

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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

CITE AUTHORITY 48-2A-9

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 3

TITLE OF RULE BEING AMENDED: Protocol for Law Enforcement Response
To Domestic Violence

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

James M. Allen

6.40

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

SERIES 3
~~RULE RULES AND REGULATIONS FOR~~
POLICE RESPONSE TO DOMESTIC VIOLENCE

1 §149-3-1. General.

1.1 Scope. -- ~~These~~ This legislative rules establishes law enforcement response to domestic violence.

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

1.3 Filing Date. --

1.4 Effective Date. --

2 §149-3-2. Purposes.

2.1 The principal purpose of ~~these this 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 ~~proceel~~ rule are:

2.2.1 To reduce the incidence and severity of domestic violence by establishing arrest and

prosecution, rather than mediation, as the preferred means of police response to domestic violence;

2.2.2 To afford maximum protection and support to victims of domestic violence through a coordinated program of law enforcement and victim assistance;

2.2.3 To ensure that law enforcement services are as available in domestic violence cases as they are in other criminal cases;

2.2.4 To promote 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 a sheriff, a sheriff's deputy, an appointed security officer of a state university or college, or the Superintendent, or an officer or member of the West Virginia Division of Public Safety. Nothing in this rule should be construed to extend the authority of any law enforcement officer beyond the officer's statutory jurisdiction.

3.2 3.1. As used herein in this rule unless the context clearly requires otherwise:

3.2.1 "Credible corroborative evidence" means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense contained in the written statement. It includes, but is not limited to, the evidence listed below:

3.2.1.1 Condition of the alleged victim such as:

- a. one or more scratches, cuts, abrasions, swellings or obvious rednesses;
- b. missing hair;
- c. torn clothing or clothing in disarray;
- d. observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow;
- e. observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact;
- f. observable breathlessness coupled with other physical exhaustion;
- g. observable, otherwise inappropriate, exaggerated startle response;
- h. observable, otherwise inappropriate hyperalertedness;
- i. observable, otherwise inappropriate numbed response behavior or incoherence;

j. unconsciousness.

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

3.2.1.2 The condition of the accused:

a. physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self defense by the victim;

3.2.1.3 The condition of the scene:

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

3.2.1.4 Other evidence:

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

3.2.2 3.1.2. "Family or

household member" means current or former 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.~~

3.2.3 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:

3.2.3.1 3.1.1.1. Attempting to cause or intentionally, knowingly or recklessly causing physical harm bodily injury with or without dangerous or deadly weapons;

3.2.3.2 3.1.1.2. Placing another person in reasonable apprehension of physical harm by physical menace another in fear of imminent serious bodily injury;

3.2.3.3 3.1.1.3. Creating fear of physical harm bodily injury by harassment, psychological abuse or threatening acts;

3.2.3.4 3.1.1.4.

Causing or attempting to cause another person to engage involuntarily in any sexual act by force, threat of force, or duress; Sexual abuse; and

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

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 remains in effect for the period of time stated in the order except:

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

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

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

protective order.

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

3.4.2.1 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 is 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~~ the records and radio any relevant information to the responding officer.

4.5 If the dispatcher has reason to believe that the subject is on bail for a crime against a family or household member, including a family or household member who is a child, and if the dispatcher has ready access to magistrate court records that show whether there are conditions on bond, the dispatcher should consult the records and radio any relevant information to the responding officer.

5 §149-3-5. Initial Police Officer Response.— Approaching the Scene; Initial Contact; Establishing Control of the Scene; Arresting at the Scene; Continuing Custody; On Scene Investigation; Enforcing Protective Order; Further On Scene Investigation.

5.1 Approaching the scene.

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

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

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

~~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. He or she should 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 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 5.1.3 Be alert for the employment of weapons from doors, windows, or nearby vehicles-;

5.1.8 5.1.3 Be alert for persons moving away from the immediate scene of the incident-; and

5.1.9 5.1.4 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 a search for other suspects, victims, witnesses or evidence connected with the alleged domestic incident.

5.2.3 If refused entry, the officer should be

persistent about seeing and speaking alone with subject of the call. If access to the subject is refused, the officer should request the dispatcher to contact the caller if the caller is the subject of the call. If the officer leaves the scene, 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~~ is necessary and appropriate. Forced entry may be appropriate when the residence areas shows signs of a fight or scuffle; or when a person from inside the residence calls for assistance or is yelling; or when a person from inside is visible and the officer observes that the person is wounded, injured or is otherwise in need of assistance."

