



STATE OF WEST VIRGINIA

GOVERNOR'S OFFICE

OF

COMMUNITY AND INDUSTRIAL DEVELOPMENT

GASTON CAPERTON
GOVERNOR

Charleston, West Virginia 25305

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: Governors 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: June 30, 1993

Signature of Agency Head or Authorized Representative

James M. Allert

DATE: June 30, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Governors Committee on Crime, Delinquency and Correction

EMERGENCY RULE TITLE: Protocol for Law Enforcement Response to Domestic Violence

1. Date of Filing _____

2. Statutory authority for promulgating emergency rule:

48-2A-9

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

Amends current Legislative Rule

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The current protocol in the code of state regulations now conflicts with Chapter 48, Article 2A, Section 1 of the West Virginia Code which was amended by the 1992 and 1993 legislature. Law enforcement officers who rely on the current code of state regulations may act in violation of the statute and become liable for such actions. Examples of changes are the definition of family violence or abuse, the definition of family or household members, the handling of protective orders, temporary protective orders and orders issued in other states which are contained in the 1992 legislative changes. House Bill 2427, which was passed by the 1993 legislature, enables an officer to arrest the accused with probable cause if conditions outlined in the Law are met. The revised protocol outlines procedures the officer will follow to effect an arrest. In addition, they contain the procedures officers should use when arriving at a domestic violence scene to minimize danger to the responding officer. The Family Protection Act of 1992, passage of House Bill 2427 and the Domestic Violence Protocol as amended directly affect law enforcements response to and treatment of incidents of domestic violence.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The current protocol in the code of State regulations now conflicts with Chapter 48, Article 2A, Section 1 of the West Virginia Code, which was amended by the 1992 and 1993 Legislature. Law enforcement officers who rely on the current code of State regulations may act in violation of the statute and become liable for such actions. Examples of changes are the definition of family violence or abuse, the definition of family or household members, the handling of protective orders, temporary protective orders and orders issued in other states which are contained in the 1992 legislative changes. House Bill 2427, which was passed by the 1993 Legislature, enables an officer to arrest the accused with probable cause if conditions outlined in the bill are met. The revised protocol outlines procedures the officer are to follow to effect the arrest. In addition, they contain the procedures officers should use when arriving at a domestic violence scene to minimize danger to the responding officer. The Family Protection Act of 1992, passage of House Bill 2427, and the Domestic Violence Protocol as amended directly affect law enforcements' response to and treatment of incidents of domestic violence.

The emergency rule, filed June 30, 1993, and the agency approved rule, filed August 13, 1993, title number 149, series 3, entitled "Protocol for Law Enforcement Response to Domestic Violence" contain conflicting language. Changes to the rule were made as a result of comments received. The emergency rule will be amended to contain language identical to the agency approved rule.

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

1.2. Filing Date. --

1.3. Effective Date. --

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.

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; Definitions; Domestic Violence Protective Orders.

3.1. ~~2-1~~ 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, any city police officer, 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 West Virginia State Police. Nothing in these rules should be construed to extend the authority of any law enforcement officer beyond the officer's statutory jurisdiction.

3.2. ~~3.1.~~ As used herein, unless the context clearly requires otherwise:

3.2.1. ~~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:

3.2.1.1. ~~3.1.1.1.~~ Attempting to cause or intentionally, knowingly or recklessly causing physical harm ~~bodily injury~~ with or without dangerous or deadly weapons;

3.2.1.2. ~~3.1.1.2.~~ Placing another in reasonable apprehension of physical harm by ~~physical menace another in fear of imminent serious bodily injury;~~

3.2.1.3. ~~3.1.1.3.~~ Creating fear of physical harm ~~bodily injury~~ by harassment, psychological abuse or threatening acts;

3.2.1.4. ~~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.~~

3.2.1.5. ~~3.1.1.5.~~ Holding, confining, detaining or abducting another person against that person's will.

3.2.2. ~~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.

3.3. ~~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.

3.4. A protective order is in effect for as long as the order says it is in effect 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 date the order says it expires if:

3.4.2.1. The protective order has been extended by another order in the same case, or;

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

5. ~~§149-3-5. Initial Police Officer Response.~~ Approaching the Scene; Initial Contact; Establishing Control of the Scene; Arresting at the Scene; Continuing Custody; Release from Custody; On Scene Investigation.

