

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



**VOLUME: 3**

**CHAPTER: 9**

**# OF PAGES: 37**

**SUBJECT: DOMESTIC VIOLENCE INVESTIGATIONS**

**EFFECTIVE DATE:**

**SEPTEMBER 3, 2024**

**BY THE ORDER OF:**

**CHIEF GIACOMO SACCA**

**BY AUTHORITY OF:**

**POLICE DIRECTOR EARL J.  
GRAVES**

**ACCREDITATION STANDARDS:**

**NJSACOP 3.5.7**

**SUPERSEDES ORDER #:**

**PURPOSE:** The purpose of this General Order is to maintain uniform 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 Elizabeth 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 Elizabeth Police Department to investigate domestic violence-related matters in compliance with New Jersey Attorney General's guidelines and applicable Union County Prosecutor's Office law enforcement directives.

## PROCEDURE:

### I. DEFINITIONS

- A. Child in Common - the child of the plaintiff and the defendant.
- B. Criminal coercion – N.J.S.A. 2C: 13-5 A (1) – Criminal coercion is defined as a threat made to unlawfully restrict freedom of action, with a purpose to coerce a course of conduct from a victim which defendant has no legal right to require, including threatening to inflict bodily injury on anyone or commit any other offense (i.e., threat to inflict bodily injury is a violation regardless of the immediacy of the threat).
- C. Criminal Complaint - criminal charges placed on CDR-1 (summons) or CDR-2 (warrant).
- D. 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.
1. A victim of a dating relationship may be below the age of 18.
  2. The domestic violence assailant must be over the age of 18 or emancipated at the time of the offense.
  3. The New Jersey law does not list any criteria by which an officer can determine what is and what is not a dating relationship. This provision should be liberally construed. If the officer is in doubt about a particular relationship, the officer should review the matter with the officer's supervisor, the department's legal advisor or the on-call Judge.
  4. To assist the supervisor, legal advisor or Judge in making this determination, the officer should obtain such information as:
    - the length of time of the relationship
    - the type of relationship
    - the frequency of interaction between the parties, and
    - if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.
- E. 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.
- F. 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.

Note: The *Prevention of Domestic Violence Act of 1991*, N.J.S.A. 2C: 25-17 et seq also requires police officers to pay special attention to cases involving neglect and abuse of the elderly (*N.J.S.A. 2C:25-18*); and animal cruelty (*N.J.S.A 4:22-17a*)

- G. Domestic Violence Central Registry (DVCR) - is a computerized inquiry system that allows authorized users to access information about domestic violence cases.
1. Includes all persons who have been charged with a crime or offense involving domestic violence.
  2. 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 undocketed 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).
  3. Is pursuant to *N.J.S.A. 2C:25-34*.
- H. Domestic Violence Complaint - multipage application and temporary restraining order issued by the Superior or Municipal Court.
- I. Domestic Violence Liaison Officer - a sworn police officer of the Elizabeth Police Department who has been designated by the Chief of Police to act as the liaison between the Elizabeth Police Department and the Union County Prosecutor's Office on matters related to domestic violence.
- J. Crisis Response Team (CRT) - is comprised of trained volunteer citizens, who have been trained by the YWCA of Eastern Union County 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.
- K. Emancipated minor - is a person under the age of 18 who:
1. Is or has been married; or
  2. Has entered 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 or an administrative agency.
- L. eTRO - is an electronic temporary restraining order database. The database is maintained by the New Jersey Administrative Office of the Courts, Automated Trial Court Services Unit.
- M. Household Members are persons who reside in the same house or premises or were a household member at any time. Officers should consider the following factors:
1. Does the person receive mail at that address, or have a driver's license or other official document listing that address;

2. Personal effects, possessions present at the residence, indicating permanent residence;
  3. 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.
- N. 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.
- O. Ontario Domestic Assault Risk Assessment (ODARA) - is a risk assessment tool that predicts how likely an arrestee who has committed an assault on an intimate partner will do so again in the future. No clinical expertise is required to administer an ODARA assessment. It is administered by an officer through an interview with the victim and a review of the offender's criminal history and related information. Officers can obtain the necessary information for scoring the ODARA's thirteen (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. (i.e., Harassment, N.J.S.A. 2C:33-4; Criminal Mischief, N.J.S.A. 2C:17-3; Stalking, N.J.S.A. 2C:12-10; Attempts to Cause Bodily Injury, N.J.S.A. 2C:12-1(a)(1); Acts of Physical Menace, N.J.S.A. 2C:12- 1(a)(3); and Terroristic Threats made without a weapon, N.J.S.A. 2C:12-3).
  3. Officers shall complete the ODARA in those cases of domestic violence in which the following crimes/offenses are charged 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)).
- P. 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.
- Q. 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 or which results from an aggravated sexual assault or sexual assault, as defined in *N.J.S.A. 2C:3-11d*.
- R. 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 pursuant to N.J.S.A 2C12-10 (*Refer to the statute for legal definition*).
- S. 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.
- T. 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 an act of 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 (victim is 18 years of age or older).
2. Any person regardless of age, who has been subjected to an act of 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.
    - 5) A Judge is the person responsible for determining whether in fact a dating relationship existed between two parties.

U. Full Faith and Credit provision of the Violence Against Women Act (VAWA) - 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.

V. The following matrix can assist officers and supervisors in determining whether to investigate an incident as an act of domestic violence 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. Officers shall 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, past history, etc.) prior to entering the scene.

