                  |                                              |                              |                                          |          |                         |

**PURPOSE:**

To ensure that proper procedures are followed when responding to a Domestic Violence incident.

**POLICY:**

When the police are called to intervene in a family dispute, the responding police officer must remain calm and collected to successfully manage the confused, emotional and often dangerous situation. The police role in the family dispute situation is diversified. The police officer must understand that he/she must assume many roles, mediator, counselor, peacemaker and enforcer of the law. Crucial to this role is neutrality, tact and patience.

The procedures that follow are intended to set out methods of approach that will be of assistance for the successful response to Domestic Dispute calls.

**PROCEDURE:**

**I. POLICE RESPONSE TO THE SCENE OF DOMESTIC VIOLENCE**

- A. Police must respond promptly and investigate all calls involving domestic violence. The primary duty of a law enforcement officer is to enforce the laws allegedly violated to protect the victim.

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1. Eliminate the immediate threat of further violence or injury by separating the parties, and apply dispute intervention techniques to gain control of the situation.
  2. Ascertain the extent of physical injuries to either party where appropriate and render immediate first aid. If necessary, trained medical emergency teams should be summoned.
  3. Interview the parties to this dispute separately and determine if the conduct of either of the parties qualifies as an act of domestic violence under the Prevention of Domestic Violence Act.
    - a. The interview should be directed toward obtaining a complete and accurate account of the incident. Where there is probable cause for arrest, give Miranda warnings. The officer should conduct an appropriate preliminary investigation including interviews of available witnesses, collection and photographing physical evidence, and such other appropriate investigative procedures.
  4. It must be recognized that even if the parties fail to qualify under the Domestic Violence Act, the complained conduct should still be treated as criminal where appropriate.
  5. Com-Cen should be advised to check the computer F.A.C.T.S. system for any prior domestics or restraining orders involving both parties.
- B. The police response to domestic violence shall also communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act will be enforced without regard to the fact that the violence grew out of a domestic situation.
- C. Due to the serious nature of the crime of domestic violence, response should be with the same degree of respect, professionalism and care accorded to all violent crimes.
- D. Domestic violence situations differ from others in that police must disseminate and explain to the victim or victims their rights under the Domestic Violence Act at the scene of domestic violence. In addition, the officer must disseminate to the complainant written instructions regarding contacting the Prosecutor's Office. Responding officers are also required to assist the complainant in obtaining relief from the court. The police should also identify whether and what type of an interpreter may be needed at the time of final hearing.
1. A copy of the Victim's Rights Statement must be given to the victim. The officer shall read it aloud and ensure that the victim understands the rights granted under the Domestic Violence Act at every domestic violence call. Terms such as "T.R.O.," "F.R.O." and other such terms should be explained. Do not assume the victim is aware of what these terms mean.



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The police officer shall have the victim sign or initial the rights form indicating that (s)he understands his/her rights, and whether (s)he desires or declines relief under the Act. The officer should witness the signature or initial with his/her own signature. The Victim's Rights Statement must be kept by the police officer and submitted with the rest of his paperwork at the completion of the investigation, with a copy given to the victim.

- E. The investigating officer is responsible for completing the investigation report.
- F. The officer is responsible for completing the New Jersey State Police Domestic Violence Offense Report.
- G. Notify the Division of Youth and Family Services when children are present during the act of domestic violence, if appropriate.
- H. In the appropriate case, the parties should be advised of the availability of community services. In Bergen County, the most readily available community service resource is through the Bergen County Women's Crisis Center. This agency also provides assistance to male victims of domestic violence. The Crisis Intervention Team D.V. will be notified as per the Crisis Intervention Team policy, Volume III Chapter 5.

**II. DOMESTIC VIOLENCE**

A. Definition of Domestic Violence

- 1. Domestic Violence means the occurrence of one or more of the following criminal offenses upon a person protected under the Prevention of Domestic Violence Act of 1991:

Homicide \_\_\_\_\_ N.J.S.A. 2C:11-1

Assault \_\_\_\_\_ N.J.S.A. 2C:12-1

Terroristic Threats \_\_\_\_\_ N.J.S.A. 2C:12-3

Kidnapping \_\_\_\_\_ N.J.S.A. 2C:13-1

Criminal Restraint \_\_\_\_\_ N.J.S.A. 2C:13-2

False Imprisonment \_\_\_\_\_ N.J.S.A. 2C:13-3

Sexual Assault \_\_\_\_\_ N.J.S.A. 2C:14-2

Criminal Sexual Contact \_\_\_\_\_ N.J.S.A. 2C:14-3

Lewdness \_\_\_\_\_ N.J.S.A. 2C:14-4

Criminal Mischief \_\_\_\_\_ N.J.S.A. 2C:17-3

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Burglary\_\_\_\_\_ N.J.S.A. 2C:18-2

Criminal Trespass\_\_\_\_\_ N.J.S.A. 2C:18-3

Harassment\_\_\_\_\_ N.J.S.A. 2C:33-4

Stalking\_\_\_\_\_ N.J.S.A. 2C:12-10

2. Victim of Domestic Violence means a person protected by the Domestic Violence Act and includes any person:
- a. Who is 18 years of age or older, or
  - b. Who is an emancipated minor, and who was subjected to domestic violence by:
    - (1) Spouse
    - (2) Former Spouse
    - (3) Any other person who is a present or former household member.

Note : This individuals same sex roommates sharing a residence, unrelated boarders or household members and homosexual relationships.

- c. Who, regardless of age, has been subjected to domestic violence by a person:
  - (1) With whom the victim has a child in common, or
  - (2) With whom the victim anticipates having a child in common, if one of the parties is pregnant, or
- d. Who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.
  - (1) A victim 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. See Paragraph g below for criteria for determining whether a person is emancipated.
- e. The Prevention of Domestic Violence Act does not define a victim of domestic violence by age, physical or psychological condition or sex.
- f. AN UN-EMANCIPATED MINOR WHO COMMITS AN ACT OF DOMESTIC VIOLENCE MAY NOT BE PROSECUTED AS A DOMESTIC VIOLENCE DEFENDANT BUT CAN BE



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PROSECUTED UNDER THE JUVENILE DELINQUENCY LAWS. THE ENTRY OF PRE OR POST-DISPOSITIONAL RESTRAINTS CAN ALSO BE CONSIDERED.

- (1) The effect of this provision is to specifically exclude parent versus minor child disputes from being classified as domestic violence, unless one of the other listed qualifying criteria is present.
  - g. A minor is considered emancipated from his or her parents when the minor:
    - (1) Has been married;
    - (2) Has entered military service;
    - (3) Has a child or is pregnant; or
    - (4) Has been previously declared by a court or an administrative agency to be emancipated.
  - h. Domestic Violence does not cover:
    - (1) Child Abuse
  - i. Domestic Violence also includes the violation of a properly served court order issued under the Act.
- B. Mandatory Arrest. A police officer must arrest and take into custody a domestic violence suspect and must sign the criminal complaint against that person if
1. The victim exhibits signs of injury caused by an act of domestic violence. N.J.S.A. 2C:25-21a(1).
    - a. The word, "exhibits," is to 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 also may be established when the police officer observes manifestations of an internal injury suffered by the victim.
    - b. 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.
    - c. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

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- (1) The comparative extent of injuries suffered;
- (2) The history of domestic violence between the parties, if any, or
- (3) Other relevant factors.

d. Police shall follow standard procedures in rendering or summoning emergency treatment of the victim, if required.

2. There is probable cause to believe that the terms of a no contact court order have been violated. If the victim does not have a copy of the court order, the officer may verify the existence of an order with the appropriate law enforcement agency.
3. A warrant is in effect.
4. 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.

If the incident involves a mandatory arrest, all charges shall be on a complaint warrant.

C. Discretionary Arrest.

1. Pursuant to the Bergen County Prosecutor's Guidelines, a police 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 none of the conditions in Section B applies.
2. In cases where a police officer determines there is insufficient probable cause to arrest, the officer should advise the victim of his/her right to make independent application to the municipal court or family part of the Superior Court, Chancery Division for the issuance of a criminal complaint.
  - a. A complaint can be drawn up and signed, however it will not be served until after a probable cause hearing has been conducted.

**In either case the following procedures will be adhered to when processing a domestic violence arrest, or a restraining order:**

**DOMESTIC VIOLENCE CENTRAL REGISTRY**

The Fort Lee Police Department has access to the DOMESTIC VIOLENCE CENTRAL REGISTRY, this is an inquiry system accessing the FAMILY AUTOMATED CASE TRACKING SYSTEM "F.A.C.T.S." database.



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This provides law enforcement officers with a history of restraining orders and domestic violence contempt cases.

Access to this system can be made through Communications computer terminal. There is a step by step guide in each location, only those who have access to ACS or ATS can access this.

This system should be checked when processing a domestic violence arrest, when there is an application for a restraining order or when there is an accusation of violation of a restraining order.

Before an arraignment on a domestic violence and prior to the Judge issuing a TRO, this system should be checked to inform the Judge of the history involved with either the defendant or the plaintiff. A printout of this information can be placed in the case jacket.

F.A.C.T.S. Will show the following in regard to restraining orders:

"ACTIVE"

"DISMISSED" No restraining order in effect.

"ACTIVE/RO" Restraining order in effect.

"ACTIVE/FRO" Final restraining order in place.

"ACTIVE/TRO/EXT" Temporary restraining order extended indefinitely.

"ACTIVE/AMD/TRO" Active / Amended temporary restraining order.

"ACTIVE/AMD/FRO" Active / Amended final restraining order.

F.A.C.T.S. Will also show different events where a party was involved in domestic violence complaints and restraining orders as a defendant or plaintiff, and the disposition of each incident.

This system is STATEWIDE and should be up to date within the last business day.

Information in this system is put in by the County Court Domestic Violence Section, it is of the utmost importance that these complaints are forwarded to the County within 24 hrs of the next business day. Records personnel will see that this is done.

If a jacket is not complete, but the TRO and DV Complaint have been signed by the Judge, then the TRO and Complaint should be forwarded to records as soon as possible.

**D. Seizure of Weapons.**

1. A police officer that has probable cause to believe an act of domestic violence has been committed must:
  - a. Question all persons present to determine whether there are weapons as defined in N.J.S.A. 2C:39-1r on the premises. If an officer sees or learns that a weapon is present within the premises of a domestic violence incident and reasonably believes that the weapon would expose the victim to a risk of serious bodily injury, the officer should attempt to gain possession of the weapon.
  - b. If the weapon is in plain view, the officer should seize the weapon.
  - c. The weapon may be seized incidental to arrest.

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- d. If the weapon is not in plain view or seized as incidental to an arrest, but is located within the premises jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain written consent, from the domestic violence victim to search and seize the weapon. In situations where the victim can give valid consent to search for and seize all possessory documentation (i.e. firearms I. D. cards and pistol purchase permits).
  - e. If the weapon(s) or possessory documents are located elsewhere upon other premises, the officer should attempt to obtain possession of the weapon and possessory documents from the possessor of said weapon, or the defendant, by a voluntary surrender of the weapon.
  - f. Weapons seized as evidence to the underlying crime are to be listed on a Property/Evidence report and retained by the arresting agency. The Property/Evidence report is to be included with the faxed material forwarded to the Bergen County Prosecutor's Office.
2. In the event an officer is unable to obtain a weapon(s) as above, and the victim obtains a temporary restraining order, the officer should request a document or documents, seizure or surrender of the weapon(s) and possessory documents at any location be ordered by the issuing judge in the TRO. Upon the issuance of such an order, if the defendant refused to surrender-said weapon and or documents, then the officer should:
- a. Inform the person that the court order authorizes a search and seizure, of the premises or mandates surrender of the named weapons and documents, and
  - b. Arrest the person, if the person refuses to surrender the named weapon and documents, for failing to comply with the order, N.J.S.A. 2C:29-9(b), and
  - c. Conduct a search of the named premises for the named weapons and documents, and
  - d. Append an inventory of seized weapons and documents to the domestic violence offense report and provide a copy of said inventory to the defendant and the issuing court.
3. In the event the victim declines a TRO, the officer still has the obligation to apply the protection of the statute and should seek seizure of the weapons and documents through a search warrant, on forms distributed by the Attorney General. An inventory of all weapons seized must be listed in the police report and the report forwarded to the domestic violence unit in the Bergen County Prosecutor's Office.



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4. Weapons seized should be processed in accordance with Evidence/Property Procedures.
5. Where the defendant is a law enforcement officer, the decision whether to seize the defendant's firearm shall be made without regard to the defendant's status as a law enforcement officer. Law enforcement officers are to be treated no differently than any other defendant.
  - a. When a law enforcement officer's firearm is seized, the responding officer or his/her supervisor shall immediately notify the Domestic Violence Assistant Prosecutor. During the day, the Domestic Violence Assistant Prosecutor can be reached at (See v3c7 tab 3). At night, the Domestic Violence Assistant Prosecutor can be reached through the Communications Center at (See v3c7 tab 3)
  - b. The responding officer or his/her supervisor shall immediately tele-fax all pertinent reports to the Prosecutor's Office at (See v3c7 tab 3).
  - c. Within forty-eight (48) hours of the receipt of the pertinent reports, the Domestic Violence Assistant Prosecutor will evaluate the case and recommend to the Prosecutor, First Assistant Prosecutor and the Chief of Investigations the return or confiscation of said firearms.
  - d. After this determination is made, the Bergen County Prosecutor's Office will promptly apply to the Superior Court for a hearing on the return or confiscation of the subject firearms. This application for a hearing will ordinarily be made within 10 days of the seizure of the weapons.
  - e. All efforts will be made to determine initially if, at the very least, the defendant's duty weapon can be made available to him/her for his/her on-duty use only. In such cases, the defendant's Chief of Police, or his/her designee, shall be responsible for the security of the defendant's duty weapon.
6. Pursuant to recently enacted federal legislation, when a final restraining order under the Domestic Violence Act, N.J.S.A. 2C:25-1, et seq., is entered against any police officer, the Chief of Police, or his/her designee, shall immediately confiscate that officer's duty weapon if the officer is off-duty. If the officer is on duty, the police chief, or designee, shall confiscate the officer's duty weapon as soon as the officer's shift ends.
  - a. Any Police officer who is served a final restraining order shall immediately notify his supervisor or provide a copy of said order to the chief. If the chief is unavailable, notification shall immediately be given to the department's ranking supervisory officer.

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- b. An officer who is subject to a final restraining order may possess his or her department issued duty weapon only while on duty. This restriction will continue as long as the final restraining order remains in effect.
- c. The police chief shall institute procedures to ensure that an officer who is subject to a final restraining order is disarmed at the end of each shift. These procedures shall include:
  - (1) Written memorialization of the officer's receipt of the duty weapon at the beginning of each shift and its return at the end of the shift; and
  - (2) Written acknowledgment by the shift commander or other appropriate ranking officer of the receipt and return of the duty weapon.
- d. The police chief shall ensure that the officer's duty weapon is appropriately secured at the end of each shift.
- e. If the police department knows or believes that an officer who is subject to a final restraining order has any personally owned firearms, the police chief, or designee, shall contact Prosecutors office immediately. This office will determine what steps should be taken to ensure that these firearms will not be possessed in violation of federal law.