5.3 Establishing Control of Scene.

Once at the immediate scene of the incident 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 Restraining the assailant if necessary, and removing the assailant to the patrol car if immediate arrest is warranted;~~

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/ and witnesses on the premises; and

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

5.3.6 Arresting at the scene.

5.3.3. Restraining the accused if necessary, and removing the accused to the patrol car if immediate arrest is authorized. Immediate arrest is authorized a) if 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; b) if the officer observes a violation of a protective order; c) because the officer observes the commission of a felony or misdemeanor; d) if the officer has probable cause to believe that the suspect has committed a felony; e) if an arrest warrant or circuit court attachment order has previously been obtained or a capias has been issued; or f) if arrest is authorized under subdivision 5.3.7 of this Section;

5.3.7 The officer is authorized to arrest the accused 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 Section 6.3.5.2 of this rule or seeking the magistrate's authorization for arrest

required in Section 6.3.5.3. of this rule. The officer is authorized by this subdivision to arrest the accused only 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;

5.3.7.2 The officer determines that credible corroborative evidence exists, as that term is defined in Section 3.2.1. 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 Continuing custody.

The officer may continue to keep an accused person who was arrested pursuant to Subdivision 5.3.7. of this Section in custody under the following conditions:

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, complete 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 6.3.5.3 of this Rule if all of the following conditions apply: A) A proper written statement by a victim or other person has been signed; 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 subdivision 5.3.8.5 of this Section; and

5.3.8.5 Leaving scene before arrest "authorized". If the officer takes the accused from the scene in custody pursuant to 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:

(a) - Section 6.4. of this Rule regarding communications through a dispatcher;

(b) - Section 3.2.1. of this Rule regarding the definition of "credible corroborative evidence;

(c) - Section 6.5. of this Rule regarding factors not to be considered in making the arrest;

(d) - Section 6.6. of this Rule regarding the officer's decision to make the arrest;

(e) - Section 7 of this Rule regarding effectuating the arrest; and

(f) - 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. The officer should be alert to possible incriminating statements.

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

5.4.6 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 allege facts which constitute all of the elements of assault or battery. If so, the officer should inquire whether the victim and/or any witness is willing to sign a statement containing those facts 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 as 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 In order to avoid disputes over the admissibility of statements made by the accused, the officer should advise the accused of his or her Miranda rights before asking the accused any questions if 1) the officer has arrested the accused pursuant to Sections 5.3.7, 6.3, or 7.2 of this Rule 2) if the officer has said anything to the accused which could lead the accused to believe that the officer has placed any restraint on the liberty of the accused, or 3) if the officer has focused the investigation on the accused.

5.4.9 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.

5.4.10 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.).

5.4.11 5.4.4. Enforcing Any Protective Order.

If the dispatcher has not advised the officer of the existence of a protective order or conditions of release on bail set in a crime against a family or household member, including a family or household member who is a child, the officer should ask the victim whether there is such an order or such bail conditions and, if so, if the victim can produce a copy of the protective order or bail document and what or identify the county and court or magistrate from which the order or document was issued from. The officer should attempt to contact a local law enforcement department specified by the victim to verify the existence of a valid protective order or contact the magistrate court to verify the conditions of release on bail. Law enforcement officers shall enforce all orders from the magistrate court or any court regardless of certification. Where the accused has been served with the protective order or has actual notice of the protective order, then the officer should follow the arrest authorization provisions of 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 a bail condition the officer knows has been set in cases of crimes between family or household members including a family or household members who are children, the law enforcement officers shall arrest for violations of such bail conditions including the presence of the accused at the home of the victim as authorized by 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.

5.4.12 5.4.7. Further On-Scene Investigation.

The officer should collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene.

5.4.13 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 appear later.

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; Factors not Considered; Confiscation of Weapons on Arrest.

6.1 6.2.3. The responding officer shall arrest the suspect accused:

~~7.1 The responding officer should arrest the assailant whenever arrest is authorized. 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.~~

6.1.1 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 of work) 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 (e.g. presence at the residence or victim's job place).~~

6.2 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 Section 5.3.7. of this rule the 6.1 ~~The responding officer should arrest the assailant accused whenever arrest is authorized as set out in subsection 6.3 of this Section. If the officer decides not to arrest the accused, 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 these 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;

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

6.3.3 6.2.2. When the

officer observes the commission of a felony or a misdemeanor;

6.3.4 6.2.1. When the officer has probable cause to believe that the suspect has committed a felony.

