

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

Form #3

Do Not Mark In This Box

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2010 JUL 27 PM 1:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND**

FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: WV Division of Justice And Community Services *Crime, Delinquency and Correction, Gov's. Comm. On* TITLE NUMBER: 149

CITE AUTHORITY: Statutory 48-27-1102

AMENDMENT TO AN EXISTING RULE: YES NO

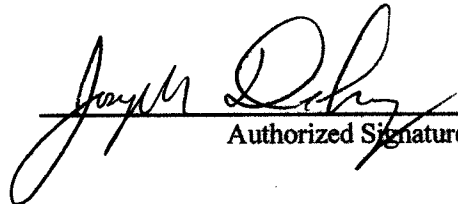
IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 3

TITLE OF RULE BEING AMENDED: Protocol for Law Enforcement Response to Domestic Violence

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 07/27/10

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Governor's Committee on Crime Delinquency and
Correction, Division of Justice and Community Services
1204 Kanawha Boulevard, East Charleston, WV 25301
Contact Person: Sarah J. Brown, Senior Justice Program
Specialist, (304) 558-8814, ext. 53337 e-mail:
Sarah.J.Brown@wv.gov

LEGISLATIVE RULE TITLE: Title 149 Protocol for Law Enforcement Response to Domestic
Violence Series 3

1. Authorizing statute(s) citation 48-27-1102

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

Filed for public comment with Secretary of State Office July 23, 2010

b. What other notice, including advertising, did you give of the hearing?

E-mailed to all members of the Law Enforcement Training Planning and Development Team to
share with their member agencies.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 24, 2010 Public Comment Period ended

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 23, 2010

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Sarah J. Brown, Senior Program Specialist

Division of Justice and Community Services (formally Division of Criminal Justice Service) 1204 Kanawha Boulevard, East

Charleston, WV 25301

(304) 558-8814, ext. 53337

E-mail: Sarah.J.Brown@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

same as f

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Not required

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

Type of Rule: Legislative Interpretive Procedural

Agency: Governor's Committee on Crime, Delinquency and Correction

Address: c/o Sarah J. Brown
WV Division of Criminal Justice Services
1204 Kanawha Boulevard, East Charleston, WV 25301

Phone Number: (304) 558-8814, ext. 53337 Email: Sarah.J.Brown@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

Rule Title:

Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

N/A

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

Date: 24, June, 2010

Signature of Agency Head or Authorized Representative



MEMORANDUM

TO: Secretary of State Office

FROM: Sarah J. Brown *SJB*
Senior Justice Programs Specialist

DATE: July 27, 2010

RE: Comment on Rule 149

Please be advised we did not receive any written or other comments concerning the Rule Title 140 "Protocol for Law Enforcement Response to Domestic Violence Series 3".

Should you have any questions, please feel free to contact me at (304)558-8814, extension 53337 or Sarah.J.Brown@wv.gov

SJB/aw



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

**SERIES 3
Protocol for Law Enforcement Response to Domestic Violence**

STATEMENT OF FACTS AND CIRCUMSTANCES

The following amendments to 149CSR3 are being proposed:

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 domestic calls. It shall be mandatory for all law enforcement agencies and dispatch centers to post this Rule in a readily visible location; and, ensure that all law enforcement officers and dispatchers are aware of its location.

Provides clarification to which the Rule applies to and a forum for the Rule to view by law enforcement officers and dispatchers.

2.2.1. To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, ~~rather than mediation~~ as the preferred means of police response to domestic violence;

Provides clarification

2.2.2. To afford maximum protection and support to victims of domestic violence through a coordinated ~~program~~ response of law enforcement and victim assistance;

Provides clarification

3.2.1. a. Credible evidence of the victim's condition may include, but is not limited to, one or more contusions, scratches, cuts, abrasions, swellings, or other signs of physical injury; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of strangulation, choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

Difficulty in breathing or breathlessness is often a sign of strangulation (medical examiner's office suggestion).

3.2.2. "Deadly weapon" means an instrument that is designed to be used to produce serious bodily injury or death, or is readily adaptable to that use. The term "deadly weapon" includes, but is not limited to, a blackjack, a gravity knife, a knife, a switchblade knife, a nunchuka, metallic or false knuckles, ~~a pistol, or a revolver~~ and firearms, as defined in W. Va. Code §61-7-2.

Clean-up language (firearms are defined in W. Va. Code §61-7-2).

3.1.7. "Protective Order" means an injunction or other order, issued under domestic violence, family violence, antistalking, 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.

3.3.8. "Protection Order" means any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) 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 protection.

Differentiates between a protective and protection order.

3.1.6. – "Dispatcher" – means a telecommunicator who receives calls from individuals who need assistance from firefighters, police 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.

Clarification

3.2.6. C. Creating fear of physical harm by harassment, stalking, psychological abuse, or threatening acts;

Includes a common element of fear.

4.1.2. Domestic violence protective orders are considered criminal in nature. Law enforcement agencies and officers in the ~~who are sworn law enforcement officers in the~~ state of West Virginia are responsible for the initial service of all protective orders in order to ensure the most prompt service of the protective order. Service of protective orders shall be a priority. Law enforcement officers shall immediately make every reasonable effort to locate respondents for service of protective orders. Service shall be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in domestic violence protective order actions.

Clean-up language

4.1.2.a. 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.

Clarification to conform with a new Code change

4.1.3. When serving the protective order, the officer shall inform the respondent that possession of firearms and ammunition is prohibited under state and federal law.

4.1.4. The serving officer should inquire of the respondent whether the Respondent owns or possesses firearms and where the firearms and ammunition are located.

4.1.5. The serving officer should inquire of the respondent what the respondent intends to do with his or her firearms.

4.1.6. The serving officer should suggest to the respondent to surrender to the officer or transfer to a qualified third party (a party who is not prohibited from possessing firearms under state and/or federal law) all of the respondent's firearms and ammunition.

4.1.7. 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.

4.1.8. The serving officer should inform the respondent that failure to surrender or transfer his or her firearms and ammunition could result in the respondent's arrest for violation of the court's order.

4.1.8. If a 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 should arrest the respondent for violation of the protective order.
This is a new section that was inserted to include the new state firearms laws.

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

~~4.2.1. A protective order remains in effect longer than the period of time stated in the order if:~~

~~4.2.1.a. The protected person has filed for and received an extension of the protective order;~~

~~4.2.1.b. The protective order was automatically extended by the filing or reopening of a court case between the same parties after the protective order was entered; or,~~

~~4.2.1.c. The protective order was extended by an order entered in another court case between the same parties.~~

~~4.2.2. A protective order does not remain in effect for the period of time stated in the order if:~~

~~4.2.2.a. An order was entered by the court dismissing the protective order; or,~~

~~4.2.2.b. In a case between the same parties which extended the protective order as a matter of law, a temporary or final order was entered, and the temporary or final order did not extend the protective order.~~

Clarified and simplified the language

4.5. If a law enforcement officer determines that an otherwise valid protective 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 make a reasonable effort to serve the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order. The officer shall then enforce the order.~~ Once the officer has notified or served the respondent, the officer shall enforce the order.

Already addressed in 4.1.2.a.

4.5.1. If the officer makes verbal notice, the officer shall do the following:

4.5.1.a. Notify the respondent of the following minimum mandatory reliefs/provisions:

4.5.1.a.1.

4.5.1.b. Document the notification in writing to the Circuit Clerk's Office.