\*\*\*\* This policy set forth above has been promulgated in response to the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322 (Sept. 13, 1994). This legislation forbids the receipt, possession or transportation of firearms by anyone subject to a final restraining order under the Domestic Violence Act. The Bureau of Alcohol, Tobacco and Firearms has provided a written opinion that this legislation applies to police officers with regard to the off duty receipt, possession or transportation of duty firearms and personally owned firearms, but does not apply to the possession of a duty weapon while the officer is on duty.

It is imperative that all police departments comply with this legislation, since the failure to do so will constitute a violation of federal law and may expose the municipality, the police department and/or police officials to civil liability. \*\*\*\*

E. Weapons Forfeiture Protocol

- 1. If the parties eventually ask for firearms to be returned, refer them to the Evidence/Property Officer, who will then notify the Bergen County Prosecutor's Office. If a prosecutor determines that the weapon should not be returned to the owner, the prosecutor within 45 days of seizure will:



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- a. File a petition, with notice of weapon, with the Family Part of the Superior Court, Chancery Division, to obtain title to the seized weapons, and
  - b. File a petition, with notice to the owner of the weapon, with the Family Part of the Superior Court, Chancery Division, to revoke any and all permits, licenses and other authorizations for the use, possession or ownership of such weapons.
2. If a prosecutor determines that a weapon may be returned to the owner, the prosecutor shall promptly inform the victim, if necessary the court, that the state will not object to the return of the weapon.
  - a. If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer should
    - (1) Inform the person that the court order authorizes a search and seizure of the premises for the named weapon, and
    - (2) Arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, N.J.S.A. 2C:29-9, and
    - (3) Conduct a search of the named premises for the named weapon.
3. The officer must attach an inventory of seized weapons to the domestic violence offense report.
4. When weapons are seized, the officers must also require the defendant to surrender his/her firearms purchase I.D. card.
5. Weapons seized should be processed in accordance with Evidence/Property Procedures.
6. Notification of such seizure must be promptly made to the Prosecutor's Office for purposes of forfeiture actions.
7. If the parties eventually ask for firearms to be returned, refer them to the Evidence Property Officer, who will then notify the Bergen County Prosecutor's Office.

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F. Domestic Violence Complaint

1. When a police officer responds to a call of a domestic violence incident, the officer must
  - a. Give and explain to the victim the domestic violence Notice of Rights which advises the victim of available court action and victim services N.J.S.A. 2C:25-23.
  - b. Ensure the victim has the opportunity to sign the Victim Rights form.
  - c. Provide the victim with the telephone number of the
    - (1) Victim/Witness Unit of the Bergen County Prosecutor's Office (See v3c7 tab 3), and
    - (2) The Jersey Battered Women's Service Hotline (See v3c7 tab 4)
  - d. Provide the victim with any available literature regarding victims services and rights.
2. The victim may file:
  - a. A domestic violence complaint alleging the defendant committed an act of domestic violence and asking the court assistance to prevent its recurrence by asking for a temporary restraining court order (TRO) or other relief;
    - (1) The officer cannot sign a domestic violence complaint
    - (2) Temporary restraining order cannot be issued without a domestic violence complaint.
  - b. A criminal complaint alleging the defendant committed a criminal act. See Section B - Mandatory Arrest for when a police officer must sign the criminal complaint;
    - (1) Victim's decision not to sign a domestic violence complaint does not effect any criminal complaint that must be filed by the officer.
3. Jurisdiction for filing domestic violence complaint by the victim.
  - a. During regular court hours,
    - (1) The victim should be transported or directed to the Family Part of the Superior Court.



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- (2) Where transportation of the victim to the Superior Court is not feasible, the officer should telephone the Municipal Court Judge by telephone for an emergent temporary restraining order.
  - b. On weekends, holidays and other times when the court is closed.
    - (1) The victim may file the domestic violence complaint before a Bergen County Municipal Court Judge.
    - (2) The Judges may be contacted: using the current list of municipal court judges , or the emergent list may be used.
    - (3) The Domestic Violence Central registry should be checked for any past involvement of domestic violence (See Section II, C.).
  - c. The victim may file a domestic violence complaint:
    - (1) where the alleged act of domestic violence occurred.
    - (2) where the defendant resides, or where the victim resides or is sheltered.
- 4. Jurisdiction for filing a criminal complaint by the victim in connection with filing a domestic violence complaint.
  - a. A criminal complaint may be filed against the defendant in locations indicated in Section 3, c.
  - b. A criminal complaint filed pursuant to Section 3, c shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.
  - c. A domestic violence complaint may be filed pursuant to the provisions of Section 2.
- 5. Jurisdiction for filing a criminal complaint but no accompanying domestic violence complaint.
  - a. During normal court hours, the victim may file a criminal complaint with the municipal court or police department where the alleged act occurred.
  - b. On weekends, holidays and other times when the court is closed, the victim may file a criminal complaint with the law enforcement agency where the alleged act occurred.
  - c. If the police officer believes that a no-contact order should be issued, the officer should inform the court of the circumstances

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justifying such request when the criminal complaint is being processed and bail is about to be set. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.

**6. Victim/Witness Notification Form**

- a. When either a criminal or domestic violence complaint is signed, a Victim/Witness Notification form is to be completed by the police officer assisting the victim.
- b. The victim should be informed that for the victim's protection, the prosecutor or the court must have the ability to contact the victim on short notice to inform the victim about the defendant's
  - (1) Impending release from custody, or
  - (2) Application to reduce bail.
- c. The victim should be instructed to contact the appropriate office to provide new telephone numbers if the victim changes telephone numbers from the numbers listed on the Victim/Witness Notification Form.

**G. Emergent Temporary Restraining Court Orders**

- 1. Where a police officer determines that an immediate court order is necessary to protect the victim from further acts of domestic violence or the victim requests an immediate court order, the tour commander shall contact the designated judge by telephone. If the Judge does not respond to Headquarters, the officer should:
  - a. Assist the victim in preparing a statement to be made to the judge.
  - b. Explain that the judge will place the person under oath and will ask questions about the incident.
  - c. If the judge issues a temporary restraining order, the police tour commander will be instructed to enter the judge's authorization on a prescribed form.
  - d. The tour commander also will be instructed to print the judge's name on the temporary restraining order.
  - e. The officer will then be instructed to serve the restraining order upon the alleged offender,
    - (1) Upon issuance the tour commander will make two copies of the TRO



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- (2) The tour commander will have one copy of the TRO , along with a Domestic Violence MARS entry form hand delivered to Com-cen for entry into the Municipal Arrest Records System (MARS). After the entry is made, Com-cen will retain the D.V. MARS entry form
- (3) On the other copy of the TRO, the tour commander will note the time, date and to whom the MARS entry form was handed to in Com-cen, he will then place the copy in the domestic violence files at the police desk.
- (4) After entry Com-Cen will return paperwork to the tour commander. This copy will remain at the police desk until sufficient time has past, whereas all oncoming tours have been made aware of the TRO.
- (5) Original TRO will be forwarded immediately to the records room, it will then be immediately forwarded by records to the Family Court.

H. Service of In or Out of County Restraining Orders:

1. Service in County:

- a. In the event the defendant resides in the municipality where the Temporary Restraining Order has been issued, that police agency shall be responsible for the service of the Restraining Order upon the defendant, and, the forwarding of all related documents to the Family Court.
- b. Where the defendant has not been arrested by police and is present at the scene, officers should:
  - (1) Escort the victim to his or her home
  - (2) Read the conditions of the restraining order to the defendant if the defendant is present
  - (3) Order the defendant to vacate the premises, if in the restraining order.
  - (4) Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration.
  - (5) Arrest the defendant if defendant refuses to comply (contempt) with the order.
- c. Where a restraining order had been issued but was not served upon the defendant because the defendant could not then be located, but

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the defendant is now at the scene, police should follow Paragraphs G. 1, (a-e) above.

- d. Where the defendant cannot be located for an immediate service of the TRO, the police agency shall make every effort to locate the defendant for purposes of service of the order.
- e. In the event the defendant resides outside of the locality of the issuing authority (but within Bergen County), then the restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be brought or faxed to the local police department where the defendant resides, works or both, so they can execute service accordingly.
- f. It shall remain the responsibility of the Police Department to confirm service of the order on the defendant.

- (1) When information is received that an order was served, the desk officer should contact the victim and advise them that it was served.

2. Service Out of County During Normal Business Hours:

- a. When a temporary or final restraining order is issued that requires service outside the issuing county, the restraining order, along with the complaint and other relevant documents (e.g. search warrant, etc.) must immediately be brought or faxed to the Bergen County Sheriff's Department.
- b. The Bergen County Sheriff's Department must similarly bring or fax the order and related documents to the Sheriff's Department in the county of the defendant's residence or business.
- c. The Sheriff's Department in the receiving county, pursuant to local policy, will either
  - (1) Execute service on the defendant or;
  - (2) Will immediately bring or fax the order and related documents to the police department in the municipality in which the defendant resides or works so that it can execute service accordingly.
- d. The return of service should then be faxed back to the Bergen County Sheriff's Department, which in turn must immediately deliver or fax the return of service to the Family Division Court.
- e. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be



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faxed to the police department in which the defendant resides, or works, or both, so that it can execute service accordingly.

- f. The sending agency shall also fax the above documents to the Bergen County Sheriff's Department with a notation indicating the actions taken by the sending agency concerning the forwarding of the related documents as described in "b" above.
- g. The sending agency shall have the responsibility for insuring the service of the Restraining Order until such time as the Bergen County Sheriff's Department resumes normal working hours.
- h. Transfer of responsibility to the Bergen County Sheriff's Department for service is not to be relinquished by the sending agency until such time as telephone confirmation is made with the Bergen County Sheriff's Department.
- i. Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO (located on the back of the last page of the multi-part TRO form) must be filled out by the police or Sheriff's Department and immediately returned to the Family Division prior to the scheduled final hearing date.

3. Service Out of County During Non-Business Hours

- a. The restraining order, along with the complaint and any other relevant documents (e.g. search warrant, etc.) must immediately be faxed to the police department in which the defendant resides, or works, or both, so that it can execute service accordingly.
- b. The sending agency shall also fax the above documents to the Bergen county Sheriff's Office with a notation indicating the actions taken by the sending agency concerning the forwarding of the related documents.
- c. The sending agency shall have the responsibility for insuring the service of the Restraining Order until such time as the Bergen County Sheriff's Office resumes normal working hours.
- d. Transfer of responsibility to the Bergen County Sheriffs Office for service is not to be relinquished by the sending agency until such time as telephone confirmation is made with the Bergen County Sheriff's Office.
- e. Once service on the defendant is attempted, successfully or unsuccessfully, the return of the service portion of the TRO (located on the back of the last page of the multi-part TRO form) must be filled out by the police or Sheriff's Office and

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immediately returned to the Family Division prior to the scheduled final hearing date.

- f. When the Desk officer receives information that the order was served, he should contact the victim and advise them of the order being served.

I. Court Order Violations

- 1. Where a police officer determines that a party has violated an existing restraining order either by committing a new act of domestic violence or by violating the terms of a court order, the officer must
  - a. Arrest and transport the defendant to the police station.
  - b. Sign a criminal contempt charge concerning the incident on a complaint- warrant (CDR-2).
  - c. The officer should sign the complaint warrant (CDR 2). A Superior Court Judge must authorize the warrant. Bail will be set by a Superior Court Judge only after the arrest has been made. During normal business hours, contact the Bergen County Prosecutor's Office for assistance in reaching a Superior Court Judge. At night, on weekends and on holidays, the on-duty Superior Court Judge should be contacted through the Sheriff's Communication Center.
  - d. If the defendant cannot make bail, transport him/her to the Bergen County Jail. The officer shall complete the Victim/ Witness Form. The victim shall receive a copy of the form. The criminal complaint(s) should be forwarded by the Municipal Court Clerk on the next working day.
  - e. The criminal contempt complaint to be signed shall be a fourth degree indictable offense 2C:29-9(a) if the underlying offense which gave rise to the violation is indictable or a disorderly persons offense. If the underlying offense is a petty disorderly persons offense, then the criminal contempt is a disorderly persons. (For example, if a defendant breaks into his/her spouse's house and points a gun at him/her and a Restraining Order is in effect, the police should sign complaints for Burglary, Aggravated Assault and a fourth degree Contempt. If the defendant calls his/her spouse in violation of a Restraining Order, then the underlying charge may be a petty disorderly persons offense, Harassment, and the Contempt charge 2C:29-9(b) would be a disorderly persons offense.) In all cases, the complaint(s) should be forwarded to the Municipal Court Clerk on the next working day.



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- f. The officer should sign a criminal complaint for all related criminal offenses. (The criminal charges should be listed on the same criminal complaint form that contains the contempt charge.)
- g. Contact the Prosecutor's Office to request that a Superior Court Judge set bail on the contempt charge.
  - (1) During regular court hours, bail should be set by the emergent duty Superior Court Judge that day.
  - (2) On weekends, holidays and other times when the court is closed, bail should be set by the designated emergent duty Superior Court Judge.
  - (3) When bail is set by a judge when the courts are closed, Records shall arrange to have the clerk of the Family Part notified on the next working day of the new complaint, the amount of bail, the defendant's whereabouts and all other necessary details.

**NOTE: All Domestic Violence Contempt of Court complaints both indictable and non-indictable should be forwarded to the Record Room as soon as possible so that arrangements can be made to have them brought to the Bergen County Prosecutor's Office Screening Unit on this department's regular screening day. All contempt complaints where the suspect is incarcerated, the complaints should be brought to the screening unit within 24 hours of arrest, or on the next business day.**

**Once accepted by screening, the assigned Assistant Prosecutor will determine which complaints remain with the Prosecutor's Office and which are to be forwarded to Domestic Violence Intake Office.**

- (4) If a Municipal Court Judge sets the bail, the arresting officer shall notify the clerk of that Municipal Court of this information
- h. If the defendant is unable to post bail, take appropriate steps to have the defendant incarcerated at the county jail
- i. There will be situations where an officer is confronted with an apparent reconciliation between two parties, but the restraining order is still in effect. Under case law in New Jersey, a reconciliation between two parties may result in eventual voiding of a domestic violence restraining order. However, the determination of whether the order is voided can only be done by a Superior Court Judge after a hearing. Until that point, the order is in full force and in effect. When confronted with this situation the officer must;

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- (1) Inform the parties that the restraining order is in effect and must be complied with.
- (2) Inform the parties that the only way the order can be modified is to respond to the Domestic Violence Intake Unit of the Bergen County Courthouse and apply for such relief.
- (3) Contempt is a mandatory arrest situation, and as there is probable cause that a violation exists, the defendant must be taken into custody pursuant to N.J.S.A. 2C:25-31.

