



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

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

AGENCY: Crime Delinquency And Correction TITLE-SERIES: 149-03  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 149-03 Protocol for Law Enforcement Response to Domestic Violence

**PRIMARY CONTACT**

NAME: Brandolyn N Felton-Ernest  
ADDRESS: 1900 Kanawha Blvd E  
Bldg 1 Room W 400  
Charleston, WV 25305  
EMAIL: brandolyn.feltonernest@wv.gov  
PHONE NUMBER: 304-957-2511

CITE STATUTORY AUTHORITY: W. Va. Code 48-27-1102

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W.Va. Code 48-27-1102 states "The Governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers, law-enforcement agencies and communications and emergency operations centers which dispatch law-enforcement officers with regard to domestic violence." This rule addresses those processes.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2022

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This legislative rule establishes law enforcement response to domestic violence by providing guidelines and establishing standards for responding to domestic violence incidents. A Sunset Provision Extension was filed and accepted on June 28, 2022 on the Secretary of State's website. In the request, the sunset provision option selected was to extend the sunset date of this rule by five (5) years.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This rule establishes law enforcement response to domestic violence by paying particular attention to protecting victims of domestic violence through enforcement of protective orders, initial response, and arrest, on-scene assistance, reporting and follow-up. This rule also concerns the means by which law enforcement agencies can minimize departmental liability and provide training.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

0

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

0

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

0

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**Brandolyn N Felton-Ernest -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

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

**SERIES 3  
PROTOCOL FOR LAW ENFORCEMENT RESPONSE  
TO DOMESTIC VIOLENCE**

**§149-3-1. General.**

1.1. Scope. -- This legislative rule establishes law enforcement response to domestic violence by providing guidelines and establishing standards for responding to domestic violence incidents. Particular attention is given to protecting victims of domestic violence through enforcement of protective orders, initial response, and arrest, on-scene assistance, reporting and follow-up. It is also the means by which law enforcement agencies can minimize departmental liability and provide training.

1.2. Authority. -- W. Va. Code §48-27-1102.

1.3. Filing Date. -- ~~April 6, 2018.~~

1.4. Effective Date. -- ~~July 1, 2018.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on ~~June 30, 2023~~ August 1, 2028.

**§149-3-2. Purposes.**

2.1. The principal purpose of this rule is to establish guidelines and procedures in compliance with state and federal law to be followed by all West Virginia law enforcement officers as defined herein and other personnel involved in police response to domestic calls.

2.2. Other purposes and goals of this rule are:

2.2.1. To reduce the incidence and severity of domestic violence and domestic violence related deaths by establishing arrest and prosecution, as the means of police response to domestic violence;

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

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

2.2.4. To promote law enforcement officer safety by ensuring that the law

enforcement officer is as fully prepared as possible to respond to domestic calls; and,

2.2.5. To help reduce police resources consumed in responding to domestic violence by reducing the number of police interventions required for any particular household.

### **§149-3-3. Definitions.**

3.1 “Credible corroborative evidence” means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense and may include, but is not limited to, the condition of the victim, the accused, and the scene.

3.2. “Credible evidence” means evidence of the victim’s condition may include, but is not limited to, one or more contusions, scratches, cuts, abrasions, swellings, or other signs of physical injury; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of strangulation, choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

3.2.1. Credible evidence of the condition of the accused may include, but is not limited to, physical injury or other conditions similar to those set out for the condition of the victim which is consistent with the alleged offense or alleged acts of self-defense by the victim.

3.2.2. Credible evidence of the condition of the scene may include, but is not limited to, damaged premises or furnishings or disarray or misplaced objects consistent with the effects of a struggle.

3.2.3. Other credible evidence may include, but is not limited to, statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of a law enforcement officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; or written statements by witnesses.

3.3. “County” means any one of the fifty-five major political subdivisions of the state.

3.4. “Deadly weapon” means an instrument that is designed to be used to produce serious bodily injury or death, or is readily adaptable to that use. The term “deadly weapon” includes, but is not limited to, a blackjack, a gravity knife, a knife, a switchblade knife, a nunchuka, metallic or false knuckles, and firearms, and as defined in W. Va. Code §61-7-2(9).

