WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #4

Do Not Mark In This Box

FILED

2012 DEC -5 AM 10:44

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Governor's Committee on Crime, Delinquency, and Correction TITLE NUMBER: 149

CITE AUTHORITY: §61-2-9A

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 7

TITLE OF RULE BEING PROPOSED: Protocol For Law Enforcement Response to Stalking

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Authorized Signature

J. Norbert Federspiel

Executive Director

FILED
2012 DEC -5 AM 10: 44
SECRETARY OF STATE

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION

SERIES 7
PROTOCOL FOR LAW ENFORCEMENT RESPONSE TO STALKING

§149-7-1. General.

1.1. Scope. -- This legislative rule establishes law enforcement response to stalking by providing guidelines and establishing standards for responding to stalking incidents. Particular attention is given to protecting victims of stalking through initial response, on-scene assistance, arrest, follow-up, and reporting, including enforcement of personal safety orders. If the stalking is determined to be domestic in nature, refer to 149CSR3. Law enforcement response is dictated by the protocol as outlined in 149CSR3. It is also the means by which law enforcement agencies can minimize departmental liability and provide training.

1.2. Authority. -- W. Va. Code §61-2-9A.

1.3. Filing Date. --

1.4. Effective Date. --

§149-7-2. Purposes.

2.1. The principal purpose of this rule is to establish guidelines and procedures in compliance with state and federal law to be followed by all West Virginia law enforcement officers as defined herein and other personnel involved in police response to stalking calls.

2.2. Other purposes and goals of this rule are:

2.2.a. To reduce the incidence and severity of stalking by establishing arrest and prosecution, as the means of police response to stalking;

2.2.b. To afford maximum protection and support to victims of stalking through a coordinated response of law enforcement and victim assistance;

2.2.c. To ensure that law enforcement services are as available in stalking cases as they are in other criminal cases;

2.2.d. To promote law enforcement officer safety by ensuring that the law enforcement officer is as fully prepared as possible to respond to stalking calls; and,

2.2.e. To help reduce police resources consumed in responding to stalking by reducing the number of police interventions required.

§149-7-3. Definitions.

3.1. "Credible corroborative evidence" means evidence that is worthy of belief and corresponds with the allegations of stalking and one or more elements indicating fear for his or her safety or suffering significant emotional distress from the offense and may include, but is not limited to, the condition of the victim, the accused, and the scene.

3.2. "County" means any one of the fifty-five major political subdivisions of the state.

3.3. "Dispatcher" means a telecommunicator who receives calls from individuals who need assistance from firefighters, law enforcement officers, and emergency medical services. Once information is obtained from the caller, telecommunicators activate the services necessary to respond to the nature of the call for help and maintain close contact with field units to monitor response and needed support requirements.

3.4. "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;

3.5. "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress.

3.6. "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, stepchild, sibling, or any person who regularly resided in the household or within the prior six months regularly resided in the household;

3.7. "Repeatedly" means on two or more occasions

3.8. "Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of this state.

3.9. Law enforcement officer" means any duly authorized member of a law enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, including persons employed as campus police officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy regional recreational authority. The term

"law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special conservation officer.

3.10. "Law enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee.

3.11. "Municipality" means any incorporated village, town or city whose boundaries lie within the geographic boundaries of the state.

3.12. "Personal Safety Order" under West Virginia Code 53-8-1, et seq, Personal Safety Order Act, means an injunction or other order, issued under sexual assault, attempted sexual assault, stalking, or similar laws. A personal safety order may include any or all of the following relief: order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), of West Virginia Code 53-8-4 against the petitioner; order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order; order the respondent to refrain from entering the residence of the petitioner; order the respondent to remain away from the place of employment, school or residence of the petitioner; order the respondent not to visit, assault, molest, or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner; order either party to pay filing fees and costs. A personal safety order must be issued by a court; agency or other entity authorized by law to issue or modify a personal safety order. Personal Safety Orders include out-of-state orders and are entitled to full faith and credit.

3.13. "Protective Order" under West Virginia Code 48-28-2 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, means an injunction or other order, issued under domestic violence, family violence, stalking, or similar domestic relations laws. A protective order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual. A protective order must be issued by a court; agency or other entity authorized by law to issue or modify a protective order. Protective Orders include out-of-state orders and are entitled to full faith and credit.

§149-7-4. Personal Safety Orders.

4.1. A personal safety order is an injunction or other order, issued under sexual assault, attempted sexual assault, stalking, or similar laws. A personal safety order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual. A personal safety order may include any or all of the following relief: order the respondent to refrain from committing or threatening to commit an act specified in subsection (a) of West Virginia Code 53-8-4 against the petitioner; order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or

through third parties regardless of whether those third parties know of the order; order the respondent to refrain from entering the residence of the petitioner; order the respondent to remain away from the place of employment, school or residence of the petitioner; order the respondent not to visit, assault, molest, or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner; order either party to pay filing fees and costs. A personal safety order must be issued by a court; agency or other entity authorized by law to issue or modify a personal safety order.