**Note: All domestic violence contempt complaint, both indictable and non-indictable must be entered into MARS.**

2. It is important to note that most contempts of a Domestic Violence Restraining Order, which is supported by probable cause, mandate the custodial arrest of the defendant. Allegations that the defendant has violated a Court Order do NOT JUSTIFY ARREST if the alleged violation relates to:

- a. Visitation
- b. Monetary compensation for losses suffered by the victim as a result of a domestic violence
- c. Rent or mortgage payments
- d. Temporary possession of personal property

**J. Reports**

1. The Domestic Violence Rights of Victims form is to be completed and signed by the victim involved.
  - a. The original copy is to be returned and attached to the Investigation Report.
  - b. The copy is to be given to the victim.
2. An Investigation Report will be completed.
  - a. The Domestic Violence Checklist will be completed by the Investigating Officer.
  - b. The officer will complete the State Police Form (UCR-DVI) and forward it to the Case Management Officer, the Case Management Officer will then forward it to the Records Room, records personnel will then forward it to:



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- (1) New Jersey State Police
  - (2) Bergen County Sheriff's B. C. I.
  - (4) Municipal Court or Superior Court
3. If a Restraining Order has been issued, a copy shall be attached to the Investigation Report.
- a. A copy is to be filed at the Desk in the Domestic Violence files.

The Restraining Order is not to be removed until it has been dismissed.

4. Records division must immediately telefax all Domestic Violence Reports and paperwork if there has been a criminal complaint or TRO issued to both the Bergen County Prosecutor's Office, Domestic Violence Unit (See v3c7 tab 3) and to the Bergen County Probation Department (See v3c7 tab 4).
5. All Domestic Violence Reports where there are no criminal complaints signed will be reviewed by the Tour Commander and subsequently be faxed to the Bergen County Prosecutor's Office and the Bergen County Probation Department after review.

**K. General Guidelines**

1. Investigate the complaint as thoroughly and professionally as any other criminal complaint.
2. Arrest in these matters should probably be the rule - not the exception.
3. Advise victim of his/her rights.
4. Complete an Investigation Report.
5. You may contact New Jersey Battered Women's Services for assistance in shelter, transportation and counseling. Office number is 455-1910 and 24-hour HOTLINE number is 267-4763.
6. You may contact the Office of the Prosecutor at (see Vol. 7 Tab 3) for legal assistance during business hours. Contact Duty Prosecutor through the Sheriff's Communication Center at night and on weekends.
7. The Act has set up immunity from damages in a civil suit for a police officer that has acted in good faith in enforcing the provisions of this Act.
8. Give the procedures under the Domestic Violence Act a chance. They may cut down on the instances of Domestic Violence in our county.

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9. If officers are subpoenaed by private counsel to testify in a Domestic Violence hearing, they are to make themselves available and follow court appearance procedures Vol.X Ch 10. Contact the issuing attorney to discuss your schedule and cooperate to the fullest.
10. All officers shall receive, biannually, In-Service Training in the dynamics of Domestic Violence appropriate handling, investigation and response procedures concerning reports of Domestic Violence.
11. All telecommunications operators shall receive biannual training on handling Domestic Violence calls.
12. The on-call detective shall not be notified to respond to headquarters to complete the Criminal complaint investigation unless:
  - a. Serious Injury to victim
  - b. Weapon involved or threatened to be used

**L. Police Involvement with Interference with Custody Matters**

1. Four (4) ways an actor can criminally interfere with custody. (N.J.S. 2C:13-4)
  - a. The actor takes or detains the child for the purpose of concealing the child and thereby depriving the other parent of custody or visitation.
  - b. The actor takes, detains, entices or conceals the child for purposes of depriving the other parent of custody or visitation or to evade the jurisdiction of the New Jersey Courts after a divorce or custody action has been filed; but before a temporary or permanent custody or visitation order has been entered.
  - c. The actor takes, detains, entices or conceals a child for the purpose of evading the jurisdiction of the New Jersey Courts after a protective-service action is filed; but before any temporary or final order affecting custody is entered.
  - d. The actor takes, detains, entices or conceals a child in violation of an existing custody or visitation order. A violation of this provision might also constitute contempt of court.
2. Police may take a child into protective custody if they have reasonable cause to believe:
  - a. That a person is likely to flee the state with the child, or evade the jurisdiction of the New Jersey Courts by flight or concealment.



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- b. Police may turn the child over to the parent with custody or to a court in which a custody hearing is pending.
  - c. Notify DYFS immediately.
  - d. Document reasonable cause that spurred them to take the child into protective custody in their report.
- 3. Defenses: An actor is not liable if he or she reasonably believed that his or her actions were necessary to preserve the child from imminent danger to his welfare. To activate this defense, the actor must
  - a. notify one of several agencies, including the police department of the municipality where the child resides or the county prosecutor, within 24 hours of the actions. The actor is required to tell the agency the current location of the child.
  - b. It is also a defense if a parent who has custody rights takes the child based on a reasonable belief that he or she was fleeing from imminent physical danger from the other parent. The acting parent must notify the appropriate agency, including the police department of the municipality in which the child resides or the county prosecutor, as soon as practicable. This notice must include the child's current whereabouts. The parent with custody can also activate this defense by going to court concerning the custody or visitation.
  - c. It is a defense if the actor reasonably believed the other parent consented to his actions or that an authorized State agency consented.
  - d. It is also a defense if the child is 14 or older, voluntarily goes and the actor has no purpose to commit a crime with or against the child.
  - e. Since the applicability of these defenses will depend on proper notice, it is important that the officer accurately log the information conveyed on an Investigation Report:
    - (1) Name of Caller
    - (2) Name of Child
    - (3) Status of Custody
    - (4) Current Location of Child
    - (5) Date Called
    - (6) Time Called

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(7) Any Additional Information Conveyed

M. Criminal Offenses against the Elderly and Disabled

1. Where the actions or omissions against an elderly or disabled person do not meet the domestic violence conditions, police may file appropriate criminal charges against the defender. (N.J.S.A. 2C:24-8), Endangering the Welfare of the Elderly or Disabled.
  - a. A legal duty to care for or has assumed continuing responsibility for the care of a person who is:
    - (1) 60 years of age or older,
    - (2) Emotionally, psychologically or physically disabled,
    - (3) The person unreasonably neglects or fails to permit to be done,
    - (4) Any act necessary for physical or mental health of the elderly or disabled.
2. Adult Protective Services
  - a. Adult Protective Services provide services to non-institutionalized adults who are abused, neglected, exploited or self-neglecting.
  - b. If criminal action is not warranted, then notification can be made on weekdays from 8:30 A.M. to 4:30 P.M. by calling (See v3c7 tab 4) After hours, notification can be made by calling the Sheriff's Communication Center at (See v3c7 tab 4)

N. Guidelines for the Seizure of Weapons from a Law Enforcement Officer Involved in a Domestic Violence Incident.

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

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

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

1. Whenever an act of domestic violence as defined in N.J.S.A. 2C:25-19 has been alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been



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served with a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or there is a bail condition which requires the surrender of weapons, the officer must:

- a. Immediately report that fact to the officer's departmental supervisor who must promptly notify the prosecutor's office in the county where the officer is employed
- b. Voluntarily surrender all weapons to the law enforcement officer responding to the domestic violence call or in response to a requirement in a domestic violence restraining order or a domestic violence warrant for the seizure of weapons or in a bail condition.
- c. Where weapons have been seized from an officer, the arresting officer shall immediately report the police response to the domestic violence incident involving a law enforcement officer to the arresting officer's departmental supervisor who must notify the prosecutor's office in the county where the charge had been filed.

O. Custody and Control of Seized or Surrendered Weapons

1. Any department issued weapon, which is seized or surrendered in connection with a domestic violence incident, is to be returned to the custody and control of the department which issued that weapon.
2. All other weapons owned, possessed, or controlled by the officer, which are seized or surrendered, are to be promptly forwarded to the county prosecutor's office in the county where the seizure of weapons took place in accordance with procedures set forth in the Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases and the county prosecutor's procedures for the seizure and transportation of firearms to the prosecutor's office in accordance with the provisions of N.J.S.A. 2C:25-21d
  - a. Prosecutors Office will have constructive possession , we will store the actual weapons.
3. Where the weapons have been seized pursuant to a court order, domestic violence search warrant, condition of bail or at the scene pursuant to N.J.S.A. 2C:25-21d, the county prosecutor's office where the civil and/or criminal charge was filed or incident occurred shall conduct an immediate investigation of the incident and determine whether the officer should be permitted to carry a weapon and what conditions, if any, should be recommended to the court for the return of the weapons to the law enforcement officer pending the disposition of the domestic violence proceedings.
  - a. Where the officer involved is a member of the State Department of Corrections, the Division of Criminal Justice, or the State Police,

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the Operations Bureau, Division of Criminal Justice, shall be notified and shall conduct the investigation and determine what conditions, if any, should be recommended to the court for the return of the weapon to the officer pending disposition of the proceedings.

- b. Where the domestic violence charges, either criminal or civil, which resulted in the seizure of weapons from a law enforcement officer have been dismissed or withdrawn before a hearing, the procedures in Paragraph P. 4., listed below, should be followed for the return of the weapons to the law enforcement officer.
4. The chief of the law enforcement agency where the officer is employed shall:
    - a. Conduct an investigation into the officer's background and shall recommend to the appropriate county prosecutor's office whether the officer should be permitted to carry weapons and what conditions, if any, should be imposed for the return of the weapons.
    - b. If necessary, reassign the officer charged with committing an act of domestic violence or served with a restraining order so that the officer will not have contact with the domestic violence complainant.
    - c. Where the officer involved is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, the Operations Bureau, Division of Criminal Justice, shall receive the report from the officer's agency.
  5. The appropriate county prosecutor's office generally should confer with the domestic violence complainant regarding the complainant's position on the return of weapons. However, the recommendation or determination whether the weapons should be returned rests with the county prosecutor, not the victim or the law enforcement agency where the officer is employed.
    - a. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, the Operations Bureau, Division of Criminal Justice, shall confer with the domestic violence victim and shall be responsible for determining or recommending whether the weapon shall be returned to the officer.

P. Return of Seized Weapons

1. When a court had specifically directed that the officer's weapons be seized either pursuant to a domestic violence restraining order or a domestic



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- violence warrant for the seizure of weapons, or as a condition of bail, the officer whose weapons have been seized because of a domestic violence incident may request an expedited court hearing to determine the officer's status regarding the possession of weapons.
2. When a court order, either criminal or civil, which prohibits a law enforcement officer from possessing weapons is in effect, no weapons are to be returned to the officer subject to the domestic violence proceedings without a court order. If the domestic violence charges or complaint are withdrawn or dismissed prior to a court hearing, the provisions in Paragraph P. 4., listed below, should be followed.
  3. If it is determined by the county prosecutor that the officer may carry weapons in accordance with that officer's duty assignments while the domestic violence proceedings, either criminal or civil, are pending court action, the county prosecutor may recommend to the appropriate court that:
    - a. The officer be permitted to carry a department issued handgun during on duty hours (duty hours means an officer's daily active duty shift) but not carry a handgun off duty, and
    - b. The officer is directed not to enter his or her residence which is shared with the complainant while on duty and armed, or meet with the complainant or any other person covered by the restraining order, while armed.
    - c. The department owned weapons are to be issued by the department to the officer at the beginning of the officer's daily active duty shift and the weapons are to be returned to the custody of the department at the end of the officer's daily active duty shift.
    - d. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice or the State Police, it shall be the responsibility of the Operations Bureau, Division of Criminal Justice, in consultation with the officer's agency, to determine whether the officer may carry weapons in accordance with the officer's duty assignment while the domestic violence proceedings are pending court action and what conditions, if any, should be recommended to the court.
  4. When a weapon has been seized from a law enforcement officer involved in a domestic violence offense but no criminal charges, court order or warrant has been issued or is pending regarding possession of weapons, a county prosecutor may authorize the return of the seized weapons subject to conditions, if any, the prosecutor determines necessary.
  5. Where the officer is a member of the State Department of Corrections, the Division of Criminal Justice, or the State Police, it shall be the

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responsibility of the Operations Bureau, Division of Criminal Justice, to determine whether a seized weapon shall be returned to the officer and

6. What conditions, if any, should be imposed for the return of the weapon to the officer.

Q. Restrictions on Return of Firearms

1. Pursuant to the provisions of the federal crime bill, 18 U.S.C.A. 922(g), if a final domestic violence restraining order is issued, and for the duration of that order:
2. A law enforcement officer may be authorized by a court to possess a department issued firearm under conditions recommended by the appropriate county prosecutor, and
3. The officer may not possess any personally owned firearms.

R. If the defendant/police officer is not employed by this department, the Duty Sergeant or the next highest ranking officer above sergeant shall be notified immediately.

1. The Duty Sergeant or the next highest ranking officer shall immediately notify the defendant/officer's Captain, Deputy Chief or Chief.
2. On the next workday, the Chief shall, by letter, notify the defendant/officer's Chief of Police.

S. If the defendant/police officer is a member of this department, the Chief or designee shall be notified immediately.

1. The Chief of Police is to be advised by the next day.

T. When the defendant/officer is a member of this department, the Internal Affairs Officer shall initiate an Internal Affairs Investigation.

U. Any firearm seized shall not be returned to any officer until approval is granted by the Bergen County Prosecutor's Office and the Chief of Police.

1. All effort will be made to determine initially if, at the very least, the defendant's duty weapon can be made available to him/her for his/her on-duty use only. In such cases, the defendant's Chief of Police, or his designee, shall be responsible for the security of the defendant's duty weapon.

V. After the Internal Affairs Officer completes his/her investigation, a recommendation shall be included for the officer to receive professional counseling.



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1. If the incident was of a serious nature, a recommendation for mandatory evaluation shall be recommended.

**W. Police Officers who are subject to a Final Restraining Order.**

1. When a Final Restraining Order is entered against any police officer, he/she may possess his/her departmental issued duty weapon only while on duty.
2. The subject officer is prohibited by Federal Law to receive, possess or transport a duty weapon or any personally owned firearm while off duty.
3. The Chief of Police or his/her designee shall ensure that the subject officer is disarmed at the end of each shift.
  - a. The weapon will be signed in and out at the beginning and end of each shift by the Chief of Police or his/her designee.
  - b. The weapon shall be appropriately secured at the end of each shift.
4. If the Chief of Police knows or believes that a subject officer has any personally owned firearms, he/she shall contact the Bergen County Prosecutor's Office to determine what steps should be taken to ensure that these firearms will not be possessed.
5. Any police officer whom a Final Restraining Order is entered against shall immediately notify the Chief of Police as soon as possible and shall forward a copy of said order to his/her attention.
  - a. If the Chief is unavailable, notification shall immediately be given to the Captain or other ranking officer.
6. This disability to possess an off duty firearm shall continue as long as the Final Order remains in effect.

**III. Domestic Violence Liaison Officers**

- A. The Police Department will have two police officers designated who will serve as a liaison between the agency and the Bergen County Prosecutor's Office.
- B. Where possible, one officer shall be selected from the supervisory ranks.
  1. Following an initial training session, the Liaison Officers will be responsible for training all officers and telecommunication operators within their agency concerning the appropriate responses to domestic violence incidents.
  2. Whenever possible, Liaison Officers shall be utilized on all incidents involving violations of the Prevention of Domestic Violence Act.

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- C. On an annual basis, the Liaison Officers shall select a sample of their agency's Domestic Violence Incident Reports for review. The results of the analysis shall be reported to the Chief of Police of the Police Department and address any deficiencies or training needs. A copy of the report, with a plan of action to correct any deficiencies, shall be forwarded to the Bergen County Prosecutor by January 31 of each year. Each annual report shall include an updated list of Liaison Officers.

