



# New Jersey Domestic Violence Procedures Manual

2022

Issued under the Authority of the Supreme Court  
of New Jersey and the Attorney General of the  
State of New Jersey

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## Announcement of Revised Edition

Date: April 22, 2022

This announces a revised edition of the Domestic Violence Procedures Manual (DVPM) promulgated under the joint authority of the Supreme Court and the Attorney General. **Prior editions of the DVPM are outdated and should be discarded.**

## Introduction

Domestic violence (DV) is a widespread public problem with consequences both inside and outside the family. Once considered merely a symptom of poverty, substance abuse, mental illness, or a dysfunctional relationship, domestic violence now is understood to be a problem in and of itself that is found independent of or coinciding with another individual, family, or community problems. In the United States, an estimated 10 million people experience domestic violence every year. According to the National Coalition Against Domestic Violence, about 20 people per minute are physically abused by an intimate partner. About 1 in 4 women and 1 in 9 men experience severe intimate partner physical violence, sexual violence, and/or partner stalking with injury, Post Traumatic Stress Disorder (PTSD), contraction of Sexually Transmitted Diseases (STDs), etc. According to the 2019 New Jersey Domestic Violence Fatality – Near Fatality Review Board Annual Report, in 2017, 2018 and 2019 there were 135 cases of domestic violence homicides, of which 80 were intimate partners. Of these, most (80%) were women victims, including four same sex relationships. Fifty percent of the intimate partner victims were identified as White, 48.75% as Black, and 1.25% as Asian. With regard to the cause of death, firearms accounted for the highest percentages of fatalities (40%), followed by knives & cutting instruments (28.8%), blunt objects which includes hammers and clubs (17.5%), personal weapons, which includes hands, arms, fists, feet, teeth, etc., (6.25%), strangulation (5%) and in a few cases (5%), the cause was not reported. In a third of the cases, the perpetrator committed suicide after killing the victim.

Domestic violence has overwhelming short and long-term effects on the abused parties and their children, as well as their communities. This type of violence can happen among heterosexual or same-sex couples as well as household members not in an intimate relationship. Domestic violence can affect all areas of a person's life such as their physical and mental health, housing, education, employment, family stability, social relationships, and community participation. There is ongoing evidence that violence within the family becomes the breeding ground for other social problems such as substance abuse, juvenile delinquency, and violent crimes of all types. The courts and the law have a significant role in addressing domestic violence.

New Jersey’s existing statutes, case law, policies and court processes are designed to facilitate the prompt resolution of domestic violence matters and provide relief to domestic violence victims. Depending on the nature of the complaint and relief sought, domestic violence matters move various ways through New Jersey courts, with Family, Criminal and Municipal Courts each playing a role in the handling of domestic violence matters. The New Jersey Supreme Court and the Attorney General of New Jersey have jointly issued this manual to serve as a policy and procedure reference guide for law enforcement and the court to address domestic violence in New Jersey. As noted in *I.J. v. I.S.*, 328 N.J. Super. 166 (App. Div. 1999), this manual which is “a compilation of efforts of New Jersey’s highest court and the highest law enforcement agency should have particular force in the interpretation of the Prevention of Domestic Violence Act (PDVA).



## I. DEFINITIONS

### A. Definitions

**Child in common:** A child whose custody is shared by, of the plaintiff and the defendant including foster children.

**Criminal Complaint:** A document that is sworn to by a victim or police officer that sets forth a criminal violation and that serves as the charging instrument by which charges are filed and judicial proceedings may be commenced against a defendant.

**Defendant:** A person at least **18 years old** or **emancipated** (defined below) who is alleged to have committed or has been found to have committed an act(s) of domestic violence under the Prevention of Domestic Violence Act (PDVA).

**De novo:** A second time; afresh. A trial or a **hearing** that is either:

- undertaken by the trial court in an emergent appeal of a Temporary Restraining Order (TRO) denial, or
- ordered by an appellate court that has reviewed the record of a **hearing** in a lower court and sent the matter back to the original court for a new trial, as if it had not been previously heard nor decided.

**Dissolution (FM) docket:** A case which is opened by a complaint for divorce or for separate maintenance is given a docket number by Family Court starting with FM.

**Domestic Violence:** (N.J.S.A 2C:25-19) The occurrence of one or more of the following acts inflicted upon a person protected under the PDVA by an adult or an emancipated minor:

- |                           |                          |
|---------------------------|--------------------------|
| ▪ Homicide                | N.J.S.A. 2C:11-1 et seq. |
| ▪ Assault                 | N.J.S.A. 2C:12-1         |
| ▪ Terroristic Threats     | N.J.S.A. 2C:12-3         |
| ▪ Kidnapping              | N.J.S.A. 2C:13-1         |
| ▪ Criminal Restraint      | N.J.S.A. 2C:13-2         |
| ▪ False Imprisonment      | N.J.S.A. 2C:13-3         |
| ▪ Sexual Assault          | N.J.S.A. 2C:14-2         |
| ▪ Criminal Sexual Contact | N.J.S.A. 2C:14-3         |
| ▪ Lewdness                | N.J.S.A. 2C:14-4         |

- Criminal Mischief N.J.S.A. 2C:17-3
- Burglary N.J.S.A. 2C:18-2
- Criminal Trespass N.J.S.A. 2C:18-3
- Harassment N.J.S.A. 2C:33-4
- Stalking N.J.S.A. 2C:12-10
- Criminal Coercion N.J.S.A. 2C:13-5
- Robbery N.J.S.A. 2C:15-1
- Cyber Harassment N.J.S.A. 2C:33-4.1
- Contempt of a Domestic Violence Order pursuant to subsection b. of N.J.S.A. 2C:29-9 that constitutes a crime or disorderly persons offense.
- Any other crime involving risk of death or serious bodily injury to a person protected under the “Prevention of Domestic Violence Act of 1991 p.l.1991, c.261(C.2C:25:17 et al.).

**Domestic Violence Advocate:** Also known as a domestic violence program liaison; a person who is specially trained in domestic violence, including both the dynamics and the law, employed by or working as a volunteer of any domestic violence project, or shelter.

**Domestic Violence Central Registry (DVCR):** A statewide registry established under N.J.S.A. 2C:25-34, of all persons who have had domestic violence restraining orders entered against them, all persons who have been charged with a crime or offense involving domestic violence, and all persons who have been charged with a violation of a court order involving domestic violence. The DVCR will contain persons who have either an active temporary restraining order, an indefinite temporary restraining order, a final restraining order entered against them, and/or a dismissed temporary or final restraining order. The DVCR also contains persons who have an active temporary or final protective order entered against them pursuant to the Sexual Assault Survivor’s Protection Act (SASPA), N.J.S.A. 2C:14-13 to 21.

**Domestic Violence Civil Complaint:** The initial pleading alleging the defendant committed an act of domestic violence and requesting court assistance to prevent its reoccurrence by granting a temporary restraining order.

**Domestic Violence (FV) Docket number:** A case that is opened by the filing of a civil complaint under the PDVA or under the SASPA is given an FV docket number.

**Domestic Violence Response Team (DVRT):** (N.J.S.A. 2C:25-20b(3)) Requires law enforcement to establish domestic violence teams or participate in established domestic crisis teams and to train individual officers and others in methods and practices of dealing with domestic violence and neglect and abuse of the elderly and disabled. Also known as Domestic Violence Crisis Teams.

**Emancipated Minor:** (N.J.S.A. 2C:25-19e) A person who is under 18 years of age is considered emancipated from his or her parents when the minor:

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

**Extreme Risk Protective Order (ERPO):** A family or household member, or a law enforcement officer, may apply for an order against a person who presents immediate and present danger of bodily injury to self or others by possessing or purchasing a firearm.

**Electronic Temporary Restraining order (eTRO):** A judicial data entry system that provides for the processing, docketing, and tracking of domestic violence restraining orders.

**Ex parte:** As used in this manual, an application for a TRO where the judge or hearing officer takes testimony only from the plaintiff without notice to the defendant of the application.

**Family-Other (FO) Docket number:** A case which is opened by filing criminal charges for a violation of an order issued under the PDVA or SASPA is given an FO docket number; a weapons forfeiture matter is also given an FO docket number.

**Final Restraining Order (FRO):** (N.J.S.A. 2C:25-29) A civil order entered under the PDVA after a hearing at which time the court considered plaintiff's complaint, having established jurisdiction over the subject matter and the parties pursuant to the PDVA and having found that the defendant has committed an act of domestic violence, and all other statutory and case law requirements having been satisfied.

**Full Faith and Credit of Violence Against Women Act:** Full faith and credit is a legal term that means a court in any jurisdiction will honor and enforce orders issued by courts in other jurisdictions. Under the Violence Against Women Act (VAWA), all jurisdictions must give full faith and credit to valid protection orders issued by all other jurisdictions, including states, Indian tribes, or territories, on behalf of survivors of domestic violence, sexual assault, stalking, and dating violence. Therefore, a valid protection order should be enforced as if it were the order of the enforcing state, tribe, or territory.

**Law Enforcement Officer:** A person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.

**Non-Dissolution (FD) Docket number:** A case which is opened by a complaint for custody, support, paternity, or parenting time where there is no divorce filed is given an FD docket number.

**Prevention of Domestic Violence Act (PDVA):** N.J.S.A. 2C: 25-18 to 35.

**Plaintiff:** A person who files the complaint that seeks or has been granted relief under the PDVA.

The plaintiff must be 18 years of age or older, **or** be an emancipated minor, and who has been subjected to domestic violence by:

- Spouse;
- Former spouse; or
- Any other person who is a present household member or was at any time a household member;

**OR**

Who, regardless of age, has been subjected to domestic violence by a person:

- With whom the plaintiff has a child in common; or
- With whom the plaintiff anticipates having a child in common, if one of the parties is pregnant; or

- With whom the plaintiff has had a dating relationship.

**Personal Service:** Service that requires a law enforcement officer or other authorized person to personally serve the defendant and/or plaintiff with a TRO, FRO or other Order issued under the PDVA.

**Protected Parties:** A third party that is included under the protections of an active restraining order. The protected party does not need to qualify as a victim in order to be added to the restraining order, however the judge must set forth the reason for the protection.

**Speedy Trial:** The speedy trial rule of criminal procedure (Rule 3:25-4) requires the prosecution to schedule and proceed with the trial or face the possibility that the case could be dismissed for lack of prosecution.

**Substituted Service:** A service of an order by means other than personal service that is pursuant to an order issued by the court. If personal service cannot be effected upon the defendant, the court may order other appropriate forms of service. Some examples of substituted service can include the following:

- Publication in a newspaper;
- Certified Mail; and/or
- Service of another adult in the household.

**Temporary Restraining Order (TRO):** An order entered pursuant to a complaint under the PDVA; is temporary by its terms and requires that a full hearing be scheduled within 10 days. A TRO shall continue in effect until further order of the court.

**Violence Against Women Act (VAWA):** The Violence Against Women Act of 1994 (VAWA) is a United States federal law (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355) signed as Pub.L. 103–322 on September 13, 1994 (codified in part at 42 U.S.C. sections 13701 through 14040).

**Weapons:** (N.J.S.A. 2C:39-1r) Means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms,

even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

## II. MUNICIPAL DIVISION

### Municipal Court Procedure

#### A. Temporary Restraining Order – Municipal Process

Municipal courts must be accessible to victims in need of emergent relief when the Superior Court is not in session. In addition, the Municipal Court must be available when a victim of domestic violence is seeking a temporary restraining order (TRO) and cannot get to the Superior Court while it's open. Each Municipal Court shall ensure that there is adequate backup coverage for domestic violence cases and other emergent matters for each Municipal Court in that vicinage. The Court Administrator of each Municipal Court in each vicinage should provide the police or other law enforcement officers covering that municipality with a list of names and phone numbers (in order of priority) to be contacted in domestic violence cases, starting with the sitting Municipal Court judge, the backup judge, the Presiding Judge of the Municipal Court (where applicable), the County Municipal Presiding Judge and the emergent duty Superior Court judge.

**Additionally, if the plaintiff or law enforcement officer files a criminal complaint and at the same time the plaintiff seeks a restraining order, law enforcement must complete the TRO process simultaneously at the time of the filing of the criminal complaint even if it is during court hours (Directive #19-20 Domestic Violence Temporary Restraining Orders (TROs) – Procedure for Taking Applications Remotely.**

#### 1. Municipal Judge Role and Responsibility

A Municipal Court judge hearing an application for a TRO shall

- Be available by telephone or remotely when the Superior Court is not in session or when the plaintiff is filing a criminal complaint and TRO simultaneously and when directed by the Vicinage Presiding Judge of the Municipal Court.
- Accept TRO applications submitted with a complaint-warrant or a complaint-summons even during Superior Court hours.

- Confirm with the police officer assisting with the TRO whether they are on a recorded line. If not on a recorded line, the judge must make contemporaneous notes of the plaintiff's testimony and the reasons for issuing or denying the TRO and any weapons seizure.
- Confirm whether one or more predicate acts were committed by the defendant and whether a TRO is necessary to protect plaintiff from immediate danger or further acts of domestic violence. Also confirm the officer checked the DVCR for any current or prior restraining orders.
- Speak directly with the applicant in person, or by telephone, radio, or other means of electronic communication pursuant to New Jersey Court Rule 5:7A. Speaking only to the police officer does not satisfy this rule.
- Ensure that the police fully set forth the plaintiff's allegations of domestic violence in the body of the domestic violence complaint, including past history of domestic violence between the parties, whether reported or unreported.
- The judge shall:
  - Review all available information for the parties including ensuring emergency contact numbers and email address have been given to law enforcement for subsequent hearings;
  - Confirm that the plaintiff has been informed about legal rights and options, and offered the services of the Domestic Violence Response Team and/or local domestic violence provider;
  - Explain to the plaintiff the domestic violence legal procedures;



- Establish a record, including findings of fact;
  - Amend the complaint to conform to the testimony, where appropriate;
  - Ensure that all appropriate crimes are checked off on the TRO;
  - Address emergent support for the plaintiff and/or children as appropriate. The order shall clearly detail the payment method to avoid contact between the parties, i.e. payable through a third party, direct deposit, or by an electronic money transfer. It should also specify a date by which the payment should be made. Emergent support is not payable through the court; and
  - Inquire as to all relief requested by the applicant to determine the appropriateness of same.
- The judge must comply with all the provisions set forth below.

## 2. Ex Parte Testimony

The municipal judge upon an *ex parte* application shall administer an oath to the applicant and take testimony regarding:

- The alleged domestic violence;
- The past history of domestic violence between the parties, whether reported or unreported;
- The reason the applicant's life, health, or well-being is endangered; and

- Whether defendant possesses or has access to weapons, firearms, purchaser permit or a firearms identification card.

The judge shall state with specificity the reasons for and scope of any search and seizure to be authorized by the TRO (see Section VI).

The TRO shall be marked accordingly to capture the testimony and information provided by the applicant.

#### B. Cross-Complaints

The municipal court has the authority to hear cross-complaints. In those cases where **both** parties seek a temporary restraining order against the other, a judge should not hear both complaints together. Each party's complaint is initially heard separately, and the court should place the findings on the record. Relief will be granted as appropriate. The **same judge** should consider these complaints to ensure that the orders do not contain conflicting provisions for such matters as possession of the residence and custody of the children.

#### C. Domestic Violence Response Teams

The court should ensure from the law enforcement officer that the victim has been offered the services of the Domestic Violence Response Team.

#### D. Language Access Plan

The court shall ensure the plaintiff has been offered the services of an interpreter as appropriate (Directive #01-17 – New Jersey Judiciary Language Access Plan)

#### E. Custody and Parenting Time

The court shall inquire if the parties have children in common and address custody and parenting time as appropriate. This may include prohibiting the defendant from contact with the child(ren) as a protected party, granting custody to the plaintiff, modifying or temporarily suspending an active parenting time order.

#### F. Emergent Support/Child Support and Paternity

If there are children between the parties and paternity has not been previously established, a request to establish paternity at the final hearing must be entered on the TRO. Paternity does not need to be established if the parties are married

or if a legal determination of paternity has been previously made. If a Certificate of Paternity has been signed, this can be indicated on the TRO.

The plaintiff must be asked if they wish to request child support at the Final Restraining Order (FRO) hearing.

Emergent support for the plaintiff and/or children may be ordered at the TRO hearing. The order shall clearly detail the payment method to avoid contact between the parties, i.e. payable through a third party, direct deposit, or by an electronic money transfer. It should also specify a date by which the payment should be made. Emergent support is not payable through the court.

#### G. Weapons

Where the Municipal Court judge determines that defendant possesses or has access to weapons, firearms, a firearms identification card or purchaser permit, the judge shall also comply with the weapons procedure in Section VI of this manual. Before issuing a warrant to search for weapons, the Municipal Court judge must find that there is:

- Probable cause to believe that an act of domestic violence has been committed by the defendant;
- Probable cause to believe that a search for and seizure of weapons is necessary to protect the life, health, or wellbeing of the plaintiff; and
- Probable cause to believe that the weapons are located in the place to be searched.

#### H. Granting the Temporary Restraining Order

After hearing testimony from the plaintiff, the judge shall issue or deny the TRO. Pursuant to Directive #13-19, Immediate De Novo Hearing for the Municipal Court Denial of a Domestic Violence Temporary Restraining Order,

When a TRO is entered:

- A return date for the Final Restraining Order Hearing is to be set within ten (10) days;

- The municipal court judge shall review a draft copy of the eTRO to confirm the specific terms and accuracy of the order prior to signing or directing the law enforcement officer to authorize the TRO;
- The judge must ensure the correct boxes are checked regarding whether the relief sought is granted under the TRO;
- The judge shall check the appropriate box granting the TRO and sign the TRO or direct the law enforcement officer to check the box authorizing the TRO and to print the judge's name on the Order as authorized by New Jersey Court Rule 5:7A, or as authorized by eTRO policies and procedures; and
- Contemporaneously, the judge shall issue a written Confirmatory Order and shall enter the exact time of issuance, as required by New Jersey Court Rule 5:7A(b).
- Testimony regarding abuse or neglect of minor children, requires mandatory reporting to the Division of Child Protection and Permanency (DCP&P). The court shall ensure that law enforcement officer made notification to DCP&P.

#### **NOTE:**

When a TRO is signed and granted by a Municipal Court Judge, the judge shall not amend the order. To amend a granted TRO, a hearing is held before the Superior Court Judge; or Domestic Violence Hearing Officer, or the plaintiff may file an Amended Domestic violence Complaint packet.

If a TRO is denied, the plaintiff can request an immediate *de novo* hearing pursuant to Directive #13-19. Immediate De Novo Hearing for the Municipal Court Denial of a Domestic Violence Temporary Restraining Order.

#### **I. Service**

When a TRO is granted, copies of the TRO shall be provided to:

- The plaintiff;
- The law enforcement agency that will serve the defendant with the Complaint/TRO; and
- The Municipal Court judge.

When eTRO is not available, a copy should be faxed immediately to the Domestic Violence Unit, Family Division of the Superior Court or sent via electronic mail, where eTRO procedures are in place.

#### J. Request for TRO Denied

If the TRO is denied, the judge shall state the reasons on the record.

Additionally, the Municipal Court judge must advise the plaintiff, on the record, that the victim has the right to an immediate *de novo* hearing of the denial to an on-call Superior Court judge.

If the plaintiff wishes to exercise this right, law enforcement shall contact an on-call Superior Court judge.

If the plaintiff does not wish to have an immediate hearing, the police will indicate that in eTRO and send the order electronically to the Superior Court for administrative dismissal.

#### K. Arrest

When the defendant is arrested for a crime or offense involving domestic violence, the Municipal Court judge, authorized court administrator or authorized deputy court administrator may fix bail on PDP offenses only when requested to do so pursuant to New Jersey Court Rule 5:7A-1 and N.J.S.A. 2B:12-21a. Only the judge who sets the bail can reduce or modify the bail. The Municipal Court Judge, authorized court administrator or authorized deputy court administrator will decide if there is probable cause to issue a complaint. If a complaint is issued charging a disorderly persons offense or indictable crime, a complaint-summons (CDR-1) or complaint-warrant (CDR-2) will issue based upon Preliminary Public Safety Assessment recommendation and other relevant factors.

Pursuant to N.J.S.A 2C:25-26:

- When a defendant charged with a crime or offense involving domestic violence is released from custody, the court authorizing the release may as a condition of release:
  - Issue an order prohibiting the defendant from having any contact with the victim including, but not limited to, restraining the defendant from entering the victim's residence, place of employment or business, or school, and from harassing or stalking the victim or the victim's friends, co-workers, or relatives in any way;
  - Issue an order prohibiting the defendant from having any contact with any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household;
  - Issue an order directing the possession of the animal and providing that the animal shall not be disposed of prior to the disposition of the crime or offense; and/or
  - Issue an order prohibiting the defendant from possessing any firearm or other weapon enumerated in subsection r. of N.J.S.A. 2C:39-1 and ordering the search for and seizure of any such weapon at any location where the judge has probable cause to believe the weapon is located. The judge shall state with specificity the reasons for and scope of the search and seizure authorized by the order.
- The written court order releasing the defendant shall contain the court's directives specifically restricting the defendant's ability to have contact with the victim, the victim's friends, co-workers, or relatives, or any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household. The clerk of the court or other

person designated by the court shall provide a copy of this order to the victim immediately.

- The victim's location shall remain confidential and shall not appear on any documents or records to which the defendant has access.
- A victim shall not be prohibited from applying for, and a court shall not be prohibited from issuing, temporary restraints pursuant to the PDVA because the victim or law enforcement has charged any person with commission of a criminal act.

#### L. Municipal Court Costs

Municipal Court costs shall not be imposed against a plaintiff who seeks the dismissal of a disorderly or petty disorderly complaint arising out of a domestic violence matter except if imposed pursuant to *N.J.S.A. 2B:12-24*.

#### M. Mediation

There shall be no mediation of any kind in domestic violence cases, except for those cases that are eligible for the Domestic Violence Economic Mediation Program (DVEM) (See Directive #06-20, Domestic Violence Mediation Program – Operational Guidelines; Forms. The DVEM Program enables litigants to mediate economic issues in dissolution matters where there is an active FRO between the parties and the plaintiff consents to participate in the mediation.

### III. SUPERIOR COURT PROCEDURES - Criminal Division

#### A. Introduction

The Judiciary is charged with upholding the Constitutional rights of criminal defendants while balancing the need to protect the safety of victims. The Criminal Justice Reform Act (CJRA) was written to strike this balance. The CJRA replaced a monetary-bail system of pretrial release with an objective risk-based system. N.J.S.A. 2A:162-15. The risk-based system considers a defendant's risk of failure to appear, the protection of the safety of any other person or the community, or whether the defendant will obstruct or attempt to obstruct the criminal justice process to determine whether and on what conditions to release the defendant. *Ibid.* Consistent with constitutional principles and the presumption of innocence, most defendants enjoy a presumption of release.<sup>1</sup> Further, those defendants who are released pretrial are ordered to the least-restrictive conditions necessary to mitigate their risk. N.J.S.A. 2A:162-16(b)(2)(b). However, defendants may be detained if, upon motion by the prosecutor, the court finds by clear and convincing evidence that no amount of non-monetary conditions, monetary conditions, or a combination, will reasonably assure the defendant's appearance in court, the protection of the public safety, or that the defendant will not obstruct the justice process. N.J.S.A. 2A:162-18.