4.1.a. Stalking offenses occurring in the context of intimate partner or other domestic situation may be covered by Domestic Violence Protective Orders and Legislative Rule 149 CSR 3 and therein governed as other Domestic Violence Offenses.

4.1.b. Protective orders include, but are not limited to, Emergency Protective Orders, Temporary Emergency Protective Orders, Domestic Violence Protective Orders, Temporary or Final Protective Orders issued as a part of Temporary or Final Divorce Orders, or any other terms or orders that have a similar purpose.

4.1.b.1. Domestic Violence protective orders are considered criminal in nature. Law enforcement agencies and officers in the state of West Virginia are responsible for the service of all orders and petitions for protection. Service of protective and personal safety orders shall be a priority. The law enforcement officer shall immediately, but not longer than 72 hours, make every reasonable effort to locate respondent for service of protective and personal safety orders. Service shall be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in personal safety or protective order actions.

4.1.b.2. When the officer serves the order upon the respondent, the officer shall file the return of service within 24 hours to the circuit clerk's office.

4.1.c. When serving the personal safety order, the officer shall inform the respondent of the mandatory relief of the order.

4.1.d. If the court prohibits the respondent from possessing firearms as defined in West Virginia Code 53-8-7, then the law enforcement officer should:

4.1.d.1. Inquire about whether or not a weapon was used or threatened to be used in the commission of the offense predicating the petitioning for the personal safety order;

4.1.d.2. Determine if the respondent has violated any prior order as specified in this protocol;

4.1.d.3. Determine if the respondent has been convicted of an offense involving

the use of a firearm;

4.1.e. The serving officer should request that the respondent surrender all of his or her firearms and ammunition to the officer or transfer to a qualified third party (a party who is not prohibited from possessing firearms under state and federal law).

4.1.f. The serving officer should encourage the respondent to make a decision about his or her firearms while the officer is present to verify the surrender or transfer; and

4.1.g. If the respondent refuses to surrender or transfer his or her firearms and ammunition after the serving officer has provided a reasonable opportunity to do so, then the serving officer shall arrest the respondent for violation of the personal safety order.

4.2. A personal safety order remains in effect for the period of time stated in the order unless the personal safety order is dismissed or extended by the court.

4.3. A personal safety order issued in any county in West Virginia is in effect in all counties in West Virginia.

4.4. A personal safety order issued by a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band that has jurisdiction to issue protective orders shall be accorded full faith and credit and enforced as if it were an order of this state, whether or not the relief ordered is available in this state, if there is probable cause to believe that it is a valid foreign protection order.

4.4.a. There is probable cause to believe that a personal safety order is valid if it identifies both the protected individual and the respondent and the order appears, on its face, to be authentic and currently in effect.

4.4.b. In circumstances whereby a written personal safety order is not presented, the law enforcement officer may consider other credible information in determining whether there is probable cause to believe that the order exists and is currently in effect.

4.4.c. Presentation of a certified copy of a personal safety order is not required for enforcement.

4.4.d. For the purposes of this section, the personal safety order may be inscribed on any tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form.

4.4.e. A personal safety order, temporary or final, from another jurisdiction may be

enforced even if the order is not registered, filed or entered into the state law enforcement information system.

4.5. If a law enforcement officer determines that an otherwise valid personal safety order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order. Once the officer has notified or served the respondent, the officer shall enforce the order.

§149-7-5. Dispatcher Responsibilities

5.1. Dispatchers under the supervision of a law enforcement agency and communications and emergency operations centers shall dispatch stalking calls in the same manner as any other call for police assistance, in accordance with the priority criteria prescribed by generally applicable department procedures. Whenever possible, the dispatcher should assign a back-up unit.

5.2. The dispatcher receiving a stalking call should attempt to elicit from the caller, and should communicate to the responding law enforcement officer, as much of the following information, in the following order of importance, as time and exigencies of the reported incident allow:

5.2.a. The nature of the incident;

5.2.b. The address of the incident, including the apartment number or the name of the business, as appropriate;

5.2.c. A telephone number where the caller can be called back;

5.2.d. Whether weapons are involved or present and if so, where they are located;

5.2.e. Whether or not there are any injuries and whether or not an ambulance is needed;

5.2.f. A description of the accused and whether or not the accused is present and, if not, the most likely location, direction of flight, and mode of travel of the accused;

5.2.g. Whether other individuals, including children, are at the scene;

5.2.h. Whether any party is using or is under the influence of alcohol or drugs;

5.2.i. Whether a personal safety order or a domestic violence protective order is in effect and if it includes consent to enter the residence to enforce the protective

order;

5.2.j. If the caller is the victim and in the residence, would they consent to entry;

5.2.k. Whether a criminal warrant is outstanding on the accused; and,

5.2.l. Whether the accused has been released on bail on a charge of a crime against a family or household member, including a family or household member who is a child, with any conditions on bail regarding contact with the victim or complainant.

