

# MONTCLAIR POLICE DEPARTMENT

## POLICY & PROCEDURES



SUBJECT: **DOMESTIC VIOLENCE INVESTIGATIONS**

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BY THE ORDER OF:  
Chief of Police Todd M. Conforti

**PURPOSE:** The purpose of this standard operating procedure is to maintain procedures when enforcing the provisions of the *Prevention of Domestic Violence Act*, N.J.S.A. 2C: 25-17 et seq., and to provide aid, assistance, and comfort to the victims of domestic violence.

**POLICY:** It is the policy of the Montclair Police Department to uniformly enforce the provisions of the *Prevention of Domestic Violence Act* in a fair and impartial manner. It is also the policy of the Montclair Police Department to investigate domestic violence-related matters in compliance with New Jersey Attorney General's guidelines and applicable Essex County Prosecutor's Office law enforcement directives.

## PROCEDURES

### I. DEFINITIONS

- A. Criminal coercion – N.J.S.A. 2C: 13-5 A (1) – This section of the statute does not require as an element of the threat to inflict immediate harm (i.e., a threat to inflict bodily injury is a violation regardless of the immediacy of the threat).
- B. Dating relationship – Always require the victim to indicate in his/her written statement why he/she feels that it was a date or a dating relationship. Upon review of the TRO complaint and supporting documentation, the court will determine whether a dating relationship exists. If the victim feels that it was a date or there is doubt, complete the required documentation and allow a judge to make the final determination.
- C. Defendant – A person at least 18 years old or emancipated alleged to have committed or has been found to have committed an act of domestic violence under the *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq.
- D. Domestic violence is the occurrence of one or more of the following criminal offenses upon a person protected under the *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq.
1. Homicide N.J.S.A. 2C: 11-1, et seq.;
  2. Assault N.J.S.A. 2C: 12-1, et seq.;
  3. Strangulation N.J.S.A. 2C: 12-1b(13);
  4. Terroristic threats N.J.S.A. 2C: 12-3;
  5. Kidnapping N.J.S.A. 2C: 13-1;
  6. Criminal restraint N.J.S.A. 2C: 13-2;
  7. False imprisonment N.J.S.A. 2C: 13-3;
  8. Sexual assault N.J.S.A. 2C: 14-2;
  9. Criminal sexual contact N.J.S.A. 2C: 14-3;
  10. Lewdness N.J.S.A. 2C: 14-4;
  11. Criminal mischief N.J.S.A. 2C: 17-3;
  12. Burglary N.J.S.A. 2C: 18-2;
  13. Criminal trespass N.J.S.A. 2C: 18-3;
  14. Harassment N.J.S.A. 2C: 33-4;
  15. Stalking N.J.S.A. 2C: 12-10;

16. Criminal coercion N.J.S.A. 2C: 13-5;
17. Robbery N.J.S.A. 2C: 15-1;
18. Cyber-harassment N.J.S.A. 2C: 33-4.1;
19. Contempt of a domestic violence restraining order pursuant to N.J.S.A. 2C: 29-2b, that constitutes a crime or disorderly persons offense;
20. Any other crime involving a risk of death or serious bodily injury to a person protected under the *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq.

NOTE: when one or more of these acts are inflicted by an un-emancipated minor upon a person protected under the *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq., the occurrence shall not constitute 'domestic violence' but, may be the basis for the filing of a petition or complaint pursuant to N.J.S.A. 2A: 4A-30, see section II.R of this directive for juvenile offenders.

- E. Domestic violence central registry (DVCR) is a computerized inquiry system that allows authorized users to access information about domestic violence cases. DVCR permits direct access at any time to the DV information in the family automated case tracking system (FACTS). The DVCR displays information about cases in which a restraining order was requested. This includes both FV dockets that have been entered into FACTS and un-docketed restraining order requests that have been entered into the e-TRO application. The DVCR also displays information about cases in which a violation of a restraining order is alleged to have occurred (FO dockets).
- F. Domestic violence response team (DVRT) is comprised of trained volunteer citizens to respond and provide immediate assistance to victims of domestic violence. This team has been developed to provide the domestic violence victim with the opportunity to access information and existing services to help them through the experience of being a domestic violence victim.
- G. Emancipated minor is a person under the age of 18 who:
  1. Marries; or
  2. Enters military service; or
  3. Is pregnant with or has a child in common with the defendant/victim; or
  4. Is declared emancipated by the court.
- H. eTRO is an electronic temporary restraining order database maintained by the New Jersey Administrative Office of the Courts, Automated Trial Court Services Unit.
- I. Household members are persons who reside in the same house or premises. Officers should consider the following factors:
  1. Any length of time the parties have resided together;

2. Does the person receive mail at that address, or have a driver's license or other official document listing that address;
  3. Personal effects, possessions present at the residence, indicating permanent residence.
  4. When an offense occurs in a boarding home or similar living arrangement, a determination must be made on a case-by-case basis if the offense occurs in an area generally considered common areas for all residents.
- J. Mutual order of protection is a single court order entered against both parties and requiring both parties to abide by the conditions of the order. Under the Violence Against Women Act (VAWA), mutual orders of protection are discouraged. Under New Jersey law, mutual orders of protection are prohibited. However, each party may obtain a separate restraining order against the other party. This would not be considered a mutual order of protection.
- K. Ontario Domestic Assault Risk Assessment (ODARA) is a tool that predicts how likely an abusive partner is to assault again. No clinical expertise is required to administer an ODARA assessment. Officers can obtain the necessary information for scoring the ODARA's 13 items during an interview with a victim, a review of the defendant's criminal history, and related records (e.g., prior investigations, CAD records, etc.).
1. Related definitions include:
    - a. Defendant: the person being assessed.
    - b. Index assault: the most recent incident in which the defendant assaulted his/her current or former partner. Assault is any act of violence that involved physical contact with the index victim or a credible threat of death made with a weapon displayed in the presence of the victim.
    - c. Partner: a person who currently is, or previously was, involved with the defendant in an intimate relationship. This includes current or former spouses, current or former intimate cohabitants, co-parents, and those currently or formerly in a dating relationship.
    - d. Victim: the person upon whom the index assault was committed.
  2. Instances of domestic violence that do not involve physical violence or threat of death with a weapon should not be assessed under ODARA.
  3. Officers shall complete the ODARA in those cases of domestic violence in which the following crimes/offenses are charges and the victim is a partner, as defined above:
    - a. Homicide (N.J.S.A. 2C: 11-1);
    - b. Simple assault with contact or a weapon (N.J.S.A. 2C: 12-1a);
    - c. Aggravated assault (N.J.S.A. 2C: 12-1b);