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. Most officers 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, follow the approach procedures set out in the remainder of this section.

~~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. Approach the scene inconspicuously. Do not use sirens or lights in the immediate area of the scene of the incident.

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

5.1.5. Do 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.

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

5.2. Initial contact with occupants.

5.2.1. The responding officer should identify himself the officer as a police officer, explain his 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. 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, 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 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.

5.3. Establishing Control of Scene. Once at the immediate scene of the incident 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~~ accused when circumstances are appropriate;

~~5.3.3.~~ 5.3.4. Assessing injuries (including inquiry about possible internal injuries), administering first aid, and/or notifying emergency medical services;

~~5.3.4.~~ 5.3.5 Identifying all occupants/witnesses on the premises; and

~~5.3.5.~~ 5.3.6 Separating occupants/witnesses from the victim and accused and keeping them out of hearing range (to avoid compromising their witness status).

~~5.3.6.~~ 5.3.7.

Restraining the assailant accused if necessary, and removing the assailant accused to the patrol car if immediate arrest is warranted authorized because the officer observes a violation of a bail condition, set in a crime charged against a family or household member, including a family or household member who is a child, because the officer observes a violation of a protective order, because the officer observes the commission of a felony or misdemeanor, because the officer has probable cause to believe that the suspect has committed a felony, because an arrest warrant or circuit court attachment order has previously been obtained or a capias has been issued, or because arrest is authorized under the next subdivision of this Section;

5.3.7. Arresting the accused at the scene. Arresting the accused at the scene of the alleged violation is authorized by this subdivision for the purpose of protecting the health or safety of either the alleged victim, the officer, or another person at the scene of the violation while the officer is obtaining the written statement of a victim or witness required in 6.3.4.2 or seeking the magistrate's authorization for arrest required in 6.3.4.3. The arrest authorized by this subdivision may only be made when:

5.3.7.1. Circumstances exist which convince the officer that a danger exists to the health and safety of the alleged victim, the officer or another person; and

5.3.7.2. The officer determines that credible corroborative evidence exists, as that term is defined in Section 6.3.7. of this Rule, to believe that an assault or

a battery of a family or household member has occurred; and

5.3.7.3. The officer either a) has obtained a signed statement from the alleged victim or a witness that the essential elements of the offense occurred or b) has been presented with verbal evidence sufficient to establish the occurrence of the essential elements of the offense and been informed of a willingness of the victim or a witness to execute a signed statement.

5.3.8. The officer may continue to keep an accused person who was arrested pursuant to Subdivision 5.3.7. of this Section in custody as provided and limited by the following subdivisions:

5.3.8.1. 2 If authorization is obtained from the magistrate, the officer should then follow the relevant procedures set out in the other provisions of this Rule to investigate the scene, effectuate the arrest, process the accused, provided other on scene assistance and so on.

5.3.8.2. If the victim or witness who was willing to make a written statement then refuses to do so, the accused must be immediately released. If this occurs the officer should provide for the safety of the victim and other persons to the extent possible, including using the procedures set out in Section 8, "Procedure when Arrest is not Authorized or, if Authorized, is not Made," and Section 9, "Other On-Scene Assistance to Victims and Dependents," of this Rule. In addition, the officer should always, if possible, advise the victim before the release that the accused is going

to be released. If it is not possible to advise the victim before the release, the officer should always immediately take steps reasonably calculated to advise the victim of the release as soon as possible.

5.3.8.3. If the officer, or another officer acting at the request of the officer making the arrest, is able to communicate with a magistrate and the magistrate denies authorization for arrest, the accused must be immediately released. If this occurs the officer should provide for the safety of the victim and other persons to the extent possible, including using the procedures set out in Section 8, "Procedure when Arrest is not Authorized or, if Authorized, is not Made," and Section 9, "Other On-Scene Assistance to Victims and Dependents," of this Rule. In addition, the officer should always, if possible, advise the victim before the release that the accused is going to be released. If it is not possible to advise the victim before the release, the officer should always immediately take steps reasonably calculated to advise the victim of the release as soon as possible.