5.3. If the caller is the victim, or if the caller is a witness to a stalking incident in progress, the dispatcher should keep the caller on the telephone and should relay ongoing information provided by the caller to the responding law enforcement officer. The dispatcher should tell the caller that help is on the way and when the police may arrive.

5.4. If the dispatcher has ready access to police department records, all information relevant to the situation shall be relayed to the officer. The dispatcher shall access the statewide domestic violence protective order database, and National Crime Information Center (NCIC), and other criminal and applicable information databases to determine whether the parties have been previously involved in similar incidents or whether there is a protective order or a personal safety order involving the parties in effect, and relay that information to the responding law enforcement officer.

5.5. If the dispatcher has reason to believe that the accused is on bail and if the dispatcher has ready access to magistrate court records that show whether there are conditions of bail, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officer; including the existence of a protective order or a personal safety order prohibiting the possession of firearms.

§149-7-6. Initial Law Enforcement Officer Response.

6.1. Approaching the scene.

6.1.a. The law enforcement officer should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.

6.1.b. Unless the circumstances of a particular incident require different measures, the law enforcement officer should follow the approach procedures set out in the remainder of this section. The law enforcement officer should:

6.1.b.1. Approach the scene inconspicuously. The law enforcement officer should not use sirens or lights in the immediate area of the scene of the incident;

6.1.b.2. Park away from the immediate scene of the incident;

6.1.b.3. Keep a safe exit route in mind;

6.1.b.4. Be alert for the employment of weapons from doors, windows, or nearby vehicles;

6.1.b.5. Be alert for persons moving away from the immediate scene of the incident; and,

6.1.b.6. Employ other standard precautionary measures for approaching high risk incident scenes.

6.2. Initial contact.

6.2.a. The responding law enforcement officer should identify himself or herself, explain the law enforcement presence, and request entry into the residence or business. The law enforcement officer shall ask to see the person who is the subject of the call. The law enforcement officer shall not reveal the caller's name.

6.2.b. Complete a report on all incidents where a reporting party or victim alleges another person violated stalking law

6.2.c. In some exigent circumstances, forced entry is necessary and appropriate. Exigent Circumstances include but are not limited to:

6.2.c.1. The residence area shows signs of a fight or scuffle;

6.2.c.2. When a person from inside the residence calls for assistance or is yelling;

6.2.c.3. When the law enforcement officer has reason to believe that the person is wounded, injured, or is otherwise in need of assistance;

6.2.c.4. When the accused is suspected of concealing the victim;

6.2.c.5. When the call came from the residence and the victim is identified as the caller and entry is denied by others present on the scene; or

6.2.c.6. When the officer has articulable suspicion that absent immediate entry serious bodily injury or death may result.

6.3. Establishing control of scene.

6.3.a. Once at the scene of the incident, the responding law enforcement officer should establish control by:

6.3.a.1. Identifying and securing potential weapons;

6.3.a.2. Separating the victim and the accused when circumstances are appropriate;

6.3.a.3. Inquiring about injuries (including inquiry about possible internal injuries), administering first aid, and notifying emergency medical services as necessary;

6.3.a.4. Identifying all occupants and witnesses on the premises; and

6.3.a.5. Separating occupants and witnesses from the victim and accused and keeping them out of hearing range (to avoid compromising their witness status).

6.4. On-scene investigation.

6.4.a. The law enforcement officer shall conduct an investigation using the same procedures that the law enforcement officer would use in any other on-scene criminal investigation. While conducting the investigation the law enforcement officer shall attempt to establish the existence of credible corroborative evidence. The law enforcement officer shall make specific note of and document all statements made by the victim, accused and all witnesses, particularly those statements that may be admissible as evidence as exceptions to the hearsay rule such as excited utterances, present sense impression and statements made for medical treatment. The law enforcement officer shall also determine if such statements were made to the dispatcher and take appropriate measures to secure and preserve such evidence.

6.4.b. The law enforcement officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the accused, witnesses, and bystanders if possible.

6.4.c. In questioning the victim, the law enforcement officer should use supportive interview techniques. The law enforcement officer should ask the victim about previous stalking or similar incidents. Determine the frequency and severity of the stalking or similar incidents. Determine if they are domestic in nature. The law enforcement officer should not tell the victim what action the law enforcement officer intends to take until all available information has been collected.