3.5. “Dispatcher” means a telecommunicator who receives calls from individuals who need assistance from firefighters, law enforcement officer, and emergency medical services. Once information is obtained from the caller, telecommomunicators activate the services necessary to respond to the nature of the call for help and maintain close contact with field units to monitor response and needed support requirements.

3.6. "Domestic assault" means the unlawful attempt to commit a violent injury of another family or household member or unlawfully committing an act which places another family or household member in reasonable apprehension of immediately receiving a violent injury.

3.7. "Domestic battery" means the unlawful and intentional physical contact of an insulting or provoking nature with another family or household member or unlawfully and intentionally causing physical harm to another family or household member.

3.8. "Elderly person" means a person who is sixty-five years or older §61-2-29b.

3.9. "Family or household members" mean persons who:

3.9.1. Are or were married to each other;

3.9.2. Are or were living together as spouses;

3.9.3. Are or were sexual or intimate partners;

3.9.4. Are or were dating: *Provided*, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;

3.9.5. Are or were residing together in the same household;

3.9.6. Have a child in common regardless of whether they have ever married or lived together;

3.9.7. Have the following relationships to another person:

3.9.7.a. Parent;

3.9.7.b. Stepparent;

3.9.7.c. Brother or sister;

3.9.7.d. Half-brother or half-sister;

3.9.7.e. Stepbrother or stepsister;

3.9.7.f. Father-in-law or mother-in-law;

3.9.7.g. Stepfather-in-law or stepmother-in-law;

3.9.7.h. Child or stepchild;

- 3.9.7.i. Daughter-in-law or son-in-law;
- 3.9.7.j. Stepdaughter-in-law or stepson-in-law;
- 3.9.7.k. Grandparent;
- 3.9.7.l. Step grandparent;
- 3.9.7.m. Aunt, aunt-in-law or step aunt;
- 3.9.7.n. Uncle, uncle-in-law or step uncle;
- 3.9.7.o. Niece or nephew;
- 3.9.7.p. First or second cousin; or,

3.9.8. Have the relationships set forth in 3.9.7.a. through 3.9.7.p., of this subsection, to a family or household member, as defined in subsections 3.9.1. through 3.9.6. of this section.

3.10. "Family violence," "domestic violence," or "abuse" means the occurrence of one or more of the following acts between family or household members:

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

3.10.2. Placing another person in reasonable apprehension of physical harm;

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

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

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

3.11. "Firearm" means any weapon that will expel a projectile by action of an explosion §61-7-2(11).

3.12. "Financial exploitation" or "financially exploit" means the intentional misappropriation or misuse of funds or assets of an elderly person, protected person or incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person or incapacitated adult with the management of his or her money or other things of value §61-2-29(b)(h)(3).

3.13. "Incapacitated adult" means any person eighteen years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health §61-2-29(a)(4).

3.14. "Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of this state.

3.15. "Law enforcement officer" or officer means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of this state, other than parking ordinances, and includes those persons employed as security officer at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority.

3.16. "Law enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee.

3.17. "Municipality" means any incorporated village, town or city whose boundaries lie within the geographic boundaries of the state.

3.18. "Protected Person" means an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (a) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgement, alone, is not sufficient evidence that the individual is a protected person within the meaning of this subsection. "Protected person" also means a person whom a court has determined is a missing person. §44A-1-4(13).

3.19. "Protective Order" or order of protection or protection order under WVC 48-28 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, means an injunction or other order, issued under domestic violence, family violence, anti-stalking, or similar domestic relations laws. A protective order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual. A protective order must be issued by a court; agency or other entity authorized by law to issue or modify a protective order. Protection Orders include out-of-state orders and are entitled to full faith and credit.

3.20. "Strangle or Strangulation" means knowingly and willfully restricting another person's air intake or blood flow by the application of pressure on the neck or throat. §61-2-9d(a)(2).

3.21. "Unlawful restraint" means any person who, without legal authority intentionally restrains another with the intent that the other person not be allowed to leave the place of restraint and who does so by physical force or by overt or implied threat of violence or by actual physical restraint but without the intent to obtain any other concession or advantage as those terms are used in section fourteen-a of this article. §61-2-14g.