- d. Terroristic threats with contact or with a weapon (N.J.S.A. 2C: 12-3);
  - e. Kidnapping (N.J.S.A. 2C: 13-1);
  - f. False imprisonment with contact or with a weapon (N.J.S.A. 2C: 13-3);
  - g. Sexual assault (N.J.S.A. 2C: 14-2);
  - h. Criminal sexual contact (N.J.S.A. 2C: 14-3);
  - i. Robbery (N.J.S.A. 2C: 15-1);
  - j. Burglary, 2<sup>nd</sup> degree with contact or with a weapon (N.J.S.A. 2C: 18-2);
  - k. Any other crime involving risk of death or serious bodily injury (N.J.S.A. 2C: 25-19a(18)).
- L. Out-of-state domestic violence restraining orders (also known as foreign orders of protection, civil restraints, and mutual restraints) include any court order issued by any other state, Indian tribe, territory or possession of the United States, Puerto Rico or the District of Columbia, whether or not the order is similar to a restraining order issued in the State of New Jersey.
- M. Serious bodily injury means bodily injury, which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- N. Stalking – When evaluating the applicability of the stalking law, it should be liberally construed in favor of the victim. It is also important that you do not focus solely on a single episode but evaluate the totality of the conduct/behavior of the defendant in the application of the law.
- O. Temporary restraining order (TRO) – An order entered pursuant to a complaint under the *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq., that is temporary by function and requires that a full hearing be scheduled within 10 days. A TRO shall continue in effect until further order of the court.
- P. Victim of domestic violence means a person protected by the *Domestic Violence Act* and includes:
- 1. Any person, who is 18 years of age or older or an emancipated minor and has been subjected to domestic violence by:
    - a. Spouse;
    - b. Former spouse;
    - c. Any other person, who is a present household member or was at any time a household member.

2. Any person regardless of age, who has been subjected to domestic violence by:
  - a. A person with whom the victim has a child in common; or
  - b. A person with whom the victim anticipates having a child in common if one of the parties is pregnant; or
  - c. A person whom the victim has had a dating relationship.
    - 1) The victim may be below the age of 18.
    - 2) The domestic violence assailant must be age 18 or older or emancipated at the time of the offense.
    - 3) Officers shall liberally construe the term dating relationship.
    - 4) If one of the parties claims that there was a dating relationship, officers must conduct the investigation accordingly.

- Q. Violence Against Women Act (VAWA) is a federal law that mandates full faith and credit for facially valid out of state restraining order acts. It also allows federal prosecution for crossing state lines with the intent to commit an act of domestic violence.
- R. The following matrix can assist officers and supervisors in determining whether to investigate an incident as domestic violence:

<b>Relationship</b>	<b>Victim</b>	<b>Defendant</b>
Spouse, former spouse, present household member or was at any time a household member	18 or emancipated	18 or emancipated
Child in common, or pregnant by a person alleged to be the father of the child	Any age	18 or emancipated
Has had a dating relationship	Any age	18 or emancipated

## II. GENERAL

- A. Domestic violence investigation guidelines can be found on the NJ DCJ Website - [http://www.nj.gov/oag/dcj/agguide/directives/dv\\_manual.htm](http://www.nj.gov/oag/dcj/agguide/directives/dv_manual.htm).
- B. A listing of all New Jersey Attorney General Guidelines can be found on the NJ DCJ Website at <http://www.nj.gov/oag/dcj/agguide.htm>.
- C. Officers must respond promptly and investigate all calls involving domestic violence. The primary duty of the officer is to enforce the laws allegedly violated and to protect the victim. The responding officer shall obtain as much information as possible from communications (e.g., injuries, weapons, etc.) prior to entering the scene.

- D. Upon entering the scene, the officer shall attempt to:
1. Restore order;
  2. Determine the location and condition of the victim;
  3. Protect the victim;
  4. Protect all others present;
  5. Determine the location of the assailant/actor;
  6. Check on the well-being, physical condition of all persons at the scene;
  7. Determine if any weapons are involved;
  8. Summon medical assistance when necessary;
  9. Secure the scene to the extent possible;
  10. Interview the victim alone;
  11. Interview all other parties separately, including children present;
  12. Ask the victim if there is a history of abuse;
  13. Record the emotional and physical condition of all persons present;
  14. Record the demeanor of the assailant/actor;
  15. Record signs of injury to the victim, including defensive wounds;
  16. Record any excited utterances by any parties present;
  17. Record any evidence of alcohol or drug abuse;
  18. Read to the victim his/her rights granted to them under the *New Jersey Domestic Violence Act* and have the victim sign the victim notification form and provide him/her with a copy of the completed form;
  19. Determine if there is a restraining order in effect (a check of the domestic violence central registry (DVCR) shall be made at the scene);
  20. Determine if the assailant/actor has been served with the active restraining order, if there is one in effect. Whenever it becomes known that an active restraining order exists but, has not been served it is now the responsibility of the investigating officer(s) to ensure the service of the restraining order prior to releasing the defendant.
  21. Determine if the assailant/actor is in violation of any court order;
  22. Determine if the assailant/actor has an active warrant for his/her arrest (an NCIC, ACS and ATS check shall be made of the assailant in every

domestic violence incident as long as there is enough identifying information to complete such checks);

