

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark in this Box

FILED

JUN 28 9 25 AM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative Rule; 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: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 27, 1994 AT 3:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING

ADDRESS

Governor's Committee on Crime,
Delinquency and Correction

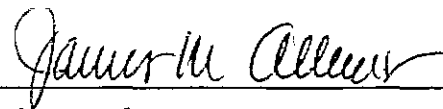
1204 Kanawha Blvd. East

Charleston, WV 25301

Attention: Protocol for Law Enforcement

Response to Domestic Violence

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

7.20



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

1204 Kanawha Boulevard East
Charleston, West Virginia 25301-2900

Gaston Caperton
Governor

Joseph J. Skaff
Secretary

James M. Albert
Director

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

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: _____

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: 6-28-94.

Signature of Agency Head or Authorized Representative

James W. Allee

FILED

JUN 28 9 25 AM '94

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. -- ~~These~~ This legislative rule ~~establishes~~ law enforcement response to domestic violence.

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

1.3. Filing Date. --

1.4. Effective Date. --

§149-3-2. Purposes.

2.1. The principal purpose of ~~these~~ this rule is to establish guidelines and procedures to be followed by police officers and other personnel involved in the police response to domestic calls. ~~For purposes herein, the term "police officer" shall refer to any city police officer, sheriff, sheriff's deputy, or West Virginia State Police.~~

2.2. Other purposes and goals of this rule ~~proceed~~ 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;

DRAFT 2

2.2.4. To promote officer safety by ensuring that 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. As used herein, unless the context clearly requires otherwise: For purposes herein unless specifically stated otherwise, the term "officer", "law-enforcement officer", or "police officer" shall 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 Division of Public Safety. Nothing in this rule should be construed to extend the authority of any law enforcement officer beyond the 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; 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.

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 an officer; audible evidence of a disturbance heard by the

DRAFT 2

dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

~~3.2.2. 3.1.1.~~ "Family Violence" or "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together:

~~3.2.2.1. 3.1.1.1.~~ Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; ~~Attempting to cause or intentionally, knowingly or recklessly causing bodily injury with or without dangerous or deadly weapons;~~

~~3.2.2.2. 3.1.1.2.~~ Placing another in reasonable apprehension of physical harm; ~~Placing by physical menace another in fear of imminent serious bodily injury;~~

~~3.2.2.3. 3.1.1.3.~~ Creating fear of physical harm by harassment, psychological abuse or threatening acts; ~~Creating fear of bodily injury by harassment, psychological abuse or threatening acts;~~

~~3.2.2.4. 3.1.1.4.~~ Committing either sexual assault or sexual abuse as those terms are defined in Chapter 61, articles 8B and 8D of this code; ~~and; Sexual abuse.~~

~~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.

~~3.1.2.~~ "Family or household member" means ~~spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and step children, current or former sexual or intimate partners, or other persons related by consanguinity or affinity. Consanguinity is defined as a "blood relationship." Affinity is defined as "as a result of marriage, the relationship that exists between one spouse and the blood relatives of the other spouse."~~

~~3.1.3.~~ "Sexual abuse" has the same meaning as the definitions of "sexual assault" and "sexual abuse" in the West Virginia Code.

3.3. Domestic violence protective orders are to be considered criminal in nature. Any and all law enforcement officers who are sworn officers in the State of West Virginia shall be 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.

~~3.2. Domestic violence protective orders are to be considered criminal in nature. Any and all law enforcement officers who are sworn officers in the State of West Virginia shall be responsible for the initial service of all protective orders in order to ensure the most prompt service of the protective order.~~

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:

3.4.2.2. A divorce, separate maintenance or annulment suit 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 protective order issued by the court of another state 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 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; and

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

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 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 such records and radio any relevant information to the responding 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 officer.

§149-3-5. Initial Police Officer Response.