5.3.8.4. The officer should only take the accused from the scene in custody without authorization from the magistrate as required by Section 6.3.4.3 of this Rule if all of the following conditions apply: A) A proper written statement by a victim or other person has been signed; and B) After making every practicable effort to communicate with the magistrate (See Section 7.3.3 of this Rule) the officer has not been able to communicate with the magistrate; and C) Circumstances exist which convince the officer that a danger continues to exist to the

health and safety of the alleged victim, the officer or another person who was at the scene if the accused is released before the officer can communicate with a magistrate. If the officer takes the accused from the scene in custody without authorization from the magistrate pursuant to this subdivision, the officer must follow the procedures in the next subdivision (5.3.8.5) of this Section.

5.3.8.5. Leaving scene before arrest "authorized". If the officer takes the accused from the scene in custody pursuant to the immediately preceding subdivision of this Section (5.3.8.4) or Section 7.2.3 of this Rule without authorization from the magistrate, the officer must proceed directly to a location where the officer reasonably expects to be able to request telephonic or oral authorization from a magistrate. In no case shall the officer keep the accused in custody later than the next required time for the on call magistrate to contact the jail and appear as provided for initial appearances in criminal cases in Rule 1 of the Administrative Rules for the Magistrate Courts in West Virginia. The accused may be detained in the same manner as a person under arrest for any other misdemeanor.

5.3.9. When arrest is made pursuant to subdivision (5.3.7) of this section see also:

- Section 6.3.6. of this Rule regarding communications through a dispatcher;
- Section 6.3.7. of this Rule regarding the definition of "credible corroborative evidence;
- Section 6.4. of this Rule regarding factors not to be considered in making the arrest;
- Section 6.5. of this Rule regarding

the officer's decision to make the arrest;
~~-Section 7 of this Rule regarding effectuating the arrest; and~~
~~-Section 10 of this Rule regarding processing the accused.~~

5.4. On-scene investigation.

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 unless the procedures provided by this Rule, which are specially applicable for police officer response to domestic violence, require different procedures.

5.4.2. While conducting the investigation the officer should attempt to establish the existence of credible corroborative evidence and the willingness of the victim or another witness to sign a written statement.

5.4.3. ~~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.

5.4.4. ~~5.4.2~~ The officer should ensure the victim's safety and privacy by interviewing the victim in an area apart from the assailant accused, witnesses, and bystanders if possible.

5.4.5. ~~5.4.2~~ 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.

5.4.6. ~~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. If witnesses provide information about prior incidents, the officer should document such incidents to establish a pattern. When interviewing the victim and/or any witnesses the officer should determine whether the victim and/or any witnesses alleges 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 and, if necessary, advise the person that such a statement is one of the requirements before the officer can seek authorization to make an arrest without leaving the scene to obtain a warrant. The officer should also inquire about past abuse or other crimes to aid the officer in evaluating the dangerousness of the accused.

5.4.7. The responding officer should interview the accused a fully as circumstances allow to inquire about the nature of the dispute. ~~5.4.1~~ The officer should be alert to possible incriminating statements.

5.4.8. ~~5.4.3~~ If the accused has been arrested prior to interview, the accused must be given Miranda warnings before being questioned. In order to avoid disputes over the admissibility of statements made by the accused, the officer should advise the accused of the Miranda rights of the accused before asking the accused any

questions if 1) the officer has arrested the accused pursuant to Sections 5.3.7, 6.3, or 7.2 of this Rule or 2) if the officer has said anything to the accused which could have led the accused to believe that the officer had placed any restraint on the liberty of the accused, or 3) if the officer has focused the investigation on the accused.

5.4.9. 5.4.3. 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. 5.4.4. 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 and what county and court or magistrate 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 Section 6 of this Rule. 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 should follow the arrest authorization provisions in Section 6 of this Rule. When law enforcement officers observe any violations of 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, 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 Section 6.1.1 of this Rule. 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 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.

5.4.11. 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.

5.4.12. 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.

5.4.13. 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.

5.4.14. 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. Arrest Authorization; Credible Corroborative Evidence; Factors not Considered; Confiscation of Weapons on Arrest.