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

Clarified the duties of officers

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

Officer safety

5.2.7. Whether ~~children~~ other individuals, including children, are at the scene;

Safety issues

5.2.9. Whether a protective order is in effect and if it includes consent to enter the residence to enforce the protective order;

Officer preparedness

~~5.2.10. Whether an affidavit to enter the premises exists;~~

Addressed in 5.2.9

5.2.10. If the caller is the victim and in the ~~house~~ residence, would they consent to entry; ~~and how the caller may indicate the premises;~~

Clarified language

5.2.11~~2~~. Whether a criminal warrant is outstanding on the accused; and,

Renumbered

5.2.12~~3~~. 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.

Renumbered

5.4. If the dispatcher has ready access to police department records, that such information 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 information databases to indicate whether the parties involved in the incident have been involved previously in domestic incidents or that indicate whether there is a protective order involving the parties in effect, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officer

Give guidance to dispatchers as to what specific information is needed for law enforcement officers to respond more effectively at the scene.

~~6.1. A law enforcement agency, under WV Code §48-27-601, shall immediately follow its procedures for investigating a missing person if the agency:~~

~~6.1.a. Has possession of a valid protective order, or has notice of the existence of a protective 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 to be missing; or,~~

~~6.1.b. Receives a missing person report accompanied by a sworn affidavit that the person at the time of the alleged disappearance was being subjected to treatment, which constitutes domestic battery or assault as defined in subdivisions 3.2.4. and 3.2.5. of this rule.~~

~~6.1.2. 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.~~

Moved to another section

6.12.1. Whenever possible, at least two law enforcement officers shall respond to a domestic call. The responding law enforcement officers should approach the scene of a domestic incident as one of high risk.

It is not always possible (or sometimes realistic) for two officers to respond to a call.

6.22.1. The responding law enforcement officers should identify themselves, explain the law enforcement presence, and request entry into the home or business. The law enforcement officers should shall ask to see the person who is the subject of the call. The law enforcement officers ~~should~~ shall not reveal the caller's name.

Emphasis on victim safety.

6.23.2. The law enforcement officers may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so or when exigent circumstances exists. If a domestic relations-violence protective order is in

effect, written consent to enter may have been given by the victim and be on file. The law enforcement officers shall limit the scope of the search to a search for other suspects, victims, witnesses, or evidence connected with the alleged domestic incident.

Clarification

~~6.3.3. If refused entry, the law enforcement officers should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, law enforcement officers should request the dispatcher to contact the caller if the caller is the subject of the call and communicate between the law enforcement officers and the caller. If the law enforcement officers leave the scene, the law enforcement officers should drive by premises and observe it frequently. If the law enforcement officers remain to observe premises, the law enforcement officers should move to public property (the street) and observe the premises.~~

Already addressed in 6.2.3

6.2.3.4. In some circumstances, forced entry is necessary and appropriate. ~~Forces entry may be appropriate when the residence are shows signs of flight or scuffle; or when a person from inside the residence calls for assistance or is yelling; or when a person from inside is visible and the law enforcement officers observe that person is wounded, injured, or is otherwise in need of assistance.~~ Circumstances include but are not limited to:

6.2.3.a. The residence area shows signs of a fight or scuffle;

6.2.3.b. When a person from inside the residence calls for assistance or is yelling;

6.2.3.c. When law enforcement officers have reasons to believe that the person is wounded, injured, or is otherwise in need of assistance;

6.2.3.d. When the offender is suspected of concealing the victim;

6.2.3.e. 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;

6.2.3.f. When the officer has articulable suspicion that absent immediate entry serious bodily injury or death may result

Reorganization and clarification

6.3.4. Establishing control of scene.

6.3.4.1. Once at the immediate scene of the incident, the responding law enforcement officers should establish control by:

6.3.4.1.a. Identifying and securing potential weapons in the surroundings;

6.3.4.1.b. Separating the victim and the accused when circumstances are appropriate;

6.3.4.1.c. Assessing injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;

6.3.4.1.d. Identifying all occupants and witnesses on the premises; and,

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

6.3.1.f. . Maintaining visibility and restricting mobility of all persons present at the scene.

Clarification

6.45.4. The law enforcement officers should interview and record, if possible, the victim and/or 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/or any witnesses (including all child witnesses) law enforcement officers should determine whether the victim and/or any witnesses (including all child witnesses) allege facts that constitute all of the elements of assault or battery. If so, the law enforcement officers should inquire whether the victim and/or any witnesses are willing to sign a statement containing those facts. The law enforcement officers should also inquire about past abuse or other crimes to aid the law enforcement officers in evaluating the dangerousness of the accused. The law enforcement officers should proceed with the investigation even in the absence of a statement from either a victim and/or any witnesses (including child witnesses).

Highlights the importance of documentation

6.45.5. The responding law enforcement officers should interview and record, if possible, the accused as fully as circumstances allow inquiring about the nature of the dispute. The law enforcement officers should be alert to possible incriminating statements.

Highlights the importance of documentation

6.4.6. In cases where the respondent or victim does not speak English, law enforcement officers should use a neural interpreter when possible. Officers should use caution when using family, friends, and children to provide interpreter services.

Compliance with the OCR requirements

6.45.8. Children should be interviewed in a manner appropriate to the child's age. ~~Signs of trauma and any apparent healing wounds on the child should be noted by the law enforcement officers.~~ If law enforcement officers have 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, law enforcement officers shall immediately, and not more than forty-eight hours after suspecting abuse, report the circumstances or cause a report to made to Child Protective Services (CPS).

Uses mandated reporter language as found in §49-6A-2. (Persons mandated to report suspected abuse and neglect.)

6.5.6. Enforcing any protective order and/or bail conditions.

Highlights that additional orders may need to be enforced.

6.56.1. To determine the existence of a protective order, ~~If the dispatcher has not advised the law enforcement officers~~ should ~~of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including children, or the existence of a protective order prohibiting the use of~~

~~possession of a firearm or deadly weapon, the law enforcement officers should ask the victim whether there is a valid protective order in effect. is an order or bail conditions. If so, the law enforcement officers should ask the victim if he or she can produce a copy of the protective order. or bail document or identify the county and court or magistrate from which the order or document was issued. The law enforcement officers should attempt to contact the local law enforcement department specified by the victim to verify the existence of a valid protective order or contact the magistrate court to verify the conditions of release on bail. The law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Where the accused has been served with the protective order or has actual notice of the protective, then the law enforcement officers shall follow the arrest authorization provisions set forth in subdivision 7.2.3. through 7.2.5. of this rule. If the victim cannot produce a copy of the protective order then the officer should attempt to verify the existence of an order by accessing the statewide protective order database, NCIC, and identifying the issuing county and court. The law enforcement officers shall enforce all orders. Where the accused has been served with the protective order or has actual notice of the protective order, then the law enforcement officers shall follow the arrest authorization provisions as set forth in this rule.~~

Language clean-up for clarity

~~6.56.1. To determine the existence of a protective order, If the dispatcher has not advised the law enforcement officers should of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including children, or the existence of a protective order prohibiting the use or possession of a firearm or deadly weapon, the law enforcement officers should ask the victim whether there is a valid protective order in effect. is an order or bail conditions. If so, the law enforcement officers should ask the victim if he or she can produce a copy of the protective order. or bail document or identify the county and court or magistrate from which the order or document was issued. The law enforcement officers should attempt to contact the local law enforcement department specified by the victim to verify the existence of a valid protective order or contact the magistrate court to verify the conditions of release on bail. The law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Where the accused has been served with the protective order or has actual notice of the protective, then the law enforcement officers shall follow the arrest authorization provisions set forth in subdivision 7.2.3. through 7.2.5. of this rule. If the victim cannot produce a copy of the protective order then the officer should attempt to verify the existence of an order by accessing the statewide protective order database, NCIC, and identifying the issuing county and court. The law enforcement officers shall enforce all orders. Where the accused has been served with the protective order or has actual notice of the protective order, then the law enforcement officers shall follow the arrest authorization provisions as set forth in this rule.~~

Language clean-up for clarity

6.5.3. If the officer makes verbal notice, the officer shall notify the respondent of the following minimum mandatory reliefs/provisions:

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

6.5.3.b. Inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.