#### **§149-3-4. Protective Orders.**

4.1. A protective order is an injunction or other order, issued under domestic violence, family violence, anti-stalking, or similar domestic relations laws. A protective order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual. A protective order must be issued by a court; agency or other entity authorized by law to issue or modify a protective order.

4.1.1. Protective orders include, but are not limited to, Emergency Protective Orders, Temporary Emergency Protective Orders, Domestic Violence Protective Orders, Temporary or Final Protective Orders issued as a part of Temporary or Final Divorce Orders, or any other terms or orders that have a similar purpose.

4.1.2. Domestic violence protective orders are considered criminal in nature. Law enforcement agencies and officers in the state of West Virginia are responsible for the service of all orders and petitions for protection. Service of protective orders shall be a priority. The Law enforcement officer shall immediately, but no longer than 72 hours, make every reasonable effort to locate respondent for service of protective orders. Service shall be performed on any day including Sundays and holidays. No law enforcement officer shall refuse to serve pleadings or orders in domestic violence protective order actions.

4.1.2.a. When the officer serves the order upon the respondent, the officer shall file the return of service within 24 hours to the circuit clerk's office.

4.1.3. When serving the protective order, the officer shall inform the respondent that possession of firearms and ammunition is prohibited under state and federal law.

4.1.4. The serving officer should inquire of the respondent whether the respondent owns or possesses firearms and where the firearms and ammunition are located.

4.1.5. The serving officer should inform the respondent that failure to surrender or transfer his or her firearms and ammunition could result in the accuser's arrest for violation of the court's order.

4.1.6 The serving officer should inquire of the respondent what the respondent intends to do with his or her firearms.

4.1.7. The serving officer should request that the respondent surrender all of his or

her firearms and ammunition to the officer or transfer to a qualified third party (a party who is not prohibited from possessing firearms under state and federal law).

4.1.8. The serving officer should encourage the respondent to make a decision about his or her firearms while the officer is present to verify the surrender or transfer.

4.1.9. If the respondent refuses to surrender or transfer his or her firearms and ammunition after the serving officer has provided a reasonable opportunity to do so, then the serving officer shall arrest the respondent for violation of the protective order.

4.2. A protective order remains in effect for the period of time stated in the order unless the protective order is dismissed or extended by the court.

4.3. A protective order issued in any county in West Virginia is in effect in all counties in West Virginia.

4.4. A protection order issued by a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States, or an Indian tribe or band that has jurisdiction to issue protection orders shall be accorded full faith and credit and enforced as if it were an order of this state, whether or not the relief ordered is available in this state, if there is probable cause to believe that it is a valid foreign protection order.

4.4.1. There is probable cause to believe that a protection order is valid if it identifies both the protected individual and the respondent and the order appears, on its face, to be authentic and currently in effect.

4.4.1.a. In circumstances whereby a written protection order is not presented, the law enforcement officer may consider other credible information in determining whether there is probable cause to believe that the order exists and is currently in effect.

4.4.2. Presentation of a certified copy of a protection order is not required for enforcement.

4.4.3. For the purposes of this section, the protection order may be inscribed on any tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form.

4.4.4. A protection order, temporary or final, from another jurisdiction may be enforced even if the order is not registered, filed or entered into the state law enforcement information system.

4.5. If a law enforcement officer determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order. Once the

officer has notified or served the respondent, the officer shall enforce the order.

#### **§149-3-5. Dispatcher Responsibilities.**

5.1. Dispatchers who provide service to police department and communications and emergency operations centers which dispatch the law enforcement officer shall 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.

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

5.2.1. The nature of the incident;

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

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

5.2.4. Whether weapons are involved or present and if so, where they are located;

5.2.5. Whether or not there are any injuries and whether or not an ambulance is needed;

5.2.6. Whether strangulation has been reported, has occurred or is suspected and if so, dispatcher shall dispatch EMS;

5.2.7. A description of the accused and whether or not the accused is present and, if not, the most likely location, direction of flight, and mode of travel of the accused;

5.2.8. Whether other individuals, including children, are at the scene;

5.2.9. Whether any party is using or is under the influence of alcohol or drugs or has a history of cognitive or mental illness;

5.2.10. Whether a protective order is in effect;

5.2.11. If the caller is the victim and in the residence, would they consent to entry;

5.2.12. Whether a criminal warrant is outstanding on the accused; and,

5.2.13. Whether the accused has been released on bond.

5.3. If the caller is the victim, or if the caller is a witness to a domestic incident in

progress, the dispatcher shall attempt to keep the caller on the telephone and relay ongoing information provided by the caller to the responding law enforcement officer and EMS if dispatched. The dispatcher shall tell the caller that help is on the way and when the police may arrive.