6.1. 6.2.2. The responding officer is authorized to arrest and shall arrest the suspect accused:

6.1.1. 6.2.3. 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; or

6.1.2. 6.2.3. When the officer observes the violation of a

valid protective order (e.g. presence at the residence or victim's job place) and the officer has actual knowledge that a valid protective order exists, unless the accused was not served with the order and did not otherwise have notice of the order and its contents. The officer shall arrest the suspect if the suspect's presence violates a protective order.

6.2. 6.2.1. In circumstances other than those provided Section 6.1. of this Rule and if the officer has not already made an arrest at the scene pursuant to 5.3.7. the 6.1. The responding officer should arrest the assailant accused whenever arrest is authorized as set out in subdivision 6.3 of this Section. If the officer decides not to arrest, the officer he must include in his the officer's report of the incident a detailed explanation of the reasons why an arrest was not made.

6.3. 6.2. Under current West Virginia law, arrest in circumstances other than those provided Section 6.1 of this Rule is authorized in the following circumstances:

6.3.1. 6.2.4. When a misdemeanor or felony a misdemeanor not included among those in paragraphs 6.2.2 through 6.2.4 has been committed and the officer or another person obtains or has previously obtained an arrest warrant, or when a capias has been issued, or when a circuit judge has signed an attachment order.

6.3.2. 6.2.2. When the officer observes the commission of a felony or a misdemeanor.

6.3.3. 6.2.1. When the officer has probable cause to believe

that the suspect has committed a felony.

6.3.4. When the officer:

6.3.4.1. Observes credible corroborative evidence that a misdemeanor assault or a battery has occurred by one family or household member against another family or household member;

6.3.4.2. Has obtained a signed statement from the alleged victim or witness to the alleged offense which has been voluntarily and knowingly executed and which sets forth facts constituting the essential elements of the alleged offense; and

6.3.4.3. Has received oral or telephonic authorization from a magistrate having jurisdiction over the alleged offense to arrest the person after the magistrate has been presented with information sufficient to satisfy the magistrate that probable cause exists to believe that the alleged offense was committed. Another officer acting at the request of the officer observing the credible corroborative evidence may request and receive the authorization required by this provision. (Notwithstanding other definitions or provisions of this Rule, for the purpose of this subdivision and West Virginia Code §48-2A-14(a)(3) 1993, "another officer" includes a dispatcher if the dispatcher is employed by or otherwise controlled and trained by a law enforcement agency such that the officer determines that the dispatcher can reliably communicate necessary information between the magistrate and the arresting officer.)

6.3.5. If the accused has fled the scene, the authority to

arrest pursuant to the immediately preceding subdivision of this section continues after the officer leaves the scene, if, at the time the officer has the opportunity to arrest, danger exists that would have allowed the officer to arrest an accused before leaving the scene pursuant to Section 7.2 of this Rule, but the officer should, at the officer's next reasonable opportunity, obtain a warrant.

6.3.6. 6.3.5.

Communications between the officer and the magistrate pursuant to subdivision 6.3.4.3. of this Section regarding the telephonic or oral authorization for arrest shall constitute the emergency response of the magistrate to this domestic violence matter, but not an initial appearance in this criminal case, for the purposes of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia. The accused may be detained in the same manner as a person under arrest for any other misdemeanor.

6.3.7. 6.3.6. Credible corroborative evidence. For the purposes of this Rule the term "credible corroborative evidence" means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense contained in the written statement. It includes, but is not limited to, the evidence listed below:

6.3.7.1. 6.3.6.1.

Condition of the alleged victim such as:
-one or more scratches, cuts, abrasions, swellings or obvious rednesses;
-missing hair;
-torn clothing or clothing in

disarray;

- 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;
- observable breathlessness coupled with other physical exhaustion;
- observable, otherwise inappropriate, exaggerated startle response;
- observable, otherwise inappropriate hyperalertness;
- observable, otherwise inappropriate numbed response behavior or incoherence;
- unconsciousness.

If the physical condition is severe enough for the offense to constitute a felony, such as unlawful or malicious wounding, then arrest should be made using normal procedures for felony arrest based on probable cause. See 6.3.3.