6.3.5 When the officer:

6.3.5.1 Observes credible corroborative evidence as defined in 3.2.1 that a misdemeanor assault or a battery has occurred by one family or household member against another family or household member;

6.3.5.2 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

6.3.5.3 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 paragraph. Notwithstanding other definitions or provisions of this Rule, for the purpose of this paragraph and West Virginia Code §48-2A-14(a)(3), "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;

6.3.6 When the accused has fled the scene before the officer arrives and the officer sees the accused or otherwise has the opportunity to arrest the accused, 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: Provided, That the officer should obtain a warrant at the officer's next reasonable opportunity after leaving the scene;

6.4 ~~6.3.5~~ Communications between the officer and the magistrate pursuant to subdivision 6.3.5.3. of this Section regarding the telephonic or oral authorization for arrest constitutes 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.

6.5 ~~6.2~~ The officer should not consider the following factors in making the arrest decision:

6.5.1 ~~6.3.1~~ The marital status of the parties;

6.5.2 ~~6.3.2~~ The ownership or tenancy rights of either

party;

6.5.3 ~~6.3.3~~ Verbal assurances that the violence will stop;

6.5.4 ~~6.3.4~~ A claim by the accused that the victim provoked or perpetuated the violence;

6.5.5 ~~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);

6.5.6 ~~6.3.6~~ The disposition of any previous police calls involving the same victim or accused;

6.5.7 ~~6.3.7~~ Speculation that the arrest may not lead to a conviction;

6.5.8 ~~6.3.8~~ The existence or not of a current protective order except insofar as the violation of such an order might justify arrest;

6.5.9 ~~6.3.9~~ The victim's emotional state;

6.5.10 ~~6.3.10~~ Concern about reprisals against the victim;

6.5.11 ~~6.3.11~~ Adverse financial consequences that might result from the arrest;

6.5.12 ~~6.3.12~~ That the incident occurred in a private place;

6.5.13 ~~6.3.13~~ The

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

6.6 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 under 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.

6.7 6.5. If the officer arrests the accused 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 6.3.5.2. 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 6.3.5.3. 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; and

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 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" required.

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 set out in this section. (7.3.1 through 7.3.3)

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 by the 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; and

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 are fully applicable, except that the officer should arrest and process 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 an 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;

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~~ has suffered or are is likely to suffer physical injury; and

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

8.2 The officer should not become involved in the disposition of personal property, the ownership of which is in dispute. In the absence of the 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 persons 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 other persons desiring to leave gather necessities for short-term absences from home, such as clothing, medication, and the 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 before the magistrate (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 (West Virginia Code §48-2A-1 et. seq.) and the possible applicability of the criminal laws of this State.

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

9.6 Elder victims or physically dependent victims.

9.6.1 When a victim of domestic violence is elderly or physically dependent, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elder or of a physically dependent person and the victim can no longer provide care (as, for example, when the victim is hospitalized), the responding 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 rule, the officer should advise the elder or physically dependent person of the availability of protective services through Adult Protective Services.

9.7 Child victims and dependents.

9.7.1 When the victim of abuse is a minor child, the officer should arrest the ~~assailant~~ accused if the officer observes the commission of a crime and should make a report to child protective services, as required by the Child Welfare Law in Chapter 49 of the West Virginia Code. If the child is physically injured, the officer should facilitate the transportation of the child to the nearest hospital for treatment. The officer should provide the victim notification, as described herein in this rule, to an adult caretaker of the child who is not the perpetrator of abuse.

9.7.2 If the accused is arrested and was the sole caretaker of a child, and/or if the

victim is the sole caretaker of a child and can no longer provide care (as, for example, when the victim is hospitalized), 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 6.3.5 (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 ~~10.3.~~ 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 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. See also subdivision 10.1.4 of this Section.

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 this rule.

11.2 Data collection.

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

Note: New language is underlined. Deleted language is ~~struckthrough~~. Sections 6, 7 and 10 do not show language as struck through if the language was only moved to another subsection or renumbered.

