



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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September 17, 2001

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: J. Nobert Federspiel
Governor's Committee on Crime, Delinquency and Correction
1204 Kanawha Blvd East
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Protocol for Law Enforcement Response to Domestic Violence, 149CSR3**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

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

Subject: Protocol for Law Enforcement Response to Domestic Violence, 149CSR3

PERTINENT DATES

Filed for public comment: June 22, 2001
Public comment period ended: July 23, 2001
Filed following public comment period: July 27, 2001
Filed LRMRC: July 27, 2001
Filed as emergency:

Fiscal Impact: None

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ABSTRACT

The proposed rule amends a current legislative rule. The proposed rule incorporates the provisions of Enrolled Senate Bill No. 730 which passed during the 2001 Legislative Session. That Bill required a law enforcement agency to immediately investigate a missing person, if the missing person possessed a valid protective order or possessed one that had expired within 30 days or if the missing person report is 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.

AUTHORITY

Statutory authority: W.Va. Code, §48-2A-9, which provides, in part, as follows:

... (g) The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic or family violence, to represent shelters receiving funding pursuant to article two-c of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.