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

6.5.4. The law enforcement officer shall document the notification in writing to the Circuit Clerk's Office.

6.5.5. Verbal notification does not relieve the agency or officer from serving the order.
Spells out the relief provisions and the documentation process.

6.5.6.3. If the victim is aware of pending criminal charges against the perpetrator and bail conditions, law enforcement officers 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. Pursuant to W. Va. Code 62-1C-17c(d), when the law enforcement officers observe any violations of a known bail condition in cases of crimes between family or household members, including family or household members who are children, the law enforcement officers shall arrest the accused for violations of the bail conditions; which may include the presence of the accused at the home of the victim.

Clarification

6.5.8. The law enforcement officers shall provide for the safety of the parties and remain at the location when they are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.

This new section deals with liability issues of the officer and department.

6.7. Further on scene investigation.

~~6.7.1. The law enforcement officers shall collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victims injuries, evidentiary articles that substantiate the attack (weapons, torn, clothing, etc.), and evidence recording the crime scene. The law~~

~~enforcement officers should ensure that photographs are taken of visible injuries on the victim and the crime scene. All physical evidence shall be collected, noted in reports and vouchered as in other criminal investigations. Sections 3 through 12 of this rule contain requirements for reporting and data collections.~~

~~6.7.2. The law enforcement officers should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officers should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The law enforcement officers should advise the victim to have photographs taken if injuries appear later.~~

Moved to section 6.4.

7.1. In most circumstances, the responding law enforcement officers shall arrest the accused whenever arrest is authorized. In addition to any other report required, law enforcement officers who do not make an arrest after investigating a complaint of domestic or family violence or who arrest two or more persons for a crime involving domestic or family violence, shall submit a written report setting forth the grounds for not arresting or for arresting both parties. ~~If no arrest is made, the law enforcement officers shall include in the report of the incident an explanation of the reasons why an arrest was not made. Officers shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.~~

Report clarification

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

7.3.1. The marital status of the parties;

7.3.2. The ownership or tenancy rights of either party;

7.3.3. Verbal assurances that the violence will stop;

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

7.3.5. The specific consent or request of the victim; or,

7.3.6. 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);

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

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

7.3.9. The existence or nonexistence of a current protective order (except insofar as the violation of the order requires arrest);

7.3.10. Concern about reprisals against the victim;

7.3.11. Adverse financial consequences that might result from the arrest;

7.3.12. That the incident occurred in a private place; or,

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

7.3.14. Criminal history of the victim

Additional components/criteria

7.5. If law enforcement officers receive complaints of domestic or family violence from two or more opposing persons, the law enforcement officers shall evaluate each complaint separately to determine who was the predominate primary aggressor. If the law enforcement officers determine that one person was the predominate primary aggressor, the law enforcement officers shall arrest the predominate primary aggressor only. Dual arrests are discouraged. In determining whether a person is the predominate primary aggressor the law enforcement officers should consider, among other things:

7.5.1. Prior complaints of domestic or family violence;

7.5.2. The relative severity of the injuries inflicted on each person;

7.5.3. The likelihood of future injury to each person; and,

7.5.4. Whether one of the persons using reasonable force acted in self-defense.

7.5.5. Initial physical contact alone does not determine predominate aggressor. "primary aggressor" is out-dated language; it is more common to use "predominate aggressor"

~~7.6. Law enforcement officers shall not:~~

~~7.6.1. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or,~~

~~7.6.2. Base the decision to arrest on:~~

~~7.6.2.a. The specific consent or request of the victim; or,~~

~~7.6.2.b. The law enforcement officers' perception of the willingness of a victim or witness to domestic or family violence to testify or otherwise participate in a judicial proceeding.~~

~~7.6.5.10. 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 protective order is a violation of federal law and should be referred to federal authorities.~~

Moved to 6.5.9

~~7.6.6.11. 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 domestic violence is a violation of federal law and should be referred to federal authorities.~~

Moved to 7.2.8

~~7.7. In addition to any other report required, law enforcement officers who do not make an arrest after investigating a complaint of domestic or family violence or who arrest two or persons for a crime involving domestic or family violence, shall submit a written report setting forth the grounds for not arresting or for arresting both parties.~~

~~7.8. The law enforcement officers shall arrest for the commission of a crime of domestic or family violence.~~

Addressed in 7.3. and 9.1

7.6. Firearms

7.6.1. The law enforcement officers shall seize all firearms, ammunition, and any other deadly weapons that are alleged to have been involved or threatened to be used in the commission of domestic or family violence. including those firearms held in violation of a protective order prohibiting possession of a firearm; and,

7.6.2. The law enforcement officer may seize a weapon that is in plain view of the officer, or is was discovered pursuant to a consensual search, or is as necessary for the protection of the officers or other persons.

7.6.3. Law enforcement officers may seize all firearms and ammunition possessed in violation of a protective order prohibiting possession of a firearm.

Created a new section focused on firearms and clarified firearm seizure procedures.

~~9.1.5. Provide transportation for or facilitate transportation of the victim upon the request of the victim to a shelter or the appropriate court when reasonable cause exists to believe the victim has suffered or is likely to suffer physical injury.~~

Duplicative (already stated in 9.1.4.)

~~9.3. The law enforcement officers shall provide for the safety of the parties when they are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.~~

Stated in 6.5.8.

10.6. When law enforcement officers form 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 domestic violence.

This was added to the Code a couple of years ago – thought it would be good to let officers know what their duties are in these situations.

10.7.1. When a victim of domestic violence is elderly or physically dependent, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elderly or of a physically dependent person, and the victim can no longer provide care (as, for example, when the victim is hospitalized) ~~the responding law enforcement officers should determine whether the elderly or physically dependent person is physically endangered, wither as a result of the abuse, a pre-existing medical condition, or the absence of a caretaker. If the elderly or physically dependent person is physically endangered and mentally alert, the law enforcement officers should attempt to provide and facilitate for the well-being of ask the elderly or physically dependent person. For the name of a relative or friend who can be contacted immediately to assist the elderly or physically dependent person. The law enforcement officers shall facilitate transportation of the elderly or physically dependent person to a relative or friend, if one can be found.~~

Allows for more options at the officer's discretion depending on the resources in the community.

10.8.2. If the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized) and is not incapacitated, the officer shall consult with the victim about arrangements for the child. ~~If the accused is arrested and was the sole caretaker of a child and/or if the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), or if both caretakers are arrested, the law enforcement officers shall contact Child Protective Services and Child Protective Services (CPS). CPS will determine may determine whether there is a responsible relative who can care for the child. and if so, may contact that relative and await the relative's arrival, or the law enforcement officer may contact Child Protective Services Law enforcement officer shall remain with the child until placement is made at the residence until a protective services worker arrives or take the child into custody pursuant to the Child Welfare Law (W. Va. Code §49-5-8 and 49-6-9). If no responsible relative is available, the law enforcement officers should contact Child Protective Services and remain at the residence until a protective services worker arrives or should take the child into custody pursuant to the Child Welfare law (W. Va. Code §49-5-8 and 49-6-9).~~

Leaves the responsibility of child placement with the victim and/or CPS.