Victims of domestic violence face unique risks. Often, defendants accused of DV as part of a plaintiff's request for a TRO or FRO are also charged with criminal or quasi-criminal offenses by the State. Since the inception of the CJRA, Pretrial Services and the Criminal Division has been designed to ensure that the protection of victims, and particularly DV victims, is a primary focus. The following are summaries of policies and procedures that reflect how Pretrial Services and the Criminal Division address criminal matters involving DV defendants.

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<sup>1</sup> Limited exceptions exist for defendants charged with murder or a crime subjecting the defendant to a term of life imprisonment. N.J.S.A. 2A:162-19(b).



**B. The Criminal Justice Reform Act was drafted to reflect the seriousness of DV cases.**

DV cases are statutorily given special treatment to reflect their seriousness. The CJRA defines which defendants are eligible for pretrial detention under the law. Typically, defendants charged with a disorderly persons (DP) offense are not detention eligible. However, if the offense is DV-related, the defendant becomes detention eligible pursuant to N.J.S.A. 2A:162-18(a)(1); and the Decision-Making Framework.

While the PSA does not calculate DV history into the score or recommendation, embedded in the foundational principles of Pretrial Services is the need for a court making release decisions to be “fully informed.” This analysis requires a court to be aware of and consider the defendant’s domestic violence history, and to be informed on the risk factors that may indicate increasing danger to the victim or community. Domestic violence risk factors may be identified by police through their implementation of the ODARA and indicated in the Preliminary Law Enforcement Incident Report (PLEIR) More information can be found in the *New Jersey Domestic Violence Bench Guide*. In addition, pretrial defendants may have their release revoked, upon motion by the prosecutor, and if appropriately found by the court, for a violation of a condition of a TRO or FRO. N.J.S.A. 2A:162-24. This is in addition to a violation of a condition of a pretrial release order.

**C. Pretrial conditions of release designed to protect victims of DV**

There are two primary metrics for a defendant’s success on pretrial release: 1) appearing for all scheduled court appearances, and 2) not committing new offenses while on pretrial release. The second metric focuses on ensuring the safety of the public and any other person, including DV victims. Judges are authorized to order a defendant released on conditions designed to ensure the public and victims are protected. Conditions, such as no contact orders, ordering the defendant to attend treatment, or home detention with or without electronic monitoring, are targeted to protect victims from future assault. This protection is

reflected through Pretrial Services policies and is perhaps most evident in the Electronic Monitoring (EM) policies.

#### D. **Electronic Monitoring**

EM is the most restrictive condition of pretrial release, which requires a defendant to have a GPS device attached to the ankle at all times to track his/her location. This device monitors the person 24 hours a day, 7 days per week therefore individuals are required to maintain the charge of the device. If the defendant triggers an alert, the alert is sent to a Pretrial Services officer. Officers are active, or on call, 24 hours a day, 7 days per week to immediately respond to the alert. Alerts may require action such as a request for a bench warrant from the on-call judge and contact with law enforcement to check on the victim and/or the defendant.

Considering the presumption of innocence, the high level of restrictiveness, and the personnel required to monitor a defendant on EM, it is only recommended in cases in which there is (1) a human victim, (2) the alleged offense is violent, and (3) EM will assist in protecting that victim. See also Directive #10-21, Criminal Justice Reform – Pre-Trial Services – Strict Home Detention, Home Detention with Limited Exceptions, and Home Detention with Electronic Monitoring. Caution should be used in ordering electronic monitoring in lieu of pretrial incarceration for those defendants at high risk of re-assaulting an intimate partner.

The EM Screening Criteria tool, which is completed by the prosecutor and the defense attorney, assists in ensuring a defendant meets the minimum requirements for being placed on EM. This includes ensuring the defendant has a residence, a means to charge their device, and identifying all the defendant's leave requests. Exclusion zones may be used along with GPS monitoring when there is a DV victim to provide immediate response if a defendant comes within a certain proximity of a victim's known address.

Special care is given when reviewing EM cases involving DV. Specifically, Pretrial Services staff will periodically recommend a defendant's condition of EM be removed where "a defendant has been on electronic monitoring for three months and has been compliant with the conditions of pretrial release." (Directive #10-21 - Directive #10-21, Criminal Justice Reform – Pre-Trial Services – Strict Home Detention, Home Detention with Limited Exceptions, and Home Detention with Electronic Monitoring). However, this guidance specifically advises that such a recommendation should not be made if any of the offenses are domestic violence related. This recognizes the unique risks posed to DV victims.

Special access is provided to law enforcement to view release orders that include electronic monitoring as a condition of pretrial release. The Judiciary maintains the "EM Dashboard" application in eCourts. The EM Dashboard contains a list and information of defendants subject to electronic monitoring and stores active EM bench warrants that are issued on an emergent basis. Law enforcement officers have access to this application to view these release orders to confirm that a defendant is in violation of their home detention and/or electronic monitoring condition and to confirm the presence of a bench warrant for the defendant's arrest and view and other pretrial release conditions, such as a condition not to contact or communicate with the defendant.

Failure to abide by home detention or electronic monitoring conditions is strictly enforced, and failure to abide by either condition should result in a Violation of Monitoring filed by Pretrial Services and the issuance of a bench warrant. Once a Violation of Monitoring is filed, the prosecutor is noticed through eCourts and thereafter, may result in the prosecutor filing a Motion to Revoke Release. If a judge finds a violation, they may amend the defendant's condition, or order the defendant to be detained pending trial if, after a prosecutor's motion, the judge finds clear and convincing evidence to detain the defendant.

#### E. Other conditions of pretrial release to ensure safety of victim

While EM is the most restrictive condition of pretrial release and provides staff with the ability to respond to noncompliance with the electronic monitoring condition 24 hours per day, 7 days per week monitoring of a defendant's location, it is not the only condition of release that may be placed on a defendant in a DV matter. A defendant accused in a DV related complaint may have a condition of "no victim contact" ordered. Where the court orders that a defendant avoid contact with an alleged victim, Pretrial Services staff will monitor this condition via (1) new arrest alerts in Pretrial Monitoring (PTM) and alerts from the National Crime Information Center (NCIC); (2) PTM alerts that the defendant violated a domestic violence a no-contact or restraining order; (3) reports from prosecutors and law enforcement regarding prohibited contact; (4) contact with the victim; and (5) confirming compliance during each reporting contact with the defendant. All contact with victims is documented in PTM.

Failure to abide by a "no victim contact" condition is strictly enforced and contact with the victim should result in a Violation of Monitoring filed by Pretrial Services. Once a Violation of Monitoring is filed, the prosecutor is noticed through eCourts and thereafter, may result in the prosecutor filing a Motion to Revoke Release or a charge for contempt under N.J.S.A. 2C:29-9a. If a judge finds a violation, they may amend the defendant's release conditions, increase the level of pretrial monitoring, or order the defendant to be detained pending trial if, after a prosecutor's motion, the judge finds clear and convincing evidence to detain the defendant.

Another public safety focused condition that may be ordered in a DV case is that the defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon, pursuant to N.J.S.A. § 2A:162-17(b)(2)(g). Pretrial Services Staff are advised that this condition may appropriately be recommended in cases involving a violent offense. This condition prohibits a defendant from "purchasing, owning, possessing or controlling a firearm. Likewise, the

defendant is prohibited from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun. The defendant's firearm purchaser identification card or permit to purchase a handgun is deemed to be immediately revoked." Ibid. Further, the defendant must contact law enforcement to arrange for the immediate surrender of any firearms that have not already been seized or surrendered.

F. **Pretrial Services' commitment to protect victims is reflected in the response to violations of release conditions**

Pretrial Services staff use consistent standards for determining the response to defendant noncompliance. The response can range from a verbal warning, filing a violation with the court, notifying counsel of the violation, and recommending an increase in monitoring levels/conditions. Staff respond accordingly to the seriousness of the violation. As stated above, violations of a no contact order, any EM order, or any Home Detention order, are considered the most serious level violations and require action on behalf of Pretrial staff.

Violations of EM are considered emergent and require immediate response by Pretrial Services staff. These alerts include: Exclusion Zone Enter and Leave Alerts (in which the defendant enters and leaves the prohibited zone around a victim's home); Inclusion Zone Leave Alert (the defendant has left an inclusion zone without preapproval by Pretrial Services); Failed to Enter Inclusion Zone Alert (the defendant did not return to the inclusion zone when required); Tracker Missed Callback ( the defendant allowed the device to completely lose charge), and Tracker Strap Tamper (the strap of the EM device has been compromised in some fashion such that it may have been damaged or removed). Staff are on call 24 hours a day, 7 days per week, and will immediately be notified of any of these alerts. Alerts are immediately acted upon, day or night. Upon receipt, Pretrial Services staff must access the defendant's profile in TotalAccess and immediately contact law enforcement where appropriate as defined by local policies and procedures and request a safety check. In addition, Pretrial Services

staff will, in the same transaction, call the emergent-duty judge to seek a bench warrant for the defendant's immediate arrest.

#### G. Special Care Given to Domestic Violence Cases

Policies and procedures for Pretrial Services staff often include provisions for handling DV cases. This may be in the form of extra steps taken for modifying conditions, ensuring the court receives proper notification of the existence of a DV accusation where necessary, or making checks of Criminal and Family systems for new DV restraining orders or no contact orders.

#### H. Compliance Reviews and Remands for DV Cases

Much like reviews for the removal of EM, Pretrial staff conduct Defendant Compliance Reviews for potential amendment of other conditions of a defendant's pretrial release. The purpose of the Defendant Compliance Review is to incentivize a defendant to comply with conditions over a defined pretrial monitoring period. If a defendant meets the criteria and has remained compliant, staff will make a formal request to the court to review the defendant's release conditions for possible reduction in the court's discretion.

If the defendant meets the criteria and is eligible for a request to review conditions, staff shall submit a formal request to the court to review the defendant's release conditions. The court may then decline or accept the request. If the court accepts the review, the court may change conditions of the defendant's release.

However, special procedures are required before making such a recommendation for matters involving domestic violence. In those cases:

1. Supervisors must thoroughly review and approve a request that a defendant charged with a DV offense have their conditions reviewed by the court based on defendant's compliance.
2. Staff shall alert the court to the presence of DV using the appropriate form promulgated by the Administrative Director.

3. Staff shall conduct their own research utilizing Party Court History (PCH) and Children in Court (CIC), or contact the Family Division, to determine if the defendant has received a new DV restraining order.
4. Staff shall provide the court with a PCH report.
5. If staff discover a new restraining order within the review-period, they shall not recommend the defendant's case for review.

Defendants who are ineligible to have their case submitted for review due to a new DV restraining order are not recommended for this review. This ensures that DV cases are thoroughly vetted before obtaining this benefit.

Similar care is given to DV cases that are remanded while being monitored pretrial. If a matter is remanded to Municipal Court, or a Remand Court, Pretrial Services staff must continue monitoring the defendant until a court order states otherwise. Where a matter is remanded or downgraded after a pretrial release order is entered, Pretrial Services staff must consult with a Pretrial Services supervisor or manager to determine whether the court would likely amend or discharge pretrial monitoring. If the consultation results in a determination that the court would likely amend the conditions of pretrial monitoring, the Pretrial Services staff member should bring the matter to the court's attention. Specifically, Pretrial Services staff may prepare a memorandum to the court advising of the remand and requesting discharge from pretrial monitoring. Staff must use the form promulgated by the Administrative Director. The memorandum should include a proposed discharge order for the court's signature.

Special procedures are required for matters involving domestic violence. Staff shall alert the court to the presence of DV using the appropriate form promulgated by the Administrative Director. Staff must additionally indicate whether the defendant received any additional restraining orders or no contact orders during the pretrial release period, or any violations of a restraining order

known to the court, but not captured in the Criminal systems. Staff may conduct their own research or contact the Family Division for this information.

I. [Directive #17-20 - Criminal and Family - Co-Occurring Orders Involving No-Contact Release Conditions and Domestic Violence or Custody Matters](#)

The PDVA requires that the courts protect victims of domestic violence by providing access to emergent and long-term civil and criminal remedies. As such, Directive #17-20, Criminal and Family – Co-Occurring Involving No-Contact Release Conditions and Domestic Violence or Custody Matters from May 22, 2020, promulgates the process to ensure communication between the Criminal and Family Divisions, where a defendant has a no-contact order in the Criminal Division and a coinciding/concurrent domestic violence or custody matter in the Family Division. The directive outlines items that must be addressed before entering, modifying, or vacating, a no-contact order. This ensures that Family, Municipal, and Criminal staff communicate before a court modifies a no contact order in any of their respective divisions.

In addition, in Criminal or Municipal, when setting conditions of release as part of a defendant’s pretrial release conditions, if the court enters a no victim contact condition, staff may input the victim’s name in a private text field that is not visible to the public. This functionality enables the system to automatically transmit the criminal no contact order to DVCR for law enforcement.

J. [Supplement to Protocol for Surrendering Firearms for Defendants Found Guilty of Crimes or Offenses Involving Domestic Violence - L. 2016, c. 91 Dated September 26, 2018/ Protocol for Surrendering Firearms for Defendants Found Guilty of Crimes or Offenses Involving Domestic Violence - L. 2016, c. 91 Dated November 3, 2017.](#)

The Protocol for Surrendering Firearms for Defendants Found Guilty of Crimes or Offenses Involving Domestic Violence - L. 2016, c. 91 and supplemental policies issued by Criminal Practice, implements N.J.S.A. 2C:25-27(c)(1), which requires courts to inform defendants found guilty of crimes or offenses involving



domestic violence that they are prohibited from possessing firearms and, if applicable, the procedures for surrendering firearms to law enforcement.

## IV. SUPERIOR COURT PROCEDURES – Family Division

### A. Confidentiality

All records maintained pursuant to the PDVA are confidential as specified by *N.J.S.A. 2C:25-33*. However, all court proceedings under the Act are open unless closed by the court in accordance with R.1:38. Domestic violence transcripts are confidential pursuant to R.1:38-3(d)(9).

### B. Who, Where and When – Filing of Domestic Violence Complaints

#### 1. Who

**Plaintiff in a domestic violence matter:** (N.J.S.A. 2C:25-19 (d)(a)) A person protected by the PDVA includes any person:

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

- Spouse;
- Former spouse; or
- Any other person who is a present household member or was at any time a household member; **OR**

Who, regardless of age, has been subjected to domestic violence by a person:

- With whom the plaintiff has a child in common;
- With whom the plaintiff anticipates having a child in common, or if one of the parties is pregnant; or
- With whom the plaintiff has had a dating relationship.

**Defendant in a domestic violence matter:** A person at least **18 years old** or **emancipated** who is alleged to have committed or has been found to have committed an act(s) of domestic violence under the PDVA.

### **Special Provisions for persons under 18 years of age:**

A plaintiff below the age of 18, may sign the TRO and does not need the consent of a parent or guardian to file or withdraw a complaint or to request a modification of an existing order.

A person under 18 years of age and not emancipated who commits an act of violence may not be a defendant in a civil domestic violence case but can be charged with specific acts of domestic violence (e.g., assault) under the Code of Juvenile Justice. The entry of pre or post-dispositional restraints can also be considered for use in the juvenile delinquency case.

#### 2. **Where (N.J.S.A. 2C:25-28)**

A plaintiff may file a domestic violence complaint:

- Where the alleged act of domestic violence occurred;
- Where the defendant resides;
- Where the plaintiff resides; or
- Where the plaintiff is sheltered or temporarily staying.

#### **Where to file a criminal complaint:**

The plaintiff may file a criminal complaint with the Municipal Court or police department where the alleged act occurred. **If the plaintiff files a criminal complaint and at the same time seeks a restraining order, law enforcement must complete the TRO process simultaneously at the time of the filing of the criminal complaint even if it is during court hours.**

During the time when the Superior Court is either not in session (close of business day, official holidays or weekends) or when the plaintiff is filing a concurrent criminal domestic violence complaint, the plaintiff **must not** be referred to the Superior Court for the filing of the TRO.

**Note:**

A Superior Court Judge has statewide authority to hear a TRO. A plaintiff should **not** be denied a TRO hearing if they make application in a different County from where they reside.

3. When

a) **Superior Court:**

On weekdays when the Superior court is in session, a plaintiff of domestic violence can file a complaint for a TRO remotely or in person at the Superior Court, Family Part.

b) **Municipal Court:**

On weekdays, after the Superior Court is closed, weekends, holidays or any other special circumstance when the Superior Court is not in session, a plaintiff should be referred to local law enforcement officials, so that the complaint can be processed by a law enforcement officer and a TRO hearing heard by a Municipal Court judge.

C. Temporary Restraining Order procedures, Family Division

1. Case Initiation:

a) **Language Access Plan:**

The plaintiff must be offered the services of an interpreter as appropriate and as directed by the Judiciary Language Access Plan (Directive #01-17. The court shall provide plaintiffs with limited English proficiency a copy of the TRO translated TRO template in the plaintiff's native language if available. Any narrative on the form shall be read aloud by the interpreter to ensure that LEP plaintiffs understand the content of the order. The TRO signed by the judge will not be translated into the native language of the plaintiff.

b) **Domestic Violence Advocate:**

The plaintiff should be assisted and accompanied by a domestic violence advocate as early and whenever possible. A domestic violence advocate should be available to speak with all plaintiffs at all stages of the court process. The domestic violence advocate should be given as much support as possible (e.g.

space for interviewing, immediate referrals, ample time to speak with plaintiffs), as well as access (with the plaintiff) to the courtroom or virtual hearing. If a domestic violence advocate is not available, staff should provide contact information for the local domestic violence program, and the New Jersey Domestic Violence Hotline, (800) 572-7233.

**c) Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (N.J.S.A. 2A:34-53-95):**

The domestic violence plaintiff may have fled for safety from another state and seeks a TRO in New Jersey. UCCJEA is a uniform state law enacted by most states to address a court's subject matter jurisdiction regarding custody of a minor child. UCCJEA states that a court may exercise temporary emergency jurisdiction when a parent of a child has been abused or threatened with abuse, even if the child themselves has not been abused. Accordingly, a court can exercise this form of jurisdiction when there is evidence that the parent has been abused by the other parent without requiring a finding that there is any child mistreatment or abuse. To exercise emergency jurisdiction, however, a court must find that the child is present in the state. A court may exercise temporary emergency jurisdiction by entering a domestic violence protection order that includes a custody provision (or through another procedural vehicle).

The UCCJEA specifies that emergency jurisdiction is temporary; it is available to protect the parties until a court in the state with preferred jurisdiction is aware of the emergency and in a position to issue an order or to decline jurisdiction in favor of another state. In limited circumstances, however, it can become permanent if the order so states, provided a child custody proceeding has not been commenced in another state with jurisdiction and the state becomes the child's home state.

**d) Jurisdiction**

Upon arrival at the domestic violence intake unit, a determination shall be made regarding whether the individuals meet the requisite relationship (N.J.S.A. 2C:25-19d) and jurisdictional elements (N.J.S.A. 2C:25-28a).

Requisite relationships are:

- An emancipated minor: “Emancipated minor” means **a person who is under 18 years of age**, but who has been married, has entered military service, has a child or is pregnant, or has previously been declared by a court or an administrative agency to be emancipated.
- Spouse;
- Former spouse;
- Have a child in common;
- Anticipates having a child in common;
- Has had a dating relationship; or
- Is or was at any time a household member (does not apply if the victim is **under 18** or unemancipated).

Venue may be conferred where:

- The act of domestic violence allegedly occurred;
- Plaintiff resides, or is sheltered (broadly defined); or
- Defendant resides.

e) **Other Requirements**

Pursuant to R. 5:4-2(a), every complaint in a Family Part action shall have the street address or, if none, the post office address of each party, or a statement that such address is not known. However, plaintiff’s address shall not appear on the complaint. N.J.S.A. 2C:25-28(b).

If the plaintiff qualifies for a TRO, they shall be given or sent by email a Confidential Victim Information Sheet (CVIS) to complete.

If the plaintiff does not qualify for a TRO, court staff should speak with a supervisor for review. Alternate remedies, such as filing criminal charges, or a Sexual Assault Survivor Protection Act (SASPA) complaint should be explained to the plaintiff, as appropriate.

## 2. Interview the Plaintiff

### a) Search electronic case management system for party

The domestic violence staff person shall search the Family electronic case management system for both parties' case histories. This history shall be made part of the court file. If it is determined while searching the Family electronic case management system that the plaintiff has an active restraining order against the defendant or that taking a complaint is inappropriate for any other reason, the complaint should not be docketed. If the defendant violated an active restraining order, staff shall refer the plaintiff with a copy of the order to the appropriate law enforcement agency to file a violation of that active order.

### b) Interview the Plaintiff

Family Division Staff shall interview the plaintiff regarding past and present acts of domestic violence. If the plaintiff appears at the courthouse, the interview shall be conducted in a confidential area (see section below for a remote hearing request). Family Division Staff shall review all available reliefs with the plaintiff. Requested reliefs must be marked on the TRO. Family Division staff shall not take photographs of a plaintiff's injuries for purposes of providing evidence to the court. The plaintiff should be directed to preserve their evidence and may be directed to a domestic violence advocate if the plaintiff needs assistance in photographing their injuries. The Court may also accept photographs from law enforcement for Final Restraining Order hearings. Many jurisdictions have specified email accounts for such transmission of photographs.

### c) Create case in electronic case management system

The case is established in the Family electronic case management system and is simultaneously created in eTRO. At that time, staff shall review the complaint with the plaintiff and obtain plaintiff's consent to electronically affix the plaintiff's signature to the complaint.

d) **Domestic Violence allegations and past history of domestic violence**

The plaintiff's allegations must be fully set forth in the body of the domestic violence complaint and include any history (reported or unreported) of prior acts of domestic violence.

e) **Paternity**

If there are children between the parties and paternity has not been previously established, a request to establish paternity at the final hearing must be entered on the TRO. Paternity does not need to be established if the parties are married or if a legal determination of paternity has been previously made. If a Certificate of Paternity has been signed, this can be indicated on the TRO and a copy maintained in the file.

f) **Child Support**

The plaintiff must be asked if they wish to request child support at the FRO hearing. If they request this relief, intake staff must provide the plaintiff with an IV-D application for child support which shall be completed, signed, dated, and placed in the file.

Emergent support for the plaintiff and/or children may be ordered at the TRO hearing to be payable through a third party.