6.4.d. The law enforcement officer should interview and record, if possible, the victim and any witnesses (including all child witnesses) as fully and as soon as circumstances allow, taking down names, addresses, and other relevant information. When interviewing the victim and any witnesses (including all child witnesses) law enforcement officer should determine whether the victim and any witnesses (including all child witnesses) allege facts that constitute all of the elements of stalking. If so, the law enforcement officer should inquire whether the victim and any

witnesses are willing to sign a statement containing those facts. The law enforcement officer should also inquire about past abuse and past behavior or other crimes to aid the law enforcement officer in evaluating the dangerousness of the accused. The law enforcement officer should proceed with the investigation even in the absence of a statement from both a victim and any witnesses (including child witnesses).

6.4.e. The responding law enforcement officer should interview and record, if possible, the accused as fully as circumstances allow inquiring about the nature of the incident. The law enforcement officer should be alert to possible incriminating statements.

6.4.f. In cases where the accused or victim does not speak English, law enforcement officer should use a neutral interpreter when possible. Officers should use caution when using family and friends and especially children, to provide interpreter services.

6.4.g. In the collection of evidence and taking of statements, the law enforcement officer shall protect the constitutional rights of the accused in accordance with current laws and statutes of the state of West Virginia and of the United States.

6.4.h. Children should be interviewed in a manner appropriate to the child's age. If the law enforcement officer has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, the law enforcement officer shall immediately report the circumstances to Child Protective Services (CPS).

6.4.i. The law enforcement officer should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.). The law enforcement officer should make reasonable efforts to locate and interview the accused as to any statements or evidence they may wish to provide prior to arrest or obtaining a warrant.

6.4.j. The law enforcement officer shall collect and preserve all physical evidence reasonably necessary to support prosecution, including contact made through electronic devices, logs kept by the accused, witness accounts, officer observation, etc. All physical evidence shall be collected, noted in reports, and vouchered as in other criminal investigations.

6.4.j.a. Electronic Evidence Collection

6.4.j.1.A. Digital Forensics is the recovery of evidence from various electronic and magnetic media such as computer hard drives, compact disks, digital cameras, memory cards, cellular telephones and mobile devices to retrieve information of probative value stored or transmitted in digital form.

Precautions must be taken in the collection, preservation, and examination of electronic evidence. Handling the evidence at the crime scene normally consists of the following steps:

6.4.j.1.A.1. Recognition and Identification

6.4.j.1.A.2. Collection and Preservation

6.4.j.1.A.3 Packaging, Transportation, Storage and Submission for Analysis

6.4.j.2. Recognition and Identification of Electronic Evidence

6.4.j.2.A. Computer systems typically consist of data storage devices, a display, keyboard, and mouse. These can be in the form of a laptop, desktop, tablet, or smart phone. Evidence is found in files that are stored on hard drives, storage devices and removable media.

6.4.j.2.B. Removable media is any device that can be connected to a computer for storage but is not part of the computer itself. This includes memory cards, flash drives, external hard drives, recording devices, and access control devices (dongles, smart cards, and biometric scanners). Memory cards can be as small as a human fingernail and flash drives can easily be disguised as other objects such as pens, pocket knives, and lighters. These devices can store the same files found on computer systems.

6.4.j.2.C. Digital cameras are recording devices for images and videos. These devices can have internal storage and contain memory cards. Electronic evidence stored within the camera can only be obtained if the camera is powered on, and therefore chargers should be collected along with these devices. Potential evidence includes images, videos, and date and time stamps. If memory cards are present, any files that can be recovered from removable media can be present.

6.4.j.2.D. Answering machines are electronic devices that store voice messages from callers. Some models use a magnetic tape while others use an electronic digital recording system. Since batteries have a limited life, data could be lost if they fail. Appropriate personnel should be informed that a device powered by batteries is in need of immediate attention. Caller identification information, deleted messages, and dates and times of recordings are all potential evidence that can be collected here.

6.4.j.2.E. Telephones can include but are not limited to: landlines, cable, VOIP, satellite, and cellular telephones. Call history can be obtained from telephones including date and timestamps and caller identification. Cellular

telephones can store small amounts of data such as text messages and calls. Cellular telephones can be more advanced like smart phones and can store the same information as a computer. Data may be lost if batteries die, so finding and securing power cables is essential.

6.4.j.2.F. Mobile devices such as personal digital assistants (PDAs), portable media players or electronic organizers have the same capabilities of a computer and smart phone. These may have special cradles or cables to connect to a computer which should be collected with the device. Limited battery life in these devices can cause data loss if they fail, so finding and securing power cables is essential.

6.4.j.2.G. Other types of electronic evidence include pagers, digital watches, floppy disks, disks, business video surveillance, CD-ROMs, and GPS devices. Pagers can hold address information and contact history. Digital watches can store email information and address books. GPS (global positioning systems) can hold points of interest, travel logs, and address books.