6.9. Follow-up Investigation

6.9.1. All domestic violence reports prepared by law enforcement officers should be reviewed and given follow-up investigation as needed.

6.9.2. Follow up investigations should include the following:

6.9.2.a. Take photographs of injuries approximately two days after the incident to exhibit changes in injury as well as the long-term effects of abuse. Contact or meet the victim at a safe location if necessary, such as a place of work.

6.9.2.b. Obtain all available medical reports after receipt of medical release from the victim.

6.9.2.c. Obtain a copy of 911 recordings or other communications with police or emergency personnel.

6.9.2.d. Interview victims/witnesses who were physically or emotionally unable to be properly interviewed or to provide a statement at the time of the incident. Interviews should also include the victim's family members and previous intimate partners of the suspect.

6.9.2.e. Interview potential witnesses (neighbors, co-workers, friends, etc.).

6.9.2.f. Ascertain if the suspect is on parole or probation and obtain the name and contact the parole or probation officer.

6.9.2.g. Obtain all jail telephone and/or communication logs.

6.9.2.h. Conduct a complete NCIC, and, if possible, a criminal history check of the suspect.

6.9.2.i. Collect all types of threatening communication to include: letters, cards, emails, and notes.

The group felt that follow-up is lacking in current practice and wanted to emphasize and give guidance as to what follow-up should consist of.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

Type of Rule: Legislative Interpretive Procedural

Agency: Governor's Committee on Crime, Delinquency and Correction

Address: c/o Sarah J. Brown
WV Division of Criminal Justice Services
1204 Kanawha Boulevard, East Charleston, WV 25301

Phone Number: (304) 558-8814, ext. 53337 Email: Sarah.J.Brown@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

Rule Title:

Protocol for Law Enforcement Response to Domestic Violence CSR 149-3

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

There will be no impact on the costs and revenue of state government as a result of the changes that are being proposed.

Date: 24, June, 2010

Signature of Agency Head or Authorized Representative



J. J. Reddy

Statement of Facts and Circumstances

Protocol for Law Enforcement Response to Domestic Violence

Summary of Proposed Changes to Title 149, Series 3

The members of the Law Enforcement Training Planning and Development Committee under the Grants to Encourage Arrests Policies and Enforcement of Protective Orders Grant, in recognition of the need to keep this rule current as to cutting edge terminology, changes in code and practices as to guidelines and procedures of law enforcement officers and other personnel's response to domestic violence calls, within West Virginia, met, April 15th and 16th, 2010 to address proposed changes to this rule. As a result of the discussion of the committee members (see attached list of committee members), the committee established and reached a consensus to each proposed change, and a series of changes were set forth to the current rule.

The changes proposed address and to establish guidelines and procedures in compliance with state and federal law to be followed by law enforcement officers and other personnel involved in police response to domestic calls.

The changes also address the new state firearm laws and firearm seizure procedures. As well other changes or updates to the code concerning law enforcement service of protective orders.

Questions concerning the proposed changes should please be directed to Sarah J. Brown, WV STOP Violence Against Women Administrator, at (304) 558-8814, ext 53337 or Sarah.J.Brown@wv.gov.



Law Enforcement Training Planning and Development Team
Attendance
April 15-16, 2010

1. Tonia Thomas, WV Coalition Against Domestic Violence
2. Amy Landers, WV Coalition Against Domestic Violence
3. Sarah Brown, WV Division of Criminal Justice Services
4. Retired Captain Chuck Sadler, WV Division of Criminal Justice Services
5. Leslie Boggess, WV Division of Criminal Justice Services
6. Jeff Estep, WV Division of Criminal Justice Services
7. Sgt. Shallon Oglesby, WV State Police
8. Lisa Tackett, WV Supreme Court of Appeals
9. Terri Tarr, WV Prosecuting Attorney's Institute
10. Dale Porter, WV Medical Examiners Office
11. Keith Rowan, Representative for the Chiefs of Police Association
12. Jen Petry, Representative for the WV Sheriff's Association
13. Chief Robert Methany, Wheeling Chief of Police
14. Gale Kahle, Ohio County Assistant Prosecutor
15. Larry Nelson, West Virginia Regional Community Policing Institute

FILED

2010 JUL 27 PM 1:11

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 3
PROTOCOL FOR LAW ENFORCEMENT RESPONSE
TO DOMESTIC VIOLENCE

§149-3-1. General.

1.1. Scope. -- This legislative rule establishes law enforcement response to domestic violence.

1.2. Authority. -- W. Va. Code §48-27-1102.

1.3. Filing Date. -- ~~May 11, 2005.~~

1.4. Effective Date. -- ~~July 1, 2005.~~

§149-3-2. 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 domestic calls. It shall be mandatory for all law enforcement agencies and dispatch centers to post this Rule in a readily visible location; and, ensure that all law enforcement officers and dispatchers are aware of its location.

2.2. Other purposes and goals of this rule are:

2.2.1. To reduce the incidence and severity of domestic violence by establishing arrest and prosecution, ~~rather than mediation~~ as the preferred means of police response to domestic violence;

2.2.2. To afford maximum protection and support to victims of domestic violence through a coordinated program response of law enforcement and victim assistance;

2.2.3. To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;

2.2.4. To promote law enforcement officer safety by ensuring that law enforcement officers are as fully prepared as possible to respond to domestic calls; and,

2.2.5. To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

§149-3-3. Definitions.

3.1. For the purposes of this rule, unless specifically stated otherwise, the terms "officer," "law enforcement officer," or "police officer" refer to law enforcement officers and officials as defined in this subdivision. Nothing in this rule should be construed to extend the authority of any law enforcement officer beyond the law enforcement officer's statutory jurisdiction.

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

3.1.2. "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.

3.1.3. "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 this state, other than parking ordinances, and includes those persons employed as security officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority.

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

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

3.1.6. – "Dispatcher" – means a telecommunicator who receives calls from individuals who need assistance from firefighters, police officers, and emergency medical services. Once information is obtained from the caller, telecommomunicators 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.

3.1.7. "Protective Order" means an injunction or other order, issued under domestic violence, family violence, anti-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.

3.1.8. "Protection Order" means any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) 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 protection.

3.2. As used in this rule unless the context clearly requires otherwise:

3.2.1. "Credible corroborative evidence" means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense and may include, but is not limited to, the condition of the victim, the accused, and the scene.

3.2.1.a. Credible evidence of the victim's condition may include, but is not limited to, one or more contusions, scratches, cuts, abrasions, swellings, or other signs of physical injury; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of strangulation, choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

3.2.1.b. Credible evidence of the condition of the accused may include, but is not limited to, physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self defense by the victim.

3.2.1.c. Credible evidence of the condition of the scene may include, but is not limited to, damaged premises or furnishings or disarray or misplaced objects consistent with the effects of a struggle.

3.2.1.d. Other credible evidence may include, but is not limited to, statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of a law enforcement officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; or written statements by witnesses.

3.2.2. "Deadly weapon" means an instrument that is designed to be used to

produce serious bodily injury or death, or is readily adaptable to that use. The term "deadly weapon" includes, but is not limited to, a blackjack, a gravity knife, a knife, a switchblade knife, a nunchuka, metallic or false knuckles, ~~a pistol, or a revolver~~ and firearms, as defined in W. Va. Code §61-7-2.

3.2.3. "Domestic assault" means the unlawful attempt to commit a violent injury of another family or household member or unlawfully committing an act which places another family or household member in reasonable apprehension of immediately receiving a violent injury.

3.2.4. "Domestic battery" means the unlawful and intentional physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causing physical harm to another family or household member.