- B. Upon entering the scene, the officer shall attempt to:
1. Restore order (If both parties are injured, distinguish the primary aggressor from the victim. No officer shall charge both parties without Assistant Prosecutor approval);
  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. Advise the victim his/her rights granted to them under the *New Jersey Prevention of Domestic Violence Act* and assist the victim in completing the Victim Notification Form and have them sign the same and provide him/her with a copy of the completed form;
  19. Determine if the victim has a restraining order in effect (The Watch Commander or Patrol Supervisor shall check the Domestic Violence Central Registry (DVCR) while investigating officers are still 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, the assailant/actor has not been served, and is on scene officers shall serve the assailant/actor with the restraining order prior to his/her release from the scene;

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 advise him/her of Miranda warnings (i.e., mandatory, warrant, probable cause, etc.);
24. If probable cause is not present to arrest the actor/assailant, advise the victim of his/her right to sign a criminal complaint in court.

C. 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, he/she 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 domestic violence assaults involving bodily injury 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;
  - a) Excited utterances and spontaneous statements shall be documented as quotes.
  - b) Conditions under which the statement made shall be documented.
2. Victim injuries (i.e., complaint of pain or other non-visible injuries);
3. Victim injury photographs;
4. Scene photographs;
5. Suspect injury photographs;
6. Text message/cell phone photographs (w/consent or communications data warrant);
7. E-mails/social networking sites (w/consent or communications data warrant);
8. Phone records (w/consent or communications data warrant);
9. Audio recordings (w/consent or communications data warrant);

10. Physical evidence (including weapons used);
  11. Medical reports, if available and necessary.
  12. Restraining orders (dismissed or active).
- D. Collect such physical evidence/exemplars and photograph all injuries and the scene, when deemed necessary and to the extent possible. In cases where the domestic violence incident resulted in a crime of the 1<sup>st</sup> or 2<sup>nd</sup> degree; serious bodily injury; or the officer for some reason is unable to photograph the injury, a detective shall be summoned on scene. When digital photographs/images of a victim are taken, the digital image(s) will be uploaded into Evidence.com in accordance with departmental directives.
1. When a temporary restraining order is issued as a result of the domestic violence incident, the officer shall send photos of injuries to the Union County Family Court at [UNNFamilydv.mbx@njcourts.gov](mailto:UNNFamilydv.mbx@njcourts.gov)
- E. If a victim wants to apply for a Domestic Violence Restraining Order officers shall assist him/her in obtaining relief from the court. Officers shall utilize the eTRO system unless the system is inoperative and shall follow the instructions in the eTRO Manual. Officers should also identify whether and what type of language interpreter may be needed at the time of the victim's interview with the Judge.
1. Prior TRO and domestic violence history reported and unreported, between parties must be detailed on a TRO. Merely noting a prior history is insufficient. Detailed information within a TRO provides a complete court record as well as the required notice to the defendant.
- F. The investigating officer is responsible for completing a detailed investigation report and accompanying peripheral reports (i.e., arrest, supplemental, evidence, property, etc.). Officers shall also complete a Victim Notification Form, New Jersey State Police Domestic Violence Offense Report, Domestic Violence Statement (TRO application only), Voluntary Statement, Crisis Response Team Request form, Consent for Taking Digital Photographs (if applicable) and an ODARA Scoring Form (if applicable).
1. Police Investigation Reports: should include, but not limited to, the relationships between the parties, prior history of abuse, details of physical injury to the victim, threats of injuries to the victim's animals, the extent of verbal abuse, weapons involved, injuries (if any) to the defendant, description of the scene, documentation of any spontaneous statements, and a list of witnesses.
  2. Victim Notification Form: shall be completed for all domestic violence incidents, including disorderly persons offenses.
  3. Photographs: refer to Section II.F.1 above.
  4. Scene Photographs: document signs of physical struggle, forced entry, bloodstains, damage to property, etc.

5. Photograph of Electrical Media: document messages on telephone and/or other forms of electronic media. Prior to taking digital photographs of the electronic media, officers shall obtain his/her consent in writing using the *Permission to Search Electronic Media* form. If a search warrant is needed, contact the On-Call Search Warrant Assistant Prosecutor.
  6. Victim's Statements:
    - a. Indictable Crimes –a formal written and/or recorded statement is required.
    - b. Disorderly Persons or Petty Disorderly Persons Offenses - a handwritten statement is permitted to be reviewed by an officer to ensure facts establish the element of the offense.
- G. 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 Division of Child Protection and Permanency (DCPP) 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 the New Jersey Division of Child Protection and Permanency 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 of if they were home or not, officers shall immediately notify the New Jersey Division of Child Protection and Permanency. This contact (date, time and name of individual contacted) shall be memorialized in the officer's initial investigation report or arrest report narrative.
    - c. In all other cases, officers may contact the New Jersey Division of Child Protection and Permanency 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 may put another in jeopardy.
- H. Officers shall review the information contained in the Domestic Violence Central Registry when investigating a domestic violence offense or a violation of a

restraining order to determine whether the defendant is subject of a domestic violence restraining order.

- I. This mandatory query of the Domestic Violence Central Registry shall be made before deciding whether to issue a complaint-summons or a complaint-warrant.
- J. Officers shall provide the information contained in the Domestic Violence Central Registry to the Judge who is issuing a restraining order on a domestic violence case.
  - 1. 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.
  - 2. Officers must provide the information contained in the Domestic Violence Central Registry to the Assistant Prosecutor assisting with the case before deciding whether to issue a complaint-summons or a complaint-warrant.
  - 3. 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.
- K. In domestic violence situations, un-emancipated minor offenders shall be processed as juveniles. Their complaints shall be filed, via the eCDR system, 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 is 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) The presence of wounds associated with defense, or considered defensive wounds;
  - 4) Other relevant factors, including checking the Domestic Violence Central Registry.
- 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. No officer shall charge both parties without Assistant Prosecutor approval.
- f. 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 through Domestic Violence Central Registry.
  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.
  5. If the incident involves a mandatory arrest, all charges shall be processed in accordance Section VII of this directive (below) and this department's General Order on Arrest and Transportation. The officer shall fingerprint and photograph the defendant pursuant to the State Bureau of Investigations Criminal Arrest Fingerprint Requirements.
- B. Contact a Union County Prosecutor's Office Assistant Prosecutor when there is probable cause to believe the defendant has violated a domestic violence restraining order (*N.J.S.A 2C:29-9b*), and that violation(s) would be an indictable crime or where a complaint-warrant shall be issued for any indictable crime or disorderly persons offense.
- C. According to CWLED 2022-003, an investigating officer need not contact a Union County Prosecutor's Office Assistant Prosecutor for complaint approval when:
1. There is probable cause to believe that a disorderly person's offense, or disorderly person contempt for violations of a Domestic Violence Restraining Order has occurred, even if this charge will be placed on a complaint-

