

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

JUL 28 11 18 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

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

CITE AUTHORITY 48-2A-9

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 NEW 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

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

LEGISLATIVE RULE TITLE: Protocol for Law Enforcement Response To Domestic Violence

1. Authorizing statute(s) citation 48-2A-9

2. a. Date filed in State Register with Notice of Hearing

June 6, 1997

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

Individual mailing to law enforcement agencies advising of the comment period, identifying sections to be amended and providing a copy of the proposed rule.

c. Date of Hearing(s) Comment period ended on July 7, 1997 at

3:00 pm.

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

Attached X No comments received

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

f. Name and phone number(s) of agency person(s) to contact for additional information:

James M. Albert (304) 558-8814, Ext. 202

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.

b. Date of hearing: _____

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 _____



Department of Military Affairs and Public Safety
Criminal Justice and Highway Safety Division

Cecil H. Underwood
Governor

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Charleston, West Virginia 25301-2900

James M. Albert
Director

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State of Circumstances

The Governor's Committee on Crime, Delinquency and Correction is mandated under 48-2A-9 of the Code of West Virginia to develop and promulgate rules for state, county, and municipal law enforcement agencies regarding their duties with respect to domestic violence.

Summary of Proposed Rules

The principle purpose of these rules and regulations is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic violence calls.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Protocol for Law Enforcement Response to Domestic Violence

Type of Rule: Legislative Interpretive Procedural

Agency Governor's Committee on Crime, Delinquency and Correction

Address 1204 Kanawha Boulevard East
Charleston, West Virginia 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

There are no direct expenses associated with implementation of the protocol beyond the current capacity of law enforcement agencies.

3. Objectives of these rules:

To provide guidelines for police agencies and officers in response to domestic violence complaints.

Rule Title: Protocol for Law Enforcement Response to Domestic Violence

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 7-25-97

Signature of Agency Head or Authorized Representative

J. Mallon

FILED

JUL 28 11 18 AM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

SERIES 3
POLICE RESPONSE TO DOMESTIC VIOLENCE**

§149-3-1. General.

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

1.2. Authority. -- ~~West Virginia~~ W. Va. Code §48-2A-9

1.3. Filing Date. --

1.4. Effective Date. --

§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 law enforcement officers and other personnel involved in police response to domestic calls.

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 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. Scope of Coverage.

3.1. For the purposes of this rule, unless specifically stated otherwise, the terms "officer", "law enforcement officer", or "police officer" refer to a chief, sergeant or member of any municipal police force or department, a sheriff, a sheriff's deputy, an appointed security officer of a state university or college, or the Superintendent, or an officer or member of the West Virginia State Police. or an officer of the Division of Natural Resources, Law Enforcement Section, in emergency situations or when assistance is requested by one of the above listed personnel. Nothing in this rule should be construed to extend the authority of any law enforcement officer beyond the law enforcement officer's statutory jurisdiction.

3.2. 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 following conditions:

3.2.1.1. Condition of the alleged victim. -- 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 choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact;

3.2.1.2. Condition of the accused. -- 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;

3.2.1.3. Condition of the scene. -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle; and

3.2.1.4. Other conditions. -- 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; written statements by witnesses.

3.2.2. "Family Violence" or "Abuse" means the occurrence of one or more of the following acts between family or household members:

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

3.2.2.2. Placing another in reasonable apprehension of physical harm;

3.2.2.3. Creating fear of physical harm by harassment, psychological abuse or threatening acts;

3.2.2.4. Committing either sexual assault or sexual abuse as those terms are defined in ~~West Virginia Code §61-8B-1 et. seq. and §61-8D-1 et. seq.;~~ or W. Va. Code §§61-8B-1 et. seq. and 61-8D-1 et seq.; or

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

3.2.3. "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together or a person with whom the victim has a child in common.

3.3. Domestic violence protective orders are to be considered criminal in nature. Any and all law enforcement officers 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 may be performed on any day including Sundays and holidays. No law enforcement officers shall refuse to serve pleadings or orders in domestic violence protective order actions.

3.4. A protective order remains in effect for the period of time stated in the order except:

3.4.1. A protective order loses its effectiveness if a temporary circuit court order which does not extend the protective order is signed by a family law master or judge, or if a final order is signed by a judge, if:

3.4.1.1. The temporary or final order was entered in a divorce, separate maintenance or annulment action between the same parties; and

3.4.1.2. The temporary or final order was entered after the date of the issuance of the protective order.

3.4.2. A protective order's effectiveness is extended beyond the expiration date in the order if:

3.4.2.1. A divorce, separate maintenance or annulment action between the same parties has been filed while the protective order is still in effect by its own terms.

