

ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



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SUBJECT: DRUG OFFENDER RESTRAINING ORDERS

EFFECTIVE DATE:

February 1, 2016

ACCREDITATION STANDARDS:

N/A

BY THE ORDER OF:

Chief Patrick Shannon

BY AUTHORITY OF:

Police Director James Cosgrove

SUPERSEDES ORDER #: G.O. #142 (05/15/00)

PURPOSE The purpose of this general order is to maintain compliance with the *Drug Offender Restraining Order Act* (N.J.S.A. 2C: 35-5.7).

POLICY It is the policy of the Elizabeth Police Department to comply with the provisions of the *Drug Offender Restraining Order Act* (N.J.S.A. 2C: 35-5.7), where applicable. A police officer who charges any person with any criminal offense defined in this general order is responsible for presenting and certifying a description of the place or specified area to enable the court to issue an appropriate restraining order.

PROCEDURES

I. DEFINITIONS

- A. For purposes of this general order, the following terms are defined:
1. Person means any person charged with or convicted of a criminal offense as defined below or any juvenile charged with delinquency or adjudicated delinquent for an act, if committed by an adult, would be a criminal offense as defined below.
 2. Place includes any premises, residence, business establishment, location or specified area including all buildings and all appurtenant land, in which or at which a criminal offense occurred or is alleged to have occurred or is affected by the criminal offense with which the person is charged. Place does not include public rail, bus, air transportation lines, or limited access highways which do not allow pedestrian access.
 3. Criminal offense means any of the following offenses:
 - a. N.J.S.A. 2C: 35-3 – Leader of Narcotics Trafficking Network;
 - b. N.J.S.A. 2C: 35-4 – Maintaining or Operating a CDS Production Facility;
 - c. N.J.S.A. 2C: 35-4.1 – Booby Traps in Manufacturing or Distribution Facilities; Fortified Premises;
 - d. N.J.S.A. 2C: 35-5 – Manufacturing, Distributing, or Dispensing CDS;
 - e. N.J.S.A. 2C: 35-5.2 – Manufacturing, Distributing, or Dispensing Gamma Hydroxybutyrate;
 - f. N.J.S.A. 2C: 35-5.3 – Manufacturing, Distributing, or Dispensing Flunitrazepam;
 - g. N.J.S.A. 2C: 35-6 – Employing a Juvenile in a Drug Distribution Scheme;
 - h. N.J.S.A. 2C: 35-7 – Distributing Drugs on School Property;
 - i. N.J.S.A. 2C: 35-7.1 – Violations of N.J.S.A. 2C: 35-5, Certain Locations;
 - j. N.J.S.A. 2C: 35-8 – Distribution to Persons Under Age 18;
 - k. N.J.S.A. 2C: 35-9 – Strict Liability for Drug Induced Death; or
 - l. Unlawful possession or use of an assault firearm as defined in N.J.S.A. 2C: 39-1.