6.4.j.3. Collection and Preservation of Electronic Evidence

6.4.j.3.A. The search for and collection of evidence at an electronic crime scene may require a search warrant or consent from the owner. Recognize that other types of evidence such as trace, biological, or latent prints may exist. Follow your agency's protocol regarding evidence collection. Destructive techniques (e.g., use of fingerprint processing chemicals) should be postponed until after electronic evidence recovery is done.

6.4.j.3.B. Items relevant to subsequent examination of electronic evidence may exist in other forms (e.g., written passwords and other handwritten notes, blank pads of paper with indented writing, hardware and software manuals, calendars, literature, text or graphical computer printouts, and photographs) and should be secured and preserved for future analysis. These items frequently are in close proximity to the computer or related hardware items.

6.4.j.3.C. Computer evidence, like all other evidence, must be handled carefully and in a manner that preserves its evidentiary value. This relates not just to the physical integrity of an item or device, but also to the electronic data it contains. Certain types of computer evidence, therefore, require special collections, packaging, and transportation. Consideration should be given to protect data that may be susceptible to damage or alteration from electromagnetic fields such as those generated by static electricity, magnets, radio transmitters, and other devices.

6.4.j.3.D. Multiple computers may indicate a computer network. Likewise, computers located at businesses are often networked. In these situations, specialized knowledge about the system is required to effectively recover evidence and reduce your potential for civil liability. When a computer network is encountered, contact the forensic computer expert in your department or outside consultant identified by your department for assistance.

6.4.j.3.E. Collection of Computer Systems

6.4.j.3.E.1. Record in notes all actions taken and any observable changes in the display, computer, printer, or other peripherals that result from actions taken.

6.4.j.3.E.2. Observe the display and determine if it is on, off, or in sleep mode. Then decide which of the following situations applies and follow the steps for that situation.

Situation 1: Display is on and work product or desktop is visible.
Action: Photograph screen and record information displayed.
Proceed to Situation 3

Situation 2: Display is on and screen is blank (sleep mode) or screen saver (picture) is visible
Action: Move the mouse slightly (without pushing any buttons). The screen should change and show work product or request a password.
If the mouse movement does not cause a change in the screen, DO NOT perform any other keystrokes or mouse operations.
Photograph the screen and record the information displayed.
Proceed to situation 3.

Situation 3: Display is off.
Make a note of the "off" status.
Action: Turn the monitor on, then determine if the monitor status is as described in either situation 1 or 2 above and follow those steps.

6.4.j.3.E.3. Regardless of the power state of the computer (on, off, or sleep mode), FIRST remove the power source cable from the computer THEN remove from the wall outlet. If dealing with a laptop, in addition to removing the power cord, remove the battery pack.

6.4.j.3.E.4. Photograph and label the connections of the computer and the

corresponding cables.

6.4.j.3.E.5. Record or log evidence according to your departmental procedures.

6.4.6.3.F. Collection of Other Electronic Devices

6.4.6.3.F.1. Electronic devices, such as the ones in the list below, may contain potential evidence associated with criminal activity. Unless an exigent circumstance exists, the device should not be operated. Should it be necessary to access information from the device, all actions associated with the manipulation of the device should be documented to preserve the integrity of the information. Special attention should be given to the following devices:

6.4.6.3.F.1.(a). Wireless mobile devices should be removed from the wireless networks. Ways to do this can include: removing the battery or placing the cellular telephone in a Faraday bag/container or wrap the device in three layers of aluminum foil and place the device in an empty metal paint can. Data from cellular telephones can be transferred onto computer systems so these systems should be collected. A preservation order should be sent to cell phone providers to preserve call logs, subscriber information and text messages. A subpoena must be served to obtain these records and a search warrant is necessary for any content.

6.4.6.3.F.1.(b) GPS devices should be turned off to prevent potential evidence from being overwritten.

6.4.j.4. Packaging, Transportation, Storage, and Submission

6.4.j.4.A. Actions taken should not add, modify, or destroy data stored on an electronic device, computer or other media. Computers are fragile electronic instruments that are sensitive to temperature, humidity, physical shock, static electricity, and magnetic sources. Therefore, special precautions should be taken when packaging, transporting, and storing electronic evidence.

6.4.j.4.A.1. Packaging procedure:

6.4.j.4.A.1.(a). Ensure that all collected electronic evidence is properly documented, labeled, and inventoried before and after packaging.

6.4.j.4.A.1.(b). Pay special attention to latent or trace evidence and take actions to preserve it.

6.4.j.4.A.1.(c). Pack magnetic media in antistatic packaging (paper or antistatic plastic bags). Avoid using materials that can produce static electricity, such as standard plastic bags.