3.2.5. "Family or household members" means persons who:

3.2.5.a. Are or were married to each other;

3.2.5.b. Are or were living together as spouses;

3.2.5.c. Are or were sexual or intimate partners;

3.2.5.d. Are or were dating: *Provided*, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

3.2.5.e. Are or were residing together in the same household;

3.2.5.f. Have a child in common regardless of whether they have ever married or lived together;

3.2.5.g. Have the following relationships to another person:

3.2.5.g.1. Parent;

3.2.5.g.2. Stepparent;

3.2.5.g.3. Brother or sister;

3.2.5.g.4. Half-brother or half-sister;

3.2.5.g.5. Stepbrother or stepsister;

3.2.5.g.6. Father-in-law or mother-in-law;

3.2.5.g.7. Stepfather-in-law or stepmother-in-law;

3.2.5.g.8. Child or stepchild;

3.2.5.g.9. Daughter-in-law or son-in-law;

3.2.5.g.10. Stepdaughter-in-law or stepson-in-law;

3.2.5.g.11. Grandparent;

3.2.5.g.12. Step grandparent;

3.2.5.g.13. Aunt, aunt-in-law or step aunt;

3.2.5.g.14. Uncle, uncle-in-law or step uncle;

3.2.5.g.15. Niece or nephew;

3.2.5.g.16. First or second cousin; or,

3.2.5.h. Have the relationships set forth in 3.2.5.g.1. through 3.2.5.g.16., of this subsection, to a family or household member, as defined in subsections 3.2.5.a. through 3.2.5.f. of this section.

3.2.6. "Family violence," "domestic violence," or "abuse" means the occurrence of one or more of the following acts between family or household members:

3.2.6.a. Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another person with or without dangerous or deadly weapons;

3.2.6.b. Placing another person in reasonable apprehension of physical harm;

3.2.6.c. Creating fear of physical harm by harassment, stalking, psychological abuse, or threatening acts;

3.2.6.d. Committing either sexual assault or sexual abuse as those terms are defined in W. Va. Code §§61-8B-1 et. seq. and 61-8D-1 et seq.; or,

3.2.6.e. Holding, confining, detaining, or abducting another person against that person's will.

3.2.7. "Firearm" means any weapon that will expel a projectile by action of an explosion.

§149-3-4. Protective Orders.

4.1. A protective order is an injunction or other order, issued under domestic violence, family violence, antistalking, 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.

4.1.1. 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.

4.1.2. Domestic violence protective orders are considered criminal in nature. Law enforcement agencies and officers in the ~~who are sworn law enforcement officers in the~~ state of West Virginia are responsible for the initial service of all protective orders in order to ensure the most prompt service of the protective order. Service of protective orders shall be a priority. Law enforcement officers shall immediately make every reasonable effort to locate respondents for service of protective orders. Service shall be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in domestic violence protective order actions.

4.1.2.a. 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.

4.1.3. When serving the protective order, the officer shall inform the respondent that possession of firearms and ammunition is prohibited under state and federal law.

4.1.4. The serving officer should inquire of the respondent whether the Respondent owns or possesses firearms and where the firearms and ammunition are located.

4.1.5. The serving officer should inquire of the respondent what the respondent intends to do with his or her firearms.

4.1.6. The serving officer should suggest to the respondent to surrender to the officer or transfer to a qualified third party (a party who is not prohibited from possessing firearms under state and/or federal law) all of the respondent's firearms and ammunition.

4.1.7. 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.

4.1.8. The serving officer should inform the respondent that failure to surrender or transfer his or her firearms and ammunition could result in the respondent's arrest for violation of the court's order.

4.1.8. If a 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 should arrest the respondent for violation of the protective order.

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

~~4.2.1. A protective order remains in effect longer than the period of time stated in the order if:~~

~~4.2.1.a. The protected person has filed for and received an extension of the protective order;~~

~~4.2.1.b. The protective order was automatically extended by the filing or reopening of a court case between the same parties after the protective order was entered; or,~~

~~4.2.1.c. The protective order was extended by an order entered in another court case between the same parties.~~

~~4.2.2. A protective order does not remain in effect for the period of time stated in the order if:~~

~~4.2.2.a. An order was entered by the court dismissing the protective order; or,~~

~~4.2.2.b. In a case between the same parties which extended the protective order as a matter of law, a temporary or final order was entered, and the temporary or final order did not extend the protective order.~~

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

4.4. A protection 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 protection 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.

4.4.1. There is probable cause to believe that a protection 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.

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

4.4.2. Presentation of a certified copy of a protection order is not required for enforcement.

4.4.3. For the purposes of this section, the protection 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.

4.4.4. A protection 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 protective 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 make a reasonable effort to serve the order upon the respondent.~~ The officer shall allow the respondent a reasonable opportunity to comply with the order. ~~The officer shall then enforce the order.~~ Once the officer has notified or served the respondent, the officer shall enforce the order.

§149-3-5. Dispatcher Responsibilities.

5.1. Dispatchers under the supervision of a police department and communications and emergency operations centers which dispatch law enforcement officers, shall dispatch domestic 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 domestic call should attempt to elicit from the caller, and should communicate to the responding law enforcement officers, as much of the following information, in the following order of importance, as time and exigencies of the reported incident allow:

5.2.1. The nature of the incident;

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

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

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

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

5.2.6. 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;

5.2.7. Whether ~~children~~ other individuals, including children, are at the scene;

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

5.2.9. Whether a protective order is in effect and if it includes consent to enter the residence to enforce the protective order;

~~5.2.10. Whether an affidavit to enter the premises exists;~~

5.2.10. If the caller is the victim and in the ~~house~~ residence, would they consent to entry; ~~and how the caller may indicate the premises~~;

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

5.2.12. 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 domestic 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 officers. The dispatcher should tell the caller that help is on the way and when the caller can expect the police to arrive.

5.4. If the dispatcher has ready access to police department records, that such information 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 information databases to indicate whether the parties involved in the incident have been involved previously in domestic incidents or that indicate whether there is a protective order involving the parties in effect, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officers.

5.5. If the dispatcher has reason to believe that the subject is on bail for a crime against a family or household member, including a family or household member who is a child, 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 officers; including a protective order prohibiting the possession of firearms.

§149-3-6. Initial Law Enforcement Officer Response.

~~6.1. A law enforcement agency, under WV Code §48-27-601, shall immediately follow its procedures for investigating a missing person if the agency:~~

~~6.1.a. Has possession of a valid protective order, or has notice of the existence of a protective 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 to be missing; or,~~

~~6.1.b. Receives a missing person report accompanied by a sworn affidavit that the person at the time of the alleged disappearance was being subjected to treatment, which constitutes domestic battery or assault as defined in subdivisions 3.2.4. and 3.2.5. of this rule.~~

~~6.1.2. 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.~~

~~6.1.2- Approaching the scene.~~

~~6.1.2.1. Whenever possible, at least two law enforcement officers shall respond to a domestic call. The responding law enforcement officers should approach the scene of a domestic incident as one of high risk.~~

~~6.1.2.2. The law enforcement officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.~~

~~6.1.2.3. Unless the circumstances of a particular incident require different measures, the law enforcement officers should follow the approach procedures set out in the remainder of this section. The law enforcement officers should:~~

6.1.2.3.a. Approach the scene inconspicuously. The law enforcement officers should not use sirens or lights in the immediate area of the scene of the incident;

6.1.2.3.b. Park away from the immediate scene of the incident;

6.1.2.3.c. Keep a safe exit route in mind;

6.1.2.3.d. Be alert for the employment of weapons from doors, windows, or nearby vehicles;

6.1.2.3.e. Be alert for persons moving away from the immediate scene of the incident; and,

6.1.2.3.f. Employ other standard precautionary measures for approaching high risk incident scenes.