II. GENERAL

- A. The *Drug Offender Restraining Order Act* (N.J.S.A. 2C: 35-5.7) requires law enforcement officers to apply for a restraining order in cases where a person is charged with any of the offenses listed in section I.A.3 of this general order.
- B. This restraining order will restrain the defendant from entering any place, in which or at which a criminal offense occurred, or is alleged to have occurred, or is affected by the criminal offense with which the person is charged. This restraining order is a condition of pre-trial release on bail or personal recognizance.
- C. The court need not issue a restraining order if the defendant establishes, by clear and convincing evidence, that they lawfully reside at or have legitimate business on or near the place, or otherwise demonstrate a legitimate need to enter the place. The court shall not issue an order unless the court is clearly convinced that the need to bar that person from the place to protect the public safety and the rights, safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place where the offense or conduct is alleged to have occurred. In the discretion of the court, the order may contain modifications to permit the person to enter the area during specified times for specified purposes, such as attending school during regular school hours.
- D. The law requires that the restraining order must be drafted with sufficient specificity to enable the defendant to guide their conduct accordingly, and this department to enforce the order.
- E. The law requires that the court provide notice of the restraining order to this agency and the county prosecutor's office.
- F. A pretrial restraining order will remain in effect until the case has been adjudicated or dismissed, or for not less than two years, whatever is less.
- G. A post-conviction, or adjudication of delinquency, order will remain in effect for such period of time as shall be fixed by the court, but not longer than the maximum term of imprisonment or incarceration allowed by law for the underlying offense(s). The order will remain in effect as an express condition of probation or intensive supervision program.
- H. All applications to modify or stay an order issued pursuant to the *Drug Offender Restraining Order Act*, including any order originally issued in municipal court, shall be made to the superior court. The court is required to immediately notify this agency, in writing, whenever an application is made to stay or modify an order issued pursuant to the *Drug Offender Restraining Order Act*.
- I. Violations of any order issued pursuant to the *Drug Offender Restraining Order Act* shall subject the person to civil contempt, criminal contempt, revocation of bail, probation or parole, or any combination of these sanctions. Officers may arrest an adult or take into custody a juvenile when there is probable cause to believe that the person has violated the terms of any removal and restraining order issued pursuant to the *Drug Offender Restraining Order Act*.

- J. Notwithstanding any other provisions of the *Drug Offender Restraining Order Act*, the court may permit the person to return to the place where they are restrained to obtain personal belongings and effects and, by court order, may restrict the time and duration, and provide for police supervision of such a visit.

III. ADULT OFFENDERS

- A. Upon preparing either a criminal complaint/summons (CDR-1) or a criminal complaint/warrant (CDR-2) alleging any offenses listed in section I.A.3 of this general order, the arresting officer shall also prepare an application for a drug offender restraining order.
1. Complete the *Certification of Offense Location Supporting the Drug Offender Restraining Order Act of 1999 Form* making sure to record a thorough and accurate description of the location involved.
 - a. The arresting officer must provide a specific description of the place from where the defendant should be barred, including a buffer zone up to 500 feet, and may propose conditions upon the defendant's entry into the place.
 - b. It is imperative that the description contains sufficient specificity for a judge to issue an enforceable restraining order. Descriptions such as "...the area of 10 Main Street", "...the area of Elizabeth High School", etc., lack specificity. Other descriptions such as "...within 500 feet of Elizabeth High School" should also be avoided. Descriptions such as this may require a certified engineering survey to sustain a conviction for N.J.S.A. 2C: 29-9.
 - c. Instead, the specific written description should include parameters that the defendant can understand and the police can enforce. A description such as, '*...Elizabeth High School including all subordinate property and the block bound by Pearl Street, South Pearl Street, South Street, and South Broad Street*' is acceptable. In addition to the specific written description on the face of the application, it is acceptable to provide a map clearly designating the restrained place or area.
 2. Describe in detail the circumstances of the arrest in the initial incident report.
 3. Prepare the restraining order by filling in the appropriate information down to the 'check the box for the offense portion' before the form is presented to the court.
- B. The desk lieutenant shall ensure that the arresting officer has completed the *Certification of Offense Location Supporting the Drug Offender Restraining Order Act of 1999 Form*, a detailed incident report and signed the criminal complaint for the appropriate charges and place all these together for presentation to the municipal court judge. Further, the desk lieutenant shall contact, or have the arresting officer contact, the appropriate municipal court judge:
1. The on-duty judge, while court is in session.