warrant. The decision to approve disorderly person offense may be made by the supervisor in charge of the scene.

2. There is no violation of a restraining order, and a complaint-summons will be issued.
3. There is probable cause to believe that only a petty disorderly persons Harassment (N.J.S.A. 2C:33-4) has occurred, there is no violation of a restraining order, and a complaint-summons will be issued.
4. If the supervisory officer has determined that probable cause exists to charge a domestic violence related disorderly persons offense and that such charges either mandatorily or presumptively qualify as complaint-warrants, the supervisory officer may authorize issuance of the complaint-warrant without contacting the on-call Assistant Prosecutor.

D. Officers shall make every effort to apprehend the defendant as soon as practicable, preferably while the officers are at the scene of the domestic violence incident. If the defendant is not on scene, officers shall:

1. Periodically check his/her residence, the victim's residence, and/or any other relevant locations;
2. Enter the defendant as a wanted person in NCIC;
3. Create and distribute a TRAK message;
4. Advise officers within this department, local municipalities, the municipality where the defendant or victim resides, etc. of the circumstances.

#### **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 and the victim does not want to file for a temporary restraining order, 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 and either a criminal or domestic violence complaint is signed, the officer must:

1. Read and explain to the victim the *New Jersey Victim Notification 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 New Jersey Victim Notification Form.
  3. Provide the victim with a copy of the New Jersey Victim Notification Form (pink-colored copy).
  4. Inform the victim that, for their protection, the court must have the ability to contact the victim on short notice to inform the victim of the defendant's impending release from custody.
  5. In addition to the directory of "Help Yourself" phone numbers listed within the domestic violence packet, which assists victims in resolving a problem, reporting an emergency or filing a complaint, officers may provide the victim with the telephone number of:
    - a. Union County Prosecutor's Office of Victim Witness Advocacy at 908-527-4596.
    - b. Union County Prosecutor's Office Domestic Violence Unit at 908-527-4500.
    - c. The Alternatives to Domestic Violence 24-hour Hotline at 201-336-7575.
  6. Provide the victim with any available literature regarding victim's services and rights.
  7. Offer the services of a crisis intervention team also known as the Crisis Response Team (CRT). When it appears the victim is intoxicated, or both parties are under arrest, the CRT should not be activated.
  8. Notify the victim immediately when the defendant is released from custody.
- 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 Union County Superior Court, Family Division, during business hours. However, if the victim, or law enforcement officer, files a criminal complaint and at the same time the victim seeks a temporary restraining order, the investigating officer must complete the TRO process simultaneously at the time of the filing of the criminal complaint. This must occur even if the criminal complaint is being signed during court hours.
- C. If the TRO is requested during non-business hours or holidays, the victim may file the domestic violence complaint with any local New Jersey law enforcement agency. The officer must contact the assigned municipal court Judge by telephone line, radio, or other means of communication. A recorded line shall be used if the application is made telephonically to apply for the TRO through eTRO.

- D. 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 assist them with obtaining a TRO and/or criminal complaint. Do not advise the victim(s) to respond to the Family Division of the Superior Court on the following business day. They must be heard immediately. Turning them away will put them at risk.
- E. If a victim arrives at headquarters after 1500 hours, the investigating officer must assist them with obtaining a TRO and/or criminal complaint and shall not send them to the Family Division of the Superior Court to do so.
- F. Only the victim can apply for and obtain a TRO. If the victim requests a TRO, the officer shall contact the designated municipal court Judge on a recorded telephone line, radio, or other means of communication. The officer shall:
  - 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. All statements to the Judge, in support of a TRO by the victim, must be made on a recorded telephone line or other recording device.
    - a. The recorded statement must be made part of the permanent case file.
  - 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. Also, include any prior acts of domestic violence incidents between the parties, reported and unreported. Approximate dates and times of each incident are helpful as they provide a complete court record and a documented timeline for the abusive behavior.
  - 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 shall be forwarded to the Family Division of the Superior Court indicating the denial. The victim must be told she/he may appeal that denial and she/he must go to the Family Division of the Superior Court to appeal the denial.
  - 6. Victims who are denied a TRO may request an immediate De Novo Hearing for the Municipal Court Denial of a Domestic Violence Temporary Restraining Order.
    - a. If a victim of domestic violence requests a hearing for a denial of a TRO by a Municipal Court Judge, the New Jersey Administrative Office of the Courts, Directive #13-19 shall be followed:  
<https://njcourts.gov/notices/2019/n190711a.pdf?c=XvJ>

- b. Refer to Union County Prosecutor's Office Guide for Processing Request for immediate De Novo Hearing of Denied Municipal Court Temporary Restraining Orders.