If the interview is telephonic and the plaintiff requests child support, the staff shall refer the plaintiff to the Division of Family Development website ([www.njchildsupport.org](http://www.njchildsupport.org)) to complete the application or staff may e-mail the plaintiff the IV-D application and inform the plaintiff to return the application through the Judiciary Electronic Documentation Submission (JEDS) system.

g) **Parenting Time/Custody**

The court shall ensure that if the parties have children in common custody and parenting time is addressed at the TRO hearing as appropriate. This may include:

- Granting custody,
- Modifying an existing parenting time order, or



- Temporarily suspending an active parenting time order.

**h) Hearing**

Once a domestic violence plaintiff has been interviewed and the necessary paperwork has been processed and is ready for court, every effort should be made for the case to be heard within one hour.

Staff must explain to the plaintiff that most cases are heard by a Domestic Violence Hearing Officer (DVHO). Those cases that are not heard by a DVHO shall be brought to a Superior Court judge.

**i) Remote Interview Process**

A plaintiff who wishes to apply for a TRO remotely, without going to a courthouse, can call the Family Division during Superior Court hours. The plaintiff can apply telephonically for a TRO in the county where they live, where the defendant lives, where the incident took place, or where they are seeking shelter. The Family Division in each vicinage will have a telephone number posted on their web page for plaintiffs to contact the court to apply for a TRO. Court staff should be available to accept phone calls from TRO plaintiffs during Superior Court hours; however, if staff are unable to speak with the plaintiff immediately, the outgoing message should provide detailed information to call 9-1-1 if it is an emergency or they need police assistance. The message should include information about the availability for police to enter a TRO outside of the court's business hours. Plaintiffs wishing to continue with processing their application for a TRO will be afforded an opportunity to leave their name, phone number, and the safest time for the court to contact the plaintiff during Superior Court hours. These cases must be treated as priority and court staff must make every effort to return the plaintiff's call as soon as possible or at the safest time as designated by the plaintiff. Also included in the outgoing message should be information advising the plaintiff that for messages left during the week after 4:00 p.m., on weekends, or holidays, court staff will contact them on the next business day.

Family Division staff will speak with the plaintiff to gather all pertinent information needed to file and docket a domestic violence complaint as detailed in the section above. The plaintiff must be offered the services of an interpreter as appropriate and as directed by the Judiciary Language Access Plan (Directive #01-17). **It is especially important that the Confidential Victim Information Sheet is completed including gathering emergency contact information for the parties.** Before affixing the plaintiff's signature and to ensure the information provided is accurately reflected on the TRO complaint, court staff will read, verbatim to the plaintiff, what has been captured on the document. Court staff will arrange to have the TRO heard remotely by either a DVHO or a Superior Court judge. The hearing for a TRO should be conducted using appropriate available video or telephone system technology. If a DVHO or judge is not immediately available, court staff will advise the plaintiff that it will be necessary to call them back to have their application heard by the court. This call should be made at a safe time as designated by the plaintiff. Again, these cases are priority, and every effort should be made to expedite these proceedings. The goal should be to have these remote proceedings conducted within one hour of completing the application, provided the plaintiff is available.

If the Superior Court judge issues a TRO, court staff will immediately email a copy of the TRO to the plaintiff, along with the Domestic Violence Remote Hearing Instruction Sheet for Litigants which can be found at [njcourts.gov](http://njcourts.gov). If the plaintiff does not have an email address, the TRO should be sent to law enforcement for service. As is normal business practice, the TRO should electronically be sent to local law enforcement to effectuate service on the defendant. Law enforcement should be advised if the parties reside in the same home so that they may take any necessary precautions when serving the TRO on the defendant and coordinate with the victim to ensure their safety in the process of service. Once the defendant is served with the TRO, the Domestic Violence Remote Hearing Instruction Sheet for Litigants should be provided by court staff to the defendant via mail or email.

j) **Domestic Violence Hearing Officer Program: (Directive #14-18, Revised Domestic Violence Hearing Officer Program Standards)**

Pursuant to Rule 5:25-4, Domestic Violence Hearing Officers may be appointed by the Judiciary to handle and make recommendations in matters under the PDVA in accordance with the provisions of that Act, Rule 5:7A (“Domestic Violence: Restraining Orders”) and such other policies and procedures as applicable. If the plaintiff agrees to have their request for a TRO heard by the DVHO, the plaintiff must sign the “Informed Consent for Hearing Before the Domestic Violence Hearing Officer” form. This form explains the Hearing Officer Program as well as the right of the Plaintiff to have their case heard before a Superior Court Judge.

k) **Procedure for dismissal of a signed domestic violence complaint when the plaintiff leaves before the case is heard by a Judge or DVHO**

If plaintiff leaves the courthouse prior to the TRO hearing, it is recommended that the complaint should be administratively dismissed at the close of same business day. Staff should attempt to contact the plaintiff by telephone prior to the dismissal of the complaint.

3. **TRO Hearing**

**Note:**

In those cases where **both** parties appear at the courthouse and each seeks a TRO against the other, a judge should not hear both complaints together. Each party’s complaint is initially heard separately, and the court should place the findings on the record with both parties present in the courtroom or virtually. Relief will be granted as appropriate. The **same judge** should consider these complaints to ensure that the orders do not contain conflicting provisions for such matters as possession of the residence and custody of the children.

a) **Testimony:**

At the initial hearing, upon ex parte application the oath shall be administered to the plaintiff and testimony shall be taken regarding:

- The relationship between the parties;
- the alleged domestic violence;
- the past history of domestic violence between the parties, if any;
- the reason the plaintiff's life, health, or well-being is endangered;
- whether firearms or weapons are present or available to the defendant;
- the judge shall state with specificity the reasons for and scope of any search and seizure authorized by the TRO Order; and shall
- make inquiry as to all relief requested by the applicant to determine the appropriateness of same including whether emergent financial relief is needed.

b) **Review:**

The judge or DVHO shall review all related case files involving the parties and ensure that the plaintiff is informed about the following:

- legal rights and options;
- domestic violence legal advocacy services;
- available protective services, including shelter services, safety planning, and counseling services for children and adults etc.;
- the domestic violence legal process and procedures;
- the findings of fact and conclusions of law forming the basis of any determination; and
- submission of evidence.

Judge or DVHO shall:

- amend the complaint to conform to the testimony, where appropriate; and
- prepare a comprehensive case specific TRO, where one is to be entered.

c) **Decision:**

After hearing testimony from the plaintiff, the judge or DVHO will issue or deny the TRO, setting forth the reasons on the record. If the judge grants the request for a TRO, a return date for the FRO is to be set within ten (10) days.

(1) *When a TRO is recommended/granted:*

- The order must be completed and signed in accordance with R. 5:7A.
- The judge or DVHO shall review and explain the reliefs available to the plaintiff.
- If the plaintiff states that defendant has weapons, the judge or DVHO must follow weapons guidelines and procedures regarding access to a weapon(s), a firearms identification card or permit to purchase a handgun on the record.
- A recommended TRO by a DVHO must be approved by a judge.
- A copy of the TRO shall be provided to the plaintiff in person or if the hearing is conducted remotely the plaintiff will be served electronically by email or by law enforcement. The plaintiff shall be provided with a TRO template in their preferred language as appropriate and if available.
- A copy of the TRO will be provided electronically to the law enforcement agency where the plaintiff resides or is sheltered.

- A copy of the TRO shall be provided electronically to the law enforcement agency which will serve the defendant.
- If the parties reside together and the defendant is being removed from the home, the plaintiff will be instructed to report to the appropriate law enforcement agency for accompaniment to the residence.

(2) *When a TRO is not recommended by the DVHO:*

- The DVHO must advise the plaintiff of their option to see a judge for a hearing *de novo*, in accordance with the DVHO Standards.
- If the plaintiff does not want to appeal the denial, the DVHO must check the box stating that the TRO was denied.

**NOTE:**

If a TRO refers to a prior complaint, a copy of the prior complaint can be provided to the defendant upon request even though the prior complaint was dismissed.

D. *Procedures for Service of Complaint/TRO:*

**NOTE:**

At no time shall the plaintiff be asked or required to serve any order on the defendant. *N.J.S.A. 2C:25-28.*

1. *Service:*

The Family Division, Domestic Violence Unit must immediately send a copy of the complaint and TRO through eTRO to the municipality where the defendant resides or may be located, and to all law enforcement agencies

that can or may assist in the service and enforcement of the TRO. This can be specified in the Comments section of the TRO.

The complaint and TRO shall be immediately served on the defendant by **personal service**, by the Municipal, or, State police, or the Sheriff's Department. Substituted service is permitted only by specific court order (*N.J.S.A. 2C:25-28(1)*). The defendant shall be provided with a TRO template in their preferred language as appropriate and if available.

Once service on the defendant is attempted, successfully or unsuccessfully, the return of service portion of the TRO must be filled out by the sheriff's department or other designated law enforcement agency and immediately entered into the service section of eTRO prior to the scheduled FRO date.

The law enforcement officer or Family Division staff member listed on the return of service **must** be the person who actually served the defendant and completed the return of service portion on the TRO.

**Until such time as the defendant has been served, court staff should not contact the defendant for any reason unless the defendant's attorney has entered an appearance for the defendant.** If the defendant contacts the court regarding the TRO prior to service, staff should direct the defendant to law enforcement for service of the complaint and order. However, if the defendant appears at the courthouse prior to service of the TRO, Family Division staff may serve the defendant with the TRO and must complete the return of service portion on the TRO.

**a) Service required outside of issuing county:**

When a TRO is issued that requires service outside the issuing county, the following procedures must be followed:

- The restraining order must immediately be sent electronically through eTRO to the Sheriff's Department or other designated law enforcement agency in the issuing county.
- The Sheriff's Department or other designated law enforcement agency in the issuing county shall electronically send through

eTRO the order and related documents to the Sheriff's Department or other designated law enforcement agency in the county of the defendant's residence or business.

- The Sheriff's Department or other designated law enforcement agency in the receiving county, pursuant to local policy, will execute personal service on the defendant.
- Return of service should then be entered into eTRO.

#### b) Service for Out of State TRO:

When an order must be served on a defendant who is out-of-state, the law enforcement officer or court staff who initiated the TRO should contact the local law enforcement agency or Family Court in the other state to determine the procedures for service in that state and return of service.

### E. Appeals of Ex Parte Orders:

#### 1. Superior Court Process:

*N.J.S.A. 2C:25-28(i)* provides that any granted TRO is immediately appealable for a plenary hearing *de novo* before any Superior Court, Family Division Judge. The hearing will be held in the county where the TRO was entered. The judge should have access to the reasons for the issuance of the TRO if ordered by the municipal court. If the TRO is modified or dismissed the judge will set forth on the record the reason for the modification or dissolution.

Upon receipt of a request for a *de novo* hearing, staff shall obtain the reasons for the request and refer the appealing party to the "Application for Appeal and Order". The vicinage Ombudsman can assist the party in completing the form if necessary. Once the form is completed and filed in the family division, staff shall present the request with the file to the judge for consideration.

If the application is granted, a *de novo* hearing will be scheduled with adequate notice to both parties as to the purpose of the hearing and the issues to be addressed. The judge must place the reasons for continuing, modifying or dissolving the TRO on the record.



If the application is denied, the reasons shall be set forth by the judge on the “Appeal of *Ex Parte* Order” form and the FRO hearing will proceed as initially scheduled.

## 2. Municipal Court Process:

If the plaintiff requests an immediate *de novo* review of a denial of a TRO by a municipal judge, the following procedure must be employed:

- The Municipal Court judge must advise the plaintiff, on the record, that the plaintiff has the right to an immediate review of the TRO denial to an on-call Superior Court judge.
- If the plaintiff wishes to exercise this right, law enforcement shall contact an on-call Superior Court judge.
- This on-call Superior Court judge will review the same TRO/Complaint that was presented to the Municipal judge.
- The Superior Court judge will conduct a hearing on the TRO/Complaint telephonically and will decide whether to grant or deny the TRO.
- Law Enforcement will memorialize the Superior Court judge’s decision and will send the order electronically to the Family Division with that order appearing on a worklist in eTRO for review.
- If the plaintiff does not wish to have an immediate hearing on the municipal judge’s denial, the police will indicate that in eTRO and send the order electronically to the Superior Court for dismissal. A plaintiff who does not elect an immediate hearing is not barred from refileing the complaint in the Family Division based on the same incident.

## F. Amended Complaints

The domestic violence complaint is filed with the court alleging the defendant committed an act(s) of domestic violence. The complaint is a **separate and distinct** legal document from the restraining order. The restraining order may be subsequently entered by a municipal or superior court judge. The complaint may

be amended for certain reasons (see below) separate and apart from the restraining order and may not require a formal hearing. A formal hearing is required to amend the actual order.

1. **Amending the Domestic Violence Complaint Only and not the TRO:**

If the plaintiff is amending the civil complaint for one of the following reasons, the amendment can be done on the papers without the necessity of a hearing. The plaintiff shall use the Amended Domestic Violence Complaint packet:

- Add additional or correct existing information about the incident that led the plaintiff to file a complaint for a restraining order;
- The defendant violated the restraining order and/or committed additional acts of domestic violence and the plaintiff wants to add the new acts to the complaint;
- Add additional information about prior history of domestic violence between the plaintiff and the defendant that was not in the original complaint; or
- Add the names of the children that the plaintiff and the defendant have in common that were not included on the original domestic violence complaint that was filed in this matter.

A plaintiff seeking to amend their domestic violence complaint should complete the required packet which may be submitted remotely via the Judiciary Electronic Document System (JEDS). The amended complaint shall be personally served on the defendant by law enforcement prior to the hearing for a final restraining order. An application to amend the TRO (rather than the complaint) would still require the plaintiff to testify on the record.

2. **Amending the Domestic Violence Complaint and Order or only the TRO:**

To amend the TRO, a hearing must be held, and the Plaintiff shall testify on the record before a DVHO or Judge.

To amend a domestic violence complaint, the plaintiff must either telephonically request an amendment or appear at the Superior Court, Family Part. Staff shall interview the plaintiff and clearly outline the amendments to the predicate acts and/or prior history below the original language in the TRO. The Plaintiff may use documents to refresh his/her memory. However, the documents shall not be attached to the order, nor retained by staff for the file.

3. **Service on Defendant:**

The defendant shall be personally served with the amended TRO order. If the defendant has not been served with the amended order prior to the FRO hearing, an adjournment may be granted by the court.

G. **Procedures for Final Hearings**

1. **Scheduling an FRO hearing:**

A FRO hearing must be scheduled within ten days of the filing of the TRO in the county where the TRO was issued unless good cause is shown for the hearing to be held elsewhere. Each county shall provide law enforcement and the Municipal Courts with the designated days and times for final hearings.

If the return of service on the defendant has not been entered into eTRO by the day before a scheduled final hearing, staff shall check with the appropriate law enforcement agency responsible for service (such as sheriff or local police) to ascertain whether the defendant was successfully served. The return of service portion of the TRO must be immediately transmitted to the domestic violence unit by law enforcement.

If either party is represented by counsel, Family Division staff communications shall be directed to counsel of record, rather than directly contacting the plaintiff or defendant. All court notices should be sent to counsel of record in addition to the party.

Family court staff shall not contact the defendant directly until the TRO has been officially served to the defendant.

## 2. Request for Adjournment:

The court may grant an adjournment for the following reasons:

- Obtaining or consulting with an attorney;
- Including amending the TRO and securing witnesses; or
- Other good cause, unless the delay would create an extreme hardship on the other party.

When a new date must be scheduled and there are no substantive changes to the TRO, a Continuance Order may be issued. The TRO must be attached to the Continuance Order for service. When substantive changes, including amendments to the complaint, are needed, an Amended TRO shall be used, which shall set forth the changes and the new hearing date.

## 3. Continuance/Indefinite Orders and Amended TROs:

Continuance orders, Indefinite orders and amended TROs serve different purposes and should only be used for their intended uses. Continuance orders are **not** to be used to address custody and parenting time matters.

- *Continuance Orders*: are entered when one or both parties request an adjournment of the FRO hearing.
- *Continuance/Indefinite orders*: the defendant cannot be served and service is not likely in the foreseeable future.
- *Amended TROs* are used when there is a request for changes to the TRO, including additional relief not requested on the original complaint *as well as* a request for an adjournment.

## 4. Non-Appearance at the FRO Hearing

### a) Plaintiff (non-appearance):

**At the first nonappearance**, staff will attempt to contact the plaintiff to collect as much information as practicable about the plaintiff's nonappearance and present the information to the court. This contact may include communication with local law enforcement to conduct a well-being check. Communications about the plaintiff shall be made outside the presence of the defendant. The file and notes reflecting the findings shall

then be brought to the judge. If only the defendant appears, the court should question the defendant under oath concerning knowledge of the plaintiff's whereabouts. When a plaintiff is unable to appear at the final hearing for good cause, arrangements shall be made for a remote appearance on the record.

The court may issue an Order of Dismissal only if the following three conditions are met:

- The plaintiff was contacted;
- The judge is satisfied (after hearing both parties' explanations) that the plaintiff's failure to appear was not the result of coercion or duress; and
- The findings required as pursuant to the Order of Dismissal were made.

If the court is not satisfied, or if the plaintiff cannot be contacted, the matter shall be rescheduled with the entry of a continuance order.

If the plaintiff fails to appear at the FRO Hearing for a second time, and the court is satisfied that plaintiff was aware of the court hearing, the court can, issue an Order of Dismissal.

If the defendant appears at the hearing, the judge shall advise the defendant of the significant consequences of a restraining order.

Any Order of Dismissal is without prejudice and is documented in the system and forwarded to the appropriate law enforcement agency.

Arrest warrants shall **not** be used to secure the presence of the plaintiff in court under any circumstances when the plaintiff has failed to appear.

**b) Plaintiff and Defendant (neither party appears at the hearing):**

If neither party appears for the final hearing, court staff shall attempt to contact the plaintiff to collect as much information as practicable about the reasons for nonappearance and present same to the court for consideration prior to the dismissal of any Order.

The matter shall be rescheduled unless the court is fully satisfied that a dismissal meets the standards as set forth on the Order of Dismissal.

**c) Defendant (non-appearance):**

**(1) Defendant Served**

Where the defendant does not appear at the FRO hearing, and proof of service has been provided, the court should proceed with the FRO hearing and may enter a FRO without an appearance by the defendant.

If there is no proof of service on the defendant, the court should conduct a hearing in the presence of the plaintiff to determine the following:

- Whether the plaintiff has seen the defendant in the courthouse or knows of the defendant's whereabouts;
- Whether the plaintiff is aware of whether the defendant was served and the basis for such knowledge;
- Whether the defendant has had any contact with the plaintiff since entry of the TRO; and
- Whether the plaintiff has additional information to effectuate service.

If the court determines that the defendant had actual knowledge of the restraining order and hearing date, after making such finding on the record, the court may proceed with the final hearing and may enter a FRO without an appearance by the defendant.

**(2) Defendant Not Served:**

If the court determines that the defendant has not been served but finds there is reasonable likelihood of service on the defendant within a reasonable amount of time (e.g. the defendant's whereabouts are known, but the defendant is on vacation), a short postponement shall be granted and a date certain scheduled, which shall be memorialized in a Continuance Order or Amended TRO. If the court issues a Continuance Order, it shall be personally served on the defendant with the TRO.

If it is unlikely the defendant can be served within a reasonable period of time, then the court can issue an indefinite TRO. This TRO shall continue the reliefs requested by the plaintiff until further order of the court and contain a provision that a final hearing shall be rescheduled upon service on the defendant. If law enforcement subsequently serves the defendant, law enforcement must enter a new court date on the order for the final hearing. The Judge will instruct the plaintiff to preserve all evidence and ensure that their address is kept current with the Domestic Violence unit. Additionally, the Judge should provide an explanation of an indefinite TRO to the plaintiff.

5. Appearance by both parties either remotely or in person:

**NOTE:**

When both parties appear in person for a FRO, the plaintiff and defendant should be kept in different locations and directed to the appropriate area for case processing by the domestic violence unit. Separate waiting areas must be available for plaintiffs to avoid potential contact, intimidation, or additional violence or victimization. In the scenario where the parties have cross domestic violence complaints, the plaintiff in the first filed complaint should be escorted to the plaintiff waiting area.

**a) Initial Intake Process:**

If the hearing will be in-person at the courthouse, Family Division staff shall meet with each party separately, prior to the hearing to review identifying information and to determine if the case is likely to be a contested trial or a dismissal. If the hearing will be conducted remotely, staff should communicate separately with each party telephonically or by video to ascertain the needed information. The plaintiff shall be given access to a domestic violence advocate, if available, before the court session.

- Court staff shall not meet with the parties together or conduct mediation of any sort on any issue, such as civil restraints,

custody or parenting time, per *N.J.S.A. 2C:25-29a(6)* and *Rule 1:40-5(a)*.

- Address support unless it is not being sought, staff should ensure that both parties have completed the required IV-D application.
- At the time of the FRO, the court's file should contain the TRO; the CVIS; any dissolution or non-dissolution standing orders, Family Division electronic case management system history of the parties and children; prior domestic violence history, if any; and relevant financial history. Court staff should make available any companion family cases for the courts review and consideration at the FRO.

## **b) Final Hearing:**

### **(1) Criminal Charges**

FRO hearings shall not be postponed due to any pending criminal or municipal charges. If a criminal complaint arising out of the same incident that is the subject matter of a complaint brought under *N.J.S.A. 2C:25-28a* has been filed, testimony given by the plaintiff or defendant in the domestic violence matter shall not be used in the simultaneous or subsequent criminal proceeding against the defendant, other than domestic violence contempt matters and where it would otherwise be admissible hearsay under the Rules of Evidence that govern unavailable parties and for impeachment purposes.

### **(2) Amending the Complaint at the Final Restraining Order Hearing:**

When the allegations in the plaintiff's complaint are incomplete and/or it becomes evident at the final hearing that the plaintiff is seeking a restraining order based upon acts outside the complaint, the court, either on its own motion or on a party's motion, shall amend the complaint to include those acts.

Due process requires that the judge make an inquiry as to whether the defendant needs additional time to prepare due to the amended complaint. A brief adjournment may be required if the judge determines that the



defendant did not have adequate notice and needs time to prepare. If an adjournment is granted, a continuance order shall be created and signed by the Judge.

### (3) FRO Hearing:

At the hearing, the standard for proving the allegations in the complaint shall be by a preponderance of the evidence. The court shall consider but not be limited to the following factors:

- The previous history of domestic violence between the plaintiff and defendant including threats, harassment and physical abuse;
- The existence of immediate danger to person or property;
- The financial circumstances of the plaintiff and defendant;
- The best interests of the plaintiff and any child;
- In determining custody and parenting time, the protection of the plaintiff's safety; and
- The existence of a verifiable order of protection from another jurisdiction.

The court must ensure that the plaintiff has had access to a Domestic Violence Advocate prior to the hearing. At the beginning of the FRO hearing, the judge shall inquire if the plaintiff has had the ability to discuss their case with a Domestic Violence Advocate.