3.5. An order issued in any county in West Virginia is in effect in all counties in West Virginia.

3.6. Any valid protective order issued by the court of another state or Indian Territory shall be given full faith and credit and enforced as if it is an order of this state. ~~if its terms and conditions are substantially similar to those which may be imposed by this state.~~

§149-3-4. Dispatch.

4.1. Dispatchers under the supervision of a police department or who serve multiple police departments should 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.

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

4.2.1. The nature of the incident;

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

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

4.2.4. Whether weapons are involved;

4.2.5. Whether an ambulance is needed;

4.2.6. Whether the suspect is present and, if not, the suspect's description, direction of flight, and mode of travel;

4.2.7. Whether children are at the scene;

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

4.2.9. Whether a protective order is in effect and whether an affidavit to enter the premises exists;

4.2.10. Whether a criminal warrant is outstanding on the suspect;
and

4.2.11. Whether the suspect 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.

4.3. 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 officer. The dispatcher should tell the caller that help is on the way and when the caller can expect the police to arrive.

4.4. If the dispatcher has ready access to police department records that 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.

4.5. 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 on bond, the dispatcher should consult the records and radio any relevant information to the responding law enforcement officer.

§149-3-5. Initial Law Enforcement Officer Response.

5.1. Approaching the scene.

5.1.1. ~~The responding law enforcement officer should approach the scene of a domestic incident as one of high risk.~~ Whenever possible, two law enforcement officers shall respond to a domestic call. The responding law enforcement officer(s) should approach the scene of a domestic incident as one of high risk.

5.1.2. The law enforcement officer(s) should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.

5.1.3. ~~Most law enforcement officer(s) injured in domestic violence responses are harmed during the approach to the incident. The incidence of ambush is two and one-half times higher in domestic situations than in responding to other types of incidents.~~ Unless the circumstances of a particular incident require different measures, a the law enforcement officer(s) should follow the approach procedures set out in the remainder of this section. The law enforcement officer(s) should:

5.1.3.1. Approach the scene inconspicuously. ~~He or she~~ The law enforcement officer(s) should not use sirens or lights in the immediate area of the scene of the incident;

5.1.3.2. ~~Not park directly in front of~~ Park away from the immediate scene of the incident;

5.1.3.3. Keep a safe exit route in mind;

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

5.1.3.5. Be alert for persons moving away from the immediate scene of the incident; and

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

5.2. Initial contact.

5.2.1. The responding law enforcement officer(s) should identify himself or herself, explain the law enforcement officer's presence, and request entry into the home or business. The law enforcement officer(s) should ask to see the person who is the subject of the call. If the person who called the police is someone other than the subject of the call, the law enforcement officer(s) should not reveal the caller's name.

5.2.2. The law enforcement officer(s) may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so. If a domestic relations protective order is in effect, written consent to enter may have been given by the victim and be on file. The law enforcement officer(s) shall limit the search to a search for other suspects, victims, witnesses or evidence connected with the alleged domestic incident.

5.2.3. If refused entry, the law enforcement officer(s) should be persistent about seeing and speaking alone with subject of the call. If access to the subject is refused, the law enforcement officer(s) should request the dispatcher to contact the caller if the caller is the subject of the call. If the law enforcement officer(s) leaves the scene, the law enforcement officer(s) should drive by and observe frequently. If the law enforcement officer(s) remains to observe, the law enforcement officer(s) should move to public property (the street) and observe the premises.

5.2.4. In some circumstances, forced entry is necessary and appropriate. Forced entry may be appropriate when the residence area shows signs of a fight 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 officer(s) observes that the person is wounded, injured or is otherwise in need of assistance.

5.3. Establishing Control of Scene.

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

5.3.1. Identifying potential weapons in the surroundings;

5.3.2. Separating the victim and the accused when circumstances are appropriate;

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

5.3.4. Identifying all occupants and witnesses on the premises;
and

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

5.4. On-scene investigation.

5.4.1. The law enforcement officer(s) should conduct an investigation using the same procedures that the law enforcement officer(s) would use in any other on-scene criminal investigation. While conducting the investigation the law enforcement officer should attempt to establish the existence of credible corroborative evidence.