23. When appropriate, arrest the assailant/actor and give Miranda warning.
- E. Officers 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.
  - F. Evidence based investigations – At the scene or initial stages of the investigation, the victim might cooperate, as the victim and witnesses are seeking to have the violent situation stopped and will readily supply information and allow evidence to be gathered. However, when it comes time to prosecute, they may be uncooperative due to a multitude of factors. Therefore, officers must take the approach that they need to gather sufficient quality evidence that will allow for a successful prosecution of the defendant, even without the cooperation of the victim and/or witnesses. Evidence-based investigations should be initiated for any DV assaults involving bodily or assaults involving the use of weapons. Areas that are vital to evidence-based prosecutions include but, are not limited to:
    1. 9-1-1 or telephone recordings;
    2. Victim photographs;
    3. Scene photographs;
    4. Suspect photographs;
    5. Text message/cell phone photographs (w/consent or communications data warrant);
    6. E-mails/social networking sites (w/consent or communications data warrant);
    7. Phone records (w/consent or communications data warrant);
    8. Audio recordings (w/consent or communications data warrant);
    9. Physical evidence;
    10. Medical reports, if available and necessary.
  - G. Collect such physical evidence/exemplars and photograph all injuries and the scene, when deemed necessary and to the extent possible. In cases where the crime is of the 1<sup>st</sup> or 2<sup>nd</sup> degree, there is serious bodily injury, or the officer is unable to photograph the injury, contact a detective to respond. When digital photographs/images of a victim are taken, the digital image(s) will be placed into evidence in accordance with departmental directives.
  - H. Officers shall assist the complainant in obtaining relief from the court. Officers shall utilize the eTRO system unless the system is inoperative. Officers shall follow the instructions in the eTRO Manual. Officers should also identify whether

and what type of an interpreter may be needed at the time of the victim's interview with the judge.

- I. The investigating officer is responsible for completing a detailed investigation report or arrest report narrative, as well as the *New Jersey State Police Domestic Violence Offense Report* (available on the eTRO system). Include in the investigation report or arrest report narrative a list of all persons present at the scene or who may have witnessed the act of domestic violence including their ages and dates of birth (if known).
  1. The investigating officer shall notify the [New Jersey Department of Children & Families](#) if he/she has reasonable cause to believe that child has been abused ([N.J.S.A. 9: 6-8.10](#)). Even if there is no physical abuse, an officer can consider an act of domestic violence in a child's home as potential abuse and they should contact DCF if they have such reasonable cause.
    - a. Such reports, when possible, shall contain the names and addresses of the child and his/her parents, guardians or other persons having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment and any other information that the person believes may be helpful with respect to the child abuse and the identity of the actor.
    - b. If there was a violent act and there are children who reside in the home either full time or part time, regardless if they were home or not officers shall immediately notify the New Jersey Department of Children & Families Child Abuse and Neglect Hotline at 1-877-652-2873 (1-877- NJABUSE). This contact (date, time and name of individual contacted) should be memorialized in the officer's initial investigation report or arrest report narrative.
    - c. In all other cases, officers may contact the Department of Children & Families Child Abuse and Neglect Hotline when they have reasonable concern for the child's safety or wellbeing.
    - d. For purposes of this subsection, a violent act is any act of violence, threat of violence or any other behavior that could put another in jeopardy.
- J. A victim of domestic violence may file a [domestic violence complaint](#):
  1. Where the alleged act of domestic violence occurred; **or**
  2. Where the defendant resides; **or**
  3. Where the victim resides or is sheltered.
- K. A victim of domestic violence can file a [criminal complaint in connection with filing a domestic violence complaint](#):

1. Where the alleged act of domestic violence occurred; **or**
  2. Where the defendant resides; **or**
  3. Where the victim resides or is sheltered.
  4. NOTE: A criminal complaint shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.
- L. A victim of domestic violence can file a criminal complaint but, with no accompanying domestic violence complaint:
1. Where the alleged act of domestic violence occurred; **or**
  2. Where the defendant resides.
  3. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, the officer shall:
    - a. Obtain a statement from the victim;
    - b. Photograph the victim's injuries;
    - c. Obtain any other items of evidentiary value;
    - d. Complete an investigation report.
  4. Once the reporting officer completes the initial investigation, he/she shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to the law enforcement agency where the offense occurred. That law enforcement agency where the offense occurred shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action.
- M. Officers must review the information contained in the domestic violence central registry when investigating a domestic violence offense or a violation of a restraining order.
1. Officers must provide the information contained in the domestic violence central registry to the judge who is issuing a warrant on a domestic violence case.
  2. Officers must provide the information contained in the domestic violence central registry to the assistant prosecutor assisting with the case.
  3. When an officer is assisting a victim with applying for a temporary restraining order (TRO), the officer must provide the information contained in the domestic violence central registry to the judge who is hearing the application for the TRO, when applicable.
  4. All information in the domestic violence central registry is confidential. Only the court, law enforcement and public agencies authorized to investigate a

report of domestic violence can access the information in the domestic violence central registry.

- N. In domestic violence situations, un-emancipated minor offenders shall be processed as juveniles. Their complaints shall be filed on juvenile petitions and they shall be detained in accordance with juvenile law.