IV. ENFORCEMENT OF OUT-OF-STATE RESTRAINING ORDERS

- A. The out-of-state restraining order or order of protection should be presumed valid by the responding officers.
- B. The officers primary responsibility is to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.
- C. Law enforcement officers are expected to protect victims of criminal offenses, regardless whether the victim is a resident of New Jersey or any other state or country.
- D. If the officers respond to a domestic violence call and determine that the actor had committed a criminal offense upon the victim, the officers should follow established police procedure in making an arrest. For example, if the victim had been assaulted by the actor and the officers see signs of injury, the officers must arrest the actor for the assault pursuant to N.J.S.A. 2C:25-21(a)..
- E. In addition, if the victim showed the officers an order of protection from having any contact with the victim, the officers should charge the actor with contempt, N.J.S.A. 2C:29-9(a), if the officers determine that the court order appears valid on its face.

However, if no immediate criminal offense had been committed by the actor but the victim has an order of protection issued by another state, the officers should determine whether the court order appears valid on its face. If the order appears to be facially valid, the officers should arrest the actor on a charge of contempt, N.J.S.A. 2C:29-9(a) for violating the no-contact provision of the order.

No underlying charge is needed on out of state restraining order violations.

- F. An out-of-state order of protection should be considered valid if:
1. The order contains the names of the correct parties.
  2. The order has not expired.
  3. The victim has informed the officers that the named defendant had appeared at the court hearing when the order was granted or had notice to appear in court but did not show up.



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- G. Defects on the face of the order, such as boxes indicating service not checked, do not invalidate the enforcement of the order. In such cases, the officers should include this information in the officers incident report.
- H. If the victim does not have a copy of the restraining order, and the parties meet the victim and defendant criteria of the New Jersey Domestic Violence Act, the officer should determine whether any of the mandatory arrest provisions contained in N.J.S.A. 2C:25-21(a) have occurred such as signs of injury or a weapon was involved in the act of domestic violence.

- 1. Where there is an injury, the officer should determine whether the injury meets the criteria of being a "significant bodily injury" which is a third degree crime. This significant bodily injury classification provides a mid-range between the criteria for simple assault, which basically is pain, and aggravated assault, which basically is a serious and permanent injury. Significant bodily injury is defined as meaning "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.

Where there is no probable cause for the officer to make a mandatory arrest, the officer should consider whether other criminal offenses have been committed.

If the actor is at the premises of the victim, the officer may be able to charge the actor with being a defiant trespasser. The officer should ask the victim if the victim had ordered the actor to leave the property. The elements for being a defiant trespasser are: :

- a. A person is a defiant trespasser if that person knowing that he or she is not permitted to do so enters or remains in any place as to which notice against trespass is given by actual communication to the actor.

Thus, if the victim has told the actor to leave the property, and the actor refused and is at the scene, the officers should arrest the actor

- 4. If an emergent situation exists and the victim wants a temporary restraining order, the officer should follow standard procedure for assisting the victim in obtaining a New Jersey temporary restraining order.
- I. If the victim wants to enforce a provision of a restraining order or an order of protection that does not require immediate action by the law enforcement officer, the officer should refer to the victim to the appropriate court for relief.
- J. When responding to a domestic violence incident involving an out-of-state order of protection or restraining order, law enforcement officers should determine whether any federal laws were violated by the actor.

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V. IMMEDIATE FAXING OR FORWARDING ALL PAPERWORK TO THE APPROPRIATE FAMILY DIVISION

- A. Immediately upon completion of all paperwork related to an act of domestic violence, copies thereof must be faxed or delivered to the following departments:
1. Domestic Violence Unit of the Prosecutor's Office.
  2. Superior Court Family Division Intake.
- B. After a defendant has been served a Final Restraining Order, fax a copy of the receipt of service (Appendix A) with the last page of the FRO to (201)646-3532. Any questions regarding this procedure, please call (201)646-3506. Defendant should also be advised to respond to the County Sheriffs department for fingerprinting.

VI. INTERVIEWING TECHNIQUES IN DOMESTIC VIOLENCE CASES

- A. General Approach: In handling domestic violence incidents, the officer's general approach should reflect the seriousness of the offense and its consequences for both suspect and the victim. To convey this seriousness, officers should follow these suggestions :
1. Impress upon the parties involved that domestic violence is a crime.
  2. Utilize special interviewing techniques to overcome a victim's reluctance to report the incident
  3. Investigate the incident as thoroughly as any crime not involving family members
  4. Handle the situation in such a manner that the victim views the officer's behavior as positive.
- B. Once officers have arrived at the scene of the incident, the officers should separate the victim and suspect as soon as safely possible and interview them separately. Take the victim out of hearing range and away from eye contact with the suspect. This will greatly decrease the likelihood that he/she will be intimidated by the suspect. It also increases the likelihood of his/her cooperation with the officers.
- C. In general, officers should use the same information-gathering and interviewing skills that they learned in recruit training for sexual assault investigation. Here are additional suggestions and strategies, which have proven effective in obtaining information in domestic violence cases.
- D. The questions asked should be specific and direct and asked in a supportive and matter-of- fact tone of voice.



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- E. Officers should be calm and direct. One of the initial objectives upon entering the residence is to calm all parties.
- F. The officers should be aware of their body language. How an officer stands and holds his or her arms and head, the nature of the officer's facial expression and the officer's tone of voice all convey a clear message to victims and suspects about how the officer perceives the situation.
- G. Many factors affect a victim's ability and/or willingness to cooperate and provide information in an interview. The officers must be aware of these factors and conduct the interview in ways that reassure the victim that his/her concerns are legitimate and are being addressed.
- H. After an episode of domestic violence, the victim will often experience feelings that might hinder a police investigation. This is especially true in cases where there is a history of domestic violence.
- I. To gain the victim's confidence and cooperation, the officers must show themselves to be aware of and responsive to his/her feelings. By reassuring the victim in this way, the officers will increase his/her willingness to reveal the specifics of the crime.
- J. Officers may encounter victims who appear extremely reluctant to cooperate with the investigation. Victims may have a lack of faith in the criminal justice system, genuine confusion, fear of retaliation, economic hardships, social stigma and isolation. Therefore, an officer should expect reluctance and not become impatient, frustrated or hostile when confronted with a victim's confusion or hesitation. Officers should attempt to mobilize and encourage victims and explain all of the relevant criminal justice options.
- K. Officers must be alert to any manipulative language or behavior of the batterer when they question the batterer. Officers should give the suspect Miranda warnings before questioning if the officer has placed the suspect under arrest or restrained his/her freedom of movement like an arrest. The officer should not make any accusatory statements while questioning the batterer. They should allow the batterer to tell his version of the incident before confronting the batterer with contradictory information. They also should not collude or support the suspect's statements as to the reason for the abuse.  
  
Officers should document all spontaneous statements by the batterer, even if the statements appear on their face to be self-serving.
- L. When interviewing children, police should interview them away from the parents and in a comfortable place for the children. The officer also should be at eye level with the child. They should befriend the child and explain why the police are there. It is important not to indicate to the children what response the officers want from the child. The officer should be careful not to use leading questions when questioning children. Lastly, officers must be alert to any indication that the child is fearful of one or both parents or feels responsible for what has

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happened. They must be alert for any signs of child abuse. In some cases, where there is spousal abuse, there also is child abuse. If the Children were present at the domestic violence incident, D.Y.F.S. must be contacted.

- M. A thorough investigation at the scene is critical to both the current and any future criminal case filed against the suspect. In addition, detailed knowledge of the present incident and past incidents will increase the officers ability to make appropriate decisions about their arrest options and to correctly advise victims on follow-up procedures. Therefore, officers must gather all relevant background information, relevant historical information and always try to get a taped statement from the victim.

**VII GENERAL PATROL GUIDELINES**

- A. On all domestic calls, a minimum of two (2) officers and a road supervisor will respond. If only one (1) officer is available, that officer will request a back up through the Communications Center, mutual aid may be utilized if needed. If no road supervisor is available, the shift supervisor or tour commander will be apprised of the facts of the matter by the responding officers as soon as they are ascertained. The officer and the supervisor will confer and determine what course of action is to be followed in order to maintain compliance with the Prevention of Domestic Violence Act.
1. Be alert for your safety and the safety of family members present.
  2. Divert the disputants' attention away from each other.
  3. Introduce yourself- name and rank.
  4. Explain that a call was received and that you are there to be of assistance.
  5. Be neutral and respectful.
  6. Restore calm, if possible, separate the disputants' into different rooms but avoid the kitchen.
  7. Gather the facts.
    - a. Listen carefully to each person's story.
    - b. Remain non-judgmental.
    - c. Obtain data to determine possible course of action
  8. As soon as practical, at the scene, disseminate the "Rights of Domestic Violence Victims" to both parties involved, whether or not violence is apparent
- B. The officer(s) or the officer in charge will make sure that all areas of this policy are followed.



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- C. The officer(s) or the officer in charge will make sure that the victim is fully aware of his/her rights under the Domestic Violence Act.
- D. The officer(s) or officer in charge will make sure any injured party is directed and assisted to proper medical help and care.
  - 1. The scene of a domestic violence incident should be properly secured and treated like any other crime scene. This includes, but is not necessarily limited to, the collection and proper handling of physical evidence, taking of photographs, and the calling and consulting with detective personnel or BCI.
- E. The officer assigned to the call will make sure that any arrested person involved in a domestic violence complaint for an indictable offense, is properly processed including the taking of two (2) photographs and four (4) fingerprint cards of all such persons.
  - 1. Fingerprinting for Domestic violence arrests and convictions should follow procedures set forth in fingerprinting policy Vol.7, Ch. 12.
  - 2. When serving Final Restraining Orders, defendant should be advised to report to the Bergen County Sheriffs Department for fingerprinting. See Appendix A.
- F. When the officer calls the assigned judge, the officer will have the completed Domestic Violence Complaint in front of him. This will expedite the process.
- G. Officers will not conduct any conversations they have with the judge within hearing of the plaintiff or defendant. The judge will advise the officer when he needs to speak directly to either one of them.
- H. Collect and record evidence and, where appropriate, take color photographs of injuries and property damage.
- I. Complete all appropriate and required reports and forms necessary to fully document the officer's response, whether or not a crime was committed or an arrest made.
- J. If the offender has left the scene and a crime has been committed, the officer will:
  - 1. Conduct a search of the immediate area;
  - 2. Obtain information from victims and witnesses as to where the offender might be;
  - 3. Insure that the victims are provided with security and assistance until the offender is located.
- K. The Crisis Intervention Team D.V. will be notified as per the Crisis Intervention Team policy, Volume III Chapter 5. If the team does not respond then the officer

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should provide the victim with referral information packet for legal or social assistance and support located in the DV information file behind the desk.

- L. Officer should refer to Family Case Management checklist form and comply with the contents.
- M. Officers should provide victim/witness with the Victim/Witness Notification Form, which shall include the information that may apply to the incident.



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APPENDIX A

\_\_\_\_\_  
Recipient's Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Town, State Zip Code

\_\_\_\_\_  
Telephone

I hereby acknowledge receipt of a copy of the Final Restraining Order entered against me by the Superior Court of the State of New Jersey.

In addition, I acknowledge receipt of the NOTIFICATION AND INSTRUCTIONS form instructing me (1) that I must be fingerprinted and photographed; (2) where to appear to submit to fingerprinting and photographing; (3) that refusal to submit to being fingerprinted and / or photographed is punishable as a disorderly persons offense.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

To be completed by law enforcement officer serving the final restraining order:

FV-\_\_\_\_\_

Served by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Law Enforcement Agency

\_\_\_\_\_  
Date

\_\_\_\_\_  
Please Print Name

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**APPENDIX A  
NOTIFICATION AND INSTRUCTION**

**Re: Fingerprinting**

**To whom it may concern:**

**You have been served with a Final Restraining Order entered against you by the Superior Court of the State of New Jersey pursuant to N.J.S.A. 2C:25-29. Pursuant to N.J.S.A. 53:1-15 you are required to be fingerprinted and photographed.**

**Therefore, you are required to respond immediately to:**

**BERGEN COUNTY SHERIFF'S DEPARTMENT**

**BCI BUILDING**

**160 RIVER ST.**

**HACKENSACK, NEW JERSEY 07601**

**Where you will be fingerprinted and photographed. Failure to appear at the Sheriff's Department and/or failure to submit to being fingerprinted and photographed will result in your being charged with Obstruction of Administration of Law or Other Government Function, a violation of N.J.S.A. 2C:29-1, a disorderly persons offense.**

**If you have any questions regarding fingerprinting, you may call the Sheriff's Department at 201-678-3333.**



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**DEPARTMENT RULES AND REGULATIONS/POLICIES AND PROCEDURES**

|                                                                               |                            |                           |                |                 |                 |                                  |
|-------------------------------------------------------------------------------|----------------------------|---------------------------|----------------|-----------------|-----------------|----------------------------------|
| <b>BOROUGH OF FORT LEE<br/>POLICE DEPARTMENT</b>                              | <b>EFFECTIVE<br/>DATE:</b> | <b>REVISION<br/>DATE:</b> | <b>PAGE #:</b> | <b>SECTION:</b> | <b>APPROVED</b> | <b>VOLUME<br/>III</b>            |
| <b>VOLUME TITLE: AUTHORITY</b>                                                | <b># PAGES:<br/>15</b>     |                           |                |                 |                 | <b>CHAPTER<br/>1.1</b>           |
| <b>ACCREDITATION STANDARD(S):</b>                                             | <b>REFERENCE:<br/>V#C#</b> |                           |                |                 |                 |                                  |
| <b>SUBJECT: DOMESTIC VIOLENCE<br/>INVOLVING A LAW ENFORCEMENT<br/>OFFICER</b> |                            |                           |                |                 |                 | <b>DISTRIBUTION<br/><br/>ALL</b> |
| <b>ISSUING AUTHORITY:</b><br><br>_____                                        |                            |                           |                |                 |                 | <b>EVALUATION<br/>DATE:</b>      |
| <b>CHIEF THOMAS O. RIPOLI</b>                                                 |                            |                           |                |                 |                 |                                  |
| <b>ATTORNEY GENERAL:</b>                                                      |                            | Special Instructions      |                |                 |                 |                                  |
| <b>PROSECUTOR'S OFFICE:</b>                                                   |                            |                           |                |                 |                 |                                  |
| <b>REFERENCE:</b>                                                             |                            |                           |                |                 |                 |                                  |
|                                                                               |                            |                           |                |                 |                 |                                  |

**I. PURPOSE**

The Fort Lee Police Department recognizes that some law enforcement officers commit acts of domestic violence as defined in *N.J.S.A. 2C:25-17 et. seq.* The integrity of the law enforcement profession and the community's trust in law enforcement are dependent upon a uniform policy on the handling of such incidents.

**II. POLICY**

This Department will act quickly where incidents of domestic violence are alleged to have occurred to protect the victim, arrest the perpetrator, where appropriate, and conduct parallel administrative and criminal investigations. In addition, this department will work to develop and implement appropriate, case-specific remedies to the situation.