5.4. If the dispatcher has ready access to police department records, all information relevant to the situation shall be relayed to the officer. At the direction of the law enforcement officer the dispatcher shall access the statewide domestic violence protective order database, and National Crime Information Center (NCIC), and other criminal information databases to determine whether the parties involved in the incident have been involved previously in domestic incidents or whether there is a protective order involving the parties in effect, and relay that information to the responding law enforcement officer.

5.5. If the dispatcher has reason to believe that the accused is on bond for a crime against a family or household member, including a family or household members who are children, and if the dispatcher has ready access to magistrate court records that show whether there are conditions of bond, the dispatcher should consult the records and communicate any relevant information to the responding law enforcement officer; including the existence of a protective order prohibiting the possession of firearms.

#### **§149-3-6. Initial Law Enforcement Officer Response.**

##### 6.1. Approaching the scene.

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

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

6.1.3. Unless the circumstances of a particular incident require different measures, the law enforcement officer should follow the approach procedures set out in the remainder of this section. The law enforcement officer should:

6.1.3.a. Approach the scene inconspicuously. The law enforcement officer should not use sirens or lights in the immediate area of the scene of the incident;

6.1.3.b. Park away from the immediate scene of the incident;

6.1.3.c. Keep a safe exit route in mind;

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

6.1.3.e. Be alert for persons moving away from the immediate scene of the

incident; and,

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

## 6.2. Initial contact.

6.2.1. The responding law enforcement officer should identify himself or herself, explain the law enforcement presence, and request entry into the residence or business. The law enforcement officer shall ask to see the person who is the subject of the call. The law enforcement officer shall not reveal the caller's name.

6.2.2. The law enforcement officer may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so or when exigent circumstances exist. If a domestic violence protective order is in effect, written consent to enter may have been given by the victim and be on file. The law enforcement officer shall limit the scope of the search to other suspects, victims, witnesses, or evidence connected with the alleged domestic incident.

6.2.3. In some exigent circumstances, forced entry is necessary and appropriate. Exigent Circumstances include but are not limited to:

6.2.3.a. The residence area shows signs of a fight or scuffle;

6.2.3.b. When a person from inside the residence calls for assistance or is yelling;

6.2.3.c. When law enforcement officer have reason to believe that the person is wounded, injured, or is otherwise in need of assistance;

6.2.3.d. When the accused is suspected of concealing the victim;

6.2.3.e. When the call came from the residence and the victim is identified as the caller and entry is denied by others present on the scene;

6.2.3.f. When the officer has articulable suspicion that absent immediate entry serious bodily injury or death may result.

## 6.3. Establishing control of scene.

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

6.3.1.a. Identifying and securing potential weapons;

6.3.1.b. Separating the victim and the accused when circumstances are appropriate;

6.3.1.c. Assessing injuries (including inquiry about possible internal injuries), administering first aid, and notifying emergency medical services as necessary (Due to high lethality and possibility of delayed death, if strangulation is reported, or suspected, the officer shall request EMS respond to the scene);

6.3.1.d. Identifying all occupants and witnesses on the premises;

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

6.3.1.f. Maintaining visibility and restricting mobility of all persons present at the scene.

#### 6.4. On-scene investigation.

6.4.1. The law enforcement officer shall conduct an investigation using the same procedures that the law enforcement officer would use in any other on-scene criminal investigation. While conducting the investigation the law enforcement officer shall attempt to establish the existence of credible corroborative evidence. The law enforcement officer shall make specific note of and document all statements made by the victim, accused and all witnesses, particularly those statements that may be admissible as evidence as exceptions to the hearsay rule such as excited utterances, present sense impression and statements made for medical treatment. The law enforcement officer shall also determine if such statements were made to the dispatcher and take appropriate measures to secure and preserve such evidence.

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

6.4.3. In questioning the victim, the law enforcement officer should use supportive interview techniques. The law enforcement officer should not tell the victim what action the law enforcement officer intends to take until all available information has been collected.