### III. MANDATORY ARREST

- A. When a person claims to be the victim of domestic violence, and when the officer responding to the incident finds probable cause to believe that domestic violence has occurred, the officer must arrest the 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 'exhibit' 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 officer observes manifestations of an internal injury suffered by the victim.
  - b. When the victim exhibits no visible sign of injury but, states that an act of domestic violence has occurred, the officer should consider other relevant factors in determining whether there is probable cause to arrest and sign the complaint.
  - c. In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should try to determine who the primary aggressor was and, if the other party was acting in self-defense, the officer should consider:
    - 1) The comparative extent of injuries suffered;
    - 2) The history of domestic violence between the parties, if any;  
or
    - 3) Other relevant factors.
  - d. ***No victim shall be denied relief, arrested, or charged with an offense because the victim used reasonable force in self-defense against domestic violence by an attacker (N.J.S.A. 2C: 25-21(c)(3))***
  - e. Officers shall follow standard procedures in rendering or summoning emergency treatment for the victim, if required.
2. There is probable cause to believe that the no contact term of a domestic violence restraining order or the emergent support term of the order has been violated **and** there is proof defendant was served with the order (or knew of the existence of the order prior to the violation). If the victim does

not have a copy of the court order, the officer may verify the existence of an order with the appropriate 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.

B. If the incident involves a mandatory arrest, all charges shall be processed in accordance section VII of this directive (below) and this department's SOP on *Arrest and Transportation*. If the incident involves a mandatory arrest, the officer must fingerprint and photograph the defendant.

#### **IV. DISCRETIONARY ARREST AND SIGNING OF A COMPLAINT WARRANT BY AN OFFICER OR VICTIM**

- A. An 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 as set forth for mandatory arrests applies.
- B. In cases when an 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 county or municipal court in their jurisdiction, unless the appropriate judge has already determined that no probable cause exists for the filing of a criminal complaint.

#### **V. EXPLANATION TO THE VICTIM OF LEGAL RIGHTS AND OPTIONS; VICTIM SERVICES; SIGNING OF VICTIM'S RIGHTS FORM**

- A. When an officer responds to a domestic violence incident, the officer must:
  1. Give and explain to the victim the *Domestic Violence Notice of Rights Form*, which advises the victim of available court action and victim services (N.J.S.A. 2C: 25-23).
  2. Ensure that the victim has the opportunity to sign the victim rights form.
  3. Provide the victim with the telephone numbers of:
    - a. Victim/witness unit of the Essex County Prosecutor's Office at 973-621-4687-; and
    - b. The Alternatives to Domestic Violence 24-hour Hotline at 201-336-7575.
  4. Provide the victim with any available literature regarding victim's services and rights.
  5. Offer the services of a crisis intervention team or domestic violence response team.

6. Once the victim is in headquarters, the officer must offer the victim the services of a crisis intervention team or domestic violence response team.
- B. Regardless of where the offense occurred, if the victim requests a temporary restraining order, the officer must notify the victim that the request for a TRO must be made in person in the Essex County Superior Court, Family Division, during working hours. If the TRO is requested during non-business hours or holidays, the officer must contact the assigned municipal court judge to apply for the TRO through eTRO.
  - C. Victims have a right to be heard on an emergent basis. If a victim requests a TRO during the evening or weekend hours, officers must help them obtain the TRO and/or criminal complaint. Do not advise the victim(s) to go to the Superior Court Family Division on the following business day. They must be heard immediately. Turning them away will put them at risk.
  - D. If a victim arrives at headquarters after 1500hrs, the investigating officer **must** help them obtain a TRO and/or criminal complaint and shall not send them to the Superior Court Family Division.
  - E. Only the victim can apply for and obtain a TRO. If the victim does request a TRO, the officer should:
    1. Assist the victim in preparing a statement to be made to the judge. Pursuant to statute, victims of domestic violence must provide testimony directly to the judge when applying for a TRO. Officers should not provide the necessary testimony on behalf of the victim.
    2. Explain that the judge will place the victim under oath and will ask questions about the incident.
    3. Provide the judge with all available information in the domestic violence central registry.
    4. If the judge issues a TRO, the officer will be instructed to enter the judge's authorization on a prescribed form.
    5. If a municipal court judge denies a domestic violence complaint or a TRO, the documentation must be forwarded to the Superior Court Family Division indicating the denial. The victim must be told she/he may appeal that denial and she/he must go to the Superior Court Family Division to appeal the denial.

## VI. SEARCH AND SEIZURE OF WEAPONS

- A. An officer with probable cause to believe that an act of domestic violence has been committed involving a weapon is empowered to seize any weapon that is considered to be contraband, evidence or an instrumentality of the crime. There is no change in this procedure, even in a domestic violence incident. Officers shall follow the protocols in the [Attorney General Weapons Seizure Directives](#).
  1. If the weapon is in plain view, the officer should seize the weapon.

2. The weapon may be seized incidental to arrest.
  3. If the weapon is not in plain view or seized 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 for and to seize the weapon. In situations where the victim can give valid consent, the officer should also seek consent to search for and seize all possessory documentation (i.e. firearms I.D. cards and pistol purchase permits).
  4. 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.
  5. The domestic violence TRO is an administrative warrant to remove weapons for safekeeping purposes. This administrative warrant is not a criminal search warrant and should not be used as a pretext to conduct a criminal search of the premises. If the officer wants to search for evidence of a crime and is unable to obtain the weapons by any of the methods described above, then the officer must apply for a standard criminal search warrant. Weapons seized as evidence to the underlying crime are to be listed on a property/evidence report and retained.
- B. When an officer has probable cause to believe that an act of domestic violence has been committed, whether or not a weapon was used in the incident, the officer **must** question all persons present to determine whether there are any weapons, as defined in N.J.S.A. 2C: 39-1(r). 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 shall attempt to seize the weapon. If the officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun issued to the person accused of the act of domestic violence (N.J.S.A. 2C: 25-21d(1)(b)).
1. In situations where a party can give valid consent, the officer should obtain the consent in writing and also seek consent to search for and seize all possessory documentation, (i.e. firearms, ID cards and pistol purchase permits).
  2. The possessor of such weapon, or the defendant, may voluntarily surrender the weapon.
  3. The weapon may be seized as a condition of the defendant's warrant.
- C. In the event an officer is unable to obtain a weapon(s) as described above, and the victim obtains a temporary restraining order, the officer should request that the judge issuing the TRO order in the TRO the seizure of document or documents, seizure or surrender of the weapon(s) and possessory documents at any location. Upon the issuance of such an order, if the defendant refuses to surrender said weapon and/or documents, then the officer should:

1. Inform the person that the court order authorizes a search and seizure, of the premises or mandates surrender of the named weapon/documents; and
  2. Arrest the person, if the person refuses to surrender the named weapon/documents, for failing to comply with the court order, N.J.S.A. 2C: 29-9(b); and
  3. If ordered under the restraining order, conduct a search of the named premises for the named weapon/documents; and
  4. Append an inventory of seized weapons and documents to the domestic violence offense report and provide a copy to the defendant, the issuing court and the Prosecutor's Office.
- D. 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/documents through a domestic violence administrative search warrant. These forms are distributed by the New Jersey Attorney General's Office.
- E. The mere fact that a victim declines a TRO does not mitigate the victim's concern for his/her safety. The officer completing the *Affidavit in Support of a Domestic Violence Administrative Search Warrant for the Search & Seizure of Weapons* should describe these concerns where appropriate on the aforementioned affidavit.
- F. Weapons seized or received by law enforcement agencies in jurisdictions outside the municipality issuing the TRO, should be retrieved as soon as possible and maintained by the police department in the municipality from which the TRO was issued.
- G. If a defendant is required to surrender his weapon(s) pursuant to a TRO and surrenders his/her weapon(s) to a law enforcement agency other than the issuing authority, the weapon(s) should be retrieved and stored by the law enforcement agency from which the TRO was issued.
- H. An inventory of all weapons seized for safekeeping must be listed in the investigation report and forwarded to the prosecutor's office.
1. If the Essex County Prosecutor's Office determines that a weapon should not be returned to the owner, the prosecutor shall, within 45 days of seizure:
    - a. File a petition, with notice to the owner of the weapon(s), 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 the Essex County Prosecutor's Office determines that a weapon can be returned to the owner, the prosecutor shall promptly inform the victim if necessary, and the court that the state will not object to the return of the weapon.
- I. When 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.
    1. Responding officers will follow standard law enforcement response procedures as set forth in the [Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases](#), directives of the Essex County Prosecutor's Office and this directive.
    2. Notify the executive officer and the Chief of Police.
    3. When a law enforcement officer's firearm is seized, the responding officer or the tour supervisor shall immediately notify a Essex County domestic violence assistant prosecutor. On the next business day, notify the Essex County Confidential Investigations Unit assistant prosecutor and the Chief of the Domestic Violence Squad.
  - J. The responding officer or the tour supervisor shall immediately notify the Essex County Prosecutor's Office indicating that the incident involves a law enforcement officer and the Detective assigned to the case will upload such pertinent reports to the Essex County Prosecutor's Office Intranet portal.

## **VII. CRIMINAL COMPLAINTS / DOMESTIC VIOLENCE COMPLAINTS**

- A. Officers shall assist the complainant in obtaining relief from the court. Officers shall utilize the e-TRO system unless the system is inoperative. Officers shall follow the instructions in the e-TRO manual. Officers should also identify whether and what type of an interpreter may be needed at the time of the victim's interview with the judge.
- B. The victim may file a criminal complaint and a domestic violence complaint (request for a temporary restraining order):
  1. Where the alleged act of domestic violence occurred;
  2. Where the defendant resides; or
  3. Where the victim resides or is sheltered.
- C. A criminal complaint filed pursuant to section VII.B above shall be investigated and prosecuted in the jurisdiction where the alleged offense occurred.
- D. If the criminal complaint is filed in a jurisdiction other than where the offense occurred, officers shall conduct the preliminary investigation, which shall include:
  1. Obtaining a statement from the victim;

2. Photographing the victim's injuries;
  3. Obtaining any other items of evidentiary value;
  4. Completing an incident (investigation) report.
- E. Once the reporting officer completes the initial investigation, he/she shall immediately contact the law enforcement agency where the offense occurred and shall immediately transmit by facsimile or by hand delivery those documents to the law enforcement agency where the offense occurred.
- F. The law enforcement agency where the offense occurred shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. Where a victim has exhibited signs of physical injury, the agency receiving the documentation shall arrest the suspect, see section III of this directive.
1. Check the domestic violence central registry to determine whether the defendant is subject to a domestic violence restraining order.
  2. Conduct an ODARA for qualifying domestic violence related crimes/offenses (see subsection I.K.3 of this directive for qualifying domestic violence related crimes/offenses);
    - a. NOTE: Use an *ODARA Scoring Form* regardless of the gender of the person committing the index assault or the gender of the victim, but officers shall only use the ODARA scores to frame decision-making in cases in which a male or a person who self identifies as a male has assaulted a female or a person who self identifies as a female partner.
    - b. In all other cases, officers should include a concise description of all ODARA items found to be present in any *Affidavit of Probable Cause* submitted with an application for a complaint-warrant.
    - c. Officers should include a concise description of all ODARA items found to be present in the *Affidavit of Probable Cause*. Do not list the ODARA scores in the *Affidavit of Probable Cause*
    - d. If the ODARA score is 3 or greater, a complaint-warrant is presumed regardless of the PSA scores;
  3. Prior to administering an ODARA, officers shall inform the victim about the use of the information being obtained and resultant score as well as the person(s) or agencies that will have access to the results and permit the victim to decline participation if the victim believes that participation will compromise her safety.
    - a. If the victim declines to participate in the ODARA interview, the officer shall complete the ODARA without the victim's participation.
    - b. In such instances, the information to complete the ODARA can be obtained from others knowledgeable about the circumstances of the

victim and the defendant, law enforcement reports, law enforcement databases, etc.