5.1. Approaching the scene.

~~5.1.1. The responding officer should approach the scene of a domestic dispute as one of high risk. Whenever possible, two officers will respond to a domestic call.~~

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

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

~~5.1.3. The officer should be alert for assailants leaving the scene and for the employment of weapons from doors, windows, or nearby vehicles.~~

5.1.3. Most 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, or an officer should follow the approach procedures set out in the remainder of this section. The officer should:

~~5.1.4. The officer otherwise should employ standard precautionary measures in approaching the scene of the incident.~~

5.1.4. Approach the scene inconspicuously. He or she should not use sirens or lights in the immediate area of the scene of the incident:

5.1.5. Not park directly in front of the immediate scene of the incident:

5.1.6. Keep a safe exit route in mind:

5.1.7. Be alert for the employment of weapons from doors, windows, or nearby vehicles:

5.1.8. Be alert for persons moving away from the immediate scene of the incident: and

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

5.2. Initial contact.

~~5.2. Initial contact with occupants.~~

~~5.2.1. The responding officer should identify himself as a police officer, explain his presence, and request entry into the home or business.~~

~~The officer 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 officer should not reveal the caller's name.~~

5.2.1. The responding officer should identify himself/herself, explain the officer's presence, and request entry into the home or business. The officer 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 officer should not reveal the caller's name.

~~5.2.2. The officer may enter and conduct a search of the premises relevant to the incident if consent has been given to do so. The search will be~~

~~limited to search for other suspects, victims, witnesses or evidence connected with the alleged domestic incident.~~

5.2.2. The officer may enter and conduct a search of the premises relevant to the incident if 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 search will be limited to a search for other suspects, victims, witnesses or evidence connected with the alleged domestic incident.

~~5.2.3. If refused entry, the officer should be persistent about seeing and speaking alone with subject of the call. If access to the subject is refused, the officer should request the dispatcher to contact the caller if the caller is the subject of the call. If the officer leaves the scene, he should drive by and observe frequently. If the officer remains to observe, he should move to public property (the street) and observe the premises. In some circumstances, forced entry will be necessary and appropriate. Forced entry may be appropriate when the residence areas 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 officer observes that the person is wounded, injured or is otherwise in need of assistance.~~

5.2.3. If refused entry, the officer should be persistent about seeing and speaking alone with subject of the call. If access to the subject is refused, the officer should request the dispatcher to contact the caller if the caller is the subject of the call. If the officer leaves the scene, the officer should drive by and observe frequently. If the officer remains to observe, the officer should move to public property (the street) and observe the premises. In some circumstances, forced entry is necessary and appropriate. Forced entry may be appropriate when the residence areas 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 officer 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 officer should establish control by:

~~5.3. Once inside, the responding officer should establish control by:~~

5.3.1. Identifying potential weapons in the surroundings;

~~5.3.2. Separating the victim and the assailant when circumstances are appropriate;~~

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

~~5.3.3. Restraining the assailant if necessary, and removing the assailant to the patrol car if immediate arrest is warranted;~~

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

~~5.3.4. 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. Identifying all occupants/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).

~~5.3.6. Separating occupants/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 responding officer should interview the victim and the assailant as fully as circumstances allow to inquire about the nature of the dispute. The officer should be alert to possible incriminating statements.~~

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

~~5.4.2. The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant, witnesses, and bystanders if possible. In questioning the victim, the officer should use supportive interview techniques. The officer should ask the victim about~~

~~previous domestic incidents, their frequency and severity. The officer should not tell the victim what action the officer intends to take until all available information has been collected.~~

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

~~5.4.3. If the accused has been arrested prior to interview, the accused must be given Miranda warnings before being questioned. If the accused has fled the scene, the officer should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.):~~

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

~~5.4.4. If the dispatcher has not advised the officer of the existence of a protective order, the officer should ask the victim whether there is such an order and, if so, if the victim can produce a copy and what county and court or magistrate the order was issued from the officer should attempt to contact a local law enforcement department specified by the victim to verify the existence of a valid protective order. Law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Law enforcement officers shall enforce all valid protective orders regardless of whether or not the accused has been served with the protective order. Law enforcement officers shall enforce all protective or similar type orders that have been certified from outside the State of West Virginia.~~

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

~~5.4.5. The officer should interview any witnesses as fully and as soon as circumstances allow taking down names, addresses, and other relevant information. If witnesses provide information about prior incidents, the officer should document such incidents to establish a pattern.~~

5.4.5. The officer should interview the victim and/or any 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

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

~~5.4.6. 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 officer.~~

5.4.6. The responding officer should interview the accused as fully as circumstances allow to inquire about the nature of the dispute. The officer should be alert to possible incriminating statements.