6.4.4. The law enforcement officer should interview and record, if possible, the victim and any witnesses (including all child witnesses) as fully and as soon as circumstances allow, taking down names, addresses, and other relevant information. When interviewing the victim and any witnesses (including all child witnesses) law enforcement officer should determine whether the victim and any witnesses (including all child witnesses) allege facts that constitute all of the elements of assault or battery. If so, the law enforcement officer should inquire whether the victim and any witnesses are willing to sign a statement containing those facts.

6.4.5. On all incidents of domestic violence requiring a report pursuant to §48-27-801, the law enforcement officer shall conduct a private interview with the victim utilizing

“Dangerousness-Lethality Information form for Use by Law Enforcement Officers” included in the “Dangerous-Lethality Assessment Guide” as approved by the “Risk Assessment in Criminal and Civil Systems” committee and distributed by the West Virginia State Police. The “Dangerousness-Lethality Information form for Use by Law Enforcement Officers” shall be attached to the police incident report and any lethality indicators found should be summarized on the criminal complaint. Summarization on the complaint should include information determined to be pertinent by the officer through the course of their investigation.

6.4.6. The law enforcement officer should proceed with the investigation even in the absence of a statement from both a victim and any witnesses (including child witnesses). Proceed with the understanding that there may be no further assistance from the victim.

6.4.7. The responding law enforcement officer should interview and record, if possible, the accused as fully as circumstances allow inquiring about the nature of the dispute. The law enforcement officer should be alert to possible incriminating statements.

6.4.8. In cases where the accused or victim does not speak English, law enforcement officer should use a neutral interpreter when possible. Officers should use caution when using family and friends and especially children, to provide interpreter services.

6.4.9. In Cases Where Children are Present:

6.4.9.a. Determine the location of all children. Check to see if they are hurt;

6.4.9.b. Keep children with known adults when safe and appropriate;

6.4.9.c. Provide non-offending parent with information about safety and resources;

6.4.9.d. Help support/calm non-offending parent (to help them care for their children);

6.4.9.e. It is recommended to not arrest in front of the children, and,

6.4.9.f. If there has been a murder, suicide or serious bodily injury of any household member, after making a mandated report to CPS, refer family/caregiver for children to community resources that provide trauma-informed care.

6.4.10. When speaking with children the following is recommended:

6.4.10.a. Speak at children’s level by sitting or squatting;

6.4.10.b. Describe your role in simple terms;

6.4.10.c. Talking with children on scene is not the same as a forensic interview conducted by a trained forensic interviewer. The on-scene engagement of children is primarily for the purpose of checking for safety, controlling the scene and comforting the child;

6.4.10.d. Don't force the child to speak;

6.4.10.e. Refrain from talking badly about either parent in front of children;

6.4.10.f. Don't say everything will be okay, or make promises you cannot keep;

6.4.10.g. Reassure children that the violence was not their fault;

6.4.10.h. Explain to children why any law enforcement use of force was necessary, and,

6.4.10.i. Document any statements and demeanor of child.

6.4.11. When Assessing Harm to Children At the Scene of a Domestic Violence Call, assess for:

6.4.11.a. Injuries;

6.4.11.b. If children are in imminent danger;

6.4.11.c. The need to take custody without a court order in cases of abandonment or medical neglect pursuant to WV code §49-4-301, and,

6.4.11.d. Whether or not children are at risk of substantial harm due to domestic violence as determined by the following indicators:

6.4.11.d.i. Past history of child maltreatment;

6.4.11.d.ii. Criminal history of domestic violence related crimes;

6.4.11.d.iii. Proximity of the children to the domestic violence;

6.4.11.d.iv. Nature of the violence or crime;

6.4.11. d. v. Child physically intervening;

6.4.11.d.vi. Child forced to participate in the domestic violence;

6.4.11.d.vii. Use of weapons or objects that could cause harm in the presence of children;

6.4.11.d.viii. Direct threats (including verbal threats) of serious bodily injury or death to or regarding children, and,

6.4.11.d.ix. A domestic violence offender with indicators of highly dangerous/potentially lethal behaviors.