- c. (NOTE: such information gathering can also be employed in those instances in which a victim is incapable of participating in an interview (e.g., hospitalized, etc.)).
4. When considering the totality of circumstances, the following special considerations and factors must be assessed:
    - a. In all cases involving domestic violence and in consultation with the tour supervisor, the officer must consider whether the mandatory detention that would result from the issuance of a complaint-warrant might exacerbate the domestic violence situation or might discourage a victim from pursuing the charge or cooperating with the prosecution, or otherwise would not serve the interest of justice.
    - b. When the officer or tour supervisor has reason to believe, considering the totality of the circumstances including, but not limited to the special factors listed above, that issuance of a no-contact condition or other restraint, a requirement to surrender weapons, or any other special condition of pretrial release expressly authorized by N.J.S.A. 2C: 25-26(a) is necessary to reasonably assure the immediate safety of the victim, the officer shall apply for a complaint-warrant and seek imposition of the condition(s) needed to reasonably assure the immediate safety of the victim. Nothing in this subsection shall be construed to preempt or in any way alter the authority of the victim to apply for a temporary or final restraining order, and the special conditions of pretrial release in the criminal prosecution sought pursuant to this subsection shall be in addition to, not in lieu of, any such civil temporary or final restraining order. Safely secure all seized weapons and forward a property/evidence report to the Essex County Prosecutor's Office.
    - c. Given the repetitive nature of domestic violence offenses, the officer or tour supervisor can consider whether it is appropriate to apply for a complaint-warrant in recognition that if the defendant is charged on a complaint-summons and thereafter commits a new crime while on pretrial release, the prosecutor cannot move to revoke release.

G. *ODARA Scoring Forms:*

1. Officers shall complete/transmit the completed *ODARA Scoring Form* through the Essex County Prosecutor's Office's [intranet](#) portal as soon as practicable following completion.
2. Officers shall also include a copy of the completed *ODARA Scoring Form* in the BCPO packet that is transmitted to the Essex County Jail or is provided during the weekly screening process.
3. The original *ODARA Scoring Form* shall be maintained in the applicable case file.

4. ODARA scores shall not be communicated or disseminated to members of the judiciary (i.e., judicial officers, including judges and court administrators, and pretrial service program personnel), and completed *ODARA Scoring Forms* shall not be offered in evidence. This prohibition applies to every stage of a criminal prosecution (e.g., applications for complaint-warrants, requests for conditions of release, hearings for pretrial detention, and trials). However, officers should utilize any information learned from the ODARA to frame critical decisions during criminal prosecutions, including whether to seek a complaint-warrant and whether to seek detention.
5. *ODARA Scoring Forms* are subject to discovery.

#### VIII. WEAPONS FORFEITURE PROTOCOL

- A. If an assistant prosecutor determines that a weapon should not be returned to the owner, the assistant prosecutor shall within 45 days of seizure, file a petition, with notice to the owner of the weapon(s), with the superior court family division to obtain title to and/or revoke any and all firearms purchaser identification cards and/or permit(s) to purchase a handgun.
- B. If the supervising assistant prosecutor determines that a weapon may be returned to the owner, the supervising assistant prosecutor shall promptly inform the victim if necessary, and the court, that the state will not object to the return of the weapon.
- C. In accordance with N.J.S.A. 2C: 25-27(c), when a defendant is convicted of a crime or an offense involving domestic violence the court shall issue an order requiring immediate surrender of the defendant's:
  1. Firearm(s);
  2. Firearms purchaser identification card;
  3. Permit(s) to purchase a handgun;
  4. Such items must be surrendered to the police department where the defendant resides within **48 hours** of the date of the sentencing order.
- D. The officer receiving any of the above items will complete:
  1. The officer will log the property into department custody consistent with the department policy concerning property retention;
  2. *Firearms Surrender Receipt Form*.
  3. The officer will provide the defendant a copy of the *Firearms Surrender Receipt Form* and place a copy in the case file.
- E. The property/evidence custodian will return surrendered firearms purchaser identification cards and/ or permit(s) to purchase a handgun to the New Jersey State Police Firearms Identification Unit, P.O. Box 7068 West Trenton, New Jersey

08328-0068.

F. Disposal of firearms:

1. The defendant has **5 days** to arrange for a licensed retail firearms dealer to purchase the firearms.
2. The firearms dealer has **10 days** from date of the sentencing order to take possession of firearms from this department.
3. If a surrendered firearm is not purchased and taken possession of by a licensed firearms dealer within **10 days** of the sentencing order, the property/evidence custodian may dispose of the surrendered firearm(s) in accordance with N.J.S.A. 2C: 64-6 (*Disposal of Forfeited Property*).

G. If the defendant fails to comply and upon motion of an assistant prosecutor, a judge may order:

1. A search for and removal of firearm(s), firearms purchaser identification card and permit(s) to purchase a handgun.
2. That the defendant be arrested and charged with:
  - a. Unlawful possession of a firearm, N.J.S.A. 2C: 39-5;
  - b. Certain person not to have weapons, N.J.S.A. 2C: 39-7(b)(2); and
  - c. Criminal contempt of court, N.J.S.A. 2C: 29-9a.

**IX. SERVICE OF IN AND OUT-OF-COUNTY RESTRAINING**

A. Restraining order service:

1. In the event the defendant resides in the Township of Montclair, this agency is responsible for the service of the restraining order upon the defendant and, the forwarding of all related documents to the Family Court and to the Prosecutor's Office.
2. Where the defendant has not been arrested by police and is present at the scene, officers should:
  - a. Escort the victim to his/her home.
  - b. Read the conditions of the restraining order to the defendant if the defendant is present.
  - c. Order the defendant to vacate the premises, if the restraining order so provides.
  - d. Give the defendant a reasonable period of time to gather personal belongings, unless the court order includes specific limits on time or duration.