6.23. Initial contact.

6.22.1. The responding law enforcement officers should identify themselves, explain the law enforcement presence, and request entry into the home or business. The law enforcement officers ~~should~~ shall ask to see the person who is the subject of the call. The law enforcement officers ~~should~~ shall not reveal the caller's name.

6.23.2. The law enforcement officers may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so or when exigent circumstances exists. If a domestic relations-violence protective order is in effect, written consent to enter may have been given by the victim and be on file. The law enforcement officers shall limit the scope of the search ~~to a search~~ for other suspects, victims, witnesses, or evidence connected with the alleged domestic incident.

~~6.3.3. If refused entry, the law enforcement officers should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, law enforcement officers should request the dispatcher to contact the caller if the caller is the subject of the call and communicate between the law enforcement officers and the caller. If the law enforcement officers leave the scene, the law enforcement officers should drive by premises and observe it frequently. If the law enforcement officers remain to observe premises, the law enforcement officers should move to public property (the street) and observe the premises.~~

6.2.3.4. In some circumstances, forced entry is necessary and appropriate. ~~Forces entry may be appropriate when the residence are shows signs of flight or scuffle; or when a person from inside the residence calls for assistance or is yelling; or when a person from inside is visible and the law enforcement officers observe~~

~~that person is wounded, injured, or is otherwise in need of assistance.~~
Circumstances include but are not limited to:

6.2.3.a. The residence area shows signs of a fight or scuffle;

6.2.3.b. When a person from inside the residence calls for assistance or is yelling;

6.2.3.c. When law enforcement officers have reasons to believe that the person is wounded, injured, or is otherwise in need of assistance;

6.2.3.d. When the offender is suspected of concealing the victim;

6.2.3.e. 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;

6.2.3.f. When the officer has articulable suspicion that absent immediate entry serious bodily injury or death may result.

6.3.4. Establishing control of scene.

6.3.4.1. Once at the ~~immediate~~ scene of the incident, the responding law enforcement officers should establish control by:

6.3.4.1.a. Identifying and securing potential weapons ~~in the surroundings;~~

6.3.4.1.b. Separating the victim and the accused when circumstances are appropriate;

6.3.4.1.c. Assessing injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;

6.3.4.1.d. Identifying all occupants and witnesses on the premises; and,

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

6.3.1.f. . Maintaining visibility and restricting mobility of all persons present at the scene.

6.4. On-scene investigation.

6.4.51. The law enforcement officers ~~should~~ shall conduct an investigation using the same procedures that the law enforcement officers would use in any other on-scene criminal investigation. While conducting the investigation the law

enforcement officers ~~should~~ shall attempt to establish the existence of credible corroborative evidence. The law enforcement officers ~~should~~ 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 officers ~~should~~ shall also determine if such statements were made to the dispatcher and take appropriate measures to secure and preserve such evidence.

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

6.45.3. In questioning the victim, the law enforcement officers should use supportive interview techniques. The law enforcement officers should ask the victim about previous domestic incidents and their frequency and severity. The law enforcement officers should not tell the victim what action the law enforcement officers intend to take until all available information has been collected.

6.45.4. The law enforcement officers should interview and record, if possible, the victim and/or 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/or any witnesses (including all child witnesses) law enforcement officers should determine whether the victim and/or any witnesses (including all child witnesses) allege facts that constitute all of the elements of assault or battery. If so, the law enforcement officers should inquire whether the victim and/or any witnesses are willing to sign a statement containing those facts. The law enforcement officers should also inquire about past abuse or other crimes to aid the law enforcement officers in evaluating the dangerousness of the accused. The law enforcement officers should proceed with the investigation even in the absence of a statement from either a victim and/or any witnesses (including child witnesses).

6.45.5. The responding law enforcement officers should interview and record, if possible, the accused as fully as circumstances allow inquiring about the nature of the dispute. The law enforcement officers should be alert to possible incriminating statements.

6.4.56. In cases where the respondent or victim does not speak English, law enforcement officers should use a neutral interpreter when possible. Officers should use caution when using family, friends, and children to provide interpreter services.

6.45.7. In the collection of evidence and taking of statements, the law enforcement officers 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.

6.45.8. Children should be interviewed in a manner appropriate to the child's age. ~~Signs of trauma and any apparent healing wounds on the child should be noted by the law enforcement officers. If law enforcement officers have 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, law enforcement officers shall immediately, and not more than forty-eight hours after suspecting abuse, report the circumstances or cause a report to be made to Child Protective Services (CPS).~~

6.45.9. If the accused has fled the scene, the law enforcement officers should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.). The law enforcement officers 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 the obtaining of a warrant.

6.4.5-10. The law enforcement officers shall collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The law enforcement officers should ensure that photographs are taken of visible injuries on the victim and of the crime scene. The law enforcement officer shall document the location of any injuries that may result in potential bruising. All physical evidence shall be collected, noted in reports, and vouchered as in other criminal investigations. ~~Sections 3 through 12 of this rule contain requirements for reporting and data collection.~~

6.4.11. The law enforcement officers should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officers should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The law enforcement officers should advise the victim to have photographs taken if injuries appear later.

6.5.6. Enforcing any protective order and/or bail conditions.

6.56.1. To determine the existence of a protective order, ~~If the dispatcher has not advised the law enforcement officers~~ should ~~of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including children, or the existence of a protective order prohibiting the use or possession of a firearm or deadly weapon, the law enforcement officers should~~ ask the victim whether there is a valid protective order in effect. ~~is an order or bail conditions. If so, the law enforcement officers should ask the victim if he or she can produce a copy of the protective order. or bail document or identify the county and court or magistrate from which the order or document was issued. The law enforcement officers should attempt to contact the local law enforcement~~

~~department specified by the victim to verify the existence of a valid protective order or contact the magistrate court to verify the conditions of release on bail. The law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Where the accused has been served with the protective order or has actual notice of the protective, then the law enforcement officers shall follow the arrest authorization provisions set forth in subdivision 7.2.3. through 7.2.5. of this rule. If the victim cannot produce a copy of the protective order then the officer should attempt to verify the existence of an order by accessing the statewide protective order database, NCIC, and identifying the issuing county and court. The law enforcement officers shall enforce all orders. Where the accused has been served with the protective order or has actual notice of the protective order, then the law enforcement officers shall follow the arrest authorization provisions as set forth in this rule.~~

~~6.5.2. Where the accused has not been served and has not had actual notice of the order, if the law enforcement officers have a copy to serve upon the accused, they shall serve it. If the law enforcement officers do not have a copy to serve, then the law enforcement officer shall give the accused actual notice of the provisions of the order by stating the provisions of the order to the accused. If the accused, after having been served with or given actual notice of the order, then refuses to comply with the order, the law enforcement officers shall follow the arrest provisions as set forth in subdivision 7.2.3. through 7.2.5. of this rule. If a law-enforcement officer determines that an otherwise valid protective 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.~~

~~6.5.3. If the officer makes verbal notice, the officer shall notify the respondent of the following minimum mandatory reliefs/provisions:~~

~~6.5.3.a. Order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.~~

~~6.5.3.b. Inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.~~

~~6.5.3.c. Inform the respondent that the order is in full force and effect~~

in every county of this state.