6.4.j.4.A.1.(d). Avoid folding, bending, or scratching computer media such as diskettes, CD–ROMs, and tapes or other types of external storage devices.

6.4.j.4.A.2. Transportation procedure:

6.4.j.4.A.2.(a). Keep electronic evidence away from magnetic sources. Radio transmitters, speaker magnets, and heated seats are examples of items that can damage electronic evidence.

6.4.j.4.A.2.(b). Avoid storing electronic evidence in vehicles for prolonged periods of time. Conditions of excessive heat, cold, or humidity can damage electronic evidence.

6.4.j.4.A.2.(c). Ensure that computers and other components that are not packaged in containers are secured in the vehicle to avoid shock and excessive vibrations.

6.4.j.4.A.3. Storage procedure:

6.4.j.4.A.3.(a). Store evidence in a secure area away from temperature and humidity extremes. Protect it from magnetic sources, moisture, dust, and other harmful particles or contaminants.

6.4.j.4.A.3.(b). Potential evidence such as dates, times, and systems configurations may be lost as a result of prolonged storage. Since batteries have a limited life, data could be lost if they fail. Therefore, appropriate personnel should be informed that a device powered by batteries is in need of immediate attention.

6.4.j.4.A.4. Submission procedure:

6.4.j.4.A.4.(a). Complete a Forensic Laboratory Case Submission Form, WVSP-53, completely.

6.4.j.4.A.4.(b). Remove all internal hard drives from desktop computers or towers. The hard drive(s) need to be removed from the computer before submission. Complete laptops will be accepted, however, since special techniques may be required to remove the hard drive. If you should need guidance in removing hard drives from a desktop or laptop computer, contact a digital forensics analyst for more

information.

6.4.j.4.A.4.(c). Mobile phones should be turned off and the battery removed. If the phone is locked, include an unlock code if possible.

6.4.j.4.A.4.(d). List, on a separate sheet of paper, a brief description of the case, evidence sought, and a list of keyword search terms relative to the case if appropriate. Names, aliases, screen names, e-mail addresses, and any other pertinent information should be included.

6.4.j.4.A.4.(e). The West Virginia State Police Digital Forensic Unit (WVSP DFU) is the entity available to all law enforcement agencies in the state for technical assistance and evidence processing:

Morgantown Laboratory
Morgantown, WV 26505

Huntington Laboratory
Huntington, West Virginia 25701

6.4.k. The law enforcement officer shall also document and report the victim's state of mind to show a level of fear for their safety or significant emotional distress. Items to document include but are not limited to whether the victim:

6.4.k.1. Moved to a new location

6.4.k.2. Obtained a new phone number

6.4.k.3. Put a tap on the phone

6.4.k.4. Told friends, coworkers, security, etc. about the stalking

6.4.k.5. Changed work schedules or route to work

6.4.k.6. Stopped visiting places previously frequented

6.4.k.7. Taken self-defense classes or purchased self-protection items, i.e. pepper spray

6.4.k.8. Installed an alarm system

6.4.l. The law enforcement officer should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officer should inquire about injuries of the victim that are concealed by

clothing or otherwise not readily apparent. The law enforcement officer should advise the victim to have photographs taken if injuries appear later.

6.4.m. The law enforcement officer may conduct surveillance on the accused.

6.5. Advising the victim.

6.5.a. The law enforcement officer should advise the victim about:

6.5.a.1. Personal safety orders or protective orders
6.5.a.2. Contact information for local victim advocacy or other services
6.5.a.3. The Law Enforcement Officer's pertinent information
6.5.a.4. How to document incidents surrounding the alleged stalker including but not limited to:

6.5.a.4.A. Keeping a diary with all contact attempts, dates, times, and details of the incident and witnesses to the incident.
6.5.a.4.B. Contacting the service provider to have them document any contact.
6.5.a.4.C. Securing and preserving emails or text messages or other contact made through electronic devices.

6.5.b. The law enforcement officer should advise the victim to:

6.5.b.1. Stop all contact with the alleged stalker.
6.5.b.2. Prepare for their safety by:

6.5.b.2.A. Having emergency numbers ready.
6.5.b.2.B. Keeping a reserve of necessities ready such as: a suitcase, money, medication, clothes, and children's items.

6.5.b.3. Report EACH incident of stalking to your local law enforcement agency.

6.5.b.4. Not let third parties other than law enforcement intervene with the alleged stalker.

6.6. Enforcing any orders or bail conditions.

6.6.a. To determine the existence of a personal safety order, ask the victim whether there is a valid personal safety order in effect. If so, the law enforcement officer should ask the victim if he or she can produce a copy of the personal safety order. If the victim cannot produce a copy of the personal safety order then the officer should attempt to verify the existence of an order by accessing, if applicable, the statewide protective order database, NCIC, and identifying the issuing county and court. The

law enforcement officer shall enforce all orders. Where the respondent has been served with the personal safety order or has actual notice of the personal safety order, then the law enforcement officer shall follow the arrest authorization provisions as set forth in this rule.