6.3.7.2. Condition of 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;

6.3.7.3. Condition of scene:

- Damaged premises or furnishings, including but not limited to locks, windows, doors, telephones;
- Alleged weapon present inconsistent normal storage of firearm or inconsistent with normal storage or use of other potential weapon (such as kitchen knife in living room);
- Other unusual items significant to allegations in otherwise inappropriate

places.

6.3.7.4. Other:

- Statements by accused admitting one or more elements of the offense;
- Threats similar to or consistent with alleged offense made by accused in presence of an officer;
- Audible evidence of disturbance heard by dispatcher or other governmental employee or agent receiving request for police assistance;
- Written statement by reliable person who actually saw or heard the alleged offense.

6.4. 6.3. The officer should not consider the following factors in making the arrest decision:

6.4.1. 6.3.1. The marital status of the parties.

6.4.2. 6.3.2. The ownership or tenancy rights of either party.

6.4.3. 6.3.3. Verbal assurances that the violence will stop.

6.4.4. 6.3.4. A claim by the accused that the victim provoked or perpetuated the violence.

6.4.5. 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).

6.4.6. 6.3.6. The disposition of any previous police calls involving the same victim or accused.

6.4.7. ~~6.3.7.~~ Speculation that the arrest may not lead to a conviction.

6.4.8. ~~6.3.8.~~ The existence or not of a current protective order (except insofar as the violation of such an order might justify arrest).

6.4.9. ~~6.3.9.~~ The victim's emotional state.

6.4.10. ~~6.3.10.~~ Concern about reprisals against the victim.

6.4.11. ~~6.3.11.~~ Adverse financial consequences that might result from the arrest.

6.4.12. ~~6.3.12.~~ That the incident occurred in a private place.

6.4.13. ~~6.3.13.~~ The racial, cultural, social, political, or professional position, or sexual orientation of either the victim or the accused.

6.5. ~~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. (See Section 6.1 of this Rule.). 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.

6.6. ~~6.5.~~ 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; Arresting at Scene Before Leaving; "Every Practicable Effort" to Communicate with Magistrate.

7.1. The responding officer should take the accused into custody as soon as the officer is authorized, or learns that the officer is authorized, to make the arrest, ~~as a warrant for the arrest of the accused has been obtained or is outstanding.~~

7.2. When an officer observes credible corroborative evidence of a misdemeanor assault or battery (which the officer did not observe) by one family or household member against another family or household member, and when the officer is proceeding to make an arrest without a warrant for that offense on the basis of a written statement, and telephonic or oral authorization from a magistrate:

7.2.1. If the officer has not yet obtained the signed statement of the victim or a witness as required as set out in Section 6.3.4.2. of this Rule, the officer should first obtain the statement, and next.

7.2.2. If the officer has not yet received oral or telephonic authorization from a magistrate to make the arrest, then the officer or another officer at the arresting officer's request, should make every reasonable effort to obtain the authorization required by Section 6.3.4.3. of this Rule.

7.2.3. If the officer

has obtained the signed statement, and if the officer has made every reasonable effort to obtain authorization and has not been able to communicate with the magistrate, and if the officer determines that circumstances exist which convince the officer that a danger would exist to the health and safety of the alleged victim, another person at the scene, or the officer if the officer leaves the scene without arresting the accused:

7.2.3.1. The officer should make an "at scene" arrest of the accused as authorized by West Virginia Code §48-2A-14(b) and take the accused from the scene in custody without authorization from the magistrate. The officer should then follow Section 5.3.8.5 of this Rule which sets out the procedures to be followed when the accused is taken from the scene in custody before communicating with a magistrate.

7.2.3.2. If the officer subsequently communicates with the magistrate and the magistrate does not authorize continued arrest of the accused the officer should follow the procedures set out in Section 5.3.8.3 of this Rule.