- e. Arrest the defendant if defendant refuses to comply (contempt) with the order.
- 3. Officers shall follow the above steps in cases where a restraining order had been issued but, had not been served upon the defendant because the defendant could not then be located, but the defendant is now at the scene.
- 4. Where the defendant cannot be located for the immediate service of the TRO, officers shall make every effort to locate the defendant for purposes of service of the order.
- 5. In the event the defendant resides outside Montclair, then the restraining order, along with the complaint and any relevant documents (e.g. search warrant, etc.) must immediately be brought, faxed, or scanned and emailed to the local police department where the defendant resides, works, or both, so it can execute service accordingly. It remains the responsibility of the police department of the issuing locality to confirm service of the order on the defendant.
  - a. If the defendant lives outside of Essex County, the Essex County Sheriff's Office is responsible for the notification of the restraining order.
  - b. All applicable documents are sent to the responsible jurisdiction through the eTRO system.
- 6. Likewise, other agencies may request service of a restraining order and related documents. All such service shall be consistent with the above procedures.

**X. GUIDELINES FOR ENFORCEMENT OF OUT OF STATE DOMESTIC VIOLENCE RESTRAINING ORDERS**

- A. The *Full Faith and Credit* provision of the *Violence Against Women Act* (VAWA), 18 U.S.C.A. 2265, requires that out-of-state domestic violence restraining orders or orders of protection be recognized and enforced as if they were orders of a New Jersey court. The out-of-state order is to be enforced in this state even if:
  - 1. The victim would not be eligible for a restraining order or an order of protection in this state.
  - 2. The order grants the named applicant more relief than the person would have received under New Jersey law.
- B. For purposes of this section:
  - 1. Emergency situation would include a situation that presents a need for immediate action by law enforcement to protect the victim against violent behavior, threats or violations of a non-contact order.
  - 2. Non-emergency situation would include a situation where there is a request for enforcement of child support, changes in visitation or any other

modification or enforcement request that does not involve violent behavior, threats or a violation of a non-contact order.

- C. In an emergency situation, the restraining order or order of protection should be presumed valid when presented to an officer. The primary responsibility of the officer should be to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.
1. If the named defendant in the court order committed a criminal offense under New Jersey law against the victim and appeared to have violated the court order, the officer should arrest the defendant and sign the criminal complaint against the defendant for the criminal offense. The officer also should charge the defendant with contempt, N.J.S.A. 2C: 29-9a.
  2. If the named defendant committed no criminal offense but appears to be in violation of the out-of-state no-contact order, the officer should determine whether the order appears to be facially valid.
  3. If the court order appears to be facially valid, the officer should arrest the defendant for violating the terms of the court order. The defendant should be charged with contempt, N.J.S.A. 2C: 29-9b.
  4. An order will be considered facially valid if:
    - a. The order contains the names of the correct parties; and
    - b. The order has not expired; and
    - c. The victim informs the officer that the named defendant appeared at the court hearing or had notice to appear in court when the court order was issued.
  5. In most states a restraining order or an order of protection has a specified expiration date. The officer must review the court order to determine whether it remains valid. Only New Jersey and Washington State have court orders with no stated expiration dates. In these two states, a final restraining order remains in effect until modified or vacated by a court.
  6. Defects on the face of the order, such as boxes checked indicating no service, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defects to determine whether the defendant had been served with the order or has knowledge that the order was issued.
  7. If the victim does not have a copy of the out-of-state court order and the officer cannot determine the existence of the court order or if the court order contains an apparent defect which would cause a reasonable officer to question its authenticity, the officer should
    - a. Arrest the actor if the criteria in N.J.S.A. 2C: 25-17 et seq., have been met and if a criminal offense had been committed (see subsection I.A of this SOP), and



- b. The issuing court had made specific findings on the record that the defendant was entitled to the order.
  2. The enforcement of a mutual order of protection by a defendant should be a relatively rare occurrence. In non-emergent situations, the defendant should be referred to the appropriate court for relief.
  3. If the officer determines that the defendant in the out-of-state restraining order or order of protection traveled across a state line with the intent to engage in conduct that violates a portion of the court order or to injure, harass, or intimidate the named victim in the court order, the officer should report this fact to the designated assistant county prosecutor who will determine whether the case should be referred to the US Attorney's Office for the appropriate action pursuant to 18 U.S.C.A. 2261 and 2262.
  4. Officers should not charge a violation of federal law since the officer does not have federal jurisdiction.
- I. N.J.S.A. 2C: 25-22 provides that a law enforcement officer shall not be held liable in any civil action brought by any party for an arrest based on probable cause when that officer in good faith enforced a court order. Under the qualified immunity doctrine, a law enforcement officer may also assert immunity to federal actions brought under 42 U.S.C.A. 1983.

## **XI. FINGERPRINTING AND PHOTOGRAPHING DOMESTIC VIOLENCE OFFENDERS**

- A. Officers must fingerprint and photograph anyone arrested pursuant to the mandatory arrest provisions of N.J.S.A. 2C: 25-21. This includes anyone who is arrested for a disorderly person offense that constitutes a mandatory arrest.
  1. In non-mandatory arrest cases, officers must fingerprint and photograph anyone who is convicted of assault or harassment, which constitutes an act of domestic violence as defined in N.J.S.A. 2C: 25-19.
  2. This provision of the statute only takes effect upon conviction for assault or harassment. Officers should not fingerprint the defendant at the time of arrest.
- B. Any person who fails to submit to fingerprinting and photographing should be charged with N.J.S.A. 2C: 29-1, a disorderly person offense.

## **XII. DOMESTIC VIOLENCE CENTRAL REGISTRY**

- A. Officers must review the information contained in the domestic violence central registry (DVCR) when investigating a domestic violence offense or a violation of a restraining order.
- B. Officers must provide the information contained in the DVCR to the judge who is setting issuing a warrant on a domestic violence case.
- C. When an officer is assisting a victim with applying for a temporary restraining order (TRO), the officer must provide the information contained in the DVCR to the municipal court judge who is hearing the application for the TRO.