6.6.b. If a law enforcement officer determines that an otherwise valid personal safety order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order, such as vacating the premises, surrendering firearms, etc. Once the officer has notified or served the respondent, and the respondent fails to comply with the order, the officer shall enforce the order.

6.6.c. If the officer makes verbal notification, the officer shall notify the respondent of the following minimum mandatory relief:

6.6.c.1. Order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner, or engaging in other conduct that would place the petitioner in reasonable fear of bodily injury.

6.6.c.2. Inform the respondent that the order is in full force and effect in every county of this state.

6.6.d. The law enforcement officer shall document the notification in writing to the circuit clerk's office.

6.6.e. Verbal notification does not relieve the agency or officer from serving the order.

6.6.f. If the victim is aware of pending criminal charges against the accused and bail conditions, the law enforcement officer should verify such information by contacting the local law enforcement department specified by the victim or the issuing court to verify the conditions of release on bail and initiate the proper proceedings.

6.6.g. The law enforcement officer shall enforce all personal safety or similar type orders that have been issued by a circuit judge, family court judge or magistrate of this state, and from courts of another state, territory, or tribe.

6.6.h. Whether or not an arrest is made, the responding law enforcement officer should not leave the scene of the incident until the situation is under control and the likelihood of immediate violence has been eliminated. The law enforcement officer should stand by for a reasonable period of time to ascertain safety of surroundings and while victims or other persons desiring to leave gather necessities for short-term absences from residence, such as clothing, medication, and necessary documents.

6.6.i Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to violate a valid personal safety order is a violation of state law and should also be referred to federal authorities.

6.7. Missing Persons Investigation; Stalking

6.7.a. A law enforcement agency, under WV Code § 48-27-601, shall initiate a missing persons investigation if the agency:

6.7.a.1. Has possession of a valid personal safety order, or has notice of the existence of a personal safety order which is in effect, or has been expired for a period of less than thirty (30) days, and receives a report that a person protected by the order has been reported missing; or,

6.7.a.2. Receives information that at the time of disappearance the missing person was subjected to stalking,

6.7.b. An agency or department shall not have a policy delaying the beginning of an investigation of a missing person, which meets the criteria outlined in this subsection.

6.7.c. The investigating officer cannot release the whereabouts of the alleged missing person, if found, without expressed consent of that person.

§149-7-7. The Arrest Decision.

7.1. In most circumstances, the responding law enforcement officer shall arrest the accused whenever arrest is authorized. In addition to any other report required, law enforcement officer who does not make an arrest after investigating a complaint of stalking-shall submit a written report setting forth the grounds for not arresting.

7.2. Arrest is authorized in the following circumstances:

7.2.a. When the law enforcement officer has probable cause to believe that the accused has committed a felony;

7.2.b. When the law enforcement officer observes the commission of a felony or a misdemeanor;

7.2.c. When the law enforcement officer observes the violation of a valid personal safety order, including the presence of the accused at a location prohibited by the personal safety order; the officer shall arrest the accused provided the accused was served with the order or had actual notice of the order and its contents;

7.2.d. When the law enforcement officer observes any violation of a condition of bail, probation or parole, including the presence of the accused at the residence of the victim;

7.2.e. When the accused is alleged to have committed stalking or the violation of a valid personal safety order; law enforcement officer has authority to arrest the accused when:

7.2.e.1. The law enforcement officer has observed credible corroborative evidence that the offense has occurred; or,

7.2.e.2. The law enforcement officer has received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of a valid personal safety order; or,

7.2.e.3. A misdemeanor or felony not included among those specified in this rule has been committed and the law enforcement officer or another person obtains or has previously obtained an arrest warrant; or,

7.2.e.4. A capias has been issued, or when a circuit judge has signed an attachment order.

7.2.e.5. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to commit stalking is a violation of federal law and should also be referred to federal authorities.

7.3. The law enforcement officers shall not consider the following factors in making the arrest decision:

7.3.a. The marital status of the parties;

7.3.b. The ownership or tenancy rights of either party;

7.3.c. Verbal assurances that the stalking will stop;

7.3.d. A claim by the accused that the victim provoked or perpetuated the violence;

7.3.e. Speculation that the victim or witnesses will not follow through or cooperate with criminal prosecution (whether based on prior incidents involving the same victim, the victim's hesitancy about pursuing prosecution, or any other factor);

7.3.f. The disposition of any previous police calls involving the same victim or accused;

7.3.g. Speculation that the arrest may not lead to a conviction;

7.3.h. The existence or nonexistence of a current personal safety order (except insofar as the violation of the order requires arrest);

7.3.i. Concern about reprisals against the victim;

7.3.j. Adverse financial consequences that might result from the arrest;

7.3.k. That the incident occurred in a private place;

7.3.l. The racial, cultural, social, political, or professional position or sexual orientation of either the victim or the accused; or,

7.3.m. The criminal history of the victim

7.4. It is the law enforcement officer's or prosecuting attorney's responsibility to decide whether an arrest should be made unless the law enforcement officer is required to make an arrest for violation of a valid personal safety order or a violation of the terms and conditions of bail, probation or parole.