7.2.4. If the officer has observed credible corroborative evidence, and if the officer has obtained the signed statement, and if the officer has made every effort reasonable effort to obtain authorization and has not been able to communicate with the magistrate, and if the officer determines there is no substantial danger if the officer leaves the scene without arresting the accused:

7.2.4.1. The officer

should follow the procedures set out in Section 8, "Procedure when Arrest is not Authorized or, if Authorized, is not Made," and Section 9, "Other On-Scene Assistance to Victims and Dependents," of this Rule; and

7.2.4.2. Whether or not the victim accepts any other assistance from the officer pursuant to Section 8, "Procedure when Arrest is not Authorized or, if Authorized is not Made," and Section 9, "Other On-Scene Assistance to Victims and Dependents," of this Rule, if the officer has determined that the accused should be arrested, then the officer should continue to make efforts to obtain telephone or oral authorization to make the arrest and return and make the arrest, or the officer should proceed to obtain a warrant at the officer's next reasonable opportunity to do so and return or arrange for another officer to return and make the arrest.

7.3. "Reasonable effort" defined.

7.3.1. There are places and times when the officer will not have the capability to communicate with the magistrate from the scene, or times when the officer has the capability and has attempted to do so, but the magistrate has not responded after a reasonable number of attempts over a reasonable period of time in light of the circumstances at the scene and the other responsibilities of the officer. In some of these circumstances it would be dangerous to the victim or others at the scene if the officer left the scene without arresting the accused. This danger can exist even if the officer follows the procedures set out in Sections 8 and 9 of this Rule for cases when

arrest is not authorized and for other assistance at the scene. In some of these circumstances it would be dangerous to the officer if the officer left the scene without arresting the accused, particularly if the officer will have to return to the scene to arrest the accused who could become angrier and who could get weapons during the officer's absence. For this reason this Rule authorizes officers to take accused persons from the scene in custody prior to authorization from a magistrate, but only in the limited circumstances when the officer has made "every reasonable effort" to communicate with the magistrate to seek authorization as defined by this subdivision (7.3) and its further subdivisions.

7.3.2. If the accused has fled the scene, the authority to arrest pursuant to the immediately preceding subdivision of this section continues after the officer leaves the scene, if, at the time the officer has the opportunity to arrest, danger exists that would have allowed the officer to arrest an accused before leaving the scene pursuant to Section 7.2 of this Rule, but the officer should, at the officer's next reasonable opportunity, obtain a warrant.

7.3.3. "Reasonable effort" includes efforts made the by officer who observed the corroborative evidence and who is making the arrest and/or another officer at the request of the arresting officer.

7.3.4. Using "Reasonable effort" includes, but is not limited to, using the following efforts when they are reasonable:

7.3.4.1. Calling the

magistrate using a telephone at the scene.

7.3.4.2. Using an officer's radio at the scene patched into a telephone call to the magistrate.

7.3.4.3. Using an officer's radio at the scene to call the magistrate if the magistrate has access to radio communications.

7.3.4.4. Using an officer's radio at the scene to call another officer who can call the magistrate on the phone or communicate with the magistrate in person at the request of the arresting officer. The other officer may be an officer who is a dispatcher.

7.3.4.5. Using a telephone or an officer's radio near the scene A) if another officer at the request of the arresting officer can communicate with the magistrate by doing so, or B) the officer believes there will be no substantial increase in danger if the officer moves from the immediate scene to a nearby location because the suspect is already arrested and restrained or because of the other circumstances of the particular case.

7.4. Communications between the officer and the magistrate regarding the telephonic or oral authorization for arrest is the emergency response of the magistrate to this domestic violence matter, but not an initial appearance in this criminal case. See Section 10 of this Rule for further procedures regarding initial appearances in magistrate court and processing the accused.

7.5. 7-1- 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. If a 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.

7.6. ~~7.2.~~ When the accused is a minor (under 18 years of age), the provisions of this rule ~~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 the 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 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 authority to arrest 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 immediate 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 initial appearance (i.e., places where the suspect should be specifically prohibited from appearing). This information would be in addition to a notation that an arrest was made for a battery against a family or household member,

including a family or household member who is a child, pursuant to oral or telephonic authorization from a magistrate which automatically imposes conditions on bail. (See Section 10.4 of this Rule.)

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 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.

9.6. 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 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. 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 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; Initial Appearance Before Magistrate.

10.1.. When the accused is arrested without a warrant for a misdemeanor as authorized by Section 6.3.4 (and Section 5.3.7) of this Rule:

10.1.1. 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.