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This policy for handling of domestic violence incidents involving law enforcement officers does not supersede the *Attorney General's Guidelines on Police Response*. This Policy was prepared by this department under the model proposed by the Division of Criminal Justice.

*Procedures in Domestic Violence Cases* and Attorney General Directives Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers and from All State Law Enforcement Officers Involved in Domestic Violence Incidents [Directives 2000-3 and 2000-4 dated September 1, 2000, hereinafter *Attorney General Weapons Seizures Directives*]. These guidelines and directives remain in full force and effect and must be followed by officers from this department when responding to a domestic violence call involving a law enforcement officer. Failure of any officer or supervisor to comply with any provision of this policy will subject the officer to discipline.

**III. DEFINITIONS**

See N.J.S.A. 2C:25-19 and *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* for definitions.

**IV. PREHIRE SCREENING AND INVESTIGATION**

- A. This department will conduct thorough background investigations of all potential new employees to determine if there is a criminal history with particular attention to acts of domestic violence, sexual abuse, stalking, elder abuse or child abuse. This department will conduct a check of the Domestic Violence Registry to determine the existence of any active restraining orders and to determine if there is a history of domestic violence.
- B. All candidates will be interviewed about any history of acts of domestic violence, sexual assault, stalking, elder abuse or child abuse and past or present restraining orders and their disposition.
- C. Those candidates with a history of perpetrating acts of domestic violence, sexual assault, stalking, elder abuse or child abuse will be screened out at this point in the hiring process.

**V. POST-CONDITIONAL OFFER OF EMPLOYMENT**

- A. This department will require a psychological examination of all viable candidates to be performed by an experienced and licensed psychiatrist/psychologist or other mental health professional.
- B. The psychological screening should include a focus on indicators of violent or abusive tendencies or behaviors, including domestic violence, in their background.



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**VI. EDUCATION AND TRAINING**

- A. All law enforcement officers within this department will receive at least four hours of training on domestic violence issues annually, as approved by the Division of Criminal Justice, pursuant to *N.J.S.A. 2C:25-20*.
- B. All police dispatchers within this department, sworn and unsworn, will receive annual training on how to handle a domestic violence call.
- C. All law enforcement officers and unsworn members of this department will receive at least annual training on the impact of domestic violence within the law enforcement community and on the department's policy and procedures when a law enforcement officer or an unsworn member is involved in a domestic violence incident.
- D. In addition to the training required in Paragraph A. above, all police supervisors within this Department will receive annual training on such matters as:
  - 1. How to recognize potential indicators or early warning signs of domestic violence behavior by law enforcement officers.
  - 2. How to investigate indicators of potential abusive behavior or early warning signs potentially indicative of domestic violence.
  - 3. When to notify the Chief of Police of the information gathered in accordance with the Department's chain of command.
  - 4. Available programs to assist law enforcement domestic violence victims and batterers.

**VII. EARLY WARNING AND INTERVENTION RESPONSIBILITIES**

- A. Department Responsibilities
  - 1. This department will, either in response to observed warning signs of domestic violence behavior or at the request of an officer, and provide non-punitive avenues of assistance to officers, their partners, and other family members.
  - 2. This department will encourage officers to take personal responsibility in seeking referrals and assistance, confidential or otherwise, and assistance from the department or on their own initiative to prevent a problem from escalating to the level of criminal conduct.

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3. When this department is aware that an officer is undergoing a separation or divorce, or that an officer is otherwise undergoing a high conflict period with a spouse or intimate partner, and the officer is exhibiting any of the warning signs of domestic violence behavior, the department will encourage the officer to seek individual counseling.
4. This department will investigate reports of domestic violence reported by family members or other officers.
5. The department, either in response to observed signs of domestic violence behavior or at the request of an officer, will refer the officer to Employee Assistance.

B. Supervisor Responsibilities

1. Supervisors will document any information potentially indicative of domestic violence including but not limited to:
  - a. Aggressiveness
    - (1) Excessive or increased use of force on the job.
    - (2) Inappropriate surveillance activities.
    - (3) Unusually high incidences of physical altercations and verbal disputes.
    - (4) Citizen and fellow officer complaints of unwarranted aggression or verbal abuse.
    - (5) Inappropriate treatment of animals.
    - (6) On or off-duty officer injuries.
  - b. Domestic violence-related issues  
Monitoring, controlling or harassing the purported victim directly or through any other person.
  - c. Deteriorating work performance
    - (1) Tardiness.
    - (2) Excessive absences.
    - (3) Alcohol and drug abuse.



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2. When the supervisor finds a pattern of behavior potentially indicative of domestic violence, the supervisor will:
  - a. Address the behaviors, consistent with Internal Affairs policies, through a review with the officer and document all contacts. Under no circumstances will the identity of a reporting victim or witness be disclosed to the officer at this stage.
  - b. Forward written reports detailing the behaviors to the Chief of Police through the chain of command in a timely manner to determine discipline or other appropriate action.
  - c. Prepare and submit to the Chief of Police a written request for a psychological exam/counseling by a licensed psychologist/psychiatrist or other mental health professional. The supervisor's written report will include the factual basis for the referral and will attach any relevant supporting documentation. A copy of the report will also be forwarded to the County Prosecutor for consideration and discussion with the Chief of the Department.
3. When the supervisor determines an officer has engaged in domestic violence, the supervisor will:
  - a. Prepare and submit to the Chief of Police a written request for a psychological exam/counseling by a licensed psychologist/psychiatrist or other mental health professional. The psychologist/psychiatrist must be provided with all reports and information available regarding the domestic violence incident(s). The psychologist/psychiatrist must attempt to contact the reported victim for their input and must be provided with the reported victim's contact information; the contact information must be kept confidential. A copy of the report will also be forwarded to the County Prosecutor.
  - b. Request that the Chief of Police order the officer to seek assistance from a program for batterers that has been approved by the County Prosecutor or the Department. If such a program is not available, request that the Chief of Police order the officer to a counselor who has demonstrable training and experience in counseling domestic violence batterers. [The cost of the counseling is to be paid by the officer].

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- c. Contact and inform the purported victim of the concerns regarding the officer's behavior; that the officer has been ordered to undergo a psychological evaluation; that the evaluator will be contacting the reported victim; that the reported victim is not required to speak with the evaluator; and, that any information disclosed by the reported victim may not be confidential. The supervisor will document that he/she informed the reported victim concerning this procedure.
- d. If the department decides to take adverse action against the officer, it will provide a copy of the psychological report to the officer in a timely manner, unless doing so would endanger the safety of the victim.

C. Law Enforcement Officer Responsibilities

- 1. Officers must:
  - a. When an officer knows or is made aware of any information of abuse or violence involving a fellow officer, the officer must report that knowledge or information to his or her supervisors.
  - b. Cooperate with the investigation of a domestic violence case involving a law enforcement officer except in the case where the officer is the victim.
- 2. Officers may be subject to criminal charges or discipline in accordance with Department procedure, if they:
  - a. Interfere with domestic violence cases involving themselves or fellow officers.
  - b. Intimidate or coerce witnesses or victims (*i.e.*, surveillance, harassment, stalking, threatening, or falsely reporting).
- 3. Officers who are involved in any domestic violence incident involving police response, regardless of jurisdiction, must immediately notify the on-duty supervisor and provide notice of the court dates, times, appearances, and proceedings. Failure to do so may result in departmental discipline in accordance with Departmental Policy and Procedures.
- 4. Officers who are the subject of any domestic violence restraining order or protective order proceeding, whether or not the order is



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issued and regardless of jurisdiction, must immediately notify their supervisor and provide a copy of the order, if issued. Failure to do so may result in departmental discipline in accordance with Departmental Policy and Procedures.

## **VIII. INCIDENT RESPONSE PROTOCOLS**

### **A. Department-Wide Response**

1. This department will accept, document, and preserve all calls or reports, including those made anonymously, regarding domestic violence as on-the-record information. A detailed Investigation Report (IR) must be completed by the responding officer to a domestic violence call. This report is to be completed regardless of whether or not an arrest is made, and regardless of whether or not a criminal offense has been committed.
2. All reports of possible criminal activity implicating law enforcement officers in domestic violence will be documented in accordance with approved policies and procedures governing the handling of reports of domestic violence incidents.
3. A copy of the report alleging domestic violence by an officer will be forwarded to the Chief of Police through the chain of command including the Internal Affairs Officer.
4. The Department will make all such IR's available to the victim without cost. *N.J.S.A. 47:1A-1.1*.
5. The Department will make all such IR's available to the officer at no cost.
6. The Chief of Police will consult with the County Prosecutor, who will determine who should be the designated Principal Law Enforcement Contact person. If the designated Principal Law Enforcement Contact person is not available 24/7, then, after consultation with the Chief of Police, the County Prosecutor will select an alternate contact person. The contact person's information must be provided to the victim. The Principal Law Enforcement Contact person will:
  - a. Advise the victim to immediately report any violation of any restraining order to the police department where it occurred and to the designated Principal Law Enforcement Contact person.

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- b. Advise the victim to contact the designated Principal Law Enforcement Contact person if there is any harassment, witness tampering or intimidation by a law enforcement officer.
- c. Intervene if the officer or agents of the officer are harassing or intimidating the victim, or violating no-contact orders.
- d. Provide the victim with the name and contact number of the domestic violence Assistant Prosecutor in the county where the abusive officer is charged with committing a criminal offense, contempt of a domestic violence restraining order, or subject to a motion for forfeiture of weapons. The victim should also be provided with the name of the victim-witness advocate or detective in the Prosecutor's Office who have been designated as the resource persons in the Prosecutor's Office.
- e. Provide the victim with contact information for a local domestic violence program and with approved safety planning material.
- f. Keep the victim apprised of all case developments.
- g. Ensure that the chain of command, including the Chief of Police, is regularly briefed on both the administrative and criminal investigations.
- h. Assist the victim with safety planning should the officer be terminated. Assistance will be provided by linking the victim with resources and preparation planning either within the department or via outside government and non-profit agencies.

B. Communications Response.

- 1. Communications officers/dispatchers will assign a high priority to all domestic violence calls, including those that involve or appear to involve law enforcement personnel from any agency.
- 2. Communications officers/dispatchers will immediately notify the Tour Commander and Road Supervisor of any domestic violence call received that involves, or appears to involve, law enforcement personnel from any agency.



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3. Communications supervisors will prepare and preserve documentation of the facts and circumstances of the call, including any relevant recorded call for service, for use in potential administrative or criminal investigations upon knowledge or notification that the domestic violence incident involved law enforcement personnel from any agency.

C. Patrol Response

1. Upon arrival on the scene of a domestic violence call or incident involving a law enforcement officer, the primary patrol unit will immediately notify dispatch and request the Road Supervisor to report to the scene, regardless of the involved officer's jurisdiction.
2. The responding officers will follow standard police response procedures as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases*.

D. On-Scene Supervisor Response

1. The Road Supervisor will immediately report to the scene of all law enforcement officer domestic violence incidents regardless of the involved officer's jurisdiction.
2. The Road Supervisor will immediately notify the Bergen County Prosecutor's Office of any domestic violence incident involving a law enforcement officer for direction on handling the case regardless of whether criminal charges are filed or a restraining order is issued.
3. The Road Supervisor will assume command and ensure that the crime scene is secured and that all evidence is collected in accordance with approved police investigative procedures.
4. The Road Supervisor will ensure that an arrest is made in cases where mandatory arrest is required. In cases where probable cause exists to arrest although not a mandatory arrest, the Road Supervisor will follow directions from the Bergen County Prosecutor's Office.
5. If the alleged offender has left the scene and probable cause exists, the supervisor will:
  - a. Exhaust all reasonable means to locate the alleged offender.

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- b. Ensure that an arrest warrant is sought if a mandatory arrest or advised to do so by the Bergen County Prosecutor's Office, if unable to locate the alleged offender.
  - c. Document all subsequent actions in a timely manner.
- 6. If the victim has left the scene, the supervisor will make every effort to follow through on the investigation and attempt to locate the victim.
- 7. The arresting of both parties involved in a domestic violence incident should be avoided. The supervisor will ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with State law and this policy. In determining which party is the primary aggressor where both persons exhibit signs of injury, the supervisor should consider such factors as:
  - a. Any history of domestic violence or violent acts by either person.
  - b. Whether the injury was caused by a person acting in self defense.
  - c. Relative size and strength of the persons involved.
  - d. The comparative severity of the injuries suffered or inflicted.
  - e. Each person's fear of physical injury resulting from the other person's threatened use or history of use of force.
- 8. The Road Supervisor will ensure the victim is informed of the following:
  - a. Victims' Rights as set forth in the Victim Notification Form.
  - b. Procedures for obtaining a restraining order.
  - c. The availability of a Domestic Violence Response Team member or a domestic violence advocate immediately following the incident.
  - d. The availability of confidential transportation to a location that can provide improved victim safety.



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- e. Community resources, local domestic violence victim services, including shelter, and safety planning information.
- 9. Whenever a domestic violence call involving a law enforcement officer does not result in an arrest or a warrant is not sought, the Road Supervisor or Tour Commander will explain in a written report why these actions were not taken, and the report shall be forwarded to the Internal Affairs Unit.
- 10. The Road Supervisor or Tour Commander will notify the Chief of Police through the chain of command as soon as possible. If the officer is from another jurisdiction, the supervisor will ensure that notification is made to the Chief of Police, Law Enforcement Chief Executive, ranking supervisor or an officer of the Internal Affairs Unit in the department where the accused officer is employed. All notifications, and attempts to notify, will be fully documented in writing and shall be forwarded to the Internal Affairs Unit.

E. Additional Critical Considerations

- 1. When responding to a domestic violence incident involving a law enforcement officer from another jurisdiction, all responding officers, investigators, and supervisors will follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from this department as set forth in the *Attorney General's Guidelines on Police Response to Domestic Violence Cases* and *Attorney General Weapons Seizure Directives*.
- 2. When responding to a domestic violence incident involving a law enforcement officer from another county, the Chief of Police or his designee shall notify the County Prosecutor where the officer is employed.
- 3. If the reported incident involves the Chief of Police or Law Enforcement Chief Executive or a person acting in those capacities, the supervisor will immediately notify the County Prosecutor's Office which may directly oversee the criminal investigation. If warranted the County Prosecutor may designate a member of the office to respond to the scene of all domestic violence incidents involving a Chief of Police or a Law Enforcement Chief Executive.
- 4. In responding to domestic violence incidents where the victim is a law enforcement officer, standard domestic

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violence response and investigation procedures should be followed as set forth in the *Attorney General's Guidelines on Police Response to Domestic Violence Cases*.

5. In responding to domestic violence incidents where the parties involved are both law enforcement officers, standard domestic violence response and investigation procedures as set forth in the *Attorney General's Guidelines on Police Response to Domestic Violence Cases* and the *Attorney General Weapons Seizure Directives* should be followed.
6. When responding to a domestic violence complaint involving a law enforcement officer employed by the federal government or out-of state agency, all responding officers, investigators and supervisors will follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from this Department as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and in the *Attorney General's Weapons Seizure Directives*.
7. All weapons are to be seized. The Chief of Police or his designee shall notify the federal or out of state government agency that employs the officer.