6.5.4. The law enforcement officer shall document the notification in writing to the Circuit Clerk's Office.

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

6.5.6.3. If the victim is aware of pending criminal charges against the perpetrator and bail conditions, law enforcement officers 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. Pursuant to W. Va. Code 62-1C-17c(d), when the law enforcement officers observe any violations of a known bail condition in cases of crimes between family or household members, including family or household members who are children, the law enforcement officers shall arrest the accused for violations of the bail conditions; which may include the presence of the accused at the home of the victim.

6.6.4. 6.5.7 The law enforcement officers shall enforce all protective 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.

6.5.8. The law enforcement officers shall provide for the safety of the parties and remain at the location when they are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.

6.5.9. 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 protective order is a violation of federal law and should be referred to federal authorities.

6.7. Further on scene investigation.

6.7.1. The law enforcement officers shall collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victims injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The law enforcement officers should ensure that photographs are taken of visible injuries on the victim and the crime scene. All physical evidence shall be collected, noted in reports and vouchered as in other criminal investigations. Sections 3 through 12 of this rule contain requirements for reporting and data collections.

6.7.2. The law enforcement officers should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene.

~~The law enforcement officers should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The law enforcement officers should advise the victim to have photographs taken if injuries appear later.~~

6.8. Missing Persons Investigation

~~6.1. 6.8.1. A law enforcement agency, under WV Code §48-27-601, shall immediately follow its procedures for investigating a missing person initiate a missing persons investigation if the agency:~~

~~6.1.a. 6.8.1.a. Has possession of a valid protective order, or has notice of the existence of a protective 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 to be missing; or,~~

~~6.1.b. 6.8.1.b. Receives information that at the time of disappearance the missing person was subjected to domestic violence,.~~

~~6.8.2. 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.~~

~~6.8.3. Investigating officer cannot release the whereabouts of the alleged missing person if found without expressed consent of that person.~~

6.9. Follow-up Investigation

6.9.1. All domestic violence reports prepared by law enforcement officers should be reviewed and given follow-up investigation as needed.

6.9.2. Follow up investigations should include the following:

6.9.2.a. Take photographs of injuries approximately two days after the incident to exhibit changes in injury as well as the long-term effects of abuse. Contact or meet the victim at a safe location if necessary, such as a place of work.

6.9.2.b. Obtain all available medical reports after receipt of medical release from the victim.

6.9.2.c. Obtain a copy of 911 recordings or other communications with police or emergency personnel.

6.9.2.d. Interview victims/witnesses who were physically or emotionally unable to be properly interviewed or to provide a statement at the time of the incident. Interviews should also include the victim's family members and previous intimate partners of the suspect.

6.9.2.e. Interview potential witnesses (neighbors, co-workers, friends, etc.).

6.9.2.f. Ascertain if the suspect is on parole or probation and obtain the name and contact the parole or probation officer.

6.9.2.g. Obtain all jail telephone and/or communication logs.

6.9.2.h. Conduct a complete NCIC, and, if possible, a criminal history check of the suspect.

6.9.2.i. Collect all types of threatening communication to include: letters, cards, emails, and notes.

§149-3-7. The Arrest Decision.

7.1. In most circumstances, the responding law enforcement officers shall arrest the accused whenever arrest is authorized. In addition to any other report required, law enforcement officers who do not make an arrest after investigating a complaint of domestic or family violence or who arrest two or more persons for a crime involving domestic or family violence, shall submit a written report setting forth the grounds for not arresting or for arresting both parties. If no arrest is made, the law enforcement officers shall include in the report of the incident an explanation of the reasons why an arrest was not made. Officers shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

7.2. Arrest is authorized in the following circumstances:

7.2.1. When the law enforcement officers have probable cause to believe that the accused has committed a felony;

7.2.2. When the law enforcement officers observe the commission of a felony or a misdemeanor;

7.2.3. Law enforcement officers observing the violation of a valid protective order, including the presence of the accused at a location prohibited by the protective order; issued by a circuit judge, family court judge or magistrate of this state and from courts of another state, territory, or tribe; the officers shall arrest the accused provided the accused was served with the order or had actual notice of the order and its contents;

7.2.4. When the law enforcement officers observe any violation of a condition of bail, probation or parole, including the presence of the accused at the

home of the victim in violation of the condition set in cases of crimes between family members, including family or household members who are children;

7.2.5. When the accused is alleged to have committed domestic assault and/or domestic battery or the violation of a valid protective order; issued by a circuit judge, family court judge or magistrate of this state or from another state, territory, or tribe; law enforcement officers have authority to arrest the alleged perpetrator when:

7.2.5.a. The law enforcement officers have observed credible corroborative evidence that the offense has occurred and, either:

7.2.5.a.1. The law enforcement officers have received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of a domestic assault or domestic battery or violation of a valid protective order; or,

7.2.5.a.2. The law enforcement officers have observed credible evidence that the accused committed the offense;

7.2.6. When a misdemeanor or felony not included among those specified in ~~subdivisions 7.2.2. through 7.2.5.~~ of this rule has been committed and the law enforcement officers or another person obtains or has previously obtained an arrest warrant; or,

7.2.7. When a capias has been issued, or when a circuit judge has signed an attachment order.

7.2.8. 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 domestic violence is a violation of federal law and should be referred to federal authorities.

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

7.3.1. The marital status of the parties;

7.3.2. The ownership or tenancy rights of either party;

7.3.3. Verbal assurances that the violence will stop;

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

7.3.5. The specific consent or request of the victim; or.

7.3.6. 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);

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

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

7.3.9. The existence or nonexistence of a current protective order (except insofar as the violation of the order requires arrest);

7.3.10. Concern about reprisals against the victim;

7.3.11. Adverse financial consequences that might result from the arrest;

7.3.12. That the incident occurred in a private place; or,

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

7.3.14. Criminal history of the victim

7.4. It is the law enforcement officers' and/or prosecuting attorney's responsibility to decide whether an arrest should be made unless law enforcement officers are required to make an arrest for violation of a valid protective order and/or a violation of the terms and conditions of bail, probation or parole on a charge of a crime against a family or household member. The law enforcement officers, therefore, should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the state's action, not the victim's action.

7.5. If law enforcement officers receive complaints of domestic or family violence from two or more opposing persons, the law enforcement officers shall evaluate each complaint ~~separately~~ to determine who was the predominate primary aggressor. If the law enforcement officers determine that one person was the predominate primary aggressor, the law enforcement officers shall arrest the predominate primary aggressor only. Dual arrests are discouraged. In determining whether a person is the predominate primary aggressor the law enforcement officers should consider, among other things:

7.5.1. Prior complaints of domestic or family violence;

7.5.2. The relative severity of the injuries inflicted on each person;

7.5.3. The likelihood of future injury to each person; and,

7.5.4. Whether one of the persons using reasonable force acted in self-defense.

7.5.5. Initial physical contact alone does not determine predominate aggressor.

~~7.6. Law enforcement officers shall not:~~

~~7.6.1. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or,~~

~~7.6.2. Base the decision to arrest on:~~

~~7.6.2.a. The specific consent or request of the victim; or,~~

~~7.6.2.b. The law enforcement officers' perception of the willingness of a victim or witness to domestic or family violence to testify or otherwise participate in a judicial proceeding.~~

~~7.7. In addition to any other report required, law enforcement officers who do not make an arrest after investigating a complaint of domestic or family violence or who arrest two or persons for a crime involving domestic or family violence, shall submit a written report setting forth the grounds for not arresting or for arresting both parties.~~

~~7.8. The law enforcement officers shall arrest for the commission of a crime of domestic or family violence.~~

7.6. Firearms

7.6.1. The law enforcement officers shall seize all firearms, ammunition, and any other deadly weapons that are alleged to have been involved or threatened to be used in the commission of domestic or family violence. including these firearms held in violation of a protective order prohibiting possession of a firearm; and,

7.6.2. The law enforcement officer may seize a weapon that is in plain view of the officer, or is was discovered pursuant to a consensual search, or is as necessary for the protection of the officers or other persons.