~~5.4.2. The responding law enforcement officer should interview the victim as fully as circumstances allow to inquire about the nature of the dispute.~~

~~5.4.3.~~ 5.4.2. The law enforcement officer(s) should ensure the victim's safety and privacy by interviewing the victim in an area apart from the accused, witnesses, and bystanders if possible.

~~5.4.4.~~ 5.4.3. In questioning the victim, the law enforcement officer(s) should use supportive interview techniques. The law enforcement officer(s) should ask the victim about previous domestic incidents, and their frequency and severity. The law enforcement officer(s) should not tell the victim what action the law enforcement officer(s) intends to take until all available information has been collected.

~~5.4.5.~~ 5.4.4. The law enforcement officer(s) should interview 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) the law enforcement officer(s) should determine whether the victim and/or any witnesses (including all child witnesses) allege facts which constitute all of the elements of assault or battery. If so, the law enforcement officer(s) should inquire whether the victim and/or any witnesses is willing to sign a statement containing those facts. The law enforcement officer(s) should also inquire about past abuse or other crimes to aid the law enforcement officer(s) in evaluating the dangerousness of the accused. The law enforcement officer(s) should proceed with the investigation even in the absence of a statement from either a victim and/or ~~a witness~~ any witnesses (including child witnesses).

~~5.4.6.~~ 5.4.5. The responding law enforcement officer(s) should interview the accused as fully as circumstances allow to inquire about the nature

of the dispute. The law enforcement officer(s) should be alert to possible incriminating statements.

~~5.4.7.~~ 5.4.6. In the collection of evidence and taking of statements, the law enforcement officer(s) 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.

~~5.4.8.~~ 5.4.7. Children should be interviewed in a manner appropriate to the child's age. Signs of trauma and any apparent healing of wounds on the child should be noted by the law enforcement officer(s).

~~5.4.9.~~ 5.4.8. If the accused has fled the scene, the law enforcement officer(s) should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.).

~~5.4.10.~~ 5.4.9. Enforcing Any Protective Order.

5.4.9.1. If the dispatcher has not advised the law enforcement officer(s) of the existence of a protective order or conditions of release on bond set in a crime against a family or household member, including a family or household member who is a child, the law enforcement officer(s) should ask the victim whether there is such an order or such bail conditions and, if so, if the victim 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 officer(s) 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. 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 order, then the law enforcement officer(s) ~~should~~ shall follow the arrest authorization provisions of ~~West Virginia W. Va. Code §48-2A-10c.~~

5.4.9.2. Where the suspect has not been served and has not had actual notice of the order, if the law enforcement officer(s) has a copy to serve upon the suspect, the copy ~~should~~ shall be served. If the law enforcement officer does not have a copy to serve, then the law enforcement officer(s) ~~should~~ shall give the suspect actual notice of the provisions of the order by stating the provisions of the order to the suspect. 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 officer(s) shall follow the arrest ~~authorization~~ provisions as provided for by ~~West Virginia W. Va. Code §48-2A-10c.~~

5.4.9.3. When law enforcement officers observe any violations of a bail condition the law enforcement officer(s) knows has been set in cases of crimes between family or household members including a family or household members who are children, the law enforcement officers shall arrest the accused for violations of the bail conditions, including the presence of the accused at the home of the victim as authorized by ~~West Virginia W. Va. Code §62-1C-17c.~~ Law enforcement officers shall enforce all protective or similar type orders that have been entered by courts ~~from outside the State of West Virginia if the terms and conditions of these orders are substantially similar to those which may be imposed by this state.~~ of another state or Indian Territory.

~~5.4.11.~~ 5.4.10. Further On-Scene Investigation.

The law enforcement officer(s) ~~should~~ 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 officer(s) should ensure that photographs are taken of visible injuries on the victim and of the crime scene. All physical evidence shall be collected, noted in reports, and vouchered as in other criminal investigations. See §149-3-11 for reporting and data collection requirements.

~~5.4.12.~~ 5.4.11. The law enforcement officer(s) should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officer(s) should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The law enforcement officer(s) should advise the victim to have photographs taken if injuries appear later.

~~5.4.13. All physical evidence should be collected, noted in reports, and vouchered as in other criminal investigations.~~

§149-3-6. The Arrest Decision.