10.1.2. An officer other than the officer making the arrest may appear at the initial appearance and swear to the criminal complaint under the same conditions and using the same procedures as is appropriate and lawful in other cases.

10.1.3. At the initial appearance, the accused shall be supplied with a written complaint. This complaint must set forth the facts and circumstances supporting the charge. The complaint must comply with the provisions of West Virginia Rule of Criminal Procedure.

10.1.4. The officer swearing to the complaint for the warrant shall inform the magistrate that the accused was arrested for a misdemeanor battery pursuant to oral or telephonic authorization by a magistrate so that required conditions of bond may be imposed as required by W. Va. Code §48-2A-14(i) (1993).

10.2. When an arrest is made, except for an arrest without a warrant for a misdemeanor assault or battery not observed by the officer which would be handled pursuant to subdivision 10.1 of this Section, the accused shall be taken before a magistrate for preliminary arraignment an initial appearance without unnecessary delay. Under no circumstances should the arresting officer release the defendant accused before the preliminary arraignment initial appearance.

10.3. ~~10.1.~~ A person arrested If the arrest is for violation of a protective order or of a condition of bail, the accused should be charged with any crimes properly charged as a result of the incident in which the

violation occurred.

10.4. ~~10.2.~~ 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. See also subdivision 10.1.4 of this Section. Provided, that the amount and conditions of bail is one of a judicial decision that rests are judicial decisions that rest 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, whether a victim is employed or attends school.

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, Sec 48~~
~~2A-12 (1992)~~

KEN HECHLER
Secretary of State

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August 25, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

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

RULE: Amendments, Series 3 **Protocol for Law Enforcement Response to Domestic Violence**

DATE FIRST EMERGENCY AMENDMENT FILED: August 19, 1993

DATE FIRST FILED AS EMERGENCY RULE: June 30, 1993

DECISION NO. 18-93

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

FILED

Aug 25 11:30 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE


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Secretary of State

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DECISION

EMERGENCY RULE DECISION (ERD 18-93)

AGENCY: Governor's Committee on Crime, Delinquency and Correction
RULE: Amendments, Series 3, **Protocol for Law Enforcement Response to Domestic Violence**

FIRST EMERGENCY AMENDMENT FILED: August 19, 1993

FIRST FILED AS EMERGENCY RULE: June 30, 1993

- par. 1 The Governor's Committee on Crime Delinquency and Correction (Committee) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Committee filed this emergency rule with supporting documents with the Secretary of State August 19, 1993 and with the LRMRC August 19, 1993.

par. 7 It is the determination of the Secretary of State that the Committee has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 48-2A-9 reads in part:

(g) The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with respect to domestic violence.

par. 9 It is the determination of the Secretary of State that the Committee has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Committee are as follows:

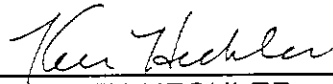
The current protocol in the code of state regulations now conflicts with §48-2A-1 of the WV Code which was amended by the 1992 and 1993 legislature. Law enforcement officers who rely on the current code of state regulations may act in violation of the statute and become liable for such actions. Examples of changes are the definition of family violence or abuse, the definition of family or household members, the handling of protective orders, temporary protective orders and orders issued in other states which are contained in the 1992 legislative changes. HB 2427, which was passed by the 1993 legislature, enables an officer to arrest the accused with probable cause if conditions outlined in the law are met. The revised protocol outlines procedures the officer will follow to effect an arrest. In addition, they contain the procedures officers should use when arriving at a

domestic violence scene to minimize danger to the responding officer. The Family Protection Act of 1992, passage of HB 2427 and the Domestic Violence Protocol as amended directly affect law enforcement's response to and treatment of incidents of domestic violence.

The emergency rule, filed June 30, 1993, and the agency approved rule, filed August 13, 1993, title number 149, series 3, entitled "Protocol for Law Enforcement Response to Domestic Violence" contain conflicting language. Changes to the rule were made as a result of comments received. The emergency rule will be amended to contain language identical to the agency approved rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "for the immediate preservation of public peace, health, safety or welfare."

par. 14 This decision shall be cited as Emergency Rule Decision 18-93 or ERD 18-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Governor's Committee on Crime, Delinquency and Correction, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AUG 25 11 30 AM 1993

FILED