## 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, shall seize any weapon that is considered to be contraband, evidence or an instrumentality of the crime. If officers observe any weapon(s) that is illegal (i.e., assault firearm), that weapon shall be seized by officers and treated as evidence. 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](#).
- B. Officers who have probable cause to believe that an act of domestic violence has been committed shall:
  1. Question all persons present to determine whether there are weapons, as defined in N.J.S.A. 2C:39-1r, on the premises.
  2. If an officer observes 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 all possessory documentation (i.e., firearm purchaser identification card, permit to carry a handgun, or application/permit to purchase a firearm) issued to the person accused of the act of domestic violence (N.J.S.A. 2C: 25-21d(1)(b)).
  3. If the weapon is in plain view, the officer should seize the weapon.
  4. If the weapon is not in plain view but, is located within the premises jointly possessed by both the domestic violence defendant and the domestic violence victim, the officer should obtain written consent from the domestic violence victim or another person with authorization to consent to search for and to seize the weapon. In situations where the victim or another person can give valid consent, the officer shall also seek consent to search for and seize all possessory documentation (i.e., firearm purchaser identification card, permit to carry a handgun, or application/permit to purchase a firearm).
  5. If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and defendant, but is located upon other premises, the officer shall attempt to obtain possession of the weapon and possessory documents from the possessor of said weapon(s), or the defendant, by a voluntary surrender of the weapon.
  6. If the domestic violence defendant or possessor of the weapon(s) refuses to surrender the weapon(s) or to allow the officer to enter the premise to search for the named weapon, the officer shall obtain a Domestic Violence Warrant for the Search and Seizure of Weapons.

- a. During business hours, officers shall contact the Union County Prosecutor's Office Domestic Violence Unit at (908) 527-4612.
  - b. After hours, officers shall contact the on-call Union County Assistant Prosecutor for General Search Warrants via the Union County Police Department at (908) 654-9800.
- C. In the event an officer is unable to obtain weapons(s) as described in Section A or Section B, above, **and** the victim obtains a TRO directing that the domestic violence defendant surrender a named weapon for safekeeping purposes, the officer shall request the Judge issue the Warrant to Search for and to Seize Weapons for Safekeeping, incorporated within the TRO, which serves as a warrant to search for and seize a named firearm(s) or other weapon(s), any possessory documents (i.e., permit to carry a firearm, any application to purchase a firearm, and a firearms purchaser identification card) at a described location. This request to the Judge shall be recorded, and such recordings shall be made part of the permanent case file.
1. 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.
  2. 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.
  3. Weapons seized as evidence to the underlying crime are to be listed on a property/evidence report and retained.
- D. Upon the issuance of such an order, if the defendant refuses to surrender said weapon and/or possessory documents, then the officer shall:
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. Weapons seized by officers on-scene, along with any possessory documents are to be documented on an Weapons Surrender Receipt (Appendix #1).
  5. Append an inventory of seized weapons and documents to the domestic violence offense report and provide a copy of the Weapons Surrender Receipt to the defendant, the issuing court, and the Prosecutor's Office.
- E. In the event the victim declines a TRO, and if the domestic violence assailant or possessor of the weapon(s) refuses to surrender the weapon(s) or to allow the

officer to enter the premises to search for the named weapon, 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 for the search and seizure of weapons.

- F. Pursuant to officers of the Elizabeth Police Department serving a defendant, who resides within the City of Elizabeth, with an out-of-county TRO requiring a weapon(s) seizure, shall seize the named weapon(s) and/or possessory documents within the order. Officers shall enter the weapon(s) and/or possessory documents into evidence and held for safekeeping in the Elizabeth Police Department evidence locker prior to being delivered to the Union County Prosecutor's Office.
1. Officers shall document the service of the TRO and weapon(s) seizure and forward the TRO return of service and Weapons Surrender Receipt to the requesting out-of-county agency via facsimile or electronic mail.
  2. Officers shall forward the completed Weapons Surrender Receipt and accompanying documents [*i.e., copy of possessory documents (if applicable), Domestic Violence Offense Report, TRO, Victim Notification, CDR complaints, and all other generated police reports generated with the seizure*] to the Union County Prosecutor's Office, via facsimile (908-527-4507) or electronic mail, within twenty-four (24) hours.
- G. If a defendant, who resides outside the confines of Union County, is required to be served with a Elizabeth Municipal Court TRO requiring a weapon(s) seizure, the agency where the defendant resides shall serve the defendant with both the TRO and Weapons Surrender Receipt. That agency shall seize the named weapon(s) and possessory documents within the order. The serving agency shall forward the TRO return of service and Weapons Surrender Receipt to the Elizabeth Police Department. The seized weapon(s) and possessory documents shall be held for safekeeping by the serving agency until a weapons hearing is held in Union County Superior Court.
1. Upon receipt, officers shall forward the completed Weapons Surrender Receipt and accompanying documents [*i.e., copy of possessory documents (if applicable), Domestic Violence Offense Report, TRO, Victim Notification, CDR complaints, and all other generated police reports generated with the seizure*] to the Union County Prosecutor's Office, via facsimile (908-527-4507) or electronic mail, within twenty-four (24) hours.
  2. Upon receipt, officers shall forward a copy of the served TRO to the Union County Prosecutor's Office Domestic Violence Unit.
- H. For all weapons seizures that take place within the City of Elizabeth, officers shall adhere to the following procedures:
1. Complete the Weapons Surrender Receipt
    - a. Officers shall forward the completed Weapons Surrender Receipt and accompanying documents [*i.e., copy of possessory documents (if applicable), Domestic Violence Offense Report, TRO, Victim Notification, CDR complaints, and all other generated police reports*]

*generated with the seizure]* to the Union County Prosecutor's Office, via facsimile (908-527-4507) or electronic mail, within twenty-four (24) hours.