~~5.4.7. The officer should 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 officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene.~~

5.4.7. In order to avoid disputes over the admissibility of statements made by the accused, the officer should advise the accused of his or her Miranda rights before asking the accused any questions if 1) the officer has arrested the accused pursuant to 149-3-6 of this Rule, 2) if the officer has said anything to the accused which could lead the accused to believe that the officer has placed any constraint on the liberty of the accused, or 3) if the officer has focused the investigation on the accused.

~~5.4.8. The officer should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The officer should advise the victim to have photographs taken if injuries later appear.~~

5.4.8. 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 officer.

~~5.4.9. All physical evidence should be collected, noted in reports, and vouchered as in other criminal investigations.~~

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

5.4.10. Enforcing Any Protective Order.

If the dispatcher has not advised the officer of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including a family or household member who is a child, the officer 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 from. The officer should attempt to contact a 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 officer should follow the arrest authorization provisions of West Virginia §Code 48-2A-10(c). Where the suspect has not been served and has not had actual notice of the order, if the officer has a copy to serve upon the suspect, the copy should be served. If the officer does not have a copy to serve, then the officer should 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 officer shall follow the arrest authorization provisions as provided for by West Virginia Code §48-2A-10(c). When law enforcement officers observe any violations of a bail condition the officer 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 for violations of such bail conditions including the presence of the accused at the home of the victim as authorized by West Virginia Code §61-1C-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.

5.4.11. Further On-Scene Investigation.

The officer should 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 officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene.

5.4.12. The officer should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent. The officer 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 officer should arrest the accused assailant whenever arrest is authorized. If the officer decides not to arrest, he or she must include in his 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 officer has probable cause to believe that the suspect has committed a felony.

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

6.2.3. When the officer observes the violation of a valid protective order and the officer has actual knowledge that a valid protective order exists. The officer shall arrest the suspect if the suspect's presence violates a protective order (e.g. presence at the residence or victim's job-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 officer observes any violation of a bail condition including the presence of the accused at the home of the victim in violation of such 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, a law enforcement officer has authority to arrest the alleged perpetrator for said 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 section twenty-eight, article two, chapter sixty-one of this code; or

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

~~6.2.6. 6.2.4.~~ When a misdemeanor or felony not included among those in paragraphs 6.2.2 through ~~6.2.5. 6.2.4.~~ has been committed and the officer or another person obtains or has previously obtained an arrest warrant.

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

6.3. The 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 such an order ~~must justify~~ requires arrest).

~~6.3.9. The victim's emotional state.~~

~~6.3.9. 6.3.10.~~ Concern about reprisals against the victim.

~~6.3.10. 6.3.11.~~ Adverse financial consequences that might result from the arrest.

~~6.3.11. 6.3.12.~~ That the incident occurred in a private place.

~~6.3.12. 6.3.13.~~ The racial, cultural, social, political, or professional position, or sexual orientation of either the victim or the accused.

~~6.4. It is the officer's responsibility to decide whether an arrest should be made. The 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.~~

6.4. It is the officer's responsibility to decide whether an arrest should be made unless the 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 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 officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the 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 officer shall consider:

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 officer's perception of the willingness of a victim of 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.

~~6.5. 6.9.~~ If the officer arrests for the commission of a crime, the officer should confiscate all weapons used or brandished in the commission of the crime, and such weapons should 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.

§149-3-7. Effectuating the Arrest.