The court only has jurisdiction to enter restraints against a defendant after a finding by the court or an admission by the defendant that the defendant has committed an act(s) of domestic violence. A defendant's admission or stipulation to committing an act of domestic violence must comply with the following:

- The parties must be sworn before any action is taken on the complaint, particularly when one or both of the parties appear *pro se*;

- The defendant must provide a factual basis for the admission that an act of domestic violence has occurred; and
- Where it becomes clear that defendant does not agree that the conduct constituted an act of domestic violence, the stipulation may not be entered, and the hearing must proceed.

If prior to or during the final hearing, a defendant alleges that the plaintiff committed an act(s) of domestic violence, defendant should be instructed to file a separate domestic violence Complaint. The complaint should receive a separate docket number and, if practicable, both cases may be heard that day unless continued for good cause. The plaintiff may be granted an adjournment for an opportunity to prepare their defense. Only if the defendant files for and is granted a restraining order can restraints be placed against the plaintiff in the original domestic violence complaint.

#### **(4) Where each party has a separate TRO:**

If both parties admit to or are found to have committed an act or acts of domestic violence, **a final order must be entered on each separate docket number where each party is the defendant.**

#### **(5) Out of State restraining order and a request for a NJ restraining order:**

If a plaintiff contacts the Family Court with a restraining order from another state and is requesting a New Jersey restraining order, staff should first verify with the other state that its order for protection is still active. Once the order is verified as active, if New Jersey has jurisdiction over the defendant, then the acts of violence that led to that out-of-state order from the other state may be viewed as providing adequate basis for the issuance of like restraints in New Jersey, without a need for alleging additional acts of violence based on the Full Faith and Credit Provision of the Violence Against Women Act (VAWA).

**NOTE:**

**“Mutual Restraints” cannot be issued on a single restraining order.**

**(6) Paternity, Medical Support, and Child Support Establishment:**

The court shall determine, where there are shared children, the issue of paternity and the duty to support unless a prior docket has already addressed these issues. If the defendant has a duty to support, as established by a prior finding of paternity, a Certificate of Paternity, an admission of paternity, or a presumption of paternity based on marriage, the court should review the available information, apply the Child Support Guidelines if appropriate and enter a support order payable through income withholding. The order should be referenced in the FRO and entered on the Uniform Summary Support Order (USSO), payable and enforced through probation. If the support was requested at the entry of the TRO, the support may be made retroactive to the date of the request.

If paternity has not been established, and is contested, the court shall order genetic testing and employ the same procedures used by the county in FD matters. In this instance, the judge should enter an FRO including all the other reliefs and restraints. When the results of the genetic test are received, the case shall be reopened on the court’s own motion for a hearing on the paternity and support issues. Support should be retroactive to the date the FRO was entered or earlier if a support order was requested or entered during the pendency of the TRO. All subsequent proceedings are held under the FV docket before a judge.

Following the entry of an order under the FV docket, unless there is a pre-existing FD or FM docket for the parties, all subsequent applications between the parties involving paternity, custody, parenting time and support shall be taken and heard under the FV docket. A separate FD complaint should not be opened to address these issues.

When a child support obligation is established, the information regarding paternity, medical support and the monetary amount must be entered on both the FRO and the USSO. The USSO must indicate whether the child support obligation is based on the New Jersey Child Support Guidelines or if there was a deviation from the Guidelines. Additionally, a IV-D application must be signed by the custodial parent for child support services.

If a child support obligation is established, the order shall be enforced by the Probation Division in the county in which the order was entered. The Probation Division will use all enforcement mechanisms applicable to the case. A child support obligation should never be made payable directly to the plaintiff.

#### **(7) Domestic Violence Counseling for a Defendant:**

Professional domestic violence counseling for a defendant should be considered whenever there has been a finding of domestic violence. The preferred program should be a batterer's intervention program if available.

When a judge orders the defendant in a domestic violence case to attend counseling and/or a batterers' intervention program, the FRO shall state that the defendant must report their compliance to the court. The case should then be assigned for monitoring to a Family Division DV Team Probation Officer either by program, odd/even docket number or some other manner selected by the vicinage. Upon issuance of the FRO ordering the defendant to attend counseling or a batterers' intervention program, Family Division staff shall conduct an after-court interview with the defendant. Staff will provide the defendant with vicinage-specific program information and explain that the defendant must, within 20 days, inform the assigned Probation Officer of the program in which they have enrolled. Staff should remind the defendant that the order requires the defendant to provide the court with proof of attendance and completion of any program.

The assigned Probation Officer shall provide a copy of the court order to the appropriate program with a letter instructing the program to provide a status update on the defendant within 20 days. Thereafter, the Probation Officer

should contact the program to determine compliance on a regular basis. The defendant could also provide proof of attendance or completion of the program to the Probation Officer at any time.

If it is determined that the defendant is not complying with the order and has not completed the program, the assigned Probation Officer shall schedule an enforcement hearing or hold a conference with the Judge to determine the next course of action. The plaintiff shall be given notice of any enforcement hearing and may attend if they so desire, but plaintiff's attendance is not required.

### **(8) Dispositions:**

Following a final hearing, the court should either:

- Enter an FRO with appropriate relief upon a finding of domestic violence, or an admission of an act of domestic violence by the defendant;
- Dismiss the Complaint/TRO and dissolve all restraints if domestic violence has not been established; or
- If appropriate, adjourn the final hearing and continue the restraints on an interim basis until a final determination can be made.

### **(9) Service of the FRO:**

The defendant shall be personally served in court if present for the final hearing. If the defendant is not present, service shall be in accordance with the procedures set forth in the section entitled "Procedures for Service of Complaint/TRO/FRO."

When a defendant comes in person to the courthouse after the FRO has been entered, the Family Electronic Case Management system shall be searched to determine if service of the FRO and the USSO has been accomplished. If these orders have not been served on defendant, court staff may initial the orders with the current date indicating that the defendant received the orders. If the defendant contacts the court telephonically prior to service of the

order, staff should direct the defendant to law enforcement for service purposes. Service by a law enforcement officer is documented by signature on the FRO.

As noted above, whether the FRO is served by court staff or a law enforcement officer, it must be the person who served the FRO who initials or signs the FRO confirming service. That person will be needed to testify if there is a violation of the FRO, which may be years after the FRO was served, therefore proper documentation is necessary.

#### **(10) Fingerprint Requirement for Granted FRO:**

Defendants shall be fingerprinted via Live Scan when served with a FRO pursuant to N.J.S.A. 53:1-15. Each county shall have a process in place to direct the defendant to the Sheriff's office to complete the fingerprint process. Staff must utilize the Fingerprinting Requirements Notice to inform the defendant of this statutory mandate.

#### **(11) Post-Court Review with the parties:**

#### **NOTE:**

The parties shall have no contact during the interview process.

To ensure that each party understands the requirements in the order, each party should be referred to the Family Division staff for their separate post-court interview if the FRO includes the following provisions:

- Emergent monetary relief;
- Monetary compensation, including child support or spousal support;
- Custody;
- Parenting time (particularly supervised parenting time);

- Counseling or other evaluations; or
- Where the order relates to third parties for whom addresses, and other information are needed.

If appropriate, during the interview, staff can facilitate the following:

- The collection of the IV-D application;
- The initiation of IV-D procedures, where applicable;
- Provide the defendant with a Child Support Probation Account Number for payments made to the New Jersey Family Support Payment Center (P.O. Box 4880, Trenton, NJ 08625-4880); and
- Ensure that the “family violence indicator” in NJKiDS is correctly coded.

**The defendant must be provided with instructions on how to ensure completion of the fingerprinting requirement prior to leaving the hearing.**

## 6. Requests for Dismissal or Reopening

### **NOTE:**

**Judge to Advise that Municipal and/or Criminal Complaints Continue:** At the time of the dismissal of the complaint and vacating of a TRO or FRO, the judge shall advise the parties that any related municipal or criminal complaint(s) arising out of the incident are not affected by the dismissal of the domestic violence Complaint/TRO or FRO. All parties present, shall be advised of the need to comply with any Pre-Trial Monitoring conditions and participate in all future court hearings related to such municipal or criminal actions. The parties should be advised to speak to the appropriate assistant prosecutor.

**a) Withdrawals of Complaint/TRO by the plaintiff:**

When a plaintiff seeks to withdraw a civil TRO after a TRO has been entered but prior to the entry of an FRO order, the plaintiff should do so either remotely or in person. The case will be scheduled before a judge. Whether the request is made remotely, in-person on a walk-in basis or on the scheduled final hearing date, the plaintiff should be directed to the appropriate domestic violence staff person. Plaintiffs do not need to wait until the FRO hearing to request a dismissal.

A domestic violence advocate should be available to speak to the plaintiff, in person or by telephone. When this is not possible, the staff shall make the plaintiff aware of the existence of an advocate along with a name and telephone number. The plaintiff shall be given an opportunity to discuss the matter with the domestic violence advocate before the Court takes the dismissal of the restraining order.

A professional staff person is to communicate with the plaintiff to ascertain that:

- The plaintiff has read and understood “What Dissolving a Restraining Order Means”;
- The plaintiff has not been coerced or placed under duress to withdraw the Complaint/TRO;
- The plaintiff is aware of the protective resources available through the court and the local domestic violence program, especially regarding housing and court-ordered emergency custody and support; and aware of the dynamics of domestic violence;
- The plaintiff clearly understands that withdrawal of the Complaint/TRO and dismissal of the TRO will eliminate the protections that issued;
- The plaintiff is aware that such withdrawals are not prejudicial if they should need to seek protection in the future; and



- The plaintiff is informed that any parallel criminal matters are separate and distinct and must be addressed in a separate venue.

Once the plaintiff has been instructed as described above, if they wish to pursue withdrawal of the complaint, they must fill out a Certification for Dissolution of Restraining Order. The plaintiff must be brought before an available judge.

After reviewing the documentation and the Certification to Dismiss, the judge shall review the above with the plaintiff on the record. If the judge finds that the request for withdrawal is an informed one and not made under duress, the withdrawal shall be granted.

When the complaint has been withdrawn and the TRO dismissed, copies of the order of dismissal shall be distributed to the plaintiff and any law enforcement agency that received the TRO and served on the defendant in the same manner as the TRO, where it has been served, unless otherwise designated by the court.

#### **b) Dismissals with “Civil Restraints”:**

The term “civil restraints” generally refers to parties’ civil agreement, whether in a consent order or a private agreement, to modify or refrain from specific acts, conduct or communication. The court should not initiate or suggest the use of “civil restraints” in domestic violence cases. If civil restraints are requested by the plaintiff, the court should question the plaintiff on the record using the same standards as a request for a dismissal and in addition, ascertain the following:

- Whether the plaintiff understand that the “civil restraints” in an FM (dissolution), FD (non-dissolution) or in a private agreement, will not provide the same protection as a Domestic Violence Restraining Order;
- Whether the plaintiff understands that the police must arrest for a violation of a domestic violence restraining order but

there will be no arrest for the violation of “civil restraints” and the police are unlikely to respond to a call regarding such a violation without a crime being committed;

- Whether the plaintiff understands they have a right to obtain a new restraining order if another act of domestic violence occurs, even if “civil restraints” are in effect; and
- When the civil restraints are a part of a court order, the judge shall question each party regarding its entry including their understanding of its contents, voluntariness, and intent to abide by the terms. If one of the parties is not represented, the court should ask that party if they would like time to consult with an attorney before proceeding with the entry of the order.

**NOTE:**

**Under no circumstances shall an FD matter be opened for the sole purpose of effectuating “civil restraints without additional relief available under an FD docket.”**

**c) Dismissal of FRO at the Request of the Plaintiff:**

A request for dismissal of a final order should be handled in the same manner as a request for withdrawal of a TRO. The dismissal must be requested either telephonically or in person. The court shall determine whether an order for child support, spousal support, custody and/or visitation was entered or sought as part of the FRO and if so, determine whether the plaintiff wants the relief to continue. If so, these provisions will be made part of an FD order and staff shall establish an FD docket simultaneously with the dismissal order without the imposition of fees or the refile by the plaintiff.

**d) Dismissal due to the death of a party:**

In matters where the court has knowledge that a party in an FV matter has died, the court shall administratively dismiss the TRO or FRO as to that deceased party, either *sua sponte* or through the motion of a party. This applies regardless of how the court obtains the knowledge of a party's death. If the FRO includes protected parties, the judge will determine on a case-by-case basis whether the protections shall continue in place as to those additional parties, be modified, or if the order should be dismissed. The standard for granting the administrative dismissal is whether good cause exists to believe that a party has died. Examples of good cause would include, but are not limited to:

- Certification of a party; or
- A death certificate; or
- A published obituary.

**e) Dismissal of FRO at Request of the Defendant:**

A request by the defendant for dismissal of a FRO shall be brought to the court by Notice of Motion using the “How to Ask the Court to Dismiss a Final Restraining Order” motion packet accompanied by an appropriate certification and brief. A FRO may be dismissed upon “good cause shown,” *N.J.S.A. 2C:25-29(d)*. Service of the motion and supporting documents on plaintiff shall be effectuated through the Family Division and not served directly by the defendant. The motion shall be heard by the judge who entered the FRO if that judge is available. If that judge is not available, the motion shall be heard by another judge who shall read and consider the transcript of the FRO and the findings by the original judge. The transcript, where needed, shall be provided to the court by the defendant.

The court shall make reasonable efforts to find and notify the plaintiff of the request for dismissal, but unless good cause is shown, the court cannot hold a hearing on this application unless the plaintiff is given notice and an opportunity to be heard. If the plaintiff's whereabouts are unknown, court staff will conduct searches on the following databases once a

defendant submits a completed application for Dismissal of a Final Restraining Order:

- CIC Search Engine
- Family Division electronic case management system
- Other Judicial case management systems such as PG (Criminal)/ACS (Municipal)/CCIS
- United States Postal Service (USPS) verification
- Division of Motor Vehicles (DMV)
- Military verification
- Internet (including but not limited to Google.com and Whitepages.com)

In addition, they will note any other searches performed:

- Examples include: Lexis Nexis, Spokeo.com

Court staff will relay the results of these searches to the judge before whom the motion is listed, at which point the judge will determine how to proceed in the matter. The plaintiff's address must remain confidential throughout the entire process. Under no circumstances, should the defendant attempt to locate the plaintiff.

The court shall consider the following as part of the determination of whether the defendant has established good cause to dissolve the FRO:

- As required by *N.J.S.A. 2C:25-29(b)(5)*, determine whether the defendant attended and completed all court ordered counseling. If not, the motion must be denied.
- Past history of domestic violence. If no findings were made by the court at a FRO regarding any past history of domestic violence, the record may be supplemented with regard to such past history.

- Any other factors the court deems appropriate to assess whether the defendant has shown good cause that the FRO should be modified or dissolved.

Pursuant to Carfagno v. Carfagno 288 N.J. Super. 424 (Ch. Div.1995), and subsequent binding case law, courts shall consider several factors when determining whether good cause has been shown that the FRO should be dissolved upon request of the defendant, including:

- Whether the plaintiff consented to dismiss the restraining order;
- Whether the plaintiff fears the defendant;
- The nature of the relationship between the parties today;
- The number of times the defendant has been convicted of contempt for violating the order;
- Whether the defendant has a continuing involvement with drug or alcohol abuse;
- Whether the defendant has been involved in other violent acts with other persons;
- Whether the defendant has completed counseling;
- The age and health of the defendant;
- Whether the plaintiff is acting in good faith when opposing the defendant's request;
- Whether another jurisdiction has entered a restraining order protecting the plaintiff from the defendant; and
- Other factors deemed relevant by the court.

**f) Request to Reopen Dismissed TRO/FRO by the Plaintiff:**

If there is no new act of domestic violence since the filing of the initial TRO and the plaintiff seeks to reopen a TRO or FRO which has been dismissed, a motion for reconsideration must be filed pursuant to R. 4:50-1.

Once the motion has been filed, the case is only opened for the purpose of scheduling the motion hearing. The restraining order is still dismissed on the Family electronic case management system and the DVCR.

A motion to reinstate the TRO or FRO restraining order does not “activate” the restraining order. The order is not activated until and unless both parties are notified, the court reviews the file, conducts a hearing, makes findings and then reinstates the TRO or FRO order.

At the hearing, the judge may reinstate the order or let the dismissal stand. If reinstated, the status of the order would be “active” in Family electronic case management system and on the DVCR.

If the motion for reconsideration is DENIED, the Domestic Violence Order Denying Reconsideration must be completed and signed by the judge.

If the motion for reconsideration is GRANTED, the Domestic Violence Order to Vacate must be completed and signed by the judge.

The Defendant may also file a motion to reconsider the entry of Final Restraining Order, if the motion is granted, staff must complete the Domestic Violence Order to Vacate. The order must then be signed by the judge.

**g) Request to Reopen Due to Duress:**

When a plaintiff seeks to reopen a domestic violence TRO or FRO that the plaintiff has withdrawn or asked to have dismissed and alleges that the request was made because the plaintiff was put in fear by the defendant of proceeding with the case, a new complaint shall be taken. The original allegations of violence, coupled with the threats or other acts of duress, should be listed on the new complaint.

**h) TRO/FRO Reversed or Remanded from Appellate Division:**

When a TRO or FRO is reversed or remanded from the Appellate Division, staff shall carefully review the Appellate order for the next steps. There may be different actions required depending on the decision of the Appellate

Division. The TRO or FRO may need to be vacated and a new hearing scheduled or the TRO or FRO may be entered or dismissed by the Appellate Division. If the Appellate Division vacates the TRO/FRO or vacates a dismissal order, the Domestic Violence Order to Vacate must be completed and signed by the judge.

If the Appellate Division dismisses the restraining order, the case will remain in the DVCR as dismissed unless there is an order specifying that the case should be removed from the DVCR. The case will not be removed from the DVCR automatically based upon a dismissal alone.

#### **NOTE:**

**Conditional Dismissals:** The conditional dismissal of a domestic violence TRO or FRO is prohibited. Whether done at the request of the plaintiff, with the agreement of the defendant, or at the discretion of the judge at the end of trial, conditions cannot be imposed on the dismissal of a TRO or FRO. No TRO or FRO shall be dismissed conditioned upon either party performing any specific act or upon the occurrence of any event with consent.

## **H. PROCEDURES FOR THE TRANSFER OF CASES TO ANOTHER COUNTY**

Pursuant to *N.J.S.A. 2C:25-29* and Rule 5:7A, a FRO hearing is to be held “in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.” Cases may be transferred between vicinages by order of the presiding judge or designee. Whenever possible, the presiding judge of the sending vicinage and presiding judge of the receiving vicinage should communicate about the change of venue especially in non-routine matters. If the issue between the presiding judges is not resolved, the assignment judges in each vicinage should resolve the matter prior to the signing of the change of venue order.

1. Transfers may occur in the following situations:

- Plaintiff, defendant or family member works for the judiciary in the original county of venue, consistent with the judiciary “Policy and Procedures for Reporting Involvement in Criminal/Quasi- Criminal Matters”;
- There is an existing FM, FD, or FN matter that has not been dismissed in the other county;
- The filing of the TRO and FRO are where the act(s) occurred but one or both parties reside in another county, upon application by either party;
- Counter-complaints are filed by both the plaintiff and defendant, but in different counties. The county of venue should be where the first complaint was filed; or
- Such other reasons for good cause shown.

When a FRO exists and a party files a request to transfer to another county, all open and pending issues must be resolved before the case is transferred.

I. REMEDIES AVAILABLE UNDER THE ACT

Pursuant to *N.J.S.A. 2C:25-29b*, following a hearing and a finding of domestic violence, the court may issue an order granting any or all of the following reliefs:

- Restraints from certain locations;
- Communication restraints, including third party communications;
- Prohibition against stalking;
- Prohibition of weapons possessions;
- Weapons forfeiture;
- Exclusive possession of residence;
- Temporary custody of children;
- Any other appropriate relief, including monitoring of that relief;



- Law enforcement accompaniment to the residence for the removal of personal property;
- Parenting Time;
- Risk Assessments as well as mental health and substance abuse evaluations;
- Monetary compensation, including support and medical coverage;
- Batterers Intervention Program;
- Compensatory (including attorney’s fees) and punitive damages;
- Disposition of personal property;
- “Possession” of Pets;
- DV Civil Penalty /Surcharges; and/or
- Other support or relief, as required or necessary.

**NOTE:**

**No in-house restraints:** Notwithstanding any provision of *N.J.S.A. 2C:25-17, et seq.* to the contrary, no order issued by the Family Division of the Chancery Division of the Superior Court pursuant to *N.J.S.A. 2C:25-28* or *N.J.S.A. 2C:25-29* regarding emergency, temporary or final relief shall include an in-house restraining order which permits the plaintiff and the defendant to occupy the same premises but limits the defendant’s use of that premises. [*N.J.S.A. 2C:25-28.1*]

1. **Restraints from certain locations:**

The defendant may be restrained from the residence, property, school, or place of employment of the plaintiff or other family or household members of the plaintiff. The defendant may also be restricted from specific locations where the plaintiff frequents such as a gym.

A plaintiff shall not be required to disclose any residence or place of employment nor shall the court require such disclosure on the record. The TRO or FRO Order shall include (where appropriate) specific names and addresses identifying the locations from which the defendant is barred and the people that the defendant is restrained from contacting, communicating with, harassing, or stalking.

2. **Communication restraints:**

An order restraining the defendant from contacting the plaintiff or others may be entered. The order may include forbidding the defendant from personally or through a third party initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact with the plaintiff, other family members, their employers, employees, co-workers or prior co-workers, others with whom communication would be likely to cause annoyance or alarm to the plaintiff or any other person listed as a protected party.

3. **Prohibition against stalking:**

The defendant is prohibited from stalking, following, or threatening to harm, to stalk or to follow, the plaintiff or any other person named in the order in a manner that, taken in the context of past actions of the defendant, would put the plaintiff in reasonable fear that the defendant would cause the death or injury of the plaintiff or any other person.

4. **Prohibition of Weapons:**

The defendant is prohibited from purchasing, owning, possessing or controlling a firearm and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun during the period in which the restraining order is in effect, or two years from the date of the order whichever is greater. However, this provision shall not apply to any law enforcement officer while on duty, or to any member of the Armed Forces of the United States, or member of the National Guard while on duty or traveling to or from an authorized place of duty, provided the TRO or FRO expressly provides that the defendant may have access to weapons while on duty.

If the defendant is a law enforcement officer, an active member of the Armed Forces of the United States or member of the National Guard, staff must send a copy of the granted restraining order to the defendant's commanding officer.

The court may also issue an order prohibiting the defendant from possessing any other weapon enumerated in subsection r. of *N.J.S.A. 2C:39-1*.