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H. B. 4245

(By Delegates Gallagher, Douglas, Compton,
Huntwork, Burk and Faircloth
(Introduced January 31, 1994; referred to the
Committee on the Judiciary)

10 A BILL to amend and reenact section nine, article nine, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 governor's committee on crime, delinquency and corrections to
14 promulgate legislative rules relating to the protocol for law
15 enforcement response to domestic violence.

16 Be it enacted by the Legislature of West Virginia:

17 That section nine, article nine, chapter sixty-four of the
18 code of West Virginia, one thousand nine hundred thirty-one, as
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS
21 TO PROMULGATE LEGISLATIVE RULES.

22 §64-9-9. Governor's committee on crime, delinquency and
23 corrections.

4245

1 (a) The legislative rules filed in the state register on the
2 twenty-fifth day of July, one thousand nine hundred eighty-eight,
3 modified by the governor's committee on crime, delinquency and
4 corrections to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 twentieth day of September, one thousand nine hundred
7 eighty-eight, relating to the governor's committee on crime,
8 delinquency and corrections (basic training academy, annual
9 in-service and biennial in-service training standards), are
10 authorized.

11 (b) The legislative rules filed in the state register on the
12 ninth day of August, one thousand nine hundred ninety-one,
13 modified by the governor's committee on crime, delinquency and
14 corrections to meet the objections of the legislative rule-making
15 review committee and refiled in the state register on the
16 fifteenth day of January, one thousand nine hundred ninety-two,
17 relating to the governor's committee on crime, delinquency and
18 corrections (protocol for law-enforcement response to domestic
19 violence), are authorized with the amendments set forth below:

20 On page 1, section 2.1 by striking out the words "member of
21 the Department of Natural Resources,";

22 On page 1, by striking out subsection 2.2.4;

23 On page 1, by striking out section 3;

24 On page 4, section 6.2.1 after the word "home" by adding "or
25 business";

1 On page 6, section 6.4.6 by striking out the word "abuse";
2 On page 6, section 7.2.3 after the words "protective order"
3 by adding "and the officer has actual knowledge that a valid
4 protective order exists.";
5 On page 6, by striking out sections 7.2.4 and 7.2.5;
6 On page 7, by striking out section 7.3.5;
7 On page 8, section 7.5, following the word "prosecution", by
8 striking out the period and by adding the following proviso: "
9 Provided, That this section does not authorize a search of the
10 premises unless a search warrant has been obtained or consent was
11 given by the occupant of the premises.";
12 On page 8, by striking out sections 7.6 and 7.7;
13 On page 8, section 8.1 by striking out the words "the officer
14 determines that a warrantless arrest is appropriate or that";
15 On page 8, section 8.1 by striking out the words "in the
16 event that a warrantless arrest for a misdemeanor is authorized";
17 On page 8, section 8.1 by striking out the word "If" from the
18 sentence "If a warrant is necessary";
19 On page 9, by adding the following:
20 "9.1.4 Advise the victim or victims that upon request of the
21 victim or victims the officer will provide transportation for, or
22 facilitate transportation of the victim or victims to a shelter
23 or the appropriate court where there is reasonable cause to
24 believe that such victim or victims have suffered or are likely
25 to suffer physical injury.

1 9.1.5. Provide transportation for or facilitate
2 transportation of the victim or victims upon the request of such
3 victim or victims to a shelter or the appropriate court where
4 there is reasonable cause to believe that such victim or victims
5 have suffered ~~or are likely to suffer~~ physical injury.";

6 On page 10, section 10.7.1 by striking out the words "should
7 arrest the assailant upon probable cause to believe that a crime
8 has been committed" and inserting in lieu thereof the following
9 "should arrest the assailant if the officer observes the
10 commission of a crime";

11 On page 11, section 11.3 by striking out the word "advise"
12 and inserting in lieu thereof the word "inform";

13 And,

14 On page 11, section 11.3 by striking out the remainder of
15 section 11.3 beginning with the words "the condition may
16 include".

17 (c) The legislative rules filed in the state register on the
18 thirteenth day of August, one thousand nine hundred ninety-three,
19 modified by the governor's committee on crime, delinquency and
20 corrections to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the first
22 day of November, one thousand nine hundred ninety-three, relating
23 to the governor's committee on crime, delinquency and corrections
24 (protocol for law enforcement response to domestic violence), are
25 authorized.

