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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Legislative Rule-Making Review Committee*

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February 11, 2001

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

TO: Ken Hechler, Secretary of State, State Register

TO: Don Davidson  
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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.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



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ANALYSIS OF PROPOSED LEGISLATIVE RULES

DEC 29 9 57 AM '00

**Staff Counsel:** Rita A. Pauley  
**Date:** December 26, 2000  
**Agency:** Governor's Committee on Crime, Delinquency and Correction  
**Subject:** Protocol for Law Enforcement Response to Domestic Violence, 149 CSR 3

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PERTINENT DATES

Filed for public comment: July 3, 2000  
Public comment period ended: August 4, 2000  
Filed following public comment period: August 16, 2000  
Filed LRMRC: August 16, 2000  
Filed as emergency: N/A  
Fiscal Impact: None

ABSTRACT

This is a current legislative rule that establishes law enforcement response to domestic violence. It establishes 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 proposed amendments are being made to meet the requirements of SB 128 which was passed during the 2000 legislative session.

The following is a synopsis of the substantive amendments.

Subsection 3.2.3 defines the term "Family or household member". The proposed amendments would add language specifying that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship. The amendment also includes people who are related by marriage or consanguinity up to second cousin, as well as a person who is the father, stepfather, mother, stepmother, brother, or sister of a family or household member.

Subsection 7.9 cites the violation of state and federal law for the possession of a firearm by a person subject to a valid protective order. One of the proposed amendments cites W.Va. Code, "§61-7-7", specifically, which identifies individuals who cannot possess a

firearm. The other proposed revision in this subsection is the inclusion of the word "also" which clarifies that both federal and state laws can be violated.

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**AUTHORITY**

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

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.

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**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 PROVISION OF THE CODE

Yes.

VIII. OTHER.

Counsel has suggested minor technical modifications.