6.4.12. The law enforcement officer should refer to Handle with Care program where available.

6.4.13. If law enforcement officer has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, the law enforcement officer shall immediately report the circumstances to Child Protective Services (CPS) pursuant to WV Code §49-2-803.

6.4.14. If the accused has fled the scene, the law enforcement officer should solicit information as to the possible whereabouts of the accused (place of employment, relatives, friends, etc.). The law enforcement officer should make reasonable efforts to locate and interview the accused as to any statements or evidence they may wish to provide prior to arrest or obtaining a warrant.

6.4.15. The law enforcement officer shall collect and preserve all physical evidence reasonably necessary to support prosecution, including evidence substantiating the victim's injuries, evidentiary articles that substantiate the attack (weapons, torn clothing, etc.), and evidence recording the crime scene. The law enforcement officer should ensure that photographs are taken of visible injuries on the victim and of the crime scene. The law enforcement officer shall document the location of any injuries that may result in potential bruising. The law enforcement officer shall document all evidence that supports a violation of any WV state code. All physical evidence shall be collected, noted in reports, and vouchered as in other criminal investigations.

6.4.16. The law enforcement officer should encourage the victim to seek medical attention for injuries that do not require emergency treatment at the scene. The law enforcement officer should inquire about injuries of the victim that are concealed by clothing or otherwise not readily apparent.

6.5. Enforcing any protective orders or bond conditions.

6.5.1. To determine the existence of a protective order, ask the victim whether there is a valid protective order in effect the officer should attempt to verify the existence of an order by accessing the statewide protective order database NCIC, and identifying the issuing county and court. The law enforcement officer shall enforce all orders. Where the respondent has been served with the protective order or has actual notice of the protective order, then the law enforcement officer shall follow the arrest authorization

provisions as set forth in this rule.

6.5.2. If a law enforcement officer determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the content of the order and make a reasonable effort to serve any available copy of the order upon the respondent. The officer shall allow the respondent a reasonable opportunity to comply with the order, such as vacating the premises, surrendering firearms, etc. Once the officer has notified or served the respondent, and the respondent fails to comply with the order, the officer shall enforce the order.

6.5.3. If the officer makes verbal notice, the officer shall notify the respondent of the following minimum mandatory relief:

6.5.3.a. Order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

6.5.3.b. Inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.

6.5.3.c. Inform the respondent that the order is in full force and effect in every county of this state.

6.5.4. The law enforcement officer shall document the notification by contacting 911 to record notification on the WV statewide domestic violence database and submitting the return of service in writing to the circuit clerk's office within 24 hours.

6.5.5. Verbal notification does not relieve the agency or officer from serving the order.

6.5.6. If the victim is aware of pending criminal charges against the accused and bond conditions, the law enforcement officer should verify such information by contacting the local law enforcement department specified by the victim or the issuing court to verify the conditions of release on bond. Pursuant to W. Va. Code 62-1C-17c (d), when the law enforcement officer observe any violations of a known bond condition in cases of crimes between family or household members, including family or household members who are children, the law enforcement officer shall arrest the accused for violations of the bond conditions; which may include the presence of the accused at the residence of the victim.

6.5.7. The law enforcement officer shall enforce all protective or similar type orders that have been issued by a circuit judge, family court judge or magistrate of this state, and from courts of another state, territory, or tribe.

6.5.8. The law enforcement officer shall provide for the safety of the parties and remain at the location when they are ordered to accompany one or both of the parties to obtain personal property or other items from a location, including temporary possession of motor vehicles owned by either or both of the parties.

6.5.9. Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to violate a valid protective order is a violation of federal law and should also be referred to federal authorities.

#### 6.6. Missing Persons Investigation; Domestic Violence.

6.6.1. A law enforcement agency, under WV Code §48-27-601, shall initiate a missing persons investigation if the agency:

6.6.1.a. Has possession of a valid protective order, or has notice of the existence of a protective order which is in effect, or has been expired for a period of less than thirty (30) days, and receives a report that a person protected by the order has been reported missing; or,

6.6.1.b. Receives information that at the time of disappearance the missing person was subjected to domestic violence,

6.6.2. An agency or department shall not have a policy delaying the beginning of an investigation of a missing person, which meets the criteria outlined in this subsection.

6.6.3. The investigating officer cannot release the whereabouts of the alleged missing person, if found, without expressed consent of that person.