6.1. The responding law enforcement officer should arrest the accused whenever arrest is authorized. If the law enforcement officer decides not to arrest the accused, he or she must include in the report of the incident a detailed explanation of the reasons why an arrest was not made.

6.2. Under current West Virginia law, arrest is authorized in the following circumstances:

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

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

6.2.3. When the law enforcement officer observes the violation of a valid protective order issued by a magistrate, a circuit judge, or family law master, or from another state or Indian Territory, and the law enforcement officer has actual knowledge that a valid protective order exists or that the valid protective order has been legally extended. The law enforcement officer shall arrest the suspect if the suspect's presence violates a protective order (e.g., presence at the residence or victim's place of work), unless the accused was not served with the order and did not otherwise have notice of the order and its contents;

6.2.4. When the law enforcement officer observes any violation of a bail condition 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;

6.2.5. When the accused is alleged to have committed domestic assault and/or domestic battery as defined in ~~West Virginia Code 61-2-28~~ W. Va. Code §61-2-28; or when the accused is alleged to have committed a violation of a valid protective order issued from a magistrate, circuit judge, or family law master, or legal extension of the protective order as defined in ~~West Virginia W. Va. Code §48-2A-10c~~, or from another state or Indian Territory; a law enforcement officer has authority to arrest the alleged perpetrator for the offense when:

6.2.5.1. The law enforcement officer has observed credible corroborative evidence that the offense has occurred; and

6.2.5.2. The law enforcement officer has received, from the victim or a witness, a verbal or written allegation of facts constituting a violation of ~~West Virginia Code §61-2-28 or West Virginia Code §48-2A-10c~~; or W. Va. Code §§61-2-28 or 48-2A-10c; or

6.2.5.3. The law enforcement officer has observed credible evidence that the accused committed the offense;

6.2.6. When a misdemeanor or felony not included among those specified in Subsections 6.2.2 through 6.2.5. of this rule has been committed and the law enforcement officer or another person obtains or has previously obtained an arrest warrant; and

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

6.3. The law enforcement officer should not consider the following factors in making the arrest decision:

6.3.1. The marital status of the parties;

6.3.2. The ownership or tenancy rights of either party;

6.3.3. Verbal assurances that the violence will stop;

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

6.3.5. Speculation that the victim 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);

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

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

6.3.8. The existence or not of a current protective order (except insofar as the violation of the order requires arrest);

6.3.9. Concern about reprisals against the victim;

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

6.3.11. That the incident occurred in a private place; or

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

6.4. It is the law enforcement officer's and/or prosecuting attorney's responsibility to decide whether an arrest should be made unless the law enforcement officer is required to make an arrest for violation of a valid protective order and/or a violation of the terms and conditions of bail on a charge of a crime against a family or household member. The law enforcement officer, 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.

6.5. If a law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the law enforcement officer shall evaluate each complaint separately to determine who was the primary aggressor. If the law enforcement officer determines that one person was the primary aggressor, the law enforcement officer need not arrest the other person believed to have committed domestic or family violence. In determining whether a person is the primary aggressor the law enforcement officer should consider, among other things:

- 6.5.1. Prior complaints of domestic or family violence;
- 6.5.2. The relative severity of the injuries inflicted on each person;
- 6.5.3. The likelihood of future injury to each person; and
- 6.5.4. Whether one of the persons acted in self-defense.

6.6. A law enforcement officer shall not:

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

6.6.2. Base the decision to arrest ~~or not to arrest~~ on:

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

6.6.2.2. The law enforcement officer's perception of the willingness of a victim or witness to the domestic or family violence to testify or otherwise participate in a judicial proceeding.

6.7. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic or family violence or who arrests two or more persons for a crime involving domestic or family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.

6.8. ~~If the~~ The law enforcement officer ~~arrests~~ shall arrest for the commission of a crime, ~~the~~ The law enforcement officer should confiscate all weapons used or brandished in the commission of the crime, including those firearms held in violation of a valid protective order prohibiting possession of a

firearm, and those weapons shall be held as evidence for prosecution: Provided that this section does not authorize a search of the premises unless a search warrant has been obtained or consent was given by the occupant of the premises.

6.9. Notwithstanding the issue of violation of the state law, the possession of a firearm by a person subject to a valid protective order is a violation of federal law and should be referred to federal authorities.

6.10. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or Indian Territory to violate a valid protective order is a violation of federal law and should be referred to federal authorities.