F. Department Follow-Up

1. In a timely manner, the Chief of Police shall ensure that all officers who responded to a law enforcement officer domestic violence call are debriefed. The debriefing should include:
  - a. A review of department confidentiality guidelines.
  - b. A direct order prohibiting discussion of the incident outside of the official inquiry.
  - c. A clear delineation of assignments.
2. Follow-up investigators will proactively seek out information on existing protective orders and, if found, will enforce them and any applicable state and federal firearms laws and determine whether the officer violated department policy by failing to report the temporary or final restraining order.



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3. Arrest warrants charging law enforcement officers with domestic violence and protective orders issued at a later time should all be served by no fewer than two officers with at least one being of senior rank to the officer being served. In cases where firearms have not previously been seized, firearms will be seized and decisions about seized weapons shall be made as set forth in the *Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases* and in the *Attorney General Weapons Seizure Directives*.
4. This Department will conduct a thorough Internal Affairs investigation even if the temporary or final restraining order is dismissed against a member of this Department.
5. Following the reported incident, the Chief of Police or Law Enforcement Chief Executive of the primary investigative department or his/her designee will immediately contact the designated Principal Law Enforcement Contact person and advise that officer of the domestic violence incident and request that he/she perform the duties listed in Section VIII. A.(6) above.

G. Response in Cases Involving Restraining Order Only

1. Any law enforcement officer who is served with a temporary or final restraining order must immediately inform his or her supervisor and provide a copy of the order to the supervisor.
2. Whenever this department is notified that a temporary or final restraining order is issued against a member of this department, this department will serve the restraining order, if it has not already been served, or will assist any other agency in ensuring the immediate service of the restraining order. This department will also ensure that a supervisory officer will be present at any time the law enforcement officer is removing personal items from any common residence with the victim pursuant to the restraining order.
3. If the law enforcement officer's duty and off-duty firearms and weapons have not already been turned in pursuant to the *Attorney General Weapons Seizure Directives*, the weapons shall be immediately seized by this Department.

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4. No weapon is to be returned or issued to the law enforcement officer except pursuant to the procedure set forth in *Attorney General Weapons Seizure Directives*.
5. This department will ensure that an Internal Affairs investigation is initiated pursuant to the procedures set forth in the *Attorney General's Internal Affairs Policy and Procedures Manual*.
6. This Department will immediately notify the Prosecutor's Office of the issuance of a restraining order against the officer.
7. The Chief of Police or Law Enforcement Chief Executive or his/her designee will immediately contact the designated Principal Law Enforcement Contact person to perform the duties listed in Section VIII. A.(6) above.

**IX. SEIZURE OF WEAPONS**

- A. See *Attorney General Directives Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers and from All State Law Enforcement Officers Involved in Domestic Violence Incidents* [Directives 2000-3 and 2000-4 dated September 1, 2000].

**X. VICTIM SAFETY AND PROTECTION**

- A. Victim Safety  
This Department will make all reasonable efforts to
  1. Provide law enforcement protection and other safety measures to a victim of law enforcement officer domestic violence.
    - a. Directed patrol initiatives including:
      - (1) Drive-bys.
      - (2) Dismounted patrols.
      - (3) Welfare checks.
  2. Assist in arranging for the transportation of the victim to a safe place when necessary.



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3. Ensure victim contact with trained domestic violence advocates for safety planning. These protective measures will remain in effect even if the officer is dismissed as a result of committing domestic violence.
- B. Victim Notification. To better ensure victim safety, the designated Principal Law Enforcement Contact person will inform the victim as to the status of the case as far in advance as possible to all impending actions taken against or with the officer. This Department will provide reasonable assistance to help the victim with safety measures.
  - C. Confidentiality of Victim Location  
If the victim wishes to be placed in an undisclosed "safe home," she/he may be transported by another party in lieu of a law enforcement officer. Those law enforcement employees who do have contact with the victim must keep all information concerning his or her whereabouts and safety plans confidential.
  - D. Prohibition of Law Enforcement Court Accompaniment  
No law enforcement officer will attend any domestic violence related court proceeding of any law enforcement officer employee unless subpoenaed to appear, or authorized by their agency, or as part of their investigation.

**XI. POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS**

Departments must conduct an administrative investigation of an alleged incident of domestic violence committed by an officer in the department in accordance with *the Attorney General's Internal Affairs Policy and Procedures Manual*.

**TRAFFIC  
DRIVING UNDER INFLUENCE "DWI"  
VOL. IX, CH. 5**

**DEPARTMENT RULES AND REGULATIONS/POLICIES AND PROCEDURES**

|                                                                                                             |                                         |                           |                |                 |                 |                                  |
|-------------------------------------------------------------------------------------------------------------|-----------------------------------------|---------------------------|----------------|-----------------|-----------------|----------------------------------|
| <b>BOROUGH OF FORT LEE<br/>POLICE DEPARTMENT</b>                                                            | <b>EFFECTIVE<br/>DATE:<br/>04-04-05</b> | <b>REVISION<br/>DATE:</b> | <b>PAGE #:</b> | <b>SECTION:</b> | <b>APPROVED</b> | <b>VOLUME<br/>IX</b>             |
| <b>VOLUME TITLE: TRAFFIC</b>                                                                                | <b># PAGES:<br/>22</b>                  |                           |                |                 |                 | <b>CHAPTER<br/>5</b>             |
| <b>ACCREDITATION STANDARD(S):61.1.5</b>                                                                     | <b>REFERENCE:<br/>V9C5</b>              |                           |                |                 |                 |                                  |
| <b>SUBJECT: DRIVING UNDER INFLUENCE "DWI"</b>                                                               |                                         |                           |                |                 |                 | <b>DISTRIBUTION<br/><br/>ALL</b> |
| <b>ISSUING AUTHORITY:</b><br><br><b>CHIEF THOMAS RIPOLI</b>                                                 |                                         |                           |                |                 |                 | <b>EVALUATION<br/>DATE:</b>      |
| <b>ATTORNEY GENERAL:<br/>AG 2001-5</b>                                                                      | <b>Special Instructions</b>             |                           |                |                 |                 |                                  |
| <b>PROSECUTOR'S OFFICE: I-5, I-15, E-5</b>                                                                  |                                         |                           |                |                 |                 |                                  |
| <b>REFERENCE: NJSP DWI Course, NJAC, Romano v.<br/>Kimmelman, Morey V. Palmer, 26:2B-16, 59:3-2, 59:3-5</b> |                                         |                           |                |                 |                 |                                  |
|                                                                                                             |                                         |                           |                |                 |                 |                                  |

**PURPOSE:**

To establish guidelines for conducting a DWI countermeasures program designed to reduce alcohol/drug-related crashes.

To provide guidance and direction for all officers and supervisors concerning DWI investigations, arrests and processing.

**GOALS:**

It is the goal of The Fort Lee Police Department to protect the lives, property, safety and well being of the public. The Fort Lee Police Department recognizes the research that shows that driving while intoxicated is a major contributing factor in motor vehicle accidents and deaths related to motor vehicle accidents.

To increase deterrence of DWI violations, and thereby reduce the number of accidents, deaths and injuries through aggressive DWI detection and enforcement of alcohol related laws (Title 39).

**DISCUSSION:**

Drivers impaired by alcohol and/or drugs represent a serious threat to the life and safety of persons using the streets and highways of this state, and consequently a comprehensive, coordinated countermeasures program involving education, enforcement, adjudication, treatment and public support is essential if the program is to have long term success in combating the DWI problem.



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Enforcement is one of the key elements in the DWI countermeasures program. If the department does not detect and apprehend impaired drivers, the rest of the system cannot function.

The detection and arrest of impaired drivers differs significantly from other traffic law violators. Specific statutes and regulations govern driving while under the influence of alcohol and/or drugs, implied consent, chemical tests for intoxication, and establish legal limits of impairment or intoxication. These statutes and regulations include many provisions that affect an officer's authority and establish procedures for conducting chemical tests and initiating the DWI sanction process.

**POLICY:**

The department fully supports a comprehensive cooperative DWI countermeasures program, and has established DWI enforcement as one of its highest priorities.

Sworn officers of the Borough of Fort Lee Police Department must be alert for signs of alcohol and/or drug impairment in all contacts with motorists and make every effort to detect and apprehend them. After conducting an initial examination at the scene of the traffic contact, and upon determining that probable cause to arrest is present, officers will effect a physical arrest of the subject.

Officers will not release a DWI suspect or arrange for alternate transportation in lieu of arrest.

Chemical test(s) will be conducted in accordance with state requirements.

Officers are reminded that chemical breath tests are supplemental tools only, and a refusal to submit to a chemical test shall not constitute cause to issue a citation for a lesser offense.

If the DWI driver was involved in a Fatal or potentially fatal accident the scene will be handled as per the Accident Investigation Policy (Vol. 9 Ch. 22).

A DWI driver will be handled and processed in accordance with other established department policies.

A DWI driver will be photographed and assigned a Rouges Gallery number. DWI driver will not be fingerprinted for the DWI charge.

Vehicle will be towed in accordance with the Towed Vehicle policy (Vol. 5 Ch. 8). Vehicles can not be released to the driver until they are sober, minimum of 12 hours, see attached "Johns Law".

The arresting officer may be the Breathalyzer Operator. If another Breathalyzer Operator is available they may be utilized.

No portable radios or cell phones are to be in the room where the Breathalyzer is being conducted.

If a DWI driver appears incapacitated or has a Breathalyzer result of .30% BAC or higher they will be transported to an area hospital under the ATRA Laws for their safety.

If a DWI driver is involved in any collision, which results in injury to anyone, including himself, an investigation should be conducted into charges involving assault by auto 2C:12-1C.

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A DWI driver must be released to a responsible adult escort willing to accept responsibility for the intoxicated person's safety, (potential liability waiver form must be given to person accepting responsibility, see attached form) or remain in custody until sober. DWI prisoners will not be released to the driver of a taxi. No on-duty member of this department will drive a DWI driver home.

No off-duty officer will drive a DWI driver home unless that officer has completed a potential liability form.

**PROCEDURE:**

**I. TRAINING**

- A. All department personnel conducting preliminary or evidential chemical tests for intoxication shall complete operator training programs, and appropriate in-service training as required.
- B. All department personnel conducting preliminary or evidential chemical tests shall be certified in accordance with state/local requirements.

**II. DWI DETECTION AND PRE-ARREST SCREENING**

- A. Detection is the first step in any DWI enforcement action. The officer's observations in this stage are crucial in establishing probable cause upon which the arrest decision is based. Officers should perform the following tasks:
  - I. Recognize and identify specific driving behaviors that have a high probability of signifying that the driver may be impaired by alcohol / drugs, proof of operation and evidence of influence.
    - a. **Elements:** all three (3) must be present.
      - (1) Establish operation of the vehicle by any of the following:
        - (a) Direct observation
        - (b) Self admission
        - (c) Witnesses
      - (2) Impairment of the operator by any of the following:
        - (a) Observation of driving
        - (b) Witnesses



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- (c). Physical test on road
    - (d). Observation of driver
  - (3) Alcohol or drugs are suspected based upon any of the following:
    - (a) Odor of an alcoholic beverage emanating from the breath.
    - (b) Observe evidence of impairment
    - (c) Self admission
    - (d) Paraphernalia
    - (e) Witnesses
  - (4) The officer must formulate an opinion as to the operator's sobriety at the scene and the operator shall be placed under arrest at the scene, not after the breath test.
- 2. Recognize and identify specific driving or other behaviors occurring during vehicle stops that provide additional evidence/suspicion that the driver may be impaired.
- 3. Note all observations leading to the suspicion that the driver may be impaired.
- 4. Exercise due care and caution in stopping impaired drivers and be alert for unusual or inappropriate reactions from the driver.
- 5. The time between observation and the motor vehicle stop should not be prolonged, apprehension should be made as soon as possible in a safe location utilizing the vehicles emergency lights, siren and if equipped, the Mobile Video Recorder.
- 6. Notify communications of location, vehicle description, and reason for the stop.
- 7. Summon assistance if necessary.
- 8. Once the vehicle has stopped and the driver is determined to be impaired, they will not be allowed to move the vehicle.
- 9. Approach the vehicle with caution, but with minimal delay.
- 10. Obtain driver license and other appropriate documents (e.g., registration, insurance card).

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11. Interview driver and passengers.
12. Recognize and identify specific characteristics, attitudes and actions commonly manifested by impaired drivers during face-to-face contact.
13. Note all observations (violation, odor of alcoholic beverage, etc.) leading to the suspicion that the driver may be impaired. If articulable facts exist to support your suspicion, request the driver to exit the vehicle for further investigation.
14. If vehicle was not observed in motion, determine if operation is established and probable cause exists to charge driver. As per 39:5-25, an officer does not have to personally witness the driver operate the vehicle to justify an arrest.
15. Request the subject to exit the vehicle and move to a safe location to conduct field sobriety tests. The officer should make observations as to the driver's balance as they exit the vehicle and / or stand in the area.

**NOTE:** Officers shall not conduct interviews or field sobriety tests in the space between the patrol vehicle and the subject's vehicle.

16. Field Sobriety Tests – No less than 3 tests and no more than 4 tests should be conducted.
  - a. The following NHTSA Standardized Field Sobriety Tests should be utilized by trained officers at the scene to assess impairment:
    - (1) Walk and Turn
    - (2) One-Leg Stand
    - (3) Horizontal Gaze Nystagmus
  - b. The following Fort Lee Police Department Psychophysical Tests may be utilized by officers that are not trained in the NHTSA Standardized Field Sobriety Tests to assess impairment:
    - (1) Finger to Nose
    - (2) Erect Stand
    - (3) Waist Bend
    - (4) Heel to Toe Walk
    - (5) Recitation of ABC's
  - c. The tests should be given on level ground, on a hard, dry, non-slippery surface, under fair conditions.



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- d. Test consideration should be given to:
    - (1) People who are over 60 years old, over 50 pounds overweight or have physical impairments that affect their ability maintain their balance.
    - (2) People wearing high-heels or uncomfortable shoes should be allowed to remove their shoes.
  - e. The officer should, based upon his observation, determine to arrest the subject for operating under the influence.
  - f. If a test is not conducted or completed the reason should be listed on the form.
  - g. Preliminary Breath Testing devices are not authorized for use in New Jersey at this time as it presents complications with Breathalyzer Refusal cases.
- 17. Formulate appropriate arrest decision based on the evidence accumulated in the above steps.
  - 18. Probable cause for a DWI arrest can not be established solely by the Breathalyzer readings.

**B. ARREST AND PROCESSING**

- 1. If all elements of the DWI violation (e.g., operation or actual physical control, on a highway in the state, while impaired by alcohol and/or drugs) have been clearly established, officers shall effect a physical arrest of the subject at scene.
- 2. Notify subject of his rights and responsibilities (e.g., implied consent, Miranda).
- 3. Handcuff and search the subject in accordance with department policy.
- 4. Secure the vehicle and property; arrange for transportation/safety of any passengers.
  - a. The vehicle operated by the person placed under arrest shall be impounded by the law enforcement agency making the arrest for 12 hours from the time of the arrest. *N.J.S.A. 39:4-50.23.*

**See Appendix "A" regarding the impounding of a vehicle in a DWI arrest for 12 hours following the arrest.**

- 5. Transport the subject to headquarters for evidential testing and processing.