#### 5. Weapons Seizure:

The court may order the search for and seizure of any firearm or other weapon at any location where the judge has probable cause to believe the weapon is located. The judge shall state with specificity the reasons for, and scope of the search and seizure authorized by the order. [*N.J.S.A. 2C:25-29b(16)*.] See Section VI.; See *State v. Hemenway*, 239 N.J. 111 (2019)

A specific description of the weapon and its believed location should be set forth with as much detail as is known. The court must make findings on the record and state with specificity the reasons for its decision and the scope of the search.

If the defendant lives out of state, a request for a weapon seizure cannot be added as part of the order. As described in Section VI, if the defendant resides out of state or has weapons out of state, a notation can be made on the TRO/FRO to alert law enforcement in that state.

#### 6. Exclusive possession of residence:

An order may be issued granting exclusive possession to the plaintiff of the residence or household regardless of whether the residence or household is jointly or solely owned by the parties or jointly or solely leased by the parties. This order shall not in any manner affect title or interest to any real property held by either party or both jointly. If it is not possible for the plaintiff to remain in the residence, the court may order the defendant to pay the plaintiff's rent or housing costs at a residence other than the one previously shared by the parties if the defendant is found to have a duty to support the plaintiff and the plaintiff requires alternative housing. [*N.J.S.A. 2C:25-29b(2)*.]

7. **Temporary Custody:**

An order awarding temporary custody of a minor child may be granted. Violations of orders for temporary custody issued pursuant to this section are included within the scope of *N.J.S.A. 2C:29-9b*, and therefore if this condition is violated the defendant can be charged with contempt. Arrest and criminal charges are mandatory when such an order is violated.

As set forth in the statute, when making custody decisions in domestic violence cases, the court must presume that “the best interests of the child are served by an award of custody to the non-abusive parent.” This mandate reflects the policy stated in the legislative findings, *N.J.S.A. 2C:25-18*, “that there is a positive correlation between spousal abuse and child abuse, and that children, even when they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence.”

8. **Any other appropriate relief, including monitoring that relief:**

An order granting any other appropriate relief for the plaintiff and dependent children may be granted. The plaintiff must consent to such relief. [*N.J.S.A. 2C:25-29b(14)*.]

The Plaintiff should not be denied any relief on the basis that it was not sought at the emergent hearing.

An order may require that the defendant report to the intake unit of the Family Division of the Superior Court for monitoring of any other provision of the TRO or FRO. [*N.J.S.A. 2C:25-29b(15)*.]

An order may enter requiring the defendant to undergo a psychiatric evaluation. [*N.J.S.A. 2C:25-29b(18)*.]

9. **Law Enforcement accompaniment:**

A TRO or FRO requiring that a law enforcement officer accompany either party to the residence or to any shared business premises to supervise the removal of personal belongings in order to ensure the personal safety of the plaintiff when a restraining order has been issued may be ordered. This order shall be restricted in duration and limited by number of visits.

[*N.J.S.A. 2C:25-29b(12)*.] The plaintiff shall **not** be financially billed or held financially responsible for court ordered police accompaniment.

10. **Parenting Time and Parenting Time Questionnaires:**

An order providing for parenting time may be issued. The order shall protect the safety and well-being of the plaintiff and minor children and shall specify the place and frequency of parenting time. Parenting time arrangements shall not compromise any other remedy provided by the court by requiring or encouraging contact between the plaintiff and defendant. Orders for parenting time may include a designation of a place of parenting time away from the plaintiff, the participation of a third party, or supervised parenting time. [*N.J.S.A. 2C:25-29b(3)*.]

The court shall consider a request by a custodial parent who has been subjected to domestic violence by a person with parenting time rights to a child in the parent's custody for an investigation or evaluation by the appropriate agency to assess the risk of harm to the child prior to the entry of a parenting time order. Any denial of such a request must be on the record and shall only be made if the judge finds the request to be arbitrary or capricious. [*N.J.S.A. 2C:25-29b(3)(a)*.]

The custodial parent can request an assessment of risk of harm to the child or children posed by unsupervised parenting time with the defendant prior to the entry of an order for parenting time. When this request is noted as a relief on the Complaint/TRO, or when the request is made at the hearing, a parenting time questionnaire must be ordered unless, on the record, the judge finds the request without merit and denies the request.

The Parenting Time Questionnaires must be completed on the "Parenting Time Questionnaire Interview Sheets". There is a separate form for the Plaintiff and for the defendant. The forms may be completed by an in-court professional staff or by an outside professional. Both parents are to be interviewed using separate interview sheets. The order for a Parenting Time Interview should also prompt the setting of a return date before the court in approximately three weeks. The Parenting Time Questionnaires should be

completed prior to the scheduled date and provided to the parties and counsel along with a “Protective Order” pursuant to the standards adopted by the Judiciary. After reviewing a completed Parenting Time Questionnaire if the judge determines that it is appropriate and necessary to interview the child(ren), then the judge shall be the one conducting such an interview.

If interim parenting time is ordered, and the vicinage has a court-sponsored or approved supervised visitation site, the parenting time shall be supervised by an individual designated by the court or through the auspices of the supervised parenting time program and shall have clear instructions regarding the arrival and departure of the plaintiff, children, and defendant so as not to compromise the safety of the plaintiff in any way. Security must be available at the parenting-time site, and the individual(s) who is (are) supervising the parenting time must be advised as to the emergency procedures that must be employed if a particular parenting time session appears dangerous. If the Parenting Time Questionnaires have not been completed before the return date, the court may enter an interim order to continue supervised visitation or hold the hearing to consider any additional applications or evidence that relates to the issue of parenting time. Supervised visitation monitors shall receive five hours of annual DV training, including a required introductory domestic violence class.

The court shall consider suspension of the parenting time order and hold an emergency hearing either sua sponte or upon an application made by the plaintiff certifying under oath that the defendant’s access to the child pursuant to the parenting time order has threatened the safety and well-being of the child. [*N.J.S.A. 2C:25-29b(3)(b).*]

This request may be made immediately during the hearing upon the entry of an order for parenting time or at any point after the entry of such an order by application for modification.

All Final Restraining Orders, and Temporary or Amended Temporary Restraining Orders if at all practicable, should specify where pick up and drop off should occur for parenting time, such as public space, to avoid any

allegations of contempt or stalking and for safety. Additionally, if the children are not protected parties, the order should address and specify the extent communication is allowed between the plaintiff and defendant regarding the children.

Violations of custody conditions contained in an FRO or TRO, when the children are not protected parties, could result in criminal charges for Interference with Custody pursuant to N.J.S.A. 2C:13-4.

11. **Monetary Compensation:**

The defendant may be ordered to pay to the plaintiff monetary compensation for losses suffered as a direct result of the act(s) of domestic violence. The order may require the defendant to pay the plaintiff directly, to reimburse the Victim of Crime Compensation Office (VCCO) for all compensation paid by the VCCO directly to or on behalf of the plaintiff and may require that the defendant reimburse any parties that may have compensated the plaintiff, as the court may determine.

12. **Compensatory losses and Punitive damages**

Compensatory losses shall include, but are not limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the plaintiff, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering.

Where appropriate, punitive damages may be awarded in addition to compensatory damages. [*N.J.S.A. 2C:25-29b (4).*]

13. **Emergent Monetary Relief:**

Each county shall establish a procedure for the collection and distribution of emergent monetary relief, whether ordered by the Superior Court or Municipal Court. Special care should be taken to avoid the entry of an order that requires the plaintiff to have contact with the defendant in order to receive money under this section. Courts should consider all forms of

monetary relief listed in the statute. Court staff shall not be responsible for collecting or disbursing monetary relief.

14. **Child Support:**

Support may be ordered in a FRO pursuant to *N.J.S.A. 2C:25-29b* (4) and (10), which provides for both emergent monetary relief that includes emergency support for minor children and compensatory losses in the form of child or spousal support. An order for emergency monetary relief or child support or spousal support may be entered without prejudice to a pending dissolution case, particularly when done on an *ex parte* basis. Monetary compensation in the form of ongoing support utilizing the child support guidelines, where applicable, should be issued at the FRO hearing if the court is able to consider testimony, submitted documentation, or representations from counsel. All child support shall be paid by income withholding from any source of funds or income. Judges should not order direct pay of support where a restraining order exists. A support order entered at the FRO may be retroactive if support was requested or ordered during the pendency of the TRO.

15. **Batterers Intervention Program:**

An order may require the defendant to receive professional domestic violence counseling from either a private or court appointed source and requiring the defendant to provide the court at specified intervals documentation of attendance at the professional counseling. The court may order the defendant to pay for the professional counseling. [*N.J.S.A. 2C:25-29b* (5).]

No application by the defendant to dissolve a FRO which contains a requirement for attendance at professional counseling pursuant to this paragraph shall be granted by the court unless, in addition to any other provisions required by law or conditions ordered by the court, the defendant has completed all required attendance at such counseling. Each county shall have a written protocol to monitor compliance with this requirement. Included in each vicinage's protocol, shall be the requirement that the



plaintiff be given notice of the enforcement hearing but is not required to attend.

## NOTE:

This section permits the court to order the defendant into a batterer’s intervention program as part of the professional domestic violence counseling option. Plaintiffs shall never be ordered into counseling of any kind.

### 16. Other support and personal property:

If the defendant is found to have a duty to support the plaintiff or other dependent household members, an order may require that the defendant make or continue to make rent or mortgage payments on the residence occupied by the plaintiff. [*N.J.S.A.* 2C:25-29b(8).]

An order granting either party temporary possession of specified property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects may issue.

### 17. Restraining Order Relief Regarding “Possession” of Pets

*N.J.S.A.* 2C:25-29(b)(19) authorizes the court to include provisions for animals in DV restraining orders. The court may enter an order prohibiting the defendant from having any contact with any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household.

Pets and other animals should not be listed under the custody portions of orders. Instead, when making orders or addressing issues concerning pets, the term “possession” should be used.

### 18. DV Civil Penalty /Surcharges

#### a) Civil Penalty

Upon the finding of an act of domestic violence and the entry of a FRO, the court is required to assess a civil penalty of \$50.00 to \$500.00 against the defendant under *N.J.S.A.* 2C:25-29.1. This fee may be waived due to “extreme financial hardship.” Such a finding must be made on the record.

The court may order the payment to be paid immediately, within 30 days, or within some other specific period of time. All orders must also include a provision for the payment of a \$2.00 Comprehensive Adult Probation System (CAPS) transaction fee for each payment. For example, if one payment of \$50 is ordered, a \$2 transaction fee is assessed, for a total of \$52. If a penalty of \$500 is ordered to be paid in five installments of \$100 each, a \$2 transaction fee must be added to each payment, for a fee of \$10 (five payments, \$2 each) and a total penalty of \$510.

**NOTE:**

There is no provision for a refund of the penalty or the transaction fee after a dismissal or a reversal of a FRO.

The following standard operating procedure shall be established in each county to ensure statewide uniformity and data quality for both the Family and Probation electronic case management systems.

The Family Division Manager will work with the Chief Probation Officer to identify a staff person from each office to act as the lead for the transmission and acceptance of information related to domestic violence penalties.

At the end of each week the Family Division designee will provide the Probation designee with the FV Penalty Fee Registration report and copies of each related order. A receipt listing the docket number of each order will be prepared and attached to the packet. The Probation designee will review the report to ensure all related orders are attached, sign the receipt, return it to the Family Division designee, and enter the penalty amount into Probation Division electronic case management system.

The Family Division designee will enter a case comment into the Family electronic case management system for each case reflecting that a copy of the order was sent and received by Probation.

**b) Domestic Violence Surcharge:**

Pursuant to *N.J.S.A. 2C:25-29.4*, any person convicted of an act of domestic violence (as that term is defined in *N.J.S.A. 2C:25-19*) shall be subject to a surcharge in the amount of \$100. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

Each county shall prepare a set of specific instructions to defendants setting out the location and address of the Finance Office where the payments are to be made. The defendant should be provided with these instructions and directed to that office to make payments pursuant to the court’s order. If the defendant does not appear at the final hearing, payment instructions shall be served on the defendant along with the FRO. The Family Division should send a copy of the order to the appropriate Finance Office to enter into the Probation electronic case management system.

When the penalty is not paid in accordance with the Court’s order, the Comprehensive Enforcement Program (CEP) in the Probation Division will serve as the enforcement mechanism. These cases will be included in the normal CEP process.

**J. Unique Situations, Specific Programs or Special Considerations**

**1. Alternate Methods of appearance by Plaintiff:**

**a) Incapacitated Plaintiff:**

If a plaintiff is physically or mentally incapable of filing personally, a judge may issue a TRO requested by a person who represents the applicant provided the judge is satisfied that:

- (1) Exigent circumstances exist to excuse the failure of the applicant to appear personally; and
- (2) That sufficient grounds for granting the application have been shown.

**2. Military Service:**

The court can enter a temporary restraining order under the FV docket against an active service member who is deployed out of the country. Any

defendant who qualifies under the Service members Civil Relief Act, 50 U.S.C. 501, *et. seq.*, is entitled to have the FRO proceedings stayed while the member is either in military service or within 90 days after termination or release from such service for a service member who has received notice of such proceedings, if the court receives a letter or other communication:

- (1) Stating that current duty requirements materially affect the service member's ability to appear; or
- (2) From the service members commanding officer stating that current duties prevent the service member's appearance, and that military leave is not authorized. This also permits a service member granted an initial stay from such proceedings to apply for an additional stay based on continuing material effect of military duty on the ability to appear.

This shall be entered into the Family Division Electronic Case Management System (FACTS) as an indefinite TRO. The restraining order shall stay in effect until such stay is lifted.

If the defendant's whereabouts are unknown, court staff will conduct searches on a quarterly basis, the following databases to locate a new address for the defendant:

- CIC Search Engine
- FACTS
- Promis Gavel/ACS/CCIS
- USPS verification
- DMV
- Military verification
- Internet (including but not limited to Google.com and Whitepages.com)
- Lexis Nexis/CLEAR

3. **Domestic Violence Economic Mediation Program (DVEM):**

There shall be no mediation of any kind in domestic violence cases, except for those cases that are eligible for the Domestic Violence Economic Mediation Program. The DVEM Program enables litigants to mediate economic issues in dissolution matters where there is a FRO between the parties. The mediation is to address economic issues only, not any custody or parenting time aspects of the case. The DVEM Program is limited to those dissolution (FM) cases with a FRO between the parties where the protected party in the active FRO has consented to mediation. It includes litigants who have mutual FROs. Litigants with TROs are not eligible to participate in the program. Also, excluded from the program are cases where there has been a charge of contempt or a conviction for a violation of the TRO or current FRO between the parties. Shuttle diplomacy is a method of mediation in which the mediator travels between the parties who are in different rooms. The vicinage must coordinate with the county Sheriff's Department to ensure that the security measures detailed in the Operational Guidelines contained in Directive #06-20, Domestic Violence Economic Mediation Program – Operational Guidelines; Forms are in place for every in-person DVEM. Videoconferencing can be an option to conduct the mediation.

4. **Protected Parties:**

- a. If a protected party requests to be removed from the TRO prior to the issuance of the FRO:
  - Staff should advise the protected party to appear at the FRO hearing to make their request to the Judge.
- b. If the FRO has been issued:
  - Staff should advise the protected party that the Plaintiff must request the removal by filing an application to modify the FRO.
- c. If the FRO has already been issued and the Plaintiff will not request that the protected party be removed from the FRO or the Plaintiff is deceased:

- Staff should advise the protected party to submit their request in writing.
- The case shall be scheduled for a modification hearing and a notice to appear shall be sent to the Plaintiff, Defendant and protected party.
- The protected party shall not be entered into FACTS as a party and a manual notice shall be sent to the protected party.

#### 5. U-Visa

A Superior Court Family Court Judge has the discretion on a case-by-case basis to sign the form 1-918 Supplement B, U-Visa non-immigration status certification.

#### 6. Supervised Visitation Monitors

Supervisors, staff and volunteers in both court and contracted agencies shall receive at least five hours standardized Domestic Violence training annually. Training topics shall include but not be limited to dynamics of DV, impact on children and safety measures.

#### 7. Concurrent FV and FD or FM docket considerations:

##### a) Concurrent FV and FM dockets:

If there is a pending FM, all reliefs except the restraints shall be incorporated into the FM with the restraints continuing in the FV docket and on the FRO. Subsequent applications or modifications for support, custody or parenting time should take place within the FM docket number. The FV shall be reopened and modified as needed so the FM and FV are consistent.

##### b) Concurrent FV and FD Dockets:

If an FRO has been granted and there is an FD which has been filed, but no orders yet entered, the FD should be dismissed. All subsequent applications/modifications (e.g., support, custody, parenting time) shall be made under the FV, so long as the FV is still in effect.

An application to dismiss the FRO and continue the support order should be addressed pursuant to the procedures in the FD manual to ensure that the support continues.

In processing an FV case where there is an existing FD case, the following provisions of the FD manual shall be employed:

If there exists a previous FD order addressing custody/parenting time and/or child support, prior to the filing of a domestic violence action, that order shall be preserved under the FD docket. The FD court file must be forwarded to the judge hearing the FRO or continued TRO for review and any necessary adjustments should be made to the FD order to ensure conflicting orders do not exist. The FD order shall be referenced in the FV order to ensure all affected parties, divisions and agencies are aware of the multiple orders. The FD file shall be joined to the FV file for as long as the FV case is active. For tracking purposes, a comment should be entered in FACTS indicating that the FD court jacket is with the FV team. The FV team should link the cases in FACTS to so that the FD and FV cases are scheduled at the same time for any future court action.

**a. Modifying the Concurrent FD order:**

When any party wishes to file for a modification of the FD order during the life of the domestic violence restraining order, that case must be heard by the domestic violence judge.

Parties should be referred to the FV team for scheduling of their FD case while the restraining order is active. A reference to the FV restraining order should be visible on any revised FD order and provided to all entities that might be affected by the revision (i.e., parties, child support enforcement, supervised visitation).

If the FV action is dismissed the judge will determine the continued status of the FD order and note that determination on the FV dismissal order, and on a new FD order, if

necessary. At that time the jacket shall be returned to the FD team and noted in FACTS case comments.

**b. Modification of child support on an active FV order:**

If the FV case has child support, the Probation Division shall be sent copies of all modified FRO orders. If the restraining order is dismissed, the DV indicator in child support electronic system (NJKiDS) may need to be updated by Family Division staff and a copy of the dismissed restraining order must be forwarded to Probation.

**c. Existing FV order and a filing for child support on behalf of plaintiff by County Board of Social Services:**

If there is a restraining order in effect and the plaintiff begins to receive welfare, the County Board of Social Services shall be able to file a complaint for support under a new FD docket.

**d. Existing FD or FM in a county other than the TRO issuing county:**

If there exists a FD docket or FM docket in a county other than the county that is issuing the TRO, consideration should be given to transferring the TRO to the FD or FM county of venue.

**8. Co-Occurrence of Domestic Violence and Children in Court dockets:**

Judges and staff who comprise the Judiciary need to understand and recognize the co-occurrence of domestic violence and child maltreatment and affirm the importance of protecting both the non-offending caregiver and the child in situations of co-occurrence. **If an allegation of neglect or abuse arises during a domestic violence hearing, the allegation must be reported to DCP&P.**

The policy of the Judiciary is that in each situation where the court finds co-occurrence, it must consider:

- Protecting the plaintiffs from physical harm;
- Providing adequate social and economic support for families; and



- Providing access to services that are respectful, culturally relevant and responsive to the unique strengths and concerns of that family.

To implement these principles, the following processes must be conducted:

- Court staff shall ensure that cases involving co-occurrence receive prompt and focused attention, ensuring that safe placements and services are identified immediately and that safety-enhancing orders are entered for children and other family members.
- All cases filed in the Family Division shall be screened by staff at the initial filing to determine case history and identify any other pending cases.
- When a domestic violence (FV) case is filed and the family has another pending CIC action, the judge who already is handling the CIC matter should, where practical, be assigned to hear the new FV matter, in keeping with the one family/one judge principle.
- Judiciary staff is often confronted with questions concerning the use of information disclosed by victims. Any requests from the Division of Child Protection and Permanency (DCP&P) for access to FV court files shall be referred to the Family Presiding Judge for determination.
- When courts and agencies exchange information concerning family members, from either the abuse/neglect or the FV case, from the DCP&P file or the court's file, the safety and privacy concerns of all parties must be balanced carefully with the need for access to such confidential or sensitive information.
- The Family Division should work with DCP&P to identify extended family members who may be able to help and other family resources as early as possible in co-occurrence cases.

- In a CIC case, court staff must ensure that DCP&P has assessed any proposed caregivers for the child, including the non-custodial caregiver, any relation or kin or foster parent, for any history of child maltreatment, criminal involvement, domestic violence, and substance abuse. The caregivers also should be assessed for their willingness to work with the court, social service agencies and the non-offending parents to meet the needs of the child.
  
- Family Division staff should encourage the utilization of a domestic violence advocate for the abused parent in all family cases involving domestic violence and encourage the input of domestic violence advocates in the development of service plans.
  
- Family Division staff shall monitor and enforce domestic violence defendants' compliance with orders to attend counseling and batterers' intervention programs.

Additional specific case processing instructions are detailed in Directive #14-17, Co-Occurring Child Abuse and Domestic Violence – Operational Guidance.

## V. LAW ENFORCEMENT

### A. INTRODUCTION

“Domestic violence is a serious crime against society”<sup>1</sup> that leaves a path of destruction that victims and their families must face. Law enforcement response and the prosecutorial assessment of domestic violence cases is crucial to ensure that a victim’s voice does not go unheard. Victims must be met by well-trained officers, advocates, and prosecutors. To further that goal, this section of the Domestic Violence Procedures Manual is promulgated to promote state-wide uniformity in domestic violence training, response, procedures, and collaboration with those engaged in this field.

County Prosecutors, as the chief law enforcement officers in their counties, are responsible for ensuring that uniform procedures for the proper and consistent handling of domestic violence incidents are used by all law enforcement agencies in their respective counties. Each law enforcement agency (the agency) should implement their own procedures, or adopt County procedures, which shall, at a minimum, conform to the procedures outlined herein, as well as pertinent Attorney General Guidelines and Directives.

### B. DOMESTIC VIOLENCE PROCEDURES FOR LAW ENFORCEMENT

#### 1. Written Policies and Procedures Overview

The agency shall develop and implement written policies and specific procedures governing the handling of domestic violence incidents, to include:

- Response to domestic violence incidents;
- Receipt and processing of domestic violence criminal complaints and restraining orders;
- Domestic violence arrests;

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<sup>1</sup> See N.J.S.A. 2C:25-18.

- Weapon seizure and forfeiture related to domestic violence criminal complaints and restraining orders;
- Reporting and investigating law enforcement involved domestic violence incidents;
- Training officers on domestic violence and response to domestic violence incidents;
- The role of the Domestic Violence Liaison Officer (DVLO); and
- Ensuring victims are provided information and resources for services.

The agency shall clearly define and explain all relevant terms used in its domestic violence policy, including but not limited to:

- **Acts** of domestic violence;
- **Victim** of domestic violence; and
- **Defendant** in domestic violence.