7.5. Firearms

7.5.a. The law enforcement officer shall seize all firearms, ammunition, and any other weapons that are alleged to have been involved or threatened to be used in the commission of stalking.

7.5.b. The law enforcement officer may secure a weapon that is in plain view of the officer, or is discovered pursuant to a consensual search, or is necessary for the protection of the officer or other persons.

7.5.c. The law enforcement officer shall seize all firearms and ammunition possessed in violation of a personal safety order prohibiting possession of a firearm.

§149-7-8. Effectuating the Arrest.

8.1. Persons arrested pursuant to this rule, shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

8.2. Because the risk is high in stalking cases that the accused will continue to seek contact with the victim, if a warrant is necessary, the law enforcement officer should obtain and execute the warrant as soon as practical.

8.3. When the accused is a minor (under 18 years of age), the provisions of this rule are fully applicable, except that the law enforcement officer should arrest and process the juvenile pursuant to W. Va. Code § 49-5-1 et. seq.

§149-7-9. Procedure when Arrest is not Made.

9.1. If an arrest is not made the law enforcement officer should:

9.1.a. Explain to the victim the reasons that an arrest is not being made;

9.1.b. Advise the victim of the applicability of criminal laws, procedures for filing a criminal complaint, the availability of a petition for a personal safety order, the procedures for filing a petition, and the remedies an order may contain;

9.1.c. Encourage the victim to contact the nearest available sexual assault or domestic violence program for information regarding services available to victims of stalking;

9.1.d. Inform the victim that the law enforcement officer will provide transportation for or facilitate transportation of the victim to a community-based service provider or the appropriate court; and,

9.1.e Inform the victim they have the right to file a claim with the West Virginia Crime Victims Compensation Fund.

§149-7-10. Other On-Scene Assistance to Victims and Dependents.

10.1. If an arrest is made or an arrest warrant obtained, the law enforcement officer should:

10.1.a. Advise the victim of what will happen next, including the probability that the accused will be in custody for only a short period of time; and

10.1.b. Obtain from the victim information to be included in the arrest report indicating any special conditions of bail that should be requested at the initial appearance before the magistrate (i.e., places where the accused should be specifically prohibited from appearing).

10.2. When the law enforcement officer has a reasonable suspicion that an animal is a

victim of cruel or inhumane treatment, he or she shall report the suspicion to the county humane officer within twenty-four hours of the response to the alleged incident of stalking.

10.3. Elderly victims or incapacitated adult victims.

10.3.a. When a victim of stalking is elderly or incapacitated adult or appears to be incapacitated, the law enforcement officer should attempt to provide and secure appropriate care and assistance for the well-being of the elderly or incapacitated adult.

10.3.b. If there is no one available to assist the elderly or incapacitated adult, the law enforcement officer should make an emergency referral to Adult Protective Services. The law enforcement officer should remain at the scene until the Adult Protective Services worker arrives, or should transport the elderly or incapacitated adult to a medical facility, or other appropriate place where the elderly or incapacitated adult can wait for the worker.

10.3.c. In addition to providing the notification required by other provisions of this rule, the law enforcement officer should advise the elderly or incapacitated adult of the availability of protective services through Adult Protective Services.

§149-7-11– Upon Arrest

11.1. A person arrested for violation of a personal safety order shall be charged with all crimes allegedly committed as a result of the incident in which the violation occurred.

11.2. The accused shall be taken before a magistrate in the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia for initial appearances in criminal cases.

11.3. The arresting law enforcement officer may inform the magistrate or court of any circumstances surrounding the arrest of the accused which would have an effect on conditions of bail, provided that the amount and conditions of bail are a judicial decision that rests solely with the magistrate or court.

§149-7-12. Reporting.

12.1. A West Virginia Intelligence Exchange (WVIX) Report shall be developed for use and is to be completed by the law enforcement officer responding to any call covered by this rule.

12.2. Data collection.

12.2.a. All WVIX reports on either party should be kept together or cross-referenced so that repeat stalking incidents can be documented.

12.2.b. The report, or another document (such as an index card) or computer entry generated from the report, shall become a stalking tracking report.

12.2.c. To the extent possible, the stalking tracking report shall be accessible to dispatchers and the law enforcement officer.