1

2 NOTE: The purpose of this bill is to authorize the
3 Governor's Committee on Crime, Delinquency and Corrections to
4 promulgate legislative rules relating to the protocol for law
5 enforcement response to domestic violence.

6

7 Strike-throughs indicate language that would be stricken from
8 the present law, and underscoring indicates new language that
9 would be added.

SENATE BILL NO. 160

1 (B) Senators Anderson, Grubb, McNaughton and
2 (Hind)

3 [Introduced January 31, 1994; referred to the
4 Committee on

THE JUDICIARY

5
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8
9
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11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
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16 Be it enacted by the Legislature of West Virginia:

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18 code of West Virginia, one thousand nine hundred thirty-one, as
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1 (a) The legislative rules filed in the state register on the
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16 fifteenth day of January, one thousand nine hundred ninety-two,
17 relating to the governor's committee on crime, delinquency and
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21 the Department of Natural Resources,";

22 On page 1, by striking out subsection 2.2.4;

23 On page 1, by striking out section 3;

24 On page 4, section 6.2.1 after the word "home" by adding "or
25 business";

1 On page 6, section 6.4.6 by striking out the word "abuse";

2 On page 6, section 7.2.3 after the words "protective order"

3 by adding "and the officer has actual knowledge that a valid

4 protective order exists.";

5 On page 6, by striking out sections 7.2.4 and 7.2.5;

6 On page 7, by striking out section 7.3.5;

7 On page 8, section 7.5, following the word "prosecution", by

8 striking out the period and by adding the following proviso: "

9 Provided, That this section does not authorize a search of the

10 premises unless a search warrant has been obtained or consent was

11 given by the occupant of the premises.";

12 On page 8, by striking out sections 7.6 and 7.7;

13 On page 8, section 8.1 by striking out the words "the officer

14 determines that a warrantless arrest is appropriate or that";

15 On page 8, section 8.1 by striking out the words "in the

16 event that a warrantless arrest for a misdemeanor is authorized";

17 On page 8, section 8.1 by striking out the word "If" from the

18 sentence "If a warrant is necessary";

19 On page 9, by adding the following:

20 "9.1.4 Advise the victim or victims that upon request of the

21 victim or victims the officer will provide transportation for, or

22 facilitate transportation of the victim or victims to a shelter

23 or the appropriate court where there is reasonable cause to

24 believe that such victim or victims have suffered or are likely

25 to suffer physical injury.

1 9.1.5 Provide transportation for or facilitate
2 transportation of the victim or victims upon the request of such
3 victim or victims to a shelter or the appropriate court where
4 there is reasonable cause to believe that such victim or victims
5 have suffered or are likely to suffer physical injury.";

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7 arrest the assailant upon probable cause to believe that a crime
8 has been committed" and inserting in lieu thereof the following
9 "should arrest the assailant if the officer observes the
10 commission of a crime";

11 On page 11, section 11.3 by striking out the word "advise"
12 and inserting in lieu thereof the word "inform";

13 And,

14 On page 11, section 11.3 by striking out the remainder of
15 section 11.3 beginning with the words "the condition may
16 include".

17 (c) The legislative rules filed in the state register on the
18 thirteenth day of August, one thousand nine hundred ninety-three,
19 modified by the governor's committee on crime, delinquency and
20 corrections to meet the objections of the legislative rule-making
21 review committee and refiled in the state register on the first
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23 to the governor's committee on crime, delinquency and corrections
24 (protocol for law enforcement response to domestic violence), are
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2 NOTE: The purpose of this bill is to authorize the
3 Governor's Committee on Crime, Delinquency and Corrections to
4 promulgate legislative rules relating to the protocol for law
5 enforcement response to domestic violence.

6

7 Strike-throughs indicate language that would be stricken from
8 the present law, and underscoring indicates new language that
9 would be added.



FILED

WEST VIRGINIA LEGISLATURE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Room M-152, State Capitol
Charleston, West Virginia 25305
(304) 340-3236

Oct 26 11 05 AM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

October 19, 1993

TO: Ken Hechler, Secretary of State, State Register
TO: Mr. James M. Albert
Governor's Committee on Crime,
Delinquency and Correction
1204 Kanawha Boulevard East
Charleston, WV 25301
FROM: Legislative Rule-Making Review Committee
PROPOSED RULE: Protocol for Law Enforcement Response to Domestic
Violence

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. _____

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: Don Davidson