6.11. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or Indian Territory to commit domestic violence is a violation of federal law and should be referred to federal authorities.

§149-3-7. Effectuating the Arrest.

7.1. Any person arrested pursuant to Subsection 6.2. 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.

7.2. 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 suspect has fled the scene, the law enforcement officer should initiate procedures to pursue and apprehend the accused as promptly as possible if the suspect's presence 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 officer should obtain and execute the warrant as soon as practical.

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

§149-3-8. Procedure when Arrest is not Authorized or, if Authorized, is not Made.

8.1. If an arrest is not 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 detailed in the incident report), the law enforcement officer should:

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

8.1.2. 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 can contain;

8.1.3. Encourage the victim to contact the nearest available domestic violence program for information regarding counseling and other services available to victims of domestic violence;

8.1.4. Advise the victim or victims that upon request of the victim or victims the law enforcement officer will provide transportation for or facilitate transportation of the victim or victims to a shelter or the appropriate court where there is reasonable cause to believe that the victim or victims have suffered or are likely to suffer physical injury; and

8.1.5. Provide transportation for or facilitate transportation of the victim or victims upon the request of the victim or victims to a shelter or the appropriate court where there is reasonable cause to believe the victim or victims has suffered or is likely to suffer physical injury.

8.2. The law enforcement officer should not become involved in the disposition of personal property, the ownership of which is in dispute. In the absence of an arrest, the law enforcement officer should remain neutral and be concerned primarily with maintaining the peace and safety of those persons present.

§149-3-9. Other On-Scene Assistance to Victims and Dependents.

9.1. Whether or not an arrest is made, the responding law enforcement officer should not leave the scene of the incident until the situation is under control and the likelihood of immediate violence has been eliminated. The law

enforcement officer should stand by while victims or other persons desiring to leave gather necessities for short-term absences from home, such as clothing, medication, and necessary documents.

9.2. Whether or not an arrest is made, the responding law enforcement officer is required by ~~West Virginia~~ W. Va. Code 48-2A-9b §48-2A-9b to notify the victim orally or in writing of the availability of a shelter, including its telephone number, or other services in the community and of civil and criminal remedies.

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

9.3.1. 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

9.3.2. 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 suspect should be specifically prohibited from appearing).

9.4. Any law enforcement officer 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 (~~West Virginia~~ W. Va. Code 48-2A-1 §48-2A-1 et. seq.) and the possible applicability of criminal laws.

9.5. Any law enforcement officer responding to an alleged incident of abuse shall, in addition to providing the information required in Subsection 9.4. 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.

9.6. Elder victims or physically dependent victims.

9.6.1. 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 elder 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 officer should determine whether the elder or physically dependent person is physically endangered, either as a result of the abuse, a pre-existing medical condition, or the absence of a caretaker. If the elder or physically dependent person is

physically endangered and mentally alert, the law enforcement officer should ask the elder or physically dependent person for the name of a relative or friend who can be contacted immediately to assist the elder or physically dependent person. The law enforcement officer shall facilitate transportation of the elder or physically dependent person to a relative or friend, if one can be found.

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

9.6.3. In addition to providing the notification required by other provisions of this rule, the law enforcement officer should advise the elder or physically dependent person of the availability of protective services through Adult Protective Services.

9.7. Child victims and dependents.

9.7.1. When the victim of abuse is a minor child, the law enforcement officer should arrest the accused if the law enforcement officer observes the commission of a crime and should make a report to Child Protective Services, as required by the Child Welfare Law in ~~Chapter 49 of the West Virginia Code~~ W. Va. Code §49. If the child is physically injured, the law enforcement officer should facilitate the transportation of the child to the nearest hospital for treatment. The law enforcement officer 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.

9.7.2. 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 in cases where both caretakers are arrested, the law enforcement officer should determine whether there is a responsible relative who can care for the child and, if so, should contact that relative and await the relative's arrival. If no responsible relative is available, the law enforcement officer 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.

§149-3-10. Processing the Accused.

10.1. A person arrested for violation of a protective order should be charged with any crimes properly charged as a result of the incident in which the violation occurred.

10.2. 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.

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

§149-3-11. Reporting.

11.1. A Domestic Violence Incident Report as required by West Virginia W. Va. Code §48-2A-9 must be completed by the law enforcement officer responding to any call covered by this rule.