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- a. Make observations of subject on the way to headquarters and from patrol car into headquarters. Note these on appropriate department forms.
  - b. The subject is to be secured and processed as per the department policies.
- 6. Evidential chemical testing:
  - a. Arrange for Breathalyzer operator and reading the Implied Consent form.
    - (1). Arresting officer must read the implied consent form.
  - b. Conduct evidential chemical test(s) in accordance with state requirements.
  - c. If subject's BAC does not substantiate impairment, check for drugs or medical condition that may cause impairment. Medical treatment should be obtained if appropriate. A Drug Recognition Expert (DRE) evaluation may be conducted by a certified DRE.
  - d. If subject refuses to submit to the evidential chemical test, complete appropriate forms to invoke the implied consent sanction.
    - (1) Issue summons for 39:4-50 and 39:4-50.2.
  - e. In any instance, wherein, a driver charged with DWI requests that they be given the opportunity to have a blood test independent of any test conducted by the Borough of Fort Lee Police Department, the arresting officer should follow the procedures under Section M.
- 7. Determine whether to incarcerate or release. The officer's decision to incarcerate or release is based on several factors:
  - a. Specific statutory or bail requirements, if there are any bailable offenses.
  - b. Level of intoxication.
    - (1) If a DWI driver appears incapacitated or has a Breathalyzer result of .30% BAC or higher the following step should be taken:
      - (a) They should be immediately transported to an area hospital under the ATRA Laws for their safety.
      - (b) The DWI driver will be served the motor vehicle summonses at the hospital and released.
      - (c) The DWI driver may be processed at a later date if needed.



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- c. Release of an arrestee from custody will be permitted only after all the arrest procedures have been completed and one of the following occur:
- (1) The arrestee's blood alcohol level has decreased to a level below the statutory limit and shows no visible signs of intoxication.
  - (2) The appearance of a responsible escort who is willing to and does assume responsibility for the arrestee's safety. This does not include a taxi or other form of public transportation hired on a single trip basis.
  - (3) The responsible adult's name, address and phone number should be included in the narrative report, arrest report and the cell log book.
  - (4) Any person summoned by or on behalf of a defendant charged with a driving while intoxicated (DWI) or refusal to submit to chemical breath testing (Refusal) violation must be provided with a written statement advising that summoned person of his or her "potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated." *N.J.S.A. 39:4-50.22*.

**NOTE:** Department policy requires release to a responsible third party whenever possible and/or practical. The responsible party should not allow the suspect to drive. See Appendix "B" regarding potential liability form to be filled out and given to person picking up arrestee.

**C. CONDITIONS FOR DRAWING BLOOD**

1. An arresting officer may request blood to be drawn by an authorized person when probable cause exists of operating a motor vehicle while under the influence of:
  - a. Intoxicating liquor and the defendant is incapable of submitting to a breath test for alcohol determination.
  - b. A Controlled Dangerous Substance (CDS) or medication effecting their ability to operate a motor vehicle.
2. Blood will not be requested by the arresting officer for alcohol determination because a defendant refused a breath test or because a defendant prefers a blood test.
3. Blood will be drawn at the defendant's request only after he has been given a proper chemical breath test (see Section L).
  - a. Blood drawn at the defendant's request will be at his expense and the doctor should be so advised.

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4. Regardless of who requests the blood sample, the arresting officer will attempt to get a sample of blood as evidence to be analyzed at a State laboratory.
  - a. All blood samples that are requested by the arresting officer should be handled as per the Evidence Policy (Vol. 7 Ch. 11).
5. Procedure for drawing blood
  - a. Blood must be drawn by a qualified individual, need not be a doctor, only licensed by the State Board of Medical Examiners.
    - (1) The officer requesting the drawing of blood must indicate the exact time of the drawing in their police report.
  - b. A non-alcoholic antiseptic will be used on the skin prior to the drawing of blood.
  - c. Grey top vials of blood should be drawn and submitted for alcohol analysis and/or drug analysis.
    - (1) Two 10 ml. (10 cc) of blood, or four 5 ml vials.
  - d. The vials should contain an anticoagulant and preservative.
  - e. As per 2A:62A-11, the officer requesting the blood sample from the medical staff should receive a certificate stating that the specimen was obtained under medically acceptable manner. The certificate shall be signed under oath before a notary public for use in the prosecution of the driver.
  - f. A blood sample may be involuntarily taken from a subject arrested for DWI when probable cause exists. A subject that resists may be restrained in a medically acceptable manner.

**D. BREATHALYZER OPERATOR**

1. An arresting officer (if he is a certified operator) may take a breath sample from a suspect that they have arrested. If possible, another officer should witness the percent blood alcohol reading. This will corroborate the testing officer's testimony in court, if needed.
2. Must be certified by the New Jersey State Police (attorney general)
  - a. Must attend a one-day refresher class as required in N.J.A.C. 13:51-1.6 (d)
3. Conduct breath tests in accordance with approved methods as outlined in the State Police training.



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4. Submit proper reports as required.
  - a. For every breath test conducted the operator will complete the Borough of Fort Lee Police Alcohol Influence Report.
5. Testify in court where appearance is required in contested cases.

**E. BREATHALYZER TEST**

1. The Operator should ensure that the Implied Consent Law (DWI 10 Paragraph Statement Form) was read to the driver by the arresting officer.
2. Anyone arrested for operating under the influence shall be requested to voluntarily submit to a breath test. An officer shall read the "Refusal" Statement. If answer is "Yes", a Breathalyzer Operator shall conduct the chemical breath test. If the answer is anything other than yes, the second section of the Implied Consent Law is to be read. Record everything completely and issue summons for 39:4.50.
  - a. The accused shall be requested to submit to a chemical breath test consisting of a minimum of two breath samples. If after the two-part test, the accused refuses, the subject is to be issued a summons for Refusal to Submit to a Breath Test. Any answer or action other than providing the required proper breath samples constitutes a refusal.
  - b. If the accused refuses to take the breath test, the Alcohol Influence Report Form should be filled out. All applicable boxes should be filled in to exhibit that the Breathalyzer was operating in good order. All questions that are on the Alcohol Influence Report should be asked after the accused has been given their Miranda Warnings.
2. The prisoner must be under constant observation for 20 minutes, by police personnel, prior to the Breathalyzer tests being conducted.
3. The prisoner may have nothing to eat or drink during this period, including medication, candy, gum etc.
4. A certified Breathalyzer Operator will conduct at least 2 complete tests with in .01% BAC of each other, within 15 minutes of each other (as per training NJ Administrative Code). Any response other than a yes and 2 proper breath samples constitutes a Refusal to submit to Breathalyzer testing (39:4-50.2).
5. If required Breathalyzer Tests may be conducted at another departments facility. A note of this should be included in the reports so the proper records may be obtained at a later date. A certified operator from another law enforcement agency may conduct test using our equipment.

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**7. Charging of DWI drivers**

- a. A motor vehicle summons will be issued for the initial observed violation that established probable cause for the motor vehicle to be stopped.
- b. If the BAC is very low for the impairment observed and there are indications of possible drugs then the actor should be checked for being under the influence of a Controlled Dangerous Substance (CDS).
  - (1) The officer should request the driver to give a urine specimen in the sterile packaged urine cup, located in the Supply Cabinet.
    - (a) The urine specimen will not be used in lieu of a Breathalyzer or blood analysis.
    - (b) The officer should take universal precautions by wearing rubber gloves at all times when handling the specimen cup.
    - (c) The specimen should be secured and marked as evidence as per the Evidence Policy.
    - (d) The officer will complete a narcotics Evidence invoice as required.
    - (e) The specimen will be taken in the cell area **only** in the presence of the officer, or if in the case of a female prisoner, in the presence of the matron or female officer.
    - (f) The officer should obtain as much of a urine specimen as possible from the driver.
    - (g) The driver will be charged with DWI prior to the results returning on the analysis, based upon the observations and evaluation of the driver.
    - (h) If a driver of a vehicle is found to be Under the Influence of CDS then the driver should be processed as a criminal arrest and charged with 2C:35-10b, Under the Influence of CDS, on a CDR Complaint in addition to 39:4-50 CDS DWI, on a MV Summons.
    - (i) The CDS DWI driver does not have to be read the Implied Consent Law DWI 10 Paragraph form as mentioned in Section II Paragraph G.



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(State V. Woomer, State V. Mercer).

- c. 21 years or older regular driver's license.
  - (1) If the driver has a BAC of .08% or higher they will be charged with DWI, 39:4-50.
  - (2) If the driver has a BAC below .08% and the officer has observations which establish the elements of the DWI offense, operation, alcohol and impairment then the driver would be charged with DWI, 39:4-50.
  - (3) If the driver refused to provide 2 breath samples as required by law they will be also charged with Refusal, 39:4-50.2.
  - (4) If the driver was found to have an open container of alcohol in the vehicle they may be charged with Open Alcohol, 39:4-51a, on a MV Summons.
- d. Under the legal age of 21
  - (1) If the driver has a BAC of .08% or higher they will be charged with DWI, 39:4-50
  - (2) If the driver has a BAC between .01% and .07% they will be charged with DWI 39:4-50 and DWI Under the Legal Age 39:4-50.14.
  - (3) If the driver refused to provide 2 breath samples as required by law they will be also charged with Refusal, 39:4-50.2.
  - (4) If the driver was found to have an open container of alcohol in the vehicle they may be charged with Open Alcohol, 39:4-51a, on a MV Summons and Underage Possession of Alcohol, 2C:33-15, on a CDR Complaint

**Note: a DWI arrest is needed to put someone on the breathalyzer**

**F. Moped DWI**

- 1. Any person under the influence operating a motorized bicycle will be charged with 39:4-14.3g, operating a motorized bicycle under the influence.

**G. Alcohol Level**

- 1. A complaint for 39:4-50 or 39:4-14.3g, Operating While Under the Influence of Intoxicating Liquor, shall be initiated when:

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- a. Evidence is based on Officer's Observation and there has been a Refusal to Submit to a Breath Test or when no chemical test was administered because of injuries, etc. In which case blood may be taken.
  - b. Chemical test is administered and the result is .08% Blood Alcohol or more.
  - c. Chemical test is administered and the result is less than .08% Blood Alcohol, but there is independent evidence to establish probable cause of operating under the influence of alcohol or drugs.
2. Complaint may be initiated for "Allowing" to operate while under the influence of intoxicating liquor or narcotic, hallucinogenic, or habit-producing drug when the elements of the offense are established.

**H. JUVENILE ARRESTS**

1. Any juvenile, who has been arrested for a violation of the drinking-driving law, shall be charged and the complaint shall be issued a regular traffic summons and it should be forwarded to the municipal court.
2. DWI reports shall be completed and forwarded according to procedures set forth in this order.
3. A Juvenile DWI driver will be photographed and entered in the Juvenile RG Book.
4. The juvenile will be served with a MV Summons, processed and released as per the Juvenile Policy (Vol. 7 Ch. 2).
5. If a Juvenile is found to have an open container of alcohol in the vehicle they should be charged with Open Alcohol, 39:4-51a, on a MV Summons and Underage Possession of Alcohol, 2C:33-15, on a Juvenile Complaint.
6. Juvenile DWI Charging Guide:
  - a. Juvenile drivers with a BAC of .08% or higher will be charged in the same manner as adults with DWI, 39:4-50,
  - b. If a juvenile DWI driver refuses to provide 2 breath samples, as required by law then the juvenile DWI driver will be as required by law then the juvenile DWI driver will be charged with Refusal, 39:4-50.2.
  - c. If a Juvenile driver has a BAC between .01% and .07% then they will be charged with DWI, 39:4-50 DWI Under the Legal Age, 39:4-50.14.



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**I. BREATHALYZER MAINTANANCE**

1. The security and maintenance of the departments Breathalyzer, and related equipment and materials, will be the responsibility of the officer(s) designated by the chief in accordance with the Breathalyzer Policy (Vol. 9 Ch. 17).

**J. GENERAL GUIDELINES**

1. You can arrest on private property for 39:4-50 and 39:4-14.3g.
2. Refusal report **not** applicable on private property.
3. Miranda Warning is required for DWI arrests.
4. A summons for the initial violation should be issued in addition to the 39:4:50 summons.
5. A non-resident violator refusing a breath test will be processed and reports filed in the same manner in which resident violators are processed.

**K. CHEMICAL BREATH TEST OF OPERATORS WITH COMMERCIAL DRIVERS LICENSES (C.D.L.) OPERATING COMMERCIAL VEHICLES**

1. **Presumption:**
  - a. .04% or higher is presumed under the influence of alcohol.
2. **Refusals:**
  - a. An arresting officer shall reread the Miranda rights, read the C. D. L. Refusal statement, Standard Refusal statement and document all responses.
  - b. Should the accused refuse to submit to the chemical breath tests after having been read the C. D. L. Standard Statement by the arresting officer, or fail to give satisfactory breath samples as determined by the Breathalyzer Operator, the arresting officer shall issue a summons for refusal pursuant to **N.J.S.A. 39:3-10.24**. Full documentation of the refusal shall be made on the D. W. I. Report.
  - c. If the accused refuses to submit to the breath test, the officer will issue a summons for **39:4-50** in addition to the refusal under **39:3-10.24**.
  - d. In the event the accused refuses to give samples of their breath, the Breathalyzer Operator or arresting officer shall not end the investigation at

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that point, but shall continue gathering evidence on the suspect's impairment.

**3. Breath Test**

- a. If the accused performs the breath tests, and it is determined that the alcohol concentration is 0.04% or more, the arresting officer shall issue a summons for N.J.S.A. 39:3-10.13, a per se violation.
- b. If the accused performs the breath tests, and it is determined that the alcohol concentration is .08% or more, the officer shall issue a summons to the accused for N.J.S.A. 39:3-10.13, a per se violation and shall also issue a summons to that accused charging a violation of N.J.S.A. 39:4-50, operating a motor vehicle under the influence of alcohol. The N.J.S.A. 39:4-50 summons will be supported by the observations of the arresting officer and the results of the chemical breath test.

**4. General Guidelines**

- a. In order to charge for a violation of 39:3-10.13, Driving While under the Influence of Alcohol and/or Drugs in a Commercial Vehicle, the arresting officer must have either a breath, blood or urine reading of .04% or higher.
- b. Under the law, a person with a C. D. L. operating a Commercial Vehicle as described in the statute can be charged twice for D. W. I. as long as the breath reading is over .08% substantiated by the officer's observations.

**c. Examples:**

- (1) 21 years and older Commercial Drivers License.
  - (a) If the driver has a commercial driver license (CDL), was operating a commercial vehicle and has a BAC above .04% but below .08% BAC then they should be charged with CDL DWI, 39:3-10.13 (affects CDL endorsement only).
  - (b) If the driver has a CDL, was operating a commercial vehicle and has a BAC of .08% or higher they should be charged with DWI, 39:4-50 and CDL DWI 39:3-10.13.
  - (c) If the driver has a CDL, was operating a commercial vehicle and presented signs of alcohol intoxication then refused to provide the required breath samples as required by law then they should be charged with DWI 39:4-50 and Refusal, 39:4-50.2.