The agency shall ensure that its domestic violence policy and procedures are in compliance with the United States Constitution, New Jersey Constitution, statutes, case law, court decisions, and Attorney General Directives and Guidelines.

## 2. Policies and Procedures on Response to Domestic Violence Incidents

The agency shall have clear policies and procedures on the response to domestic violence incidents.

The agency shall ensure that all allegations of domestic violence, including violations of Temporary and Final Restraining Orders and criminal no contact orders, are responded to promptly and investigated thoroughly.

The agency shall ensure that the safety of the victim and all individuals at the scene of the domestic violence incident, including law enforcement officers, is of primary concern.

The agency shall have clear policies and procedures regarding language access and will make best efforts to communicate with victims in the language most comfortable for them.

The agency shall ensure that victims are advised of their rights, as required by statute, and provided their rights via the Victim Notification Form (VNF).

The agency shall ensure that all officers who respond to domestic violence incidents make available current and accurate information for referrals to appropriate local domestic violence and social service agencies.

The agency shall establish or participate in an established Domestic Violence Response Team (DVRT) and work with the DVRT Coordinator in their county to ensure victims have access to the DVRT. It is recommended that an advocate be called in every domestic violence situation, allowing the victim to determine whether or not to utilize the services provided by the advocate.

#### **a) Policies and Procedures on Reporting of Domestic Violence Incidents**

The agency shall fully document all complaints of, and responses to, domestic violence incidents.

The agency shall ensure that all domestic violence incidents are fully recorded and documented within their departmental reporting/case tracking system.

The agency shall ensure that all domestic violence incidents are reported in accordance with state statutes.

The agency shall ensure that the Ontario Domestic Assault Risk Assessment (ODARA) Scoring Form is completed in any domestic violence case involving physical contact with the victim or with a weapon as set forth in Attorney General Directive 2016-6 v3.0: Modification of Directive Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L. 2015,c.31, issued September 27, 2017, and submitted to the County Prosecutor's Office and reported to the Division of Criminal Justice at [odara@njdcj.org](mailto:odara@njdcj.org).

The agency shall ensure that proper data is submitted for Uniform Crime Reporting to New Jersey State Police via form or its electronic data equivalent.

The agency shall ensure that proper data is reported in accordance with applicable laws and Attorney General Guidelines and Directives.

#### **b) Policies and Procedures on Processing Domestic Violence Complaints**

When domestic violence incidents result in criminal or civil complaints (commonly referred to as restraining orders), or both, the manner in which those complaints are processed shall be specifically delineated.

The agency shall specify the procedure to be followed in filing of criminal charges stemming from domestic violence incidents.

The agency shall specify the procedure to be followed in accepting and processing domestic violence civil complaints/restraining orders at times when the Superior Court, Family Division, is open and closed, including closures due to holidays, weekends, health pandemics, natural disaster, local emergencies, and a declared State of Emergency.

The agency shall also have clear protocol on officers responding to subpoenas and participating in civil and criminal domestic violence hearings.

#### **c) Policies and Procedures on Training**

The ability to uniformly respond, process, and prosecute domestic violence cases starts with effective training. Although training for law enforcement is statutorily mandated, specialized training should be attended by Domestic Violence Liaison Officers (DVLOs) and those whose focus is on the investigation and prosecution of domestic violence cases, and the agency shall specify policies for officer training.

The agency shall provide training for all officers on the appropriate response to, and investigation of, domestic violence. Pursuant to N.J.S.A. 2C:25-20(a)(2), law enforcement officers are required to attend domestic violence

training within 90 days of their appointment (or transfer), including ODARA training. Law enforcement officers shall also complete four-hours of domestic violence training annually. N.J.S.A. 2C:25-20(a)(2). Training should include, but not be limited to, understanding risk in domestic violence cases, the impact of trauma on survivors, language access, the impact of domestic violence in underserved populations, recognizing implicit and explicit bias, and trauma informed response. Training should be tailored to the communities the agencies serve.

The agency shall ensure that officers complete statutorily mandated domestic violence training and shall keep records of compliance.

### C. DOMESTIC VIOLENCE ARRESTS

The agency shall identify the procedures to be followed by officers for arrests in domestic violence incidents, in accordance with the United States Constitution, New Jersey Constitution, statutes, case law, Attorney General Directives and Guidelines, and accepted police practice.

The agency shall specify the domestic violence incidents which require mandatory arrests.

The agency shall specify how to identify the predominant aggressor.

The agency shall specify those domestic violence incidents in which arrest is discretionary.

The agency shall clearly delineate the procedure to be followed in cases involving a violation of an existing restraining order and criminal no contact orders.

The agency shall specify the procedure to be followed in processing an arrest for acts of domestic violence, including:

- Fingerprinting via Live Scan;

- Completing complaints in eCDR;
- Approvals for charging;
- Defendant processing (photographs, DNA, etc.); and
- Completing the ODARA Scoring Form, when applicable.

The agency shall specify the procedures to be followed when a charge or allegation of domestic violence is filed against a law enforcement officer, including agency notification and weapon(s) seizure, specifically in accord with Attorney General Directives 2020-7, 2000-3, and 2000-4.

### 1. **Mandatory Arrest**

A police officer must arrest and take into custody a domestic violence suspect and must sign a criminal complaint against that person if there exists probable cause to believe an act of domestic violence has occurred and:

- **The victim exhibits<sup>1</sup> signs of injury caused by an act of domestic violence.** N.J.S.A. 2C:25-21(a)(1).
- **A warrant is in effect.** N.J.S.A. 2C:25-21(a)(2).
- **There is probable cause to believe that a Temporary Restraining Order (“TRO”) or Final Restraining Order (“FRO”) has been violated that was served on the defendant.**<sup>2</sup>N.J.S.A. 2C:25-21(a)(3).
- **There is probable cause to believe that a weapon, as defined in N.J.S.A. 2C:39-1, has been involved in the commission of an act of domestic violence.** N.J.S.A. 25-21(a)(4).

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<sup>1</sup> The word, “exhibits,” is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or impairment of physical condition. N.J.S.A. 2C:25-21(c)(1). If the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest. N.J.S.A. 2C:25-21(c)(1).

<sup>2</sup> If the victim does not have a copy of the restraining order, the officer may verify the existence of an order with the appropriate law enforcement agency and should check the Domestic Violence Central Registry (“DVCR”) or eTRO. See N.J.S.A. 2C:25-21(a)(3).



## 2. Predominant Aggressor

All efforts shall be made to charge only the predominant aggressor. Dual arrests can put victims of domestic violence in additional danger and further limits their access to services and support.

In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider:

- The comparative extent of injuries suffered;
- The history of domestic violence between the parties, if any; and
- Other relevant factors. [N.J.S.A. 2C:25-21(c)(2)].

The investigating officer must ensure that “[n]o victim shall be denied relief or 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).

In determining the predominant aggressor, observation and assessments should be made to distinguish offensive and defensive wounds/injuries and consideration should be given to the specific circumstances of the incident, inclusive of cultural factors.

If the officer arrests both parties when each exhibit signs of injury, the officer shall explain in their incident report the basis for the officer’s action and the probable cause to substantiate the charges against each party.

Police shall follow standard procedures in rendering or summoning emergency treatment for the victim and defendant, if required.

Certain high-risk offenses, like strangulation, may result in non-visible injuries on the primary victim, but instead more severe visible injuries on the primary aggressor, as a result of the victim fighting back. A victim of domestic violence who has survived a strangulation is at seven times greater risk of being killed by the perpetrator in the future. It is not unlikely for a

victim to fight back when being strangled, therefore, officers must ensure that they carefully assess injuries and consider all risk factors involved.

Victims who allege any type of strangulation, including smothering or “choking,” should be made aware that even if they feel as though they do not need medical attention after the incident, strangulation can cause internal injuries, brain damage, and/or delayed health consequences, such as stroke, thyroid issues, miscarriage, and/or death, even days or weeks after the incident with no outward signs of injury. Victims should be informed if their vicinage has any strangulation specific programs and encouraged to seek medical attention immediately.

#### D. Discretionary Arrest

A police officer may arrest a person or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but none of the mandatory arrest criteria apply. N.J.S.A. 2C:25-21(b).

#### E. Violations of Pretrial Release No Contact Conditions

If a defendant is criminally charged, law enforcement can request “no-contact” with the victim as a condition of defendant’s release. If “no-contact” is ordered by the court, victims should be advised and provided a copy of the order and how to report a violation of the order. A victim may also advise the court if they want the condition removed.

Any alleged or discovered violation of a pretrial release “no-contact” condition should be investigated. If probable cause is found that a violation occurred, the defendant can be charged with contempt under N.J.S.A. 2C:29-9a. This applies only to “no-contact” conditions; not any other pretrial release conditions. See “Domestic Violence Central Registry (DVCR) Release Notes 4/27/2020.” Pretrial release orders can be located in the DVCR.

#### F. WEAPONS RELATING TO DOMESTIC VIOLENCE INCIDENTS

The agency shall identify the procedures to be followed by officers when weapons are involved in domestic violence incidents, in accordance with the

United States Constitution, New Jersey Constitution, statutes, case law, Attorney General Directives and Guidelines, and accepted police practice.

The agency shall specify the procedures to be followed by investigating officers when:

- Weapon(s) are used or threatened to be used in the domestic violence incident;
- Weapon(s) are not used in the domestic violence incident, but are in plain view to the officer;
- Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that weapon(s) are present in the household;
- Weapon(s) are not used in the domestic violence incident, are not in plain view to the officer, but the officer has reason to believe that defendant has access to or ownership of weapon(s) outside the home; and/or
- The TRO or FRO authorizes the seizure or surrender of weapons.

#### 1. Seizure of Weapons for Safekeeping

A police officer who has probable cause to believe that an act of domestic violence has been committed shall, pursuant to N.J.S.A. 2C:25-21(d)(1):

- Question all persons present to determine whether there are weapons, as defined in N.J.S.A. 2C:39-1(r), on the premises (N.J.S.A. 25:21(d)(1)(a)); and
- If an officer sees or learns that a weapon(s) is present within the premises of a domestic violence incident and reasonably believes that the weapon(s) would expose the victim to a risk of serious bodily injury, the officer shall seize the weapon(s) and if the officer seizes any firearm, the officer shall also seize any firearm purchaser identification card or permit to purchase a handgun (if not in electronic format) issued to the person

accused of the act of domestic violence and any ammunition in their possession. N.J.S.A. 2C:25-21(d)(1)(b); N.J.S.A. 2C:39-7(b)(3).

If the weapon is in **plain view**, the officer should seize the weapon.

If the weapon is **not in plain view** but is located within the premises possessed by the domestic violence victim or jointly possessed by both the domestic violence assailant and the domestic violence victim, the officer should obtain the consent, preferably in writing, of the domestic violence victim to search for and to seize the weapon.

If the weapon is not located within the premises possessed by the domestic violence victim or jointly possessed by the domestic violence victim and domestic violence assailant but is located upon other premises, the officer should attempt to obtain possession of the weapon from the possessor of the weapon, who may be either the domestic violence assailant or a third party, by a voluntary surrender of the weapon.

If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon or to allow the officer to enter the premises to search for the named weapon, the officer should obtain a **Domestic Violence Warrant for the Search and Seizure of Weapons**<sup>1</sup> and may consider appropriate charges.

To authorize a warrant, the issuing court must make three findings of probable cause: (1) probable cause to believe that the defendant has committed an act of domestic violence; (2) probable cause to believe that a search for and seizure of weapons is “necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought,” see N.J.S.A. 2C:25-28(f); and (3) probable cause to believe that there are weapons located in the place to be searched. See *State v. Hemenway*, 239 N.J. 111 (2019).

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<sup>1</sup> A Domestic Violence Warrant for the Search and Seizure of Weapons is not the same as a criminal search warrant.

## 2. Seizure of Weapons Pursuant to Court Order

Weapons are to be immediately seized pursuant to restrictions placed in a TRO or FRO under N.J.S.A. 2C:25-26 and N.J.S.A. 2C:25-28(j).

- If a domestic violence victim obtains a TRO or FRO directing the domestic violence assailant surrender a named weapon, the officer shall demand that the person surrender the weapon.
- If the domestic violence assailant or the possessor of the weapon refuses to surrender the weapon, the officer shall:
  - 1) inform the person that the court order authorized a search of the premises and seizure of the named weapon; and
  - 2) arrest the person, if the person refuses to surrender the named weapon, for failing to comply with the court order, N.J.S.A. 2C:29-9(b); and
  - 3) conduct a search of the named premises for the named weapon.

## 3. Seizure of Weapons Pursuant to an “Order to Surrender”

Defendants convicted of crimes or offenses involving domestic violence are prohibited from possessing firearms. Therefore, weapons may be seized pursuant to an “Order to Surrender,” under N.J.S.A. 2C:25-27(c)(1), following a defendant’s conviction for a domestic violence crime or offense.

Defendants who plead or are found guilty of crimes or offenses involving domestic violence will be advised by the court that they are prohibited from “purchasing, owning, possessing, or controlling a firearm...and from receiving or retaining a firearms purchaser identification card or permit to purchase a handgun.” N.J.S.A. 2C:25-27c(1). The court will provide the defendant with an “Order to Surrender Firearms/Firearms Purchaser Identification Card/Permit to Purchase a Handgun” for any triggering conviction under N.J.S.A. 2C:25-19. Specific forms of order have been created for municipal, family, and criminal matters.

- 1) The “Order to Surrender” will be provided in court to the defendant, defense counsel, and municipal or assistant prosecutor. Municipal

Courts are tasked with ensuring that the designee in the appropriate County Prosecutor's office receives that order. County Prosecutors' Offices are required in every case to immediately forward the order to the municipal police department or State Police barracks having jurisdiction where the defendant presently resides and to the New Jersey Firearms Investigation Unit via email:

[FirearmsInvestUnit@gw.njsp.org](mailto:FirearmsInvestUnit@gw.njsp.org).

- 2) Defendants have five business days from entry of the "Order to Surrender" to arrange for the sale of their surrendered firearms to a licensed dealer; licensed dealers have 10 business days from the entry of the order to take possession of the firearms or law enforcement may dispose of them pursuant to N.J.S.A. 2C:25-27c(1) and (2).

The "Order to Surrender" will require the immediate surrender to law enforcement of any firearms, firearms identification card, or permit to purchase a handgun that law enforcement does not already possess. N.J.S.A. 2C:25-27c(1). This procedure is to be followed unless defendant attests under penalty of law on the record that they have no firearms pursuant to N.J.S.A. 2C:25-27c(1); in these cases, a corresponding box designating such is checked on the "Order to Surrender." Even in cases where the defendant attests they do not own firearms, the County Prosecutor's Office is required to immediately forward the order to the municipal police department or State Police barracks having jurisdiction where the defendant presently resides and to the New Jersey Firearms Investigation Unit via email:

[FirearmsInvestUnit@gw.njsp.org](mailto:FirearmsInvestUnit@gw.njsp.org).

- The surrender of weapons can occur at the police department where the defendant resides, at the police department in the jurisdiction where the "Order to Surrender" was issued, any other police department, or wherever law enforcement directs. A defendant should have in their possession the "Order to Surrender" at the time they surrender firearms, firearms

identification cards, or permits to purchase, as law enforcement may not have any familiarity with the case or basis for surrender.

Upon defendant's surrender of firearms, firearm identification cards, and/or permits to purchase a handgun, law enforcement must provide defendant with a receipt listing defendant's name, date of surrender, item(s) surrendered, serial number(s), manufacturer(s), and model of surrendered firearm(s). N.J.S.A. 2C:25-27c(1). The defendant is required to provide this receipt to the prosecutor of record<sup>1</sup> within 48 hours of service of the "Order to Surrender." N.J.S.A. 2C:25-27c(1).

Further, at the time the receipt is provided to the prosecutor, the defendant must attest under penalty of law that they have transferred all firearms owned or in their possession or control. N.J.S.A. 2C:25-27c(1).

- To facilitate this process, and to assist law enforcement in providing a receipt different than the receipt utilized when weapons are seized pursuant to N.J.S.A. 2C:25-21, the Division of Criminal Justice has promulgated a "Domestic Violence Weapons Surrender Receipt."<sup>2</sup> . This receipt must be used by law enforcement and a copy kept on file.

If a defendant fails to surrender any firearm, firearm identification card, and/or permit to purchase a handgun, the prosecutor shall file a motion with the court that issued the "Order to Surrender" for a search for those items in any location where the judge has probable cause to believe the weapons or

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<sup>1</sup> The "prosecutor" responsible for accepting the receipt and attestation from defendant and for moving for any search and seizure orders when weapons are not surrendered falls upon the prosecutor of record, which is the municipal prosecutor in municipal cases. However, the County Prosecutor can direct that the receipt and attestation be provided to the County Prosecutor's Office and can assign the responsibility to move for search and seizure orders or warrants to an assistant prosecutor. County Prosecutors should inform municipal prosecutors and Municipal Division Managers of the procedures to be followed in their county.

<sup>2</sup> The "Domestic Violence Weapons Surrender Receipt" should only be used when a defendant is surrendering weapons after a conviction for a domestic violence crime or offense. In all other cases, the receipt law enforcement currently uses to trigger the forfeiture process remains in effect; weapon forfeiture procedures pursuant to N.J.S.A. 2C:25-21 remain unchanged.

card/permit may be located. The court must articulate the reasons for and scope of the search authorized. N.J.S.A. 2C:25-27c(1).

- Weapons seized by a police officer, along with any seized firearms identification card or permit to purchase a handgun, must be promptly delivered to the County Prosecutor's storage facility if one exists and if not, the weapons will remain with the police department that seized the weapons. A copy of the property report, along with a copy of the domestic violence offense report and, where applicable, the domestic violence complaint and TRO/FRO shall be provided to the County Prosecutor's Office. N.J.S.A. 2C:25-21(d)(2). The officer must append an inventory of seized weapons to the domestic violence offense report. N.J.S.A. 2C:25-21(d)(2).

#### G. DOMESTIC VIOLENCE COMPLAINT PROCESS

Domestic Violence civil complaints are also known as Temporary or Final Restraining Orders and are issued by the Superior or Municipal Court.

Criminal complaint refers to the criminal charges placed on a CDR-1 (complaint-summons) or CDR-2 (complaint-warrant).

When a police officer responds to a domestic violence incident, the officer must explain to the victim their rights in accordance with N.J.S.A. 2C:25-23, and must also advise of their options to file:

- A civil complaint/TRO alleging the defendant committed an act of domestic violence and asking the court for certain protections and relief, which may be requested at any time; or
- A criminal complaint alleging the defendant committed a criminal act. See Attorney General Law Enforcement Directive 2016-6 v3.0: Modification of Directive Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L. 2015, c.31, issued September 27, 2017, (CJR Directive), as to when a police officer should



file a criminal complaint (CDR-1 (complaint-summons) or CDR-2 (complaint-warrant)); or

- Both of the above.

All efforts should be made to communicate in a language most comfortable to the victim.

A victim may file a domestic violence civil complaint/TRO at any time pursuant to N.J.S.A. 2C:25-28, as follows:

1. During regular court hours (8:30 a.m. – 3:30 p.m.), the victim should be transported or directed to the Family Division of the Superior Court. Where transportation of the victim to the Superior Court is not feasible, the officer must contact the designated court by telephone for an emergent TRO in accordance with established procedure.
2. On weekends, holidays, and any time when the Superior Court is closed, including closures due to health pandemics, natural disaster, or during a declared State of Emergency<sup>1</sup>, the victim may apply for a TRO by presenting to a police department and the police must facilitate a call to the municipal court. N.J.S.A. 2C:25-28(A)

The victim may file a civil complaint/TRO and/or may file a criminal complaint (CDR-1 or CDR-2) in any of the following locations pursuant to N.J.S.A. 2C:25-28(a):

- Where the alleged act of domestic violence occurred;
- Where the defendant resides; or
- Where the victim resides or is sheltered.

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<sup>1</sup> The Courts may issue specific guidance as to Court availability for TRO applications, for example see [https://www.njcourts.gov/public/covid19\\_one-stop.html#domestic\\_violence](https://www.njcourts.gov/public/covid19_one-stop.html#domestic_violence)

- “Sheltered” means any police department from which the victim seeks help. Therefore, victims should not be referred to another county or department.

A criminal complaint shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.

If the criminal complaint is reported in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim. The agency shall also generate all appropriate investigative reports and shall immediately contact the law enforcement agency where the offense occurred. The law enforcement agency shall immediately transmit electronically, or hand deliver, all photographs, statements, and reports 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. In mandatory arrest cases, the agency receiving the documentation shall arrest the suspect in accordance with domestic violence procedures.

Law Enforcement shall take the following steps when signing and processing a criminal complaint:

- Check the defendant’s criminal history and the DVCR.
- Complete the ODARA Scoring Form, in any domestic violence case involving physical contact with the victim or with a weapon as set forth in Attorney General Directive 2016-6 v3.0: Modification of Directive Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L. 2015, c.31, issued September 27, 2017.
- Fingerprint the defendant via Live Scan.
- Prepare the complaint using the eCDR system on a complaint-warrant (CDR-2) or issue a complaint-summons (CDR-1), pursuant to Section 4.5 and 4.6.10 of the CJR Directive and any applicable County directives.
- Prepare the Affidavit of Probable Cause and the Preliminary Law Enforcement Incident Report (PLEIR) in eCDR.

- Upon approval, if required, submit the complaint through eCDR to the appropriate Judge or Court Administrator for a finding of probable cause. N.J.S.A. 2C:25-31(b).
- If the defendant is approved by the Court to be charged on a complaint-warrant, take appropriate steps to have the defendant lodged at the County Correctional Facility. N.J.S.A. 2C:25-31(c).

## 1. Victim Notification Form (VNF) and Victim Information and Notification Everyday (VINE)

Pursuant to Attorney General Law Enforcement Directive No. 2005-5, law enforcement officers are to complete the Victim Notification Form (VNF) when an indictable offense or domestic violence offense is reported.

Therefore, a VNF must be completed by the law enforcement officer assisting a domestic violence victim, regardless of whether a victim applies for a TRO and/or seeks criminal charges. The VNF should be completed in its entirety, ensuring all copies are legible.

The VNF captures victim contact information and is confidential and non-discoverable. See N.J.S.A. 2c:25-26c. Law enforcement, prosecutors, victim witness advocates, and court personnel, must be able to contact a victim after a domestic violence incident for various reasons. Whenever a defendant is pending release/released from custody, the prosecuting agency shall make every effort to notify the victim immediately. Also, notice is provided for court appearances, as many charges and restraining orders are dismissed when the state or court cannot locate the victim.

If the officer filling out the VNF, or the image of the VNF, is captured on Body Worn Camera (BWC) or Motor Vehicle Recording (MVR) footage, these recordings must be redacted before this footage is provided in discovery. The victim's address, shelter location, telephone number, and/or personal identifying information, must be redacted from BWC and/or MVR footage and all documents, preventing this confidential information from being released in discovery or otherwise.