11.2. Data collection.

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

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

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

**GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION
PROTOCOL FOR LAW ENFORCEMENT
RESPONSE TO DOMESTIC VIOLENCE**

SUMMARY OF COMMENTS RECEIVED

July 23, 1997

The attached letters from the West Virginia Coalition Against Domestic Violence, the West Virginia Prosecuting Attorneys Institute and the Charleston Police Department were the only comments received.

149-3-3.1 "Scope of Coverage" The comment was received to include an officer of the DNR in emergency situations or when assistance is requested by one of the above listed personnel.

The rule was modified.

149-3-5.4.4 "Initial Law Enforcement Officer Response" Two comments were received that when the term witnesses is used in this section that it include "all child witnesses."

The rule was modified.

149-3-5.4.10 "Further On-Scene Investigation" The comment was received that the first mention of mandatory reports at the crime scene is not until §149-3-11 and it was suggested that this requirement be placed under §149-3-5.4 "On Scene Investigation."

The rule was modified.



Department of Military Affairs and Public Safety
Criminal Justice and Highway Safety Division

1204 Kanawha Boulevard East
Charleston, West Virginia 25301-2900

Cecil H. Underwood
Governor

James M. Albert
Director

Telephone (304) 558-8814
Fax (304) 558-0391

MEMORANDUM

TO: Chiefs of Police
Sheriffs
College Campus Police Chiefs

FROM: *JMA* James M. Albert
Director

DATE: June 10, 1997

RE: **LEGISLATIVE RULES**

Enclosed for your review are copies of legislative rules entitled, "Protocol for Law Enforcement Response to Domestic Violence" and "Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards," which have been filed with the Secretary of State's office for comment until July 7, 1997. Modifications to various sections of each rule are being proposed and are outlined below. All language to be deleted is struck through and the new language is underlined.

The following sections of the Protocol for Law Enforcement Response to Domestic Violence have been amended: (Numerous sections have been amended to make the section technically correct and are not listed below).

- ◆ 2.1.
- ◆ 3.6.
- ◆ 5.1.1, 5.1.3, 5.1.3.1., 5.1.3.2.
- ◆ 5.2.2., 5.2.4.
- ◆ 5.4.2., 5.4.9.1., 5.4.9.2., 5.4.9.3., 5.4.10., 5.4.13.
- ◆ 6.2.3., 6.2.5.
- ◆ 6.4.
- ◆ 6.8., 6.9., 6.10., 6.11.

Memo to Chiefs and Sheriffs
June 10, 1997
Page Two

The following sections for the Basic Training Academy, Annual In-Service and Biennial In-Service Training Standards have been amended: (Numerous sections have been amended to make the section technically correct and are not listed below).

- ◆ 3.18.
- ◆ 3.19.
- ◆ 3.20.
- ◆ 3.21.
- ◆ 3.22.
- ◆ 6.5.2.
- ◆ 6.6.
- ◆ 7.3.3.
- ◆ 7.4.
- ◆ 7.5.
- ◆ 7.6.
- ◆ 15.2., 15.2.a., 15.2.b., 15.2.c., 15.2.d., 15.2.e., 15.2.f.
- ◆ 15.3.
- ◆ 15.5.

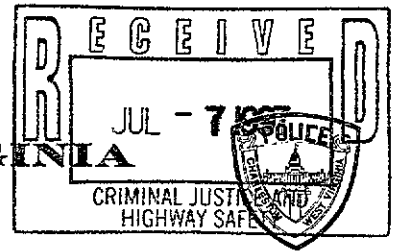
If you have any questions or need additional information, please contact Mr. Donald M. Davidson at (304) 558-8814, Extension 214.

JMA:DMD/sw
Enclosures

t:\mac\nofice97



**CITY OF
CHARLESTON, WEST VIRGINIA
POLICE DEPARTMENT**



G. KEMP MELTON
MAYOR

(304) 348-8174

P. O. BOX 2749

CHARLESTON, WEST VIRGINIA 25330

July 7, 1997

FREDERICK L. MARSHALL
CHIEF OF POLICE

(304) 348-6460

Governor's Committee on Crime
1204 Kanawha Boulevard East
Charleston, West Virginia 25301

Dear Sir or Madam:

This letter is written in response to your request for comments on the amendments to the Protocol for Law Enforcement Response to Domestic Violence. Key personnel at the Charleston Police Department reviewed the changes and have one suggestion for your consideration. Currently, the first mention of mandatory reports at crime scenes is not mentioned until the last section 149-3-11, Reporting. We would suggest mentioning reports earlier, possibly under section 5.4, On-scene Investigation.