7.6.3. Law enforcement officers may seize all firearms and ammunition possessed in violation of a protective order prohibiting possession of a firearm.

7.6.4.9. Notwithstanding the issue of violation of the West Virginia Code §61-7-7, the possession of a firearm by a person subject to a valid protective order,

is also a violation of federal law and should be referred to federal authorities.

~~7.6.5.10. 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 protective order is a violation of federal law and should be referred to federal authorities.~~

~~7.6.6.11. 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 domestic violence is a violation of federal law and should be referred to federal authorities.~~

§149-3-8. Effectuating the Arrest.

8.1. Persons arrested pursuant to ~~subdivision 7.2.~~ of 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. The risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If the accused has fled the scene, the law enforcement officers should initiate procedures to pursue and apprehend the accused as promptly as possible if the presence of the accused in the vicinity represents a continuous threat to the safety of the victim and/or other members in the household. If a warrant is necessary, the law enforcement officers 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 officers should arrest and process the juvenile pursuant to W. Va. Code §49-5-1 et. seq.

§149-3-9. Procedure when Arrest is not Authorized or, if Authorized, Arrest is not Made.

9.1. If an arrest is not made ~~authorized because of the absence of probable cause to believe that a crime was committed, or if arrest is authorized but not made (for reasons to be included in the incident report), the law enforcement officer~~ law enforcement officers should:

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

9.1.2. Advise the victim of the applicability of criminal laws, procedures for filing a criminal complaint, the availability of a petition for a protective order, the procedures for filing a petition, and the remedies an order may contain;

9.1.3. Encourage the victim to contact the nearest available domestic violence program for information regarding services available to victims of domestic

violence;

9.1.4. ~~Advise~~ Inform the victim that the law enforcement officers will provide transportation for or facilitate transportation of the victim to a shelter or the appropriate court when reasonable cause exists to believe that the victim suffered or is likely to suffer physical injury.

~~9.1.5. Provide transportation for or facilitate transportation of the victim upon the request of the victim to a shelter or the appropriate court when reasonable cause exists to believe the victim has suffered or is likely to suffer physical injury.~~

9.2. The law enforcement officers should not become involved in the disposition of personal property, the ownership of which is in dispute except as provided in ~~subdivision 9.3.~~ of this section. In the absence of an arrest, the law enforcement officers should remain neutral and be concerned primarily with maintaining the peace and safety of those persons present.

~~9.3. The law enforcement officers shall provide for the safety of the parties when they are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.~~

§149-3-10. Other On-Scene Assistance to Victims and Dependents.

10.1. Whether or not an arrest is made, the responding law enforcement officers 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 officers should stand by for a reasonable period of time while victims or other persons desiring to leave gather necessities for short-term absences from home, such as clothing, medication, and necessary documents.

10.2. Whether or not an arrest is made, the responding law enforcement officers are required by W. Va. Code §48-27-702 to notify the victim orally or in writing of the availability of a local domestic violence shelter program, crime victim compensation fund, including its telephone number, or and other services in the community, and of civil and criminal remedies such as: the right to file for a protective order and the right to file a criminal complaint if there is a violation of an existing protective order.

10.3. If an arrest is made or an arrest warrant obtained, the law enforcement officers should:

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

10.3.2. 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).

10.4. Law enforcement officers responding to an alleged incident of abuse shall inform the parties to the incident of the availability of the possible remedies provided by the Prevention of Domestic Violence Act (W. Va. Code §48-27-101 et. seq.) and the possible applicability of criminal laws.

10.5. Law enforcement officers responding to an alleged incident of abuse shall, in addition to providing the information required in ~~subdivision 10.4.~~ of this rule, provide transportation for or facilitate transportation of the victim, upon the request of the victim, to a shelter or the magistrate court when there is reasonable cause to believe that the victim has suffered or is likely to suffer physical injury.

10.6. When law enforcement officers form 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 domestic violence.

10.7. Elderly victims or physically dependent victims.

10.7.1. When a victim of domestic violence is elderly or physically dependent, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elderly or of a physically dependent person, and the victim can no longer provide care (as, for example, when the victim is hospitalized) ~~the responding law enforcement officers should determine whether the elderly or physically dependent person is physically endangered, wither as a result of the abuse, a pre-existing medical condition, or the absence of a caretaker. If the elderly or physically dependent person is physically endangered and mentally alert, the law enforcement officers should attempt to provide and facilitate for the well-being of ask the elderly or physically dependent person. For the name of a relative or friend who can be contacted immediately to assist the elderly or physically dependent person. The law enforcement officers shall facilitate transportation of the elderly or physically dependent person to a relative or friend, if one can be found.~~

10.7.2. If there is no one available to assist the elderly or physically dependent person, or if the elderly or physically dependent person appears not to be mentally alert, the law enforcement officers should make an emergency referral to Adult Protective Services. The law enforcement officers should remain at the residence until the Adult Protective Services worker arrives, or should transport the elderly or physically dependent person to a medical facility, or other appropriate place where the elderly or physically dependent person can wait for the worker.

10.7.3. In addition to providing the notification required by other provisions of

this rule, the law enforcement officers should advise the elderly or physically dependent person of the availability of protective services through Adult Protective Services.

10.8. Child victims and dependents.

10.8.1. When the victim of abuse is a minor child, the law enforcement officers shall arrest the accused if the law enforcement officers observe the commission of a crime and shall report to Child Protective Services, as required by W. Va. Code §49-6A-2 et seq. If the child is physically injured, the law enforcement officers should facilitate the transportation of the child to the nearest hospital for treatment. The law enforcement officers should provide the victim notification, as described in this rule, to an adult caretaker of the child who is not the perpetrator of the abuse.

10.8.2. If the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized) and is not incapacitated, the officer shall consult with the victim about arrangements for the child. If the accused is arrested and was the sole caretaker of a child and/or if the victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), or if both caretakers are arrested, the law enforcement officers shall contact Child Protective Services and Child Protective Services (CPS). CPS will determine ~~may determine~~ whether there is a responsible relative who can care for the child. ~~and if so, may contact that relative and await the relative's arrival, or the law enforcement officer may contact Child Protective Services~~ Law enforcement officer shall remain with the child until placement is made at the residence until a protective services worker arrives or take the child into custody pursuant to the Child Welfare Law (W. Va. Code §49-5-8 and 49-6-9). ~~If no responsible relative is available, the law enforcement officers should contact Child Protective Services and remain at the residence until a protective services worker arrives or should take the child into custody pursuant to the Child Welfare law (W. Va. Code §49-5-8 and 49-6-9).~~

§149-3-11. Processing the Accused.

11.1. A person arrested for violation of a protective order shall be charged with any crimes properly charged 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 officers 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.

§149-3-12. Reporting.

12.1. A Domestic Violence Incident Report, as required by W. Va. Code §48-27-801, shall be completed by the law enforcement officers responding to any call covered by this rule.

12.2. Data collection.

12.2.1. All ~~written~~ reports on the same person shall should be kept together or cross-referenced so that repeat domestic violence can be monitored.

12.2.2. The ~~written~~ report, or another document (such as an index card) or computer entry generated from the ~~written~~ report, shall become a domestic violence tracking report.

12.2.3. To the extent possible, the domestic violence tracking report shall be accessible to dispatchers and law enforcement officers.