2. Photograph seized weapons
    - a. Photographs of all seized weapon(s) shall be electronically mailed to the Union County Prosecutor's Office within twenty-four (24) hours at [ucpodv@ucnj.org](mailto:ucpodv@ucnj.org).
  3. Weapons
    - a. Weapon reports shall be forwarded to the Union County Prosecutor's Office before the hearing date. Said reports shall be emailed to [ucpodv@ucnj.org](mailto:ucpodv@ucnj.org).
  4. Weapons Stored at the Elizabeth Police Department
    - a. Weapons shall remain with the Elizabeth Police Department until a Court Order is issued by a Superior Court Judge, Family Division. This order will be forwarded directly from the Union County Prosecutor's Office.
    - b. No weapon shall be released and/or destroyed unless the Elizabeth Police Department is directed to do so by the Union County Prosecutor's Office.
- I. Seizure of Weapons from a law enforcement officer
1. All procedures set forth in this General Order regarding weapons seizures shall apply to all law enforcement offices and shall include the seizure of duty, off-duty, and personally owned weapons.
  2. 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.
  3. Whenever an act of domestic violence is alleged to have been committed by a law enforcement officer, the seizure of all weapon(s) shall be governed by [Attorney General Directives 2000-3 / Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents](#). All weapons possessed by that law enforcement officer, department-issued or personal, shall be immediately:
    - a. Seized by the responding officer to the domestic violence incident if the responding officer reasonably believes that the presence of the weapon would expose the victim to a risk of serious bodily injury.
    - b. Voluntarily surrendered by the law enforcement officer when served with a TRO and/or search warrant.

4. Whenever an act of domestic violence is alleged to have been committed by a law enforcement officer resulting in the seizure of the officer's weapons, or the officer has been served with a TRO or a Domestic Violence Administrative Warrant for the Search and Seizure for Weapons, the supervisor shall:
  - a. Immediately report the alleged domestic violence incident to the alleged defendant's departmental supervisor, who must then immediately notify the prosecutor's office in the county where the alleged defendant is employed.
  - b. The supervisor must also immediately notify the Union County Prosecutor's Office regardless of where the alleged defendant is employed.
5. 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 issue that weapon.
  - a. A Weapons Surrender Receipt must be completed and forwarded to the Union County Prosecutor's Office within twenty-four (24) hours of the seizure.
  - b. Personal weapons are to be delivered to the Prosecutor's Office on the county where the seizure took place, in accordance with the procedures set forth in the Attorney General's Guidelines.
6. The responding officer or the shift commander shall immediately fax all pertinent reports to the Union County Prosecutor's Office with a cover sheet indicating that the incident involves a law enforcement officer or upload such pertinent reports to InfoShare.
7. The County Prosecutor's office where the charges are filed against the officer or where the incident occurred shall conduct an immediate investigation into the incident.
8. The Chief of Police where the officer is employed shall:
  - a. Conduct an investigation into the officer's background and make a recommendation to the appropriate County prosecutor whether the officer should be permitted to carry weapons, and under what conditions.
  - b. If necessary, the officer charged with committing an act of domestic violence shall be temporarily assigned so that the officer will not have contact with the domestic violence victim.

## **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. Officers should make best efforts to communicate with a victim in the language most comfortable for them. An interpreter may be needed at the time of the victim's interview with the investigating officer and Judge.

- B. A victim of domestic violence may file a domestic violence complaint, (i.e., request for temporary restraining order):
1. Where the alleged act of domestic violence occurred; **or**
  2. Where the defendant resides; **or**
  3. Where the victim resides, is sheltered, or temporarily staying.
  4. During regular court hours, the victim should be transported or directed to the Family Division of the Superior Court.
    - a. Where transportation of the victim to the Superior Court is not feasible, the officer should telephone the designated court by telephone for an emergent temporary restraining order in accordance with established procedure.
    - b. On weekends, holidays, and other times when the court is closed, the victim may file the domestic violence complaint with the police and request a temporary restraining order before a municipal court Judge specifically assigned to accept these complaints.
    - c. The victim's complaint shall be processed promptly. Under no circumstances should be the victim be advised to appear in Union County Superior Court, Family Part, the next business day to apply for a TRO.
- C. A victim of domestic violence may file a criminal complaint (i.e., criminal charges placed on CDR-1/summons or CDR-2/warrant) with an accompanying domestic violence complaint:
1. In locations indicated in Paragraph B.1.2.3. above.
  2. 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.
  3. A criminal complaint filed pursuant to this shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred. However, the criminal complaint may be generated by the non- jurisdictional

agency in eCDR with the ORI changed to reflect the jurisdiction where the offense occurred. Except, however, in mandatory arrest situations, in which no on-scene arrest was made, a criminal complaint(s) must be signed in the jurisdiction where the offense occurred. The investigating officer shall assist the victim by coordinating with the other jurisdiction.

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 electronic mail, 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.
  5. A domestic violence complaint (i.e., request for temporary restraining order) may be filed pursuant to the provisions of Section VII.B above.
- D. 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**
    - a. During normal court hours, with the municipal court or law enforcement agency where the alleged act occurred
    - b. On weekends, holidays, and other times when the court is closed, with the law enforcement agency where the alleged act occurred.
  2. Where the defendant resides.
  3. Where the victim resides, is sheltered, or temporarily staying.
  4. If the police officer believes that a no-contact order should be issued, the officer should inform the Assistant Prosecutor of the circumstances justifying such request when the criminal complaint is being processed. The officer should include in the domestic violence offense report the reasons for the request and the court's disposition of the request.
  5. If the victim requests to file a criminal complaint in a jurisdiction other than where the offense occurred, the officer shall follow the procedures as indicated in Section VII.C.1-4.
- E. The law enforcement agency where the offense occurred shall 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, refer to 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. This mandatory query of the DVCR shall be made before deciding whether to issue a complaint-summons or a complaint-warrant.