- D. Officers must review the information contained in the DVCR when conducting a background investigation involving a person's application for a handgun purchase permit, a firearms identification card, or employment as a sworn law enforcement officer.
- E. All information in the DVCR is confidential. Only the court, law enforcement and public agencies authorized to investigate a report of domestic violence can access the information in the DVCR.
- F. If information in the DVCR is disseminated to an unauthorized person, the person who disseminated the information is guilty of a crime of the fourth degree.

### **XIII. PUBLIC RELEASE OF DOMESTIC VIOLENCE REPORTS**

- A. All police reports in a domestic violence case are confidential except where otherwise authorized for release by law and this directive.
- B. Absent a court order or authorization by the Essex County Prosecutor's Office, domestic violence reports shall not be released to the media or any other person.
- C. Subsections XIII.D and XIII.E below pertain only to requests for domestic violence reports by a defendant against whom charges are currently pending or requests by their attorneys.
- D. Upon receiving a request for discovery of domestic violence reports, proceed as follows:
  - 1. If an indictable charge is pending (a 4<sup>th</sup> degree crime or higher) against a party involved in a domestic violence incident, a written request for the reports shall be made to the Essex County Prosecutor's Office.
  - 2. This department shall not release any reports when an indictable charge is pending because the Essex County Prosecutor's Office will be the prosecuting agency.
  - 3. If the charges were disorderly person or petty disorderly person offenses (e.g., simple assault, harassment, etc.) this department will forward the discovery request to the municipal prosecutor. The municipal prosecutor shall be responsible for discovery and may authorize the release directly to the requesting party.
  - 4. **NOTE: VICTIM LOCATION INFORMATION OR CONTACT INFORMATION SUCH AS: ADDRESS OR SHELTER LOCATION, PHONE NUMBERS OR PLACE OF BUSINESS MUST BE REDACTED AND REMAIN CONFIDENTIAL PURSUANT TO N.J.S.A. 2C: 25-26(c).**
- E. If the victim or defendant requests any copies of the police reports for their TRO/FRO hearing, those records shall be released directly to the requesting party. The request shall be made in writing by the requesting party and shall include the

date and time of the TRO/FRO hearing and the name of the judge hearing the matter.

- F. A request for domestic violence reports by a victim or defendant for other reasons such as a pending child custody dispute, divorce action or civil action shall be directed to the Essex County Prosecutor's Office for review by an assistant prosecutor.
- G. **THE V.I.N.E. FORM SHALL NOT BE RELEASED UNDER ANY CIRCUMSTANCES TO A REQUESTING PARTY OR ATTORNEY.**
- H. Requests for police reports (to include prior incidents regarding the individuals involved) from the New Jersey Department of Children & Families should be complied with expeditiously and without redaction in order for it to effectively investigate each complaint.

#### **XIV. DOMESTIC VIOLENCE RESPONSE TEAM**

- A. The investigating officer shall advise the victim of the availability of the domestic violence response team. Any time a victim of a domestic violence incident comes into our headquarters, a DVRT member will be contacted.
- B. If the victim wishes to speak with a DVRT member, they shall be transported to police headquarters and escorted to a designated area where they will wait for the DVRT member to respond. An officer should remain with the victim during any wait to provide comfort and support.
- C. Once at headquarters, the officer shall provide the victim with a *DVRT Acknowledgment Form*. After reading the form, the victim should acknowledge whether he/she wishes the services of DVRT. If the victim does not wish to speak with a DVRT member, the investigating officer shall also document the victim's response in the investigation report.
- D. **Under no circumstances shall a DVRT member respond to the scene of the domestic violence incident.**
- E. In the event a DVRT member must respond to a medical facility, a police officer must remain at the facility with the DVRT member. Under no circumstances shall a DVRT member have any contact, in any way, with a domestic violence actor.
- F. DVRT members will normally provide their own transportation to and from police headquarters but, shall not utilize their own transportation if it is required for them to respond to a hospital or other medical care facility. DVRT members shall respond to police headquarters and be transported by a police car to the hospital or other medical facility and provided a return ride to police headquarters. A police officer must remain at the location until the meeting is concluded.
- G. In the event a victim of domestic violence reports an incident of domestic violence during normal family court hours (weekdays 0830 – 1530), the victim must be advised of the DVRT service prior to responding to family court. If the victim indicates an interest in intervention, a DVRT member shall be called prior to the victim responding to family court.

- H. Once it is determined that a DVRT member is necessary:
  - 1. The officer shall ensure that the on-call DVRT member is contacted. A recall roster shall be maintained in the DVRT binder in Communications.
  - 2. The time(s) of the call(s) shall be logged into the CAD for the incident being investigated.
  - 3. The officer shall give the responding DVRT member a reasonable amount of time to respond (10 minutes). If the DVRT member does not respond in a reasonable amount of time (10 minutes), a second call shall be made.

**XV. CRIMINAL OFFENSES AGAINST THE ELDERLY**

- A. When the actions or omissions against the elderly or disabled person do not meet the domestic violence conditions, officers may file appropriate criminal charges against the offender.
- B. A person may be charged with *Endangering the Welfare of the Elderly or Disabled*, N.J.S.A. 2C: 24-8, if the person has:
  - 1. A legal duty to care for or has assumed continuing responsibility for the care of a person who is:
    - a. 60 years of age or older; or
    - b. Emotionally, psychologically or physically disabled adult; and
  - 2. The person abandoned, unreasonably neglects to do or fails to permit to be done, any act necessary for the physical or mental health of the elderly or disabled adult.

**XVI. ETRO SYSTEM CHECK EACH SHIFT**

The Shift Supervisor must complete a check of the eTRO system at least once a shift. If any action is required, the Shift Supervisor must generate an CAD/RMS incident and clearly document what action(s) were taken.