#### 6.7. Follow-up Investigation; Domestic Violence.

6.7.1. All domestic violence reports prepared by the law enforcement officer should be reviewed and given follow-up investigation as needed.

6.7.2. Follow up investigations should include the following:

6.7.2.a. Take photographs of injuries approximately two days after the incident to exhibit changes in injury as well as the long-term effects of abuse. Contact or meet the victim at a safe location if necessary, such as his or her work place.

6.7.2.b. Obtain all available medical reports after receipt of medical release from the victim.

6.7.2.c. Obtain a copy of 911 recordings or other communications with police or emergency personnel.

6.7.2.d. Interview victims and witnesses who were physically or emotionally unable to be properly interviewed or to provide a statement at the time of the incident due to victim trauma. Interviews should also include the victim's family members, previous intimate partners of the accused, and as necessary interview family of the accused.

6.7.2.e. Interview potential witnesses (neighbors, co-workers, friends, etc.).

6.7.2.f. Ascertain if the accused is on parole or probation and obtain the name and contact the parole or probation officer.

6.7.2.g. Obtain all jail telephone and communication logs at the time of the incident.

6.7.2.h. Conduct a complete NCIC check, and, if possible, a criminal history check of the suspect.

6.7.2.i. Collect all types of threatening communication (sent by the perpetrator to the victim, family members and friends) to include: letters, cards, emails, text messages, and notes.

#### **§149-3-7. The Arrest Decision.**

7.1. In most circumstances, the responding law enforcement officer shall arrest the accused whenever arrest is authorized. A law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence shall submit in writing on the required domestic violence incident report pursuant to WV code §48-27-801 setting forth the grounds for not arresting or for arresting both parties. Officers shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party.

7.2. Arrest is authorized in the following circumstances:

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

7.2.2. When the law enforcement officer observe the commission of a felony or a misdemeanor;

7.2.3. Law enforcement officer observing the violation of a valid protective order, including the presence of the accused at a location prohibited by the protective order; the officer shall arrest the accused provided the accused was served with the order or had actual notice of the order and its contents;

7.2.4. When the law enforcement officer observe any violation of a condition of bond, probation or parole, including the presence of the accused at the residence of the victim in violation of the condition set in cases of crimes between family members;

7.2.5. When the accused is alleged to have committed domestic assault or domestic battery or the violation of a valid protective order; law enforcement officer has authority to arrest the accused when:

7.2.5.a. The law enforcement officer has observed credible corroborative evidence that the offense has occurred; and either:

7.2.5.b. The law enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of the West Virginia Code; or,

7.2.5.c. The law-enforcement officer has observed credible evidence that the accused committed the offense.

7.2.6. When a misdemeanor or felony not included among those specified in this rule has been committed and the law enforcement officer or another person obtains or has previously obtained an arrest warrant; or,

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

7.2.8 Notwithstanding the issue of violation of the state law, the crossing or causing the crossing of a state line or territory or tribal boundary to commit domestic violence is a violation of federal law and should also be referred to federal authorities.

7.3. The law enforcement officers shall not consider the following factors in making the arrest decision:

7.3.1. The marital status of the parties;

7.3.2. The ownership or tenancy rights of either party;

7.3.3. Verbal assurances that the violence will stop;

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

7.3.5. Speculation that the victim or witnesses 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);

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

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

7.3.8. The existence or nonexistence of a current protective order (except insofar

as the violation of the order requires arrest);

7.3.9. Concern about reprisals against the victim;

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

7.3.11. That the incident occurred in a private place; or,

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

7.3.13. Criminal history of the victim

7.4. It is the law enforcement officers or prosecuting attorney's responsibility to decide whether an arrest should be made unless the law enforcement officer is required to make an arrest for violation of a valid protective order or a violation of the terms and conditions of bond, probation or parole on a charge of a crime against a family or household member. The law enforcement officer, therefore, should not consider the victim's opposition to arrest and should emphasize to the victim, and to the accused as well, that the criminal action thus initiated is the state's action, not the victim's action.