We appreciate the opportunity to respond to these changes in the Protocol for Law Enforcement Response to Domestic Violence. If I can provide any additional information on our suggestion or any other section of the code please do not hesitate to contact me. I can be reached at 348-6460.

Sincerely,

Frederick L. Marshall, Chief
Charleston Police Department

WEST VIRGINIA PROSECUTING ATTORNEYS INSTITUTE

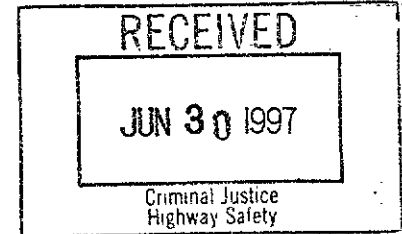
CHRISTOPHER D. CHILES
Chairman

VIRGINIA J. HOPKINS
Executive Director

1206 KANAWHA BLVD., EAST
SUITE 207
CHARLESTON, WEST VIRGINIA 25301
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ALEXANDER M. ROSS
MICHAEL D. THOMPSON
LOUIS "DUKE" BLOOM
JAMES E. SAGO

June 26, 1997



Donald M. Davidson
Law Enforcement Training Coordinator
Criminal Justice & Highway Safety
1204 Kanawha Blvd., East
Charleston, WV 25301

RE: Suggestions for protocol for law enforcement
response to domestic violence

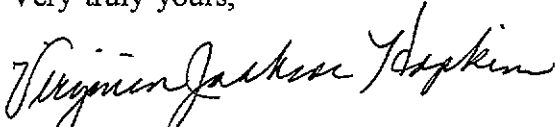
Dear Mac:

As we discussed by phone earlier this week, I have the following two suggestions to be added to the protocol:

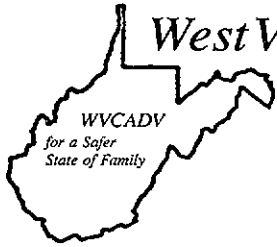
1. To 3.1, under "Scope of Coverage," I would suggest that it include "an officer of the DNR in emergency situations or when assistance is requested by one of the above listed police personnel."
2. To 5.4.4, before the last sentence, my suggestion is to add, "The above reference referring to 'witnesses' includes all child witnesses who should be fully interviewed as is outlined."

I am hopeful that the above suggestions are clear. If anything else is required, please so advise me. Thank you in advance for your cooperation.

Very truly yours,


Virginia Jackson Hopkins
Executive Director
WV Prosecuting Attorneys Institute

VJH/lg



West Virginia Coalition Against Domestic Violence

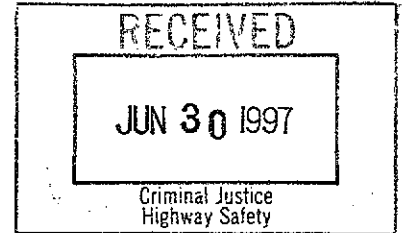
P.O. Box 85

Sutton, WV 26601

(304) 765-2250

June 27, 1997

Governor's Committee on Crime, Delinquency and Correction
1204 Kanawha Boulevard, East
Charleston, West Virginia 25301
Attn: Protocol for Law Enforcement
Response to Domestic Violence



Proposal

Because children are often the only witnesses to violence that occurs in the home;

Because domestic violence impacts the lives of children;

Because children's testimony can assist law enforcement officers in assessing events that happened;

Because law enforcement officers can assist children in understanding that the violence in their home is not the child's fault;

The WV Coalition Against Domestic Violence proposes that Section 5.4.4 of the Protocol for Law Enforcement response to Domestic Violence be revised to include the following underlined phrase:

"The law enforcement officer(s) should interview the victim and/or witnesses, including children, as fully and as soon as circumstances allow ..."

The WV Coalition Against Domestic Violence is grateful to the Governor's Committee on Crime, Delinquency and Correction for its ongoing efforts - through the Domestic Violence Protocol Review Committee - to update and revise the Protocol for Law Enforcement Response to Domestic Violence. The WV protocol is a model for adaptation by other states.

Respectfully submitted,

Sue Julian / Diane Reese
WVCADV Team Coordinators