The victim shall be provided with the telephone numbers for the Office of Victim Witness Advocacy in the County Prosecutor's Office where a criminal complaint or restraining order was filed and the Family Division - Domestic Violence Unit where the restraining order issued. Contact information should be provided to victims regardless of whether charges are filed, or a restraining order sought, in the event they seek to file at a later date. The victim should be instructed to contact the appropriate offices to provide new contact information if the information provided on the VNF changes.

The VNF is also utilized to enroll victims in New Jersey's Victim Information and Notification Everyday (VINE) system. The VINE System provides those registered with an offender's custodial status and location without cost. (See Attorney General Law Enforcement Directive No. 2005-5 and N.J.S.A. 52:4b-71). Pursuant to N.J.S.A. 52:4b-71b, "[v]ictims and witnesses and, as determined by the prosecuting agency, other appropriate persons, shall be provided with the opportunity to supply contact information in order to be notified when the offender's custody status changes." Therefore, law enforcement is reminded that witnesses and other appropriate persons shall be provided information as to how to register with VINE.

When an offender is arrested or released from custody, the victim will be telephoned through VINE's automated notification feature. The victim can change their preference to have notifications be transmitted via email or text message, through the VINE link website:

<https://vinelink.vineapps.com/state/NJ>. Additionally, a victim may also access the custody status of an offender, whether housed in a New Jersey County jail, state prison, or other correctional facility, 24-hours a day by calling VINE's toll-free number: 1-877-846-3465, or accessing the application: <https://vinelink.vineapps.com/state/NJ>.

## 2. Procedure for Filing Reports

A copy of the domestic violence offense report and VNF must be attached to all criminal complaints and to the TRO when those documents are forwarded to the appropriate court. N.J.S.A. 2C:25-24(a).

## H. TEMPORARY RESTRAINING ORDERS

When a victim requests a TRO, the officer shall contact the designated judge by telephone, via eTRO, or by other means of electronic communication.

The officer shall assist the victim in applying for the TRO and should advise the victim that they will provide testimony to the judge on a recorded line, which includes the victim being placed under oath and questioned about the incident and prior domestic violence incidents, both reported and unreported. The victim shall be offered language assistance, as needed.

The TRO shall include all information about prior incidents, reported and unreported, under the “History” section and shall identify children in common and children in the household.

If the judge authorizes the issuance of a TRO, the judge will electronically sign the TRO and the officer shall effectuate service of the TRO upon the offender, provide a copy to the victim, and ensure the victim can return home safely.

If the victim displays visible signs of injury at the time they apply for a TRO, a police officer shall photograph the injuries.

### 1. Service of Temporary Restraining Orders

When serving the defendant with a TRO, an officer shall do the following:

- 1) Read all of the conditions of the TRO to the defendant;
- 2) Order the defendant to vacate the premises, if that is one of the conditions ordered on the TRO;
- 3) If the defendant refuses to comply with the conditions of the TRO, advise the defendant they can be charged with contempt pursuant to N.J.S.A. 2C:29-9b; and
- 4) In addition to documenting the return of service on the TRO, law enforcement should prepare a supplemental report documenting the circumstances surrounding the service of the TRO, confirming the

conditions were reviewed with the defendant, the TRO was read to the defendant, and offered in a non-English language, if needed.

When a defendant requests to remove their personal belongings (clothing, toiletries, etc.) from a shared residence, the officer must contact the victim to arrange a time agreeable by both parties, and the officer. The defendant is to be given a reasonable period of time to gather their personal belongings from the premises, unless the TRO includes specific limits on time or duration. N.J.S.A. 2C:25-28(k). The officer shall remain with the defendant as they gather personal belongings pursuant to the terms of the TRO. If the parties are contesting ownership of any items, the parties will address those issues with the Court; law enforcement are not present to resolve property disputes.

Where a TRO is issued but was not served upon the defendant because the defendant could not be located, law enforcement shall continue to make all reasonable efforts to locate the defendant and serve the TRO. If a victim provides updated information to effectuate service, the file must be updated, and service attempted anew at the updated location.

When a TRO or FRO is issued and requires service outside the issuing county, the restraining order, along with any criminal complaint or other relevant documents (e.g. search warrant, etc.) will be electronically accessible (eCDR, eTRO, etc.) or provided to the appropriate law enforcement agency in the county where the defendant resides.

- 1) The law enforcement agency in the receiving county shall immediately upon receipt effectuate service of the TRO or FRO upon the defendant.
- 2) The return of service should be electronically updated through the eTRO system.
- 3) When the service of a restraining order results in the seizure of weapons:
  - The weapons inventory should be attached to the return of service that is brought or electronically sent back to the issuing

county and Family Division. A copy of the weapons inventory shall also be electronically sent to the County Prosecutor's Office in the issuing county.

- The weapons and ammunition themselves, along with any licenses, I.D. cards, permits to purchase, or other paperwork or documentation shall be secured by the prosecutor or municipal police department in the seizing county for storage. At such time that the seized property is needed by the prosecutor or Family Division in the issuing county, the prosecutor in the seizing county shall forward same.

## I. RESTRAINING ORDER VIOLATIONS

Where a police officer determines that a party has violated an existing restraining order that was served upon that party, the officer must:

- Arrest and transport the defendant to the police station (violations of restraining orders are mandatory arrests);
- Check the DVCR;
- Submit the defendant's fingerprints using the Live Scan system;
- Complete the ODARA Scoring Form if there is a qualifying offense in addition to the contempt charge;
- Apply for a criminal contempt charge concerning the incident using the eCDR system on a complaint-warrant (CDR-2) or obtain screener approval to overcome the presumption of the warrant and issue a summons (CDR-1) pursuant to Section 4.5 and 4.6.10 of the CJR Directive;
- The officer should apply for a criminal complaint for all underlying criminal offenses, including petty and disorderly persons offenses; (The criminal charges should be listed on the same criminal complaint form that contains the contempt charge.)
- Upon approval, if required, submit via eCDR or electronically to the appropriate judge or court administrator for a complaint-

summons or for a finding of probable cause and for the issuance of a complaint-warrant. N.J.S.A. 2C:25-31(b); and

- If the defendant is charged on a complaint-warrant, take appropriate steps to have the defendant incarcerated at the County Correctional Facility. N.J.S.A. 2C:25-31(c).

Where the officer deems there is no probable cause to arrest or sign a criminal complaint against the defendant for a violation of a restraining order, the officer must advise the victim of the proper procedure for filing a citizen's complaint.

#### J. CRIMINAL OFFENSES AGAINST THE ELDERLY AND DISABLED

Where an elderly or disabled person is subjected to a criminal offense listed as an act of domestic violence, police shall follow the appropriate procedure listed above.

Where the actions or omissions against an elderly or disabled person do not meet the domestic violence criteria, police may file appropriate criminal charges against the offender.

A person may be charged with "abandonment, neglect of elderly person, disabled adult," pursuant to N.J.S.A. 2C:24-8, if the person has a legal duty to care for, or has assumed continuing responsibility for, the care of a person who is:

- 60 years of age or older; or
- Emotionally, psychologically, or physically disabled; and
- The person abandons the elderly or disabled adult or 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 person.



## K. GUIDELINES ON PROSECUTORIAL PROCEDURE REGARDING WEAPONS SEIZED IN DOMESTIC VIOLENCE CASES

Any weapon used in the commission of a criminal offense, contraband, or evidence of criminal activity, shall be seized by police and processed in accordance with established procedures for the handling of such evidence.

- The police must promptly deliver to the County Prosecutor's Office: the weapons involved; any seized firearms identification card or permit to purchase a handgun; ammunition; domestic violence offense report; complete inventory of weapons seized; TRO/FRO; criminal complaint; VNF; and police reports.
- If the County Prosecutor's Office does not have a storage facility, the weapons seized shall remain in the custody of the seizing police department.
- Where seizure of weapons is pursuant to a TRO or FRO, a copy of the weapon inventory, including whether no weapons were found, should also be electronically forwarded to the Superior Court, Family Division.

Any weapon seized by police in a domestic violence incident pursuant to N.J.S.A. 2C:25-21(d) cannot be returned to the owner by the police, absent a court order, or written authorization from the County Prosecutor. The County Prosecutor shall determine within 45 days of the seizure:

- Whether the weapon should be returned to the owner, or
- Whether to institute legal action against the owner of the weapon.

If the County Prosecutor determines not to institute an action to forfeit the weapon and does not institute an action within 45 days of seizure, the seized weapon shall be returned to the owner by court order. N.J.S.A. 2C:25-21(d)(3).

If the County Prosecutor determines to institute an action to forfeit the weapon, the Prosecutor, with notice to the owner of the weapon, may do the following:

- File a petition with the Family Division of the Superior Court, to obtain title to the weapon;
- Seek revocation of any firearms identification card, permit to purchase a handgun, or any other permit, license or other authorization for the use, possession, or ownership of weapons; (See N.J.S.A. 2C:58-3(f), 2C:58-4(f), and/or 2C:58-5, governing such use, possession, or ownership).
- Object to the return of the weapons pursuant to N.J.S.A. 2C:58-3(c), insofar that the owner is unfit or that the owner poses a threat to the public in general or a person or persons in particular; and/or
- Seek a court order that defendant dispose of the weapons by sale or transfer to a person legally entitled to take possession of the weapons.

When the service of a domestic violence restraining order outside the issuing county results in the seizure of weapons, the following shall occur:

- The weapons inventory should be attached to the return of service that is brought or transmitted electronically back to the issuing county;
- The weapons themselves and ammunition, along with any firearms identification card, purchaser's permit, licenses, identification cards, or other paperwork or documentation (unless electronic) shall be secured by the County Prosecutor in the seizing county for storage. At such time that the seized property is needed by the County Prosecutor or Family Division in the issuing county, the Prosecutor in the seizing county shall make arrangements for the delivery of same; and

- The County Prosecutor where the restraining order is issued will be responsible for making the decision to return or oppose the return of the firearms, ammunition, and ID card or permit to purchase.

When a law enforcement officer, who is authorized to carry weapons pursuant to N.J.S.A. 2C:39-6, is involved in an act of domestic violence, the seizure of weapons shall be governed by Attorney General Directives 2000-3: *Directive Implementing Procedures for the Seizure of Weapons from Municipal and County Law Enforcement Officers Involved in Domestic Violence Incidents* and Directive 2000-4: *Directive Implementing Procedures for the Seizure of Weapons from All State Law Enforcement Officers Involved in Domestic Violence Incidents*.

- If a law enforcement officer is required by departmental regulations to personally purchase their official duty firearm, that firearm shall be considered the same as if it had been departmentally issued for purposes of applying the provisions of Attorney General Directives 2000-3 and 2000-4 and provisions of Federal law, 18 U.S.C. § 922(g).

## 1. **Restrictions on Return of Firearms**

There are restrictions that prevent the ownership/possession of firearms and returns should only occur with the approval and authorization of the Court or County Prosecutor's Office.

Restrictions preventing possession or ownership of firearms include:

- Conviction of a domestic violence crime or offense, pursuant to N.J.S.A. 2C:25-19;
- TRO or FRO in place;
- If an FRO is issued, pursuant to the provisions of both New Jersey and federal gun control laws, N.J.S.A. 2C:39-7(b)(3) and 18 U.S.C. § 922(g), the named defendant shall not be permitted to possess, purchase, own, or control any firearm for the

duration of the order or for two years, whichever is greater;  
N.J.S.A. 2C:25-29b;

- Federal restrictions if convicted of “misdemeanor crime of domestic violence” pursuant to 18 U.S.C. § 922;
- Certain persons status pursuant to N.J.S.A. 2C:39-7; and
- Any disqualifier under N.J.S.A. 2C:58-3.

#### L. DOMESTIC VIOLENCE FINGERPRINTING REQUIREMENTS

Defendants shall be fingerprinted via Live Scan in the following circumstances:

- 1) When **arrested** for an indictable offense.
- 2) When **arrested** for a domestic violence offense (includes disorderly persons offenses) where any of the following four circumstances are met:
  - a. victim exhibits signs of injury caused by act of domestic violence;
  - b. warrant is in effect;
  - c. probable cause to believe a person violated a judicial order (N.J.S.A. 2C:29-9) AND person served with the order; or
  - d. probable cause that a weapon has been involved.
- 3) When **convicted** of assault or harassment.

Example: Citizen complaint without law enforcement involvement.
- 4) When **served** with a FRO pursuant to N.J.S.A. 53:1-15.

## M. UTILIZATION OF THE DOMESTIC VIOLENCE RESPONSE TEAM (DVRT)

In 2000, pursuant to the Prevention of Domestic Violence Act, specifically N.J.S.A. 2C:25-20(b)(3)(1), law enforcement agencies were mandated to establish domestic violence crisis teams or to participate in established crisis teams. That legislation saw the state-wide implementation of the DVRT program.

When law enforcement responds to a domestic violence call, a DVRT advocate can be activated, as early in the process as possible, to respond to the police department or hospital to provide the victim with emotional support, information on domestic violence and available resources, and assistance in the creation of a safety plan.<sup>1</sup> Those private sessions ensure victims are making informed decisions. DVRTs are available in each county and the advocates are comprised of volunteers who are extensively trained to respond and assist domestic violence victims, twenty-four hours a day, seven days a week.

- The role of the DVRT advocate is crucial. Therefore, it is recommended that an advocate be called in every domestic violence situation, allowing the victim to determine whether or not to utilize the services provided by the advocate.
- Many municipalities and County Prosecutors have issued automatic call-out policies or procedures for the use of the DVRT advocate, which is an established best practice.

DVLO shall work with the DVRT Coordinator in their County to ensure utilization of the DVRT. DVRT utilization data should be shared with DVRT Coordinators in the respective County and with County Prosecutors, in an effort to optimize response.

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<sup>1</sup> If law enforcement is responding to a domestic violence sexual assault, the Sexual Assault Response Team (SART) should be activated in lieu of the DVRT. Also, DVRTs are not to be utilized when there is no identifiable victim or when the call is in regard to custody, visitation, or property disputes.

## N. RIGHTS OF VICTIMS

### 1. Victim's Rights Without Arrest or Restraining Order

In every report of domestic violence, a victim is to be offered the services of the DVRT and provided the Victim's Bill of Rights contained on the VNF. N.J.S.A. 2C:25-23. That includes cases where there is no probable cause for arrest and the victim does not wish to file charges or seek a TRO.

## O. 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 law enforcement agencies maintain knowledge of legislative changes, technological advancements, potential changes as to policy and procedure, and employ best practices, each law enforcement agency should identify a Domestic Violence Liaison Officer ("DVLO"), who is a sworn member of their department, as the point person for domestic violence.

The DVLO shall serve as the station's 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.

## P. DOMESTIC VIOLENCE WORKING GROUP

In 1991, Chief Justice Wilentz and Attorney General Del Tufo convened County Domestic Violence Working Groups. County Prosecutors and Presiding Judges were enlisted to co-chair those meetings to ensure that each county engaged their working groups to evaluate, monitor, and address issues concerning domestic violence. The Office of the Attorney General supports

the utilization of those working groups to address concerns and issues as they arise in each county.

County Prosecutors, or their designee, shall continue to co-chair the County Domestic Violence Working Group with a member of the county's judiciary.

Quarterly meetings should be held and shall be attended by the DVLO from each law enforcement agency in the county and a County Office of Victim Witness Advocate assigned to domestic violence cases.

In counties where it is impractical for DVLOs from each municipality to participate at the County Working Group Meeting, the County Prosecutor retains the discretion to call for mandatory meetings of the DVLOs to ensure they are up to date on information disseminated at Working Group Meetings.

Working Groups are a valuable resource and should maintain up-to-date information on programs, services, and legal assistance and resources available to victims in their respective county.

The composition and mission of the County Domestic Violence Working Group should be reviewed by current membership to ensure goals can be met and all necessary parties participate.

## VI. WEAPONS

### A. WEAPONS IN GENERAL

New Jersey Courts do not have the authority to issue search warrants for weapons outside of New Jersey on TROs. If the defendant resides out of state or has weapons out of state, a notation can be made of the TRO/FRO to alert law enforcement in that state.

Weapons of varying types are defined generally in *N.J.S.A. 2C:39-1*, and more specifically in *N.J.S.A. 2C:39-1r*. The Attorney General and County Prosecutors delineate law enforcement procedures through directives and guidelines in accordance with the United States Constitution, New Jersey Constitution, statutes and court decisions.

Weapons relating to domestic violence incidents can be categorized in several ways including but not limited to:

- Weapon(s) used or threatened to be used in a domestic violence incident.
- Weapon(s) not used in a domestic violence incident but in plain view of an officer.
- Weapon(s) not used in a domestic violence incident, not in plain view to the officer, but the officer has reason to believe that weapon(s) are in the possession of the abuser.

See **Section V** for the following topics:

- Mandatory arrest
- Seizure of weapons for safekeeping
- Seizure of weapons pursuant to court order
- Seizure of weapons used in commission of a criminal offense
- Seizure of Weapons Pursuant to N.J.S.A. 2C:25-21d
- Seizure of weapons outside the county where the domestic violence restraining order was issued
- Seizure of weapons from law enforcement officers involved in a domestic violence incident



## 1. Restrictions on return of firearms

Where the defendant is a Law Enforcement Officer: If a law enforcement officer is subject to an FRO, pursuant to the provisions of the federal gun control law, 18 *U.S.C.A.* 922(g), the court may, if necessary for the protection of the plaintiff, prohibit any defendant who is a law enforcement officer from possessing any weapon, firearm or firearm identification card, including those provided by their department. If the court determines that a prohibition on possession of weapons by defendant who is a law enforcement officer is not necessary, the provisions of the Attorney General's *Directive Implementing Procedures for the Seizure of Weapons from Law Enforcement Officers Involved in Domestic Violence Incidents* shall apply. Where the court permits the return of weapons while on duty, the procedures in section V still apply.

All Others: If an FRO is issued, the named defendant may not be permitted to own or possess any firearm for the duration of the order or for two years, whichever is greater (N.J.S.A. 2C:25-29(b)).

## B. WARRANT FOR THE SEARCH AND SEIZURE OF WEAPONS

The purpose of the issuance of a search warrant is to protect the plaintiff of domestic violence from further violence and not to discover evidence of criminality. There must be sufficient facts and information presented to satisfy the judicial *probable cause* requirement (State v. Hemenway, 239 N.J. 111 (2019)).

The scope of the warrant and the times during which it may be served must be set forth with specificity on the warrant.

When granting a TRO, the court should grant relief that includes forbidding the defendant from possessing any firearm or other weapon as defined by *N.J.S.A.* 2C:39-1(r). The possession of a weapon by a defendant may pose a danger to the plaintiff even though the alleged act of domestic violence did not involve the use or threatened use of a weapon and even though there was no testimony or evidence that the defendant had previously used or threatened to use a weapon against the plaintiff.

## 1. Probable Cause

*N.J.S.A.* 2C:25-28(j) authorizes the issuance of a search warrant as a form of *ex parte* relief at the time of the issuance of a TRO. *N.J.S.A.* 2C:25-29(b)(16) contains identical language authorizing similar relief at the time of the issuance of a FRO. Both statutes are intended to protect the plaintiff from the risk of serious bodily injury.

The test to be applied by the Court is whether there exists *probable cause* to believe that:

- The defendant has committed an act of domestic violence;
- The defendant possesses or has access to a firearm or other weapon(s) as enumerated in *N.J.S.A.* 2C:39-1(r); and
- The defendant's possession or access to the weapon poses a heightened or increased risk of danger or injury to the plaintiff.

## 2. Description of Weapon

A specific description of the weapon and its believed location should, as much as practical, be set forth in the warrant. The court must make findings on the record and state with specificity the reasons for its decision and the scope of the search. The original return of the search warrant shall be delivered to the court within ten (10) days.

## 3. Domestic Violence Hearing Officer Recommendation for Search Warrant

When a search warrant is recommended by a Domestic Violence Hearing Officer (DVHO), the Affidavit in Support of the Warrant shall set forth precise facts constituting the basis for the conclusion that the defendant's possession of a weapon exposes the plaintiff to a risk of serious bodily injury. The affidavit shall be reviewed with the plaintiff on the record and signed by the plaintiff. The DVHO should witness the plaintiff's signature.

## 4. Probable Cause Determination

Once the TRO hearing is completed, the recommended TRO, along with the weapons seizure affidavit, should be presented to the appropriate judge for review (including specific review of the affidavit and warrant section of the TRO) and potential signature.

The probable cause determination regarding weapons seizure shall be placed on the record by the designated DV judge after referencing the weapons affidavit prepared by the DVHO and signed by the plaintiff and the affidavit is thereafter orally confirmed on the record by plaintiff.

**Note:**

The intent of this procedure is to eliminate the repeated testimony of the plaintiff before the DVHO and the judge.

After reviewing the TRO, affidavit and DVHO's recommendations, any questions regarding the sufficiency of the information contained in the affidavit should be resolved by sworn testimony by the plaintiff before the judge.

If the affidavit in support of the warrant for the search and seizure of weapons recommended by the DVHO contains sufficient information, the judge shall confirm with appropriate findings on the record and enter the order.

After reviewing the TRO and affidavit, the judge shall consider and be satisfied as to the following:

- The basis upon which plaintiff believes that the defendant possesses a prohibited weapon or firearm;
- The reasons plaintiff believes that the defendant's possession of a prohibited weapon or firearm poses a heightened or increased risk of danger or injury to the plaintiff, which may include the past history, if any, of domestic violence between the parties;
- A description of the weapon or firearm which the defendant possesses;

- A specific description of the location where the weapons or firearms are located, the owner of those premises, if not the defendant; and
- Other relevant factors that the particulars of the circumstances require.

When an *ex parte* application is made regarding seizure of weapons, whether before the court or the DVHO, the affidavit must be completed with the reasons for the seizure specified.

#### 5. Weapons Inventory

When the service of a restraining order results in the seizure of weapons, the weapons inventory should be attached to the return of service and sent to the Family Division in the issuing county. The weapons themselves, along with any licenses, identification cards, other paperwork or documentation shall be secured for storage by the prosecutor in the seizing county.

#### 6. Notice to the prosecutor

A copy of every TRO or FRO in which the “seizure” box is checked should be forwarded immediately to the County Prosecutor’s Office. In addition, where seizure has not yet occurred but is ordered as part of an order prohibiting weapons possession pursuant to *N.J.S.A 2C:25-29b(1)*, a copy of that order, with the appropriate boxes checked, should also be forwarded immediately to the Prosecutor’s Office.

When the service of a restraining order results in the seizure of weapons, the weapons inventory should be attached to the return of service and sent to the Family Division in the issuing county. The weapons themselves, along with any licenses, identification cards, other paperwork or documentation (digital or print) shall be secured for storage by the prosecutor in the seizing county. At such time that the seized property is needed by the prosecutor or the Family court in the issuing county, the prosecutor in the seizing county shall make arrangements for the delivery of forward same.