7.5. If the law enforcement officer receives complaints of domestic or family violence from two or more opposing persons, the law enforcement officer shall evaluate each complaint to determine who was the predominate aggressor. If the law enforcement officer determines that one person was the predominate aggressor, the law enforcement officer shall arrest the predominate aggressor only. **Dual arrests are discouraged.** In determining whether a person is the predominate aggressor the law enforcement officer should consider, among other things:

7.5.1. Prior complaints of domestic or family violence;

7.5.2. The relative severity of the injuries inflicted on each person;

7.5.3. The likelihood of future injury to each person; and,

7.5.4. Whether one of the persons using reasonable force acted in self-defense.

7.5.5. Initial physical contact alone does not determine predominate aggressor.

7.5.6. The presence of highly dangerous/potentially lethal behaviors.

7.6. Firearms

7.6.1. The law enforcement officer shall seize all firearms, ammunition, and any other weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence.

7.6.2. The law enforcement officer may seize a weapon that is in plain view of the officer, or is discovered pursuant to a consensual search, or is necessary for the protection of the officer or other persons.

7.6.3. The Law enforcement officers shall seize all firearms and ammunition possessed in violation of a protective order prohibiting possession of a firearm.

7.6.4. Notwithstanding the issue of violation of the West Virginia Code §61-7-7, the possession of a firearm by a person subject to a valid protective order, is also a violation of federal law and should be referred to federal authorities.

#### **§149-3-8. Effectuating the Arrest.**

8.1. Persons arrested pursuant to this rule, shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

8.2. The risk is high in domestic violence cases that the accused will return to the victim's residence or the scene of the violence. If the accused has fled the scene, the law enforcement officer should initiate procedures to pursue and apprehend the accused as promptly as possible if the presence of the accused in the vicinity represents a continuous threat to the safety of the victim or other members in the household. If a warrant is necessary, the law enforcement officer should obtain and execute the warrant as soon as practical.

8.3. When the accused is a minor (under 18 years of age), the provisions of this rule are fully applicable, except that the law enforcement officer should arrest and process the juvenile pursuant to W. Va. Code.

#### **§149-3-9. Procedure when Arrest is not Made.**

9.1. If an arrest is not made the law enforcement officer should:

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

9.1.2. Advise the victim of the applicability of criminal laws, procedures for filing a criminal complaint regarding violations of a protective order, the availability of a petition for a protective order, the procedures for filing a petition, and the remedies an order may contain;

9.1.3. Encourage the victim to contact the nearest available domestic violence program for information regarding services available to victims of domestic violence;

9.1.4. Inform the victim that the law enforcement officer will provide transportation for or facilitate transportation of the victim to a shelter or the appropriate court when reasonable cause exists to believe that the victim suffered or is likely to suffer physical

injury. Make reasonable efforts to assure victim safety.

9.2. The law enforcement officer should not become involved in the disposition of personal property, the ownership of which is in dispute except as provided in-subdivision 6.5.8 of this section. In the absence of an arrest, the law enforcement officer should remain neutral and be concerned primarily with maintaining the peace and safety of those persons present.

### **§149-3-10. Other On-Scene Assistance to Victims and Dependents.**

10.1. Whether or not an arrest is made, the responding law enforcement officer should not leave the scene of the incident until the situation is under control and the likelihood of immediate violence has been eliminated. The law enforcement officer should stand by for a reasonable period of time while victims or other persons desiring to leave gather necessities for short-term absences from residence, such as clothing, medication, and necessary documents.

10.2. Whether or not an arrest is made, the responding law enforcement officer is required by W. Va. Code §48-27-702 and §48-27-101 et. seq to notify the victim orally or in writing of the availability of a local domestic violence program, crime victim compensation fund, and other services in the community, and civil and criminal remedies such as: the right to file for a protective order and the right to file a criminal complaint if there is a violation of an existing protective order.

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

10.3.1. Advise the victim of what will happen next, including the probability that the accused will be in custody for only a short period of time; and

10.3.2. Obtain from the victim information to be included in the arrest report indicating any special conditions of bond that should be requested at the initial appearance before the magistrate (i.e., places where the accused should be specifically prohibited from appearing).

10.4. The law enforcement officer responding to an alleged incident of abuse shall, in addition to providing the information required in subdivision 10.2. of this rule, provide transportation for or facilitate transportation of the victim, upon the request of the victim, to a shelter or the appropriate court when there is reasonable cause to believe that the victim has suffered or