~~7.1. The responding officer should take the accused into custody as soon as a warrant for the arrest of the accused has been obtained or is outstanding. 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 officer should initiate procedures to pursue and apprehend the accused as promptly as possible; if the suspect has fled the scene, the officer should initiate procedures to pursue and to apprehend the suspect 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. A warrant is necessary (e.g. the accused has entered another private residence); the officer should obtain and execute the warrant as soon as practical.~~

7.1. Whenever any person is arrested pursuant to Subsection 6.2 of this rule, the arrested person 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. When the accused is a minor (under 18 years of age), the provisions of this protocol shall be fully applicable, except that arrest should be effectuated and the juvenile processed pursuant to the West Virginia Juvenile Offender Rehabilitation Act (W. Va. Code §49-5B-1 et seq.).~~

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 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 (e.g. the accused has entered another private residence or violated the terms of a valid protective order outside of the officers presence), the 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 officer should arrest and process the juvenile pursuant to the West Virginia Juvenile Officer Rehabilitation Act (West Virginia Code 49-5B-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 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 procedures for filing a criminal complaint and/or a petition for a protective order; and~~

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

DRAFT 2

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 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 such victim or victims ~~have~~ has suffered or is 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 such victim or victims to a shelter or the appropriate court where there is reasonable cause to believe ~~the~~ that such victim or victims has ~~have~~ suffered or is ~~are~~ likely to suffer physical injury.

~~8.2. The officer should not become involved in the disposition of personal property, ownership of which is in dispute. In the absence of a warrant or probable cause to believe a crime has occurred, the officer should remain neutral and be concerned primarily with maintaining the peace and safety of those present.~~

8.2. The 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 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 officer should not leave the scene of the incident until the situation is under control and the likelihood of further violence has been eliminated. The officer should stand by while victims gather necessities for short term absences from home, such as clothing, medication, and necessary documents.~~

9.1. Whether or not an arrest is made, the responding 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 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 officer is required by W. Va. Code §48-2A-3a 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 by providing the victim with a Victim's Rights Information Packet.~~

9.2. Whether or not an arrest is made, the responding officer is required by West Virginia Code 48-2A-9(b) 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 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;

~~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 preliminary arraignment (i.e., places where the suspect should be specifically prohibited from appearing).~~

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 police officer responding to an alleged incident of abuse shall inform the parties thereto of the availability of the possible remedies provided by the Prevention of Domestic Violence Act (West Virginia Code 48-2A-1 et. seq.) and the possible applicability of the criminal laws of this State.

~~9.5. Any police officer responding to an alleged incident of abuse shall, in addition to providing the information required in section 9.4 above, provide transportation for or facilitate transportation of, the victim or victims, upon the request of such victim or victims, to a shelter or the magistrate court when there is reasonable cause to believe that such victim or victims have suffered or are likely to suffer physical injury.~~

9.5. Any police officer responding to an alleged incident of abuse shall, in addition to providing the information required in section 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.

DRAFT 2

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 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 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 police officer shall facilitate transportation of the elder or physically dependent person to a relative or friend, if such a person 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 officer should make an emergency referral to Adult Protective Services. The 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 protocol, the officer should advise the elder or physically dependent person of the availability of protective services through Adult Protective Services.~~

9.6.3. In addition to providing the notification required by other provisions of this rule, the 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 officer should arrest the assailant if the officer observes the commission of a crime and should make a report to child protective services, as required by the Child Welfare Law. If the child is physically injured, the officer should facilitate the transportation of the child to the nearest hospital for treatment. The officer should provide the victim notification, as described herein, to an adult caretaker of the child who is not the perpetrator of abuse.~~

9.7.1. When the victim of abuse is a minor child, the officer should arrest the accused if the 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. If the child is physically injured, the officer should facilitate the transportation of the child to the nearest hospital for treatment. The officer should provide the victim notification, as described in this rule, to an adult caretaker of the child who is not the perpetrator of 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 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 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. When arrest is made, the accused shall be taken before a magistrate for preliminary arraignment without unnecessary delay. Under no circumstances should the arresting officer release the defendant before the preliminary arraignment.~~

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 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.

DRAFT 2

11.1. A Domestic Violence Incident Report as required by W. Va. Code §48-2A-9 must be completed by the officer responding to any call covered by this rule. ~~these rules and regulations.~~

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 ~~for at least a two year period of time.~~

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 police officers.

draft'2