2. Conduct an ODARA for qualifying domestic violence related crimes/offenses and when the victim is a partner in an intimate relationship;
  - a. The ODARA Risk Assessment Form must be completed for all defendants, male and female, in an intimate relationship, and charged with qualifying offenses as listed on the ODARA Scoring Form. A final score of 3 or more requires the issuance of a warrant, regardless of the PSA score, unless the presumption for a warrant is overcome as outlined in 4.5.1b of the Attorney General Directive 2016-6 v3.0.
  - b. Officers should include a concise statement indicating the presence of all risk factors (i.e., ODARA criteria) found to be present within the Affidavit of Probable Cause submitted with an application for a complaint-warrant.
  - c. Do not list the ODARA scores in the Affidavit of Probable Cause.
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 his/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. In determining whether to apply for a complaint-summons or a complaint-warrant in domestic violence cases, special consideration shall be given to the following circumstances relevant to the risks that would be posed if the defendant were to be released on a complaint-summons:
  - a. In consultation with the watch commander or patrol 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. Given the repetitive nature of domestic violence offenses, the officer or shift commander 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.

- c. Whether the victim exhibited sign of injury caused by an act of domestic violence, and if so, the extent of injury.
  - d. Whether any weapon was used or threatened to be used against the victim.
  - e. Whether the defendant has at any time previously violated a domestic violence restraining order and the nature and seriousness of such violation(s).
  - f. Whether there is reason to believe that the defendant possesses one or more firearms that for practical or other reasons cannot be seized or surrendered pursuant to the *Prevention of Domestic Violence Act* before the defendant can be released on a complaint-summons.
  - g. Whether the defendant exhibited suicidal behavior such as excessive sadness, moodiness or is threatening self-injury.
  - h. Whether the defendant attempted to or did strangle the victim during an assault or at any point prior thereto; and
  - i. Whether the defendant threatened to or did harm a household pet.
5. When the officer, or watch commander or patrol 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 Union County Prosecutor's Office.
6. In any application for a complaint-warrant, the presence of any of the above circumstances listed in VII.E.4a.-i. shall be included in the Affidavit of Probable Cause.
7. If the decision is made to apply for a complaint-warrant, the application shall clearly read that the offense involves domestic violence and the Affidavit of Probable Cause and/or the Preliminary Law Enforcement Incident Report (PLEIR) shall include any relevant information contained in the Domestic Violence Central Registry and/or ODARA (excluding the scores), if applicable.

8. Whether the offense is charged by complaint-warrant or complaint-summons, the victim shall be informed how to apply for a restraining order under the Prevention of Domestic Violence Act. This requirement to inform the victim shall not be construed to preclude the officer, watch commander, or patrol supervisor from seeking imposition of a no contact or other appropriate restraint as a condition of release on a complaint-warrant as may be required.
9. In those circumstances for which a complaint-warrant is applied prior to the subject being apprehended, the date of arrest field should be left blank in the eCDR drafting process for the CDR-2. Do not put in the date of application as the date of arrest. Once the defendant has been arrested and taken into custody on the outstanding complaint-warrant, he/she shall be fingerprinted via Live Scan so as to initiate the automated pretrial risk assessment process (PSA). The officer shall make certain that the fingerprint links to the defendant(s) and offense(s) for which a complaint-warrant had been issued.
10. If an officer is unsure of whether to apply for a complaint-warrant or to issue a complaint-summons on a domestic violence DP offense, the officer should contact the on call domestic violence Assistant Prosecutor. However, a domestic violence Assistant Prosecutor shall be contacted if:
  - a. An officer has probable cause to believe that the defendant has violated a domestic violence restraining order (N.J.S.A 2C:29-9b); or
  - b. A first, second, third, or fourth degree crime has been committed.
11. An officer does not need to contact an Assistant Prosecutor when:
  - a. There is probable cause to believe that a DP Simple Assault (N.J.S.A. 2C:12-1a) has occurred, there is no violation of restraining order, and a complaint-summons will be issued.
  - b. There is probable cause to believe that a PDP Harassment (N.J.S.A. 2C:33-4) has occurred, there is no violation of restraining order, and either a complaint-warrant or a complaint-summons will be issued.
12. When a defendant is charged with a disorderly person offense involving a mandatory arrest circumstance, in evaluation of the warrant versus summons decision, a no contact provision can only be ordered as a condition of pretrial release if a complaint-warrant is applied for and granted.
13. The officer should include in the Domestic Violence Offense Report the reason for the complaint-warrant request and the court's disposition of the request.

F. ODARA Scoring Forms:

1. Officers shall complete the *ODARA Scoring Form* and transmit a copy of the same to the Union County Prosecutor's Office's Domestic Violence Unit as

soon as practicable following its completion. Officers shall also email the completed ODARA form to [ODARA@njdcj.org](mailto:ODARA@njdcj.org) and [ucpodv@ucnj.org](mailto:ucpodv@ucnj.org).

- a. The documents in the case file, including the ODARA Scoring Form, shall be sent to the Elizabeth Municipal Court for all cases involving domestic violence non-indictable charges and no accompanying restraining order violations.
  - b. The documents in the case file, including the ODARA Scoring Form, shall be uploaded into Infoshare for all cases involving domestic violence indictable charges, all domestic violence contempt/violations of restraining orders, and all domestic violence disorderly persons complaint-warrants. (***\*\*DO NOT upload domestic violence disorderly persons complaint-summons unless the defendant is charged with domestic violence contempt/violations of restraining orders***).
2. The original *ODARA Scoring Form* shall be maintained in the applicable case file.
  3. 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.
  4. *ODARA Scoring Forms* are subject to discovery, however, they are not subject to public access and shall only be disseminated amongst police or other law enforcement agencies authorized to investigate reports of domestic violence.