2. The prevailing on-call municipal court judge up until 2200hrs on all evenings.
 3. On Saturdays, Sundays and holidays, the current on-call municipal judge between 0800hrs and 2200hrs.
 4. On Saturdays, Sundays and holidays, in cases where the arresting officer has gone off duty, the desk lieutenant shall contact the on-call municipal court judge between 0800hrs and 2200hrs informing him/her of the case or cases requiring a drug offender restraining order. The desk lieutenant shall then send the on duty field supervisor with the completed packets to the judge's residence for his/her signature.
 5. Desk lieutenants shall ensure that all the above steps are taken before the arrested person is released from custody.
- C. If the complaint is placed on a criminal complaint/warrant (CDR-2), the judge may, as a condition of release, issue an order prohibiting the person from entering the place defined on the application for a drug offender restraining order, including the buffer zone. The same judge shall make the bail determination.
- D. If the complaint is placed on a criminal complaint/summons (CDR-1), the court shall, at the time of the defendant's first appearance, issue an order prohibiting the person from entering the place defined on the application for a drug offender restraining order, including the buffer zone.
- E. After the judge has completed the restraining order, make sure the defendant is served and signs for it. The defendant must receive a copy of the restraining order and a copy of the certification form.
1. The copy of the restraining order and certification form shall be forwarded to the services division.
 2. Two copies of the restraining order and certification form shall be attached to the criminal complaint(s) and filed with the municipal court.
 3. One copy of the restraining order and certification form shall also be forwarded to the narcotics bureau commander.
- F. The court will provide notice of the approved restraining order to both this agency and to the Union County Prosecutor. The court may issue instructions as to any additional notifications that should be made in furtherance of the statute.
- G. If a restraining order is issued as part of a criminal judgment in superior court, the superior court will send a copy of the order to this agency and the Union County Prosecutor.

IV. JUVENILE OFFENDERS

- A. Upon preparing a juvenile delinquency complaint alleging any of the offenses listed in section I.A.3 of this general order, the officer shall also prepare an application for a drug offender restraining order (see section III.A of this general order). The officer must provide a specific description of the place from where the defendant

should be barred, including a buffer zone up to 500 feet, and may propose conditions upon the defendant's entry into the place. (See section III.B of this general order for acceptable descriptors.)

- B. If the juvenile is released without being detained pursuant to N.J.S.A. 2A: 4A-34 or N.J.S.A. 2A: 4A-35, the order shall be filed on the next court day. The officer releasing the juvenile shall serve the juvenile and parent or guardian with written notice that an order shall be issued by the Family Part of the Superior Court on the next day prohibiting the juvenile from entering the place, including buffer zone, contained within the application. If the restraints contained within the court order differ from the restraints set forth in the application, the order will not be effective until the third court day following the issuance of the order.
- C. When a juvenile is charged with a criminal offense on a juvenile delinquency complaint and is detained pursuant to N.J.S.A. 2A: 4A-34 or N.J.S.A. 2A: 4A-35 and is later released from custody at a detention hearing pursuant to N.J.S.A. 2A: 4A-38, the court shall issue an order prohibiting the person from entering any designated place including the buffer zone indicated on the application.
- D. The officer or other designee shall fax a copy of the application, along with the complaint, to the Chancery Division, Family Part of the Superior Court.
- E. The Family Court will notify this agency if a restraining order is no longer applicable. If an order was posted, it must be removed without delay. The Family Court will also notify this agency if an order is expired or has been modified.

V. NOTIFICATIONS

- A. Notwithstanding the provisions of N.J.S.A. 2A: 4A-60, prior to the person's conviction for a criminal offense or adjudication for delinquency, this agency may post a copy of any orders issued pursuant to the *Drug Offender Restraining Order Act*, or an equivalent notice containing the terms of the order, upon one or more of the principal entrances of the place or in any other conspicuous location, and/or publish a copy or equivalent in a newspaper circulating in the area of the place described in the order. This agency may also distribute copies of any orders or equivalent to residents and/or businesses located within the area delineated within the order or, in the case of a school or other government-owned property, to the appropriate administrator, or to any tenant association representing residents of the affected area.
- B. If this agency chooses to post a copy of any restraining order for the purpose of informing the public, the court will usually provide a copy of the order suitable for posting. The investigations division commander or his/her designee shall determine whether to post the restraining order for the public.
- C. When a person is convicted or adjudicated delinquent for any criminal offense subject to the *Drug Offender Restraining Order Act*, in addition to the posting provisions in this section, this agency may also post, publish and distribute a photograph of the person.