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- (d) If the driver has a CDL, was operating a commercial vehicle and presented signs of alcohol impairment then refused to provide the required breath samples as required by law, then they should be charged with CDL Refusal, 39:3-10.24 (affect drivers license and CDL endorsement). A CDL DWI driver can not be charged with 39:3-10.24 if they were operating on private property, but may be charged with 39:4-50.
  - (e) An operator involved in an accident and is transported to the hospital, if the arresting officer determines alcohol is involved, blood samples shall be obtained. The arresting officer should issue a motor vehicle summons for DWI 39:4-50 and a second summons for CDL DWI 39:3-10.13.
  - (f) If the driver was found to have an open container of alcohol in the vehicle they may be charged with Open Alcohol, 39:4-51a, on a MV Summons
- (2) Under the Legal Age of 21 with a CDL License
- (a) If the driver has a commercial drivers license (CDL), was operating a commercial vehicle and BAC of .08% or higher they should be charged with DWI, 39:4-50.
  - (b) If the driver has a CDL license and was operating a commercial vehicle and has BAC between .04% and below .08% they should be charged with CDL DWI, 39:3-10.13, (affects only CDL endorsement).
  - (c) If the driver has a BAC between .01 and below .04% they should be charged with DWI, 39:4-50, and Under the Legal Age DWI 39:4-50.14.
  - (d) If the driver was found to have an open container of alcohol in the vehicle they should be charged with Open Alcohol, 39:4-51a, on a MV Summons and Underage Possession of Alcohol, 2C:33-15, on a CDR Complaint.

**L. INDEPENDENT TEST REQUESTS**

1. Upon completion of the arrest procedures (after submitting samples of Breath, Urine or Blood to Law Enforcement) and at the request of the arrestee, the arrestee shall be permitted reasonable access to a telephone for the purpose of arranging to have a person or physician of their own selection, at their expense, take independent samples and conduct independent chemical tests of the arrestee's breath, urine, or blood.

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2. The Borough of Fort Lee Police will not assume responsibility or undertake any transportation of the arrestee once release for the purpose of exercising their right to obtain independent testing. The officer should:
  - (a) Advise the individual that they are free to make whatever arrangement for independent testing that they wish. Arrangements for conducting the independent testing shall be the sole responsibility of the arrestee or their escort.
3. In the instance where an arrestee is unable be released and they request that they be given the opportunity to have a blood test independent of any test conducted by the Borough of Fort Lee Police Department, the arresting officer should do the following:
  - (a) The officer will indicate on his report that the individual so requested an independent test and also indicate what facility or whom they contacted to assist them in obtaining independent testing.
  - (b) If the arrestee will not soon be released, the arrestee must be given an opportunity to arrange for independent testing at their own expense.
  - (c) If arrangements are made the arrestee must be securely transported to the facility to obtain an independent testing.
  - (d) Since the arrestee has not yet been released, the Prisoner Policies (Vol. 7 Ch. 8 & 9) shall be followed.

M. At no time is a person that has been arrested for Operating Under the Influence to be allowed to have the keys to a vehicle. The keys are to be turned over to the person that has accepted responsibility for the driver.

**N. STATIONARY SOBRIETY CHECKPOINTS**

1. The Operations Division Commander Responsibilities
  - a. The Operations Division Commander should be designated the locations where sobriety checkpoints will be conducted.
  - b. The Operations Division Commander may have a Work Schedule and plan developed by a Patrol Division Supervisor, as the supervisor in charge of the operation.
  - c. The supervisor in charge will be responsible to prepare a news release two weeks prior to the operation and submit it to the Chief for approval. Once approved, one news release will be given to the local paper and the other



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to the local radio station. These releases must be published or announced one week prior to the operation.

- d. The supervisor in charge, when organizing the operation, will have at least one Breathalyzer Operator assigned with additional manpower needed for the sobriety checkpoint.

**2. Patrol Supervisor's Responsibilities**

- a. The supervisor will be responsible for the proper utilization of the D. W. I. Road Check signs and highway flares at the checkpoint.
- b. The supervisor will be responsible to ensure that officers assigned to the operation complete the After Action Report. At the completion of the operation, the report shall be completed and submitted to the Operations Division Commander. A copy will also be forwarded to the Administrative Division Commander.

**(1) After action report may include, but is not limited to:**

- a. Time, date, and location of checkpoint.
- b. Weather conditions.
- c. Number of vehicles passing through checkpoint.
- d. Average time delay to motorists.
- e. Predetermined order of selecting motorists.
- f. Number and types of arrests.
- g. Number of motorists detained for field sobriety testing.
- h. Identification of unusual incidents such as safety problems/other concerns.

- c. Supervisor is responsible to ensure that all the officers are properly entered in the blotter.

**3. Sobriety Checkpoints**

- a. The DWI operations should be scheduled for the hours of the detail.

- b. D. W. I. Road Check Assignments:

**(1) Minimum manpower shall consist of:**

- (a) One (1) Supervisor in charge of the operation
- (b) Three (3) Uniformed Officers
- (c) One additional supervisor if the four or more uniformed officers are scheduled for the operation.

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- c. The predetermined sequence of vehicles that will be stopped will be determined based upon the traffic flow presented on the day selected.  
**Example: every third car, every fifth car, etc.**
  - (1) Once a "stop sequence" has been determined for an evening, it shall be conducted until the conclusion of the operation.
  - (2) Locations should be selected based upon:
    - (a) Alcohol related accidents and arrests.
    - (b) Safety issues such as visibility, lighting and equipment.
- d. Proper lighting, signs, flares and other equipment should be utilized. Personnel shall wear their reflective Traffic vests.
- e. Officers making the stops should be courteous and it is imperative that they advise the motorist of the purpose of the stop.
- f. All attempts should be made not to delay traffic for any prolonged period of time. Ideal circumstances are to have no lines of stopped traffic other than a few cars to be checked.
- g. The plate numbers of all stopped and checked vehicles shall be recorded.
- h. Addition police vehicles may be positioned in the area to stop vehicles that either attempt to avoid or refuse to stop for the checkpoint.

**O. ROVING D. W. I. PATROL**

- 1. The Drunk Driving Enforcement detail will announced and scheduled by the Supervisor in charge of the detail.
- 2. Upon completion of the detail, each assigned officer, regardless of the results, will be responsible to complete and forward a report containing the following information to the Detail Supervisor:
  - a. Grant Number for the Detail in the Heading of Report
  - b. Total Number of Motor Vehicle Stops
  - c. DWI Arrests Including Summons and Case Numbers
  - d. Open Alcohol Summonses Including Summons Number
  - e. Speeding Summonses



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- f. Seatbelt/Child Restraint Summonses
  - g. Criminal Arrests including Complaint and Case Numbers
  - h. Other Motor Vehicle Summons Violations
  - i. Total Number of Summonses Issued
  - j. Other incidents involved in during the shift.
- 3. This report should be submitted to the Detail Supervisor with the officer's original overtime sheet.
  - 4. Any reports not completed to the above format will be returned for completion prior to submitting of overtime sheet for payment.
  - 5. This report is in addition to any arrest reports completed.

**P. INJURED DRIVERS UNDER THE INFLUENCE OF ALCOHOL**

- 1. If the operator of a motor vehicle is injured requiring transportation to a hospital, and if the investigating officer has determined that the driver is under the influence of alcohol, the:
  - a. The VAC will decide which New Jersey area hospital to transport the arrestee to for treatment.
  - b. As per the Prisoner Transportation Policy, at least one officer is to escort the arrestee to and remain with the arrestee until such time that a blood sample is obtained as evidence.
  - c. The Supervisor may assign another officer to follow the ambulance to the hospital to obtain a blood sample and assist with prisoner security.
  - d. The officer will advise the emergency room doctor that they request that blood samples be taken from the driver.
    - (1) The officer will request a blood sample be drawn as per Section D.
    - (2) The officer will document the doctor, nurse or technician's name who draws the blood and obtain a notarized certification that the sample was obtained in a medically acceptable manner.
    - (3) The officer will return the blood samples to police headquarters where the blood samples will be logged as evidence and placed into the Evidence Refrigerator.

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- (4) An Evidence Detective will forward the blood samples to the State Police Lab for analysis.
2. At no time will an officer request that the blood samples recovered be tested by hospital personnel for a B.A.C. level.
3. If the suspect may be admitted to the hospital or stay in the emergency room for a prolonged time the following procedures should be followed:
  - a. The officer at the hospital should advise the Tour Commander of the suspect's condition and approximate time of release or admission status.
  - b. Once the officer has finished collecting evidence (blood, identification, verbal statements, etc.) the Tour Commander may direct the officer to issue the summons to the suspect and request that the hospital notify the department upon the suspect's release.
  - c. The suspect may be processed (photographed, etc.) after their release from the hospital.
4. Investigating officer should determine whether additional charges under 2C:12-1C assault by auto may be appropriate.

**Q. PERSONS INJURED BY OTHER DWI DRIVER**

1. An investigation shall be conducted to determine whether additional charges under 2C:12-1C assault by auto may be appropriate.

**III. REPORTS AND CASE JACKETS**

- A. A narrative report will be written documenting all the observations made by the officer at the scene, enroute to HQ and while processing the DWI driver at HQ. This documentation is required to sustain a conviction even if the Breathalyzer results are suppressed and found inadmissible in court. As per the Video in Patrol Vehicles policy, the MVR tape is to be secured as evidence and noted in the reports and on an Evidence Report.
- B. Departmental forms must be completed as required, thoroughly documenting all evidence gathered during the investigation and indicating the results of chemical tests administered. In addition to all other reports as required for arrests, the DWI jacket will contain the following:
  1. Drinking - Driving Report
  2. Implied Consent Law- DWI 10 Paragraph Statement Form or DWI 10 Paragraph Statement Form for Commercial Vehicle



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3. Psychophysical Evaluations Report or Standardized Field Sobriety (Horizontal Gaze Nystagmus) Report
  4. Alcohol Influence Report
  5. Breathalyzer Operator's certification card (copy)
  6. NJ State Police Breath Test Inspection Certificate (before and after the date of arrest)
  7. Ampoule Assay Certificate
  8. Any other certifications or reports to be used in court (RADAR, DRE, etc.)
  9. Potential liability form
  10. Drinking and driving questionnaire
  11. Accident reports as related
- C. Related charges/offenses
1. Assault by auto 2C:12-1C
  2. Endangering children 2C:24-4
  3. Possession of alcohol by a minor 2C:33-15
  4. Possession of alcohol by a minor on school property 2C:33-16
  5. Narcotic offenses 2C:35 et al
  6. DWI Bicycle 39:4-14.1
  7. DWI Moped 39:4-14.3g
  8. DWI with minor in vehicle 39:4-50.15
  9. Alcohol consumption in motor vehicle 39:4-51.a
  10. Open/unsealed containers of alcohol 39:4-51b
  11. Driving suspended, or allowing to drive 39:3-40

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### VOL. IX. CH 5 APPENDIX "A"

#### 12-HOUR MANDATORY IMPOUNDMENT OF VEHICLES, N.J.S.A. 39:4-50.23

*N.J.S.A. 39:4-50.23* mandates that the law enforcement agency which has arrested a driver for a DWI or a Refusal violation is required to take two actions.

- The arresting law enforcement agency **shall impound** the vehicle that the person was operating at the time of the arrest. *N.J.S.A. 39:4-50.23(a)*
- The vehicle "**shall be impounded for a period of 12 hours after the time of arrest** or until such later time as the arrestee claiming the vehicle meets the conditions for release" under *N.J.S.A. 39:4-50.23(d)*. *N.J.S.A. 39:4-50.23(b)*
  - A vehicle **cannot be impounded** if there is another person who is present at the scene of the arrest & that person has permission to take the vehicle, a valid driver's license, & is capable of operating the vehicle or is making arrangement for removal.
- The police **MUST** inform the person or party taking responsibility for the removal & impoundment of the vehicle of the time of the arrest of the operator of the vehicle & that the vehicle cannot be released for 12 hours following the time of arrest, unless otherwise authorized.
- Release of a vehicle before the expiration of the 12-hour period of impoundment expires is allowed **ONLY** under the following conditions. Failure to comply with any of these requirements will prohibit the release of the impounded vehicle before the 12-hour period of impoundment has elapsed.
- Regardless of the ownership of the vehicle, *N.J.S.A. 39:4-50.23(d)* requires that the person claiming the vehicle **MUST** present & satisfy the documentation, authority & criteria below.
  - Have a valid driver's license.
  - Have proof of ownership of the vehicle or evidence of authority to operate that vehicle.
  - Show proof of valid insurance for the vehicle.
  - The person must be able to operate the vehicle in a safe manner.
  - The person would not be in violation of Title 39 by operating the vehicle.
  - The person has met any other conditions for the release of the vehicle as established by the law enforcement agency, including but not limited to the payment of the reasonable fees for any towing and/or storage of the vehicle.
- If the vehicle is **NOT** owned or leased by the person arrested, then the owner or lessor can claim the vehicle at any time, provided that the owner or lessor satisfies the requirements listed above.
- If the vehicle **IS** owned or leased by the arrested person, the vehicle may be released to another person **ONLY** if the following conditions and requirements are **FULLY** satisfied.
  - The person to whom permission has been given, **has acknowledged, in writing**, receipt of the **POTENTIAL LIABILITY WARNING** - *N.J.S.A. 39:4-50.22*.
  - The arrestee has given permission to the other person to operate the vehicle.
  - The person to whom permission has been given has met all of the conditions for release of the vehicle under the provisions of *N.J.S.A. 39:4-50.23(d)*.



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**OVERVIEW OF GUIDELINES 1**

**AG DIRECTIVE NO. 2001-5, N.J.S.A. 39:4-50.22; 39:4-50.23**

**Effective Date: August 1, 2001**

**POTENTIAL LIABILITY WARNING, N.J.S.A. 39:4-50.22, Form & Procedures**

- Any person summoned by or on behalf of a person arrested for DWI or Refusal **MUST** be provided with the POTENTIAL LIABILITY WARNING form [WARNING form].
- After an arrestee has been processed, and before the person summoned arrives, the police officer **MUST** complete the WARNING form as directed by the Guidelines in Appendix A of AG Directive No. 2001-5.
- The police officer does **NOT** have to **READ** the WARNING form to the person.
- The person **MUST** acknowledge receipt of the WARNING form, in writing.
- When the person arrives the police officer should:
  - Identify the defendant to the person & confirm the person has come for the arrestee.
  - Inform the person of the charges against the arrestee.
  - Ask the person for some form of positive verifiable identification.
  - Hand the pre-prepared WARNING form to the person. Ask the person to read the form & instruct the person to fill in the information on the form & sign the form.
  - Take the completed form back from the person & verify if the person has completed all of the information acknowledging receipt.
  - If the person has signed the Acknowledgment, then the police officer is to sign the form, make a copy of the form & give the original to the person.
  - If the person will **NOT** provide written acknowledgment of their receipt of the WARNING form, the police officer **MUST** record that fact on the form, make a copy of the form & give the original to the person.
- The copy of the WARNING form is to be filed in the police department file for that case.