## 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:
  1. File a petition, with notice to the owner of the weapon(s), with the Family Division of the Superior Court to obtain title to and/or revoke any and all firearms purchaser identification cards and/or permit(s) to purchase a handgun.
  2. Seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license and other authorization for the use, possession, or ownership of such weapons, or
  3. Object to the return of the weapon on such grounds:

- 1) As are provided for the initial rejection or later revocation of the authorizations pursuant to N.J.S.A. 2C:58-3c; or
  - 2) That the owner is unfit or that the owner poses a threat to the public in general or a person(s) in particular; or
  - 3) Seek a court order that defendant must dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.
- 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. Permit to carry a handgun(s);
  5. Such items must be surrendered to the police department where the defendant resides within **48 hours** of the date of the sentencing order. The defendant shall be required to contact the police department within the jurisdiction he/she resides and inform a supervisor of his/her requirement to surrender his/her firearm(s) as per the court order.
- D. The officer receiving any of the above items will complete:
1. The officer shall log the property into department custody consistent with the department directives concerning property retention;
  2. *Firearms Surrender Receipt* form, which shall include, the date of surrender, name of the defendant, and any item that has been surrendered, including the serial number, manufacturer and model of the surrendered firearm.
  3. The officer shall provide the defendant a copy of the *Firearms Surrender Receipt Form* and place a copy in the case file.
- E. The property/evidence custodian shall 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, permit to carry a handgun, 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.
- H. Law Enforcement Officer – Return of Weapons
1. When a court order exists that prohibits a law enforcement officer from possessing a weapon, that weapon shall not be returned to the officer absent a court order. The officer may request an expedited court hearing.
  2. If it is determined by the Union County Prosecutor or the Operations Bureau at the Division of Criminal Justice that the officer may carry a weapon in accordance with his/her duty assignments while the domestic violence proceedings are pending, the Union County Prosecutor may recommend to the appropriate court that:
    - a. The officer may be permitted to carry a department-owned handgun during “*on duty*” hours only.
    - b. The officer may be prohibited from entering his/her residence (if shared with the victim) or meet with the victim or any other protected person by the restraining order, while on duty and armed.
    - c. The department-owned weapons are to be issued to the officer at the beginning of the officer’s shift and returned to the custody of the department at the end of the officer’s shift.
  3. When a weapon has been seized from a law enforcement officer, but no criminal charges are pending and no court order is in effect, the Union County Prosecutor may authorize the return of the seized weapon(s), subject to any condition deemed necessary.

- I. Restrictions of the Return of Firearms to Law Enforcement Officers
  1. Pursuant to the Federal Crime Bill, 18 U.S.C.A. 922(q), if a Final Domestic Violence Restraining Order (FRO) is issued, a law enforcement officer may not possess any personally owned firearms for the duration of the FRO, or two (2) years after the incident if the FRO is dismissed, whichever is greater.

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

- A. Restraining order service:
  1. If the TRO is granted, the officer must make every effort to serve the defendant immediately.
  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.
    - f. A copy of the TRO shall be given to the defendant upon service of the same.
  3. In the event the defendant resides in the City of Elizabeth, this agency is responsible for the service of the restraining order upon the defendant. Upon service of the TRO, officers shall update the restraining order's return of service through the Domestic Violence Central Registry, which will notify the Family Division of the Union County Superior Court and the Union County Prosecutor's Office. A copy of the TRO shall be printed out and placed in the TRO file.
  4. Officers shall follow the above steps (IX.A.2.a-e) 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.
  5. 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.

6. In the event the defendant resides outside the confines of the City Elizabeth, officers shall contact the appropriate law enforcement agency in the Municipality/County where the defendant resides and/or works to coordinate the service of the TRO.
  - a. The officer shall email, or transmit by facsimile, the TRO, and the Weapons Surrender Receipt (if applicable) to the serving law enforcement agency.
  - b. Upon serving the defendant with the restraining order, the serving law enforcement agency shall update the restraining order's return of service through the Domestic Violence Central Registry. Supervisors from this department can check the Domestic Violence Central Registry to confirm service.
7. Anytime an officer from this department is requested to serve a restraining order that was issued outside of Union County, the officer shall serve the restraining order and seize any weapons ordered and/or found at the scene, if applicable. Officers shall update the restraining order's return of service through the Domestic Violence Central Registry.
8. If the defendant is not present at the location service is being attempted, the officer shall make repeated and documented attempts to serve the TRO.
9. A copy of the TRO shall be given to the defendant upon service of a restraining order.

B. Violation of a Restraining Order

1. When an officer has confirmed the defendant has been served with a restraining order and there is probable cause to believe the defendant has violated that order, the defendant shall be charged with Contempt in violation of N.J.S.A 2C:29-9b after receiving complaint approval from an Assistant Prosecutor. Officers can confirm service through the Domestic Violence Central Registry, the Family Division of the Superior Court (during court hours), the law enforcement agency that issued the restraining order, and/or the law enforcement agency where the victim resides.
  - a. If the violation of the restraining order occurred along with an indictable crime or a disorderly persons offense, then the Contempt charge is a fourth degree crime.
  - b. If the violation of the restraining order occurred along with a petty disorderly offense, then the Contempt charge is a disorderly persons offense.
  - c. If the violation of a restraining order was contact alone, then the Contempt charge is a disorderly persons offense.
2. Officers shall upload all cases involving Domestic Violence Contempt / Violation of Restraining Order charges into InfoShare.

