

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JAN 8 1 52 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Legislative Rule; CITE AUTHORITY 48-29-A

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 February 11, 1993 AT 2 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 Boulevard, East

Charleston, West Virginia 25301

Attention: Protocol for Law Enforcement
Response to Domestic Violence

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

James M. Allen

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

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
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense					
Repairs and Alterations					
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.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

(Federal funds have been set aside to pay costs associated with distribution of the protocol and training.)

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 1-8-93

Signature of Agency Head or Authorized Representative

James M. Allen

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Amendments approved by Governor's Committee December 8, 1992
to conform Rule to "The Family Protection Act of 1992."

Changes are indicated by ~~strikeout~~ and underline.
[Bracketed changes are typos or other "cleanup".]

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

1. §149-3-1. General.

1.1. Scope. -- These legislative rules establish law enforcement response to domestic violence.

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

1.3. Filing Date. -- May 29, 1992

1.4. Effective Date. -- August 27, 1992

2. §149-3-2. Purposes.

2.1. The principal 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 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 protocol 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 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.

3. §149-3-3. Scope of Coverage.

3.1. As used herein, unless the context clearly requires otherwise:

3.1.1. "Family violence" or "Abuse" means the occurrence of one

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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:

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

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

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

3.1.1.4. Causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, or duress; ~~sexual abuse.~~

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

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 blood or marriage, persons who are presently or in the past have resided or cohabitated together, or a person with whom the alleged victim has a child in common. ~~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.~~

3.2. 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. 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.

3.3. A temporary order of a family law master or a judge, or a final order of a judge, stops the effectiveness of a protective order if the temporary or final order was entered in a divorce, separate maintenance or annulment action between the same parties, and if it was entered after the date of the issuance of the protective order. Otherwise a protective order is in effect if it is still in effect as set out in the protective order, if it has been extended by another order in the same proceeding, or if an action for divorce, separate maintenance or annulment between the same parties is filed while the protective order is still in effect by its own terms.

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

3.5. Any protective order issued by the court of another state shall be given full faith and credit and enforced as if it was an order of this state if its terms and conditions are substantially similar to those which may be imposed by this state.

4. 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, or an assault or other offense against a child, with 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

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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 or an assault or other offense against 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 such records and radio any relevant information to the responding officer.

5. 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.

5.1.2. 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.

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

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.

5.2.2. 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 entry may have been given by the victim and be on file.] The search will be limited to 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

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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. 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;

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

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

5.3.5. Identifying all occupants/witnesses on the premises; and

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.

5.4.2. 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.

5.4.3. 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.).

5.4.4. If the dispatcher has not advised the officer of the existence of a protective order or conditions of release on bail, 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 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 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. Law enforcement officers shall enforce all valid protective orders regardless

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of whether or not the accused has been served with the protective order. When law enforcement officers observe any violations of bail conditions set in cases of crimes between family members or in situations of alleged child abuse, including the presence of the accused at the home of the victim in violation of such a bail condition, law enforcement officers shall enforce conditions of release on bail. Law enforcement officers shall enforce all protective or similar type orders that have been entered by courts certified 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.

5.4.5. 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.

5.4.6. 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.

5.4.7. 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.

5.4.8. 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.

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

6. §149-3-6. The Arrest Decision.

6.1. The arresting officer shall arrest the assailant when a 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 such bonds, set in cases of crimes between family members in situations of alleged child abuse.

6.2. The responding officer should arrest the assailant whenever arrest is otherwise authorized.

6.2.1. If the officer decides not to arrest, he must include in his report of the incident a detailed explanation of the reasons why an arrest was not made.

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

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6.2.1.2. When the officer has probable cause to believe that the suspect has committed a felony.

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

6.2.1.4. 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).

6.2.1.5. When a law-enforcement officer observes any violation of a bail condition, including the presence of the accused at the home of the victim, set in cases of crimes between family members in situations of alleged child abuse.

6.2.1.6. When a misdemeanor not included among those in paragraphs 6.2.1.2 through 6.2.1.4 has been committed and the officer or another person obtains or has previously obtained an arrest warrant.

6.2.2. The officer should not consider the following factors in making the arrest decision:

6.2.2.1. The marital status of the parties.

6.2.2.2. The ownership or tenancy rights of either party.

6.2.2.3. Verbal assurances that the violence will

stop.

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

6.2.2.5. 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).

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

6.2.2.7. Speculation that the arrest may not lead to a conviction.

6.2.2.8. The existence or not of a current protective order (except insofar as the violation of such an order might justify arrest).

6.2.2.9. The victim's emotional state.

6.2.2.10. Concern about reprisals against the victim.

6.2.2.11. Adverse financial consequences that might result from the arrest.

6.2.2.12. That the incident occurred in a private place.

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

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6.2.3. 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.

6.3. 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.

7. §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.

7.2. 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.).

8. §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 arrest is not being made;

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

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

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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 suffered or are likely to suffer physical injury.

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 that such victim or victims have suffered or 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.

9. §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 or others 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 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 by providing the victim with a Victim's Rights Information Packet.

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).

9.4. 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 (48-2A-1 et. seq.) and that fees will not have to be paid until final resolution and will not have to be paid at all if the victim is unable to afford the fees. The police officer shall also inform the parties of and the possible applicability of the criminal laws of this State. [Set out remedies and crimes?]

9.5. Any police officer responding to an alleged incident of

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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.

9.6. 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.

9.7. 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.

9.7.2. 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), the officer should

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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.

10. §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.

10.3. 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. Relevant circumstances include, but are not limited to, evidence that the accused poses a threat or danger to the victim or another family or household member, whether a victim is a child, and whether a victim is employed or attends school. West Virginia Code §14a-3-12 Registration [See 48-2A-12 (1992)].

11. §149-3-11. Reporting.

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 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 officer.

[§149-3-12 Registration . . . See 48-2A-12 (1992)]