## C. HEARING REGARDING FORFEITURE OF WEAPONS

Weapons seized in accordance with the PDVA shall be returned to the owner except upon order of the Superior Court.

### 1. Motion for Title to Seized Weapons

The prosecutor, who has possession of the seized weapons, may upon notice to the owner, petition the Family court within 45 days of the seizure (N.J.S.A. 2C:25-21(d)(3)) to obtain title to the seized weapons or to revoke any and all permit and licenses. This notice shall be done by filing a motion in the Family division.

Family Division staff shall docket these petitions under the FO case type and a hearing shall be scheduled with 45 days of receipt of the notice provided by the prosecutor, as set forth in *N.J.S.A. 2C:25-21d(3)*. The hearing shall be summary in nature.

#### Note:

These petitions shall be docketed and scheduled even if there is no restraining order in place.

### 2. Hearing

At the hearing, the Family Division Judge must decide whether the weapon(s) should be forfeited, along with any related permit(s) or license(s), or whether the weapon(s) should be returned; or whether legal rights to own should be revoked and/or defendant should be ordered to dispose of the weapon, based on the factors contained in *N.J.S.A. 2C:25-21d*.

If the prosecutor does not institute an action within 45 days of seizure, the seized weapons shall be returned to the owner.

## VII. ENFORCEMENT AND MODIFICATION OF RESTRAINING ORDERS

### A. Enforcement and Modification of a TRO/FRO

The enforcement of a TRO or FRO occurs when the plaintiff notifies law enforcement or the court that the defendant has not complied with the TRO/FRO. Restraining orders can be enforced by way of criminal or civil remedies.

A modification is when one party seeks to add or change the provisions of an active TRO or FRO.

### B. Criminal Procedure N.J.S.A. 2C:29-9(b)

Enforcement of a TRO/FRO is governed by N.J.S.A. 2C:25-30 and 2C:29-9(b), depending on the conduct and the provision of the order that is violated.

Pursuant to N.J.S.A. 2C:25-30, a violation by the defendant of an order issued pursuant to the PDVA shall constitute an offense under N.J.S.A. 2C:29-9(b). The below provisions can be enforced by way of criminal or civil remedies:

- An order restraining the defendant from subjecting the plaintiff to domestic violence;
- An order granting exclusive possession to the plaintiff of the residence or household;
- An order restraining the defendant from entering the residence, property, school, or place of employment of the victim or of other household members of the victim;
- An order restraining the defendant from entering any other specifically designated location;
- An order restraining the defendant from contacting the plaintiff or others;

- An order awarding emergency monetary relief, including emergency support for minor children, to the victim, and other dependents;
- An order awarding temporary custody of a minor child;
- An order requiring that a law enforcement officer accompany either party to the residence or any shared business premises to supervise the removal of personal belongings for a specific period of time and within a specific time period;
- An order prohibiting the defendant from possessing any firearm or any other weapon enumerated in subsection r. of N.J.S.A. 2C:39-1 and ordering the search for and seizure of any firearm or other weapon at any location where the judge has probable cause to believe the weapon is located;
- An order prohibiting the defendant from stalking, or following, or threatening to harm, to stalk, or to follow the plaintiff or any other person named in the order;
- An order requiring the defendant to undergo a psychiatric evaluation; and/or
- An order directing the possession of any animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household.

A defendant who “purposely or knowingly violates any provision” of a TRO or FRO listed above is guilty of a crime of the fourth degree if the conduct that constitutes the violation also constitutes a crime or disorderly persons offense under *N.J.S.A. 2C:29-9(b)*. In all other cases, the defendant is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of the PDVA.

Any person convicted of a second or subsequent nonindictable domestic violence contempt offense shall serve a minimum term of not less than 30 days in jail.

Pursuant to N.J.S.A. 2C:25-30, all contempt proceedings conducted pursuant to N.J.S.A. 2C:29-9(b) involving domestic violence orders, other than those constituting indictable offenses, shall be heard by the Family Part of the Chancery Division of the Superior Court. If the contempt is non-indictable and/or downgraded, it shall be sent to Family Court and docketed as an FO case. This should be done at the first appearance.

### 1. Scheduling of Subsequent Proceedings

As contempt cases are high impact offenses, each County Prosecutor should screen these cases as expeditiously as possible. Complaints for violations of restraining orders and the underlying charge may be placed on a Complaint Warrant or a Complaint Summons. Judges assigned to hear these cases must be provided with pertinent information from the underlying FV file as required by N.J.S.A. 2C:29-26(e). All contempt matters are subject to Speedy Trial guidelines and must be scheduled accordingly.

<b>Note:</b>
Pursuant to the Speedy Trial guidelines, defendants detained awaiting trial in the Family court must be released 90 days from the day they were detained.

### 2. Complaint Warrant

A complaint warrant is a warrant for the defendant's arrest. This means the defendant will be taken into custody and will be detained for a period of time until they are brought before a Criminal Judge – Pre-Trial (CJP) or detention judge.

When the warrant is executed and the defendant is in custody, the detention review hearing will be held within 48 hours by a CJP Judge.

A determination shall be made by the Prosecutor's office whether to move forward with a charge, or to downgrade the charge and remand the case to the Family Division for further processing.



If the Prosecutor files a motion for detention and the judge orders the defendant to be detained, Family court staff must check the jail list daily to see if a defendant has been detained and falls within the jurisdiction of the Family division.

## NOTE:

Defendants who are detained pretrial have seven (7) days to file a notice of appeal. When the offense falls within the jurisdiction of the Family court a *pro bono* attorney (Madden v. Delran, 126 N.J. 91 (1992)) must be appointed for those defendants who cannot afford a private attorney.

If the defendant cannot afford an attorney, Family Division staff should complete an application for indigency (5A form) to determine if the defendant qualifies for a *pro bono* attorney. If the defendant is eligible, Family Division staff should contact the *pro bono* coordinator in their Vicinage for assignment of counsel. Once an attorney is assigned, the case should be scheduled for a first appearance/arraignment and notices sent to all parties.

### a) Plea Hearing/Trial

Victims must be informed of all proceedings and any possible plea deals.

After the first appearance, the plea hearing should be held within two weeks if the defendant is incarcerated and within three weeks if the defendant is not incarcerated.

If the defendant pleads guilty at the plea hearing, the plea shall be recorded on the Domestic Violence Contempt and Related Disorderly Persons and Petty Disorderly Persons Plea Form and they should be sentenced immediately using the Order of Disposition. If the court needs additional information the sentencing may be adjourned to a date certain.

If the defendant pleads not guilty, a non-jury trial shall be scheduled expeditiously, keeping in mind the 90-day disposition guideline.

Subpoenas for witnesses for the trial must be issued by the Prosecutor for State's witnesses and defense counsel for defense witnesses.

The completed Order of Disposition must be immediately forwarded to the appropriate entities, if appropriate (e.g., Probation Division, correctional facility).

### 3. Complaint Summons

A complaint summons is a criminal complaint but is not an arrest warrant. A summons is issued to the defendant with a date and time to appear in court.

If the Prosecutor has made the decision to downgrade the offense to Family Division, court staff shall notice the defendant and schedule the first court event no later than 20 days after the issuance of a contempt complaint.

If the defendant cannot afford an attorney, Family Division staff shall complete an application for indigency, FO 5A form – Application for Indigency to determine if the defendant qualifies for a *pro bono* attorney. If the defendant is eligible, Family Division staff should contact the *pro bono* coordinator in their Vicinage for assignment of counsel. Once an attorney is assigned, the case should be scheduled for a first appearance/arraignment and notices sent to all parties.

After the first appearance, the plea hearing should be held within two weeks if the defendant is incarcerated and within three weeks if the defendant is not incarcerated.

#### a) Plea Hearing/Trial

If the defendant pleads guilty at the plea hearing, the plea should be recorded on the Domestic Violence Contempt and Related Disorderly Persons and Petty Disorderly Persons Plea Form and the defendant should be sentenced immediately using the Order of Disposition. Additionally, the Order to Surrender Firearms/Firearms Purchaser Identification Card/Permit to

Purchase a Handgun shall be completed and signed by the Judge. If the court needs additional information the sentencing may be adjourned to a date certain.

If the defendant pleads not guilty, a non-jury trial shall be scheduled expeditiously, keeping in mind the 90-day disposition guideline.

Subpoenas for witnesses for the trial must be issued by the Prosecutor for State's witnesses and defense counsel for defense witnesses.

The completed form of order of disposition must be immediately forwarded to the appropriate entities, if appropriate (e.g. Probation Division, correctional facility).

#### 4. **More Than One Charge on a Complaint Warrant/Summons**

The Family Part processes contempt charges and the underlying charge. If the Family Division receives a complaint without a charge under N.J.S.A. 2C:29-9(b), the complaint should be referred to either the Criminal or Municipal court.

In Family Division, if there are both a contempt and underlying charge and the contempt charge is dismissed as part of a plea agreement, the Family Part judge shall dispose of the underlying charge if it is related to the contempt charge.

The contempt charge and the underlying charge should never be bifurcated and heard by different courts unless the underlying charge is not related to the contempt, i.e., shoplifting, and will not cause a double jeopardy issue.

**Note:**

The court is required to order an expungement of all related records and information at the time of the dismissal, acquittal, or discharge without a conviction. An expungement will not be ordered where the dismissal, acquittal or discharge resulted from a plea-bargaining agreement involving the conviction of other charges (Please see Directive #02-16 and Supplement date June 29, 2020)

5. **Incarceration of Sole Caretaker of Children**

If a defendant's conviction results in incarceration and they are the sole caretaker of a child(ren), the court must follow the procedures set forth in N.J.S.A. 2C:44-6.2 et seq. and Administrative Directives #04-04 and #29-17.

6. **Domestic Violence Surcharge**

Pursuant to *N.J.S.A. 2C:25-29.4*, any person convicted of an act of domestic violence (as that term is defined in *N.J.S.A. 2C:25-19*) shall be subject to a surcharge in the amount of \$100. This surcharge is in addition to other penalties, fines and/or charges imposed pursuant to law.

C. **Enforcement/Modification – Civil Procedures**

Violations for the below provisions are excluded from enforcement under 2C:29-9(b). However, violations of these orders may be enforced in a civil or criminal action initiated by the plaintiff or by the court, on its own motion (Rule 1:10-3 and Rule 5:3-7):

- An order providing parenting time.
- An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence.
- An order requiring the defendant to receive professional domestic violence counseling from either a private provider or provider appointed by the court.

- An order requiring the defendant to make or continue to make rent or mortgage payments on the residence occupied by the plaintiff.
- An order granting either party temporary or possession of specified personal property.

#### 1. Plaintiffs or Defendants Requesting to Enforce or Modify FRO

Plaintiffs seeking to enforce or modify these provisions of their FRO should be directed to fill out “How to Enforce or Request a Change of a Domestic Violence Restraining Order or Sexual Assault Survivor Protection Order.” Family Division staff should ask the plaintiff if they want or need assistance from a victim advocate.

Defendants seeking to modify or enforce provisions of the FRO, for example, parenting time or possession of personal property, should be directed to fill out “How to Enforce or Request a Change of a Domestic Violence Restraining Order or SASPA.

Modifications or enforcement of child support matters can be scheduled before a Child Support Hearing Officer (CSHO), pursuant to Child Support Hearing Officer Program Standard 7. If the matter is scheduled before a judge, where possible, the matter should be listed before the judge who granted the order. The matter shall be reopened using the same docket number and case file. The judge hearing the matter should be provided with the complete file.

All other requests to modify the FRO shall be scheduled within 2-3 weeks from the filing of the application. Family Division staff shall notice all parties including counsel as appropriate. Where possible, the matter shall be listed before the judge who granted the order. The matter shall be reopened using the same docket number and case file. The judge hearing the matter shall be provided with the complete file.

Any modifications granted by the court should be recorded in a new amended final restraining order. The amended FRO must also include those reliefs that

were previously granted by the court and not refer to the former order. This will ensure that there is only one final order that sets out all granted reliefs. If the only relief amended is the child support provision, a new USSO may be used instead of an amended FRO.

## 2. Orders to Show Cause

If either the plaintiff or the defendant believes that the matter is emergent, Family Division staff should provide the necessary forms to assist the litigant in preparing an Order to Show Cause (OTSC).

If the case is closed, Family Division staff shall reopen the case, enter the OTSC in the system and take the completed forms to the assigned judge to determine whether the request is emergent. Whenever possible, the judge who issued the original order should review the proposed OTSC.

If the judge is satisfied with the sufficiency of the application, the OTSC may be granted, and the judge will set a return date for both litigants to appear on short notice. Motions made pursuant to Rule 1:10-3 should be returnable for the next designated domestic violence enforcement day for which regular notice can be arranged, but in any event, no longer than two weeks. Family Division staff will schedule accordingly.

If the OTSC is denied, the litigant can be referred to intake to file an application to modify or enforce the FRO (How to Enforce or Request a Change of a Domestic Violence Restraining Order or Sexual Assault Survivor Protection Order.)

If the moving party is in the courthouse, the Family Division staff will provide them with a copy of the signed OTSC and the other party shall be served with the OTSC application pursuant to court rules. If the moving party is no longer in the courthouse, Family Division staff should contact them to let them know they can come to the courthouse to pick-up the OTSC. Service of papers and notice of hearing shall be prepared by the Family Division.

Family Division staff should ensure that the plaintiff's address is not disclosed to the defendant.

The order should inform the responding party that non-appearance may result in the requested relief being granted.

Any modifications granted by the court should be recorded in a new amended final restraining order. The amended FRO should also include those reliefs that were previously granted by the court and not refer to the former order. This will ensure that there is only one final order that sets out all granted reliefs. If the only relief amended is the child support provision, a new USSO may be used instead of an amended FRO.

## VIII. WORKING GROUPS DOMESTIC VIOLENCE

### A. County Domestic Violence Working Groups:

On September 24, 1991, then Chief Justice Robert Wilentz and Attorney General Robert Del Tufo charged that each Presiding Judge and County Prosecutor convene or reconvene a County Domestic Violence Working Group. This group's charge is to share information regarding local domestic violence resources and ensure the following:

- adherence to practices and procedures required by this Domestic Violence Procedure manual, statute, rule or administrative directive;
- that the public is informed of the services of the court and its partners;
- services are made available to the public and in languages that are accessible to individuals; and
- to provide an ongoing forum for identification and resolution of problems in the domestic violence prevention and protection process in each county.

Each Vicinage Assignment Judge is to either co-chair the County Working Group along with the County Prosecutor, or to designate a Judge and an Assistant Prosecutor who have a broad knowledge and experience with domestic violence across divisions. Working Groups shall meet at least quarterly.

The group shall also consist of the following members:

- Family Division Judge
- Family Division Manager/Representative
- Domestic Violence Hearing Officer
- Criminal Division Judge
- Criminal Division Manager/Assistant Criminal Division Manager with pretrial services experience
- Municipal Court Judge
- Municipal Division Manager/Representative



- Probation Chief/Representative
- Legal Services Representative
- Assistant Prosecutor
- Deputy Public Defender
- Municipal Prosecutor
- Municipal Public Defender
- County Sheriff's Office
- DV Police Liaison/Representative
- County Bar Association
- Domestic Violence Advocate
- Batterer's Intervention Group, if available
- Division of Child Protection & Permanency

The membership is not limited and can also be expanded to include other relevant partners or agencies such as representatives from the fields of healthcare and education. Having a diverse membership increases the likelihood of interagency cooperation and communication. Communication between agencies is imperative to assist in reducing the risk for victims, dismantling systematic barriers and stopping domestic violence at an early stage. Cooperation facilitates:

- Early effective risk identification;
- Improved information sharing;
- Joint decision making; and
- Coordinated action to assess, respond to, and reduce risk

In November 2016, the Supreme Court acted on the report and recommendations of the Supreme Court Ad Hoc Committee on Domestic Violence. The report set out several recommendations regarding education, training, resources to victims and batterers, and the interaction between the Municipal and Superior Courts regarding domestic violence. Recommendation 10 detailed new requirements for the County Domestic Violence Working Groups.

The initial charge and composition of the County Domestic Violence Working Group (Working Group) should be the subject of renewed focus

and, where needed, revised to include additional members, such as the DCP&P domestic violence liaison, Municipal Court judge, and Municipal Division Manager. The Supreme Court approved this recommendation. The New Jersey Senate and Assembly each subsequently passed Resolutions urging that the agencies in the recommendation be part of each County Working Group's membership (Senate Resolution 20, Assembly Resolution 163).

The County Domestic Violence Working Groups shall be required to maintain up-to-date information regarding available domestic violence programs and services such as legal assistance to victims; counseling and mental health services for survivors, children and batterers; substance abuse treatment programs; available shelter beds for victims and children; extended services to include child care, transitional housing, emergency financial support, location of food pantries; medical insurance application assistance; transportation for court appearances; availability of separate waiting areas for municipal and Superior Court appearances; and availability of DVRTs in each municipality. The Working Group should also evaluate access to and utilization of these services in the county.

1. **Annual Report:**

Pursuant to the 2016 Report of the Supreme Court Ad Hoc Committee on Domestic Violence – Recommendation 10, County Domestic Violence Working Groups should be required to maintain up-to-date information regarding available domestic violence programs and services. The Co-Chairs of each County Working Group must provide a yearly written report to the Administrative Director, Assignment Judge, and the Family Presiding Judge, summarizing accomplishments, trainings, and obstacles. This report shall be submitted annually to the Administrative Office of the Courts by February 15. Once the report is submitted, the Assignment Judge and the co-chairs of each County Working Group will be scheduled to present the county's report to the Judiciary's Management and Operations Committee. Additionally, the reports will be shared with the Supreme Court State Domestic Violence Working group which will review the reports for statewide best practices.

As well as ensuring that the County Working Group membership is inclusive of all our partners, the County Working Groups should discuss the goals and objectives they want to accomplish throughout the year and should annually review processes to ensure standard operating procedures are being adhered to within the County and that individuals are able to safely access the services of the judiciary.

Each goal selected by the County Working groups must relate to identifying gaps and systematic barriers in our current system and must include short-term goals identified by the Working Group to address those gaps and barriers. Reports will be disseminated to the County Work Groups to aid in their discussions and reviews.

Additionally, relevant training should be provided at the quarterly meetings throughout the year. Training is vital for the members to remain current regarding new domestic violence case rules, legislation, available services, and evolving trends.

## IX. FULL FAITH AND CREDIT OF OUT OF STATE ORDERS

### A. FEDERAL STATUTORY OVERVIEW

The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 *U.S.C.A.* 2265, *et seq.*, requires states and Indian tribes to enforce protection orders issued by other states and Indian tribes as if the orders had been issued by the non-issuing/enforcing state or Indian tribe. In addition, an enforcing state must enforce a protection order from another state even if the petitioner would not be eligible for a protection order in the enforcing state.

Additionally, all orders of protection shall have the same force and effect on military installations as such order has within the jurisdiction of the court that issued the order under the Armed Forces Domestic Security Act, 10 *U.S.C.* 1561a.

### B. PROTECTION ORDERS COVERED BY §2265

#### 1. Definition of Protection Order:

The Full Faith and Credit provision applies to any injunction or other order issued for the purpose of preventing violent or threatening acts, or harassment against, contact or communication with, or physical proximity to another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking the protection. In other words, it extends to temporary and final, civil and criminal protection orders (e.g., stay away or no-contact orders that are part of a defendant's conditions of release or bail).

#### 2. Final and Ex Parte Orders:

Every state, subdivision thereof, and Indian tribe must accord full faith and credit to both final and *ex parte* protection orders.

In terms of final protection orders, the statute provides that a final order must be enforced if:

- It was issued by a court that had personal and subject matter jurisdiction to issue the order, and
- The respondent was provided with reasonable notice and the *opportunity* to be heard sufficient to protect that person’s right to due process.

In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state or tribal law and, in any event, within a reasonable period of time after the order is issued, sufficient to protect the opposing party’s right to due process.

### 3. Mutual Protection Orders:

Should the issuing court enter a protection order with prohibitions against both the respondent and the petitioner, only the provisions in favor of the petitioner (those constraining the respondent) are entitled to enforcement in another state, tribe, or territory unless:

- The respondent filed a separate petition or pleading seeking such an order, and
- The court made specific findings that both parties were entitled to such a protection order.

Pursuant to §2265, a court in a jurisdiction other than the jurisdiction that issued the order shall not enforce a mutual order against a petitioner unless the portions that impose prohibitions on the petitioner meet the above legal criteria.

## C. New Jersey Law and Procedure:

### 1. Procedures:

In May 2000, the New Jersey Judiciary adopted procedures to implement the registration of out of state orders. The procedures include:

- Instructions for Family Division staff to follow to register the orders.

- FACTS codes and procedures (part of the FACTS FV Docket User’s Guide distributed by the Automated Trial Court Systems Unit).
- Certification forms for incoming orders and for outgoing New Jersey orders.

The procedures accommodate the out-of-state order’s expiration date in FACTS and the practice of other states concerning certification for Restraining Orders. The primary benefit to registration for the victim is that the order will be on the statewide DVCR to which police throughout the state have access on an immediate, round-the-clock basis.

These procedures:

- Establish these registered cases without adding new cases to the Family Division statistical report;
- Accommodate the expiration date of out-of-state orders;
- Identify out-of-state orders to users, particularly law enforcement users of the DVCR;
- It is not required to notify the defendant of the registration;
- Prohibit an out-of-state order to be reopened or modified; and
- Continue to require that Full Faith and Credit be honored by law enforcement and the courts on those orders that have not been registered.

## 2. Process

The victim (plaintiff) who elects to register an out-of-state restraining order will present the order at a county Family Division Intake Domestic Violence Unit. The plaintiff will complete a Confidential Victim Information Sheet and complete an Out-of-State certification form.

The Domestic Violence Unit will review the order, certification and Confidential Victim Information Sheet. The staff member will call the issuing court immediately or within one business day. The staff member will send by facsimile or e-mail the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager or the Domestic Violence Team Leader may review the contact with the issuing court to resolve questions concerning confirmation.

Upon confirmation, the staff member will complete the bottom of the certification form which will allow for the establishment and docketing of the case on family division electronic case management system.

Staff will refer to the system instructions to docket the case on the family electronic case management system.

Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered as of the case establishment date and providing the New Jersey docket number. The victim/plaintiff will be provided with the order, a copy sent to the police departments identified by the plaintiff, and a copy placed or uploaded into the Family Division file that was created when the system assigned the New Jersey number as part of the registration process.

**The Attorney General’s guidelines to law enforcement officers state that the registration of an order is not required to enforce the order.**

**The Division of Criminal Justice has assured that Full Faith and Credit will be emphasized in all police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out-of-state order with New Jersey.**

### 3. **Outgoing orders**

All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute.

The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, and complete the Verification and Certification Form upon request of the victim.