**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: 29-9a.
  4. Officers shall contact an Assistant Prosecutor in the Union County Prosecutor's Office Domestic Violence Unit for complaint-approval when there is probable cause to believe the defendant has violated a domestic violence restraining order.
  5. 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.
- 6. 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.
- 7. 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.
- 8. 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 policy), and
  - b. Assist the victim in obtaining a temporary restraining order in accordance with this directive; or
  - c. If the officer determines that a non-emergency situation exists, explain to the victim the procedure to obtain a domestic violence restraining order in New Jersey.
- 9. If the responding officer has probable cause to believe that a defendant, who is no longer at the scene, has violated the provisions of a valid restraining order and/or committed a criminal offense requiring arrest, the applicable provisions of this directive apply.
- D. In a non-emergency situation, the officer should refer the victim to the appropriate court, so the victim may seek to obtain appropriate relief in accordance with the out of state restraining order or order of protection. If the victim had moved into New Jersey from another state, the officer should refer the victim to the Family Division of Superior Court in the County where the victim is then located. If the victim is only temporarily in New Jersey, the officer should refer the victim to the court where the victim is then residing.
- E. When responding to a domestic violence incident involving an out-of-state order of protection or restraining order, officers should determine whether the actor violated any federal laws (i.e., crossing state lines with the intent to violate a domestic violence restraining order). Questions should be referred to the Union County Prosecutor's Office.

F. Mutual orders of protection:

1. The plaintiff of a mutual order of protection from another state is entitled to full faith and credit in this state to the same degree as if the order had been issued solely on the plaintiff's behalf. The defendant of a mutual order of protection from another state would be entitled to relief if:
  - a. The defendant had filed a written pleading in that other state seeking this protective order; 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.

G. 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. BREATHE TEAM ACTIVATION**

Pursuant to New Jersey Attorney General Directive 2023-03, upon investigating an act of domestic violence involving a strangulation and/or smothering assault, the victim shall be advised of their right to accept all, or any portion of, **BREATHE Team** services as soon as possible. Victims who do not initially report to law enforcement, may access **BREATHE Team** services through contact at health care facilities or advocacy agencies.

**XII. FINGERPRINTING AND PHOTOGRAPHING DOMESTIC VIOLENCE OFFENDERS**

- A. Officers shall 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. Victim exhibits signs of injury caused by an act of domestic violence.
  2. A warrant is in effect.

3. There is probable cause to believe that the person has violated a judicial order in N.J.S.A. 2C:29-9 AND there is probable cause to believe that the person has been served with that order.
  4. There is probable cause to believe that a weapon as defined in N.J.S.A. 2C:39-1 has been involved in the act of domestic violence.
- B. Any person who fails to submit to fingerprinting and photographing may be charged with N.J.S.A. 2C: 29-1, a disorderly person offense.

### **XIII. DOMESTIC VIOLENCE CENTRAL REGISTRY**

- A. The Domestic Violence Central Registry (DVCR) allows officers direct access to domestic violence information in FACTS.
- B. Officers shall review the information contained in the Domestic Violence Central Registry (DVCR) when investigating a domestic violence offense or a violation of a restraining order to determine whether the defendant is subject of a domestic violence restraining order. The mandatory review shall be made by officers before deciding to issue a complaint-summons or complaint-warrant.
- C. Officers must provide the information contained in the DVCR to the Assistant Prosecutor when requesting complaint approval.
- D. 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.
- E. 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.
- F. 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.
- G. If information in the DVCR is disseminated, or disclosed, to an unauthorized person, the person who disseminated the information may be charged with a crime of the fourth degree.

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

- A. All police reports in a domestic violence case are confidential and shall not be made available to any individual or institution except where otherwise authorized for release by law and this directive.
- B. Absent a court order or authorization by the Union County Prosecutor's Office, domestic violence reports shall not be released to the media or any other person.

- C. Subsections XIV.D and XIV.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 Union County Prosecutor's Office.
  - 2. This department shall not release any reports when an indictable charge is pending because the Union County Prosecutor's Office shall be the prosecuting agency.
  - 3. If the charges were disorderly person or petty disorderly person offenses (e.g., simple assault, harassment, etc.) this department shall 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 Union 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.

## **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 who abandons an elderly person or disabled adult, unreasonably neglects to do or fails to permit to be done, any act necessary for the physical or mental health of an elderly or disabled adult.

#### **XVI. ETRO SYSTEM CHECK EACH SHIFT**

The Watch Commander and/or Patrol Supervisor must complete a check of the ETRO system at least one time at the beginning of his/her shift. If any action is required, the Watch Commander and/or Patrol Supervisor must document what action(s) were taken.

#### **XVII. COURT PROCEEDINGS**

Officers are required to participate in any civil and or criminal domestic violence hearings pursuant to a valid subpoena.

#### **XVIII. DOMESTIC VIOLENCE LIAISON OFFICER**

Domestic Violence is an area of the law that evolves and changes rapidly and requires the utmost sensitivity when working with victims. Whether it is the addition of newly designated domestic violence crimes or the implementation of new technology, such as eTRO, proper domestic violence response and processing is contingent upon awareness.

To ensure that the police department maintains knowledge of legislative changes, technological advancements, potential changes as to policy and procedure, and employs best practices, the police department will identify a Domestic Violence Liaison Officer ("DVLO"), who is a sworn member of this department, as the point person for domestic violence. The DVLO shall serve as the department in-house expert on how to respond to domestic violence; works collaboratively with the DVRT Coordinator in their County to ensure access and utilization of the DVRT program; regularly reviews and ensures adherence to policies regarding language access, dual arrests, violations of civil restraining orders, criminal no contact orders, officers' response to subpoenas, etc.; and shall represent their department in meetings with the County Prosecutors, local domestic violence programs, and participates at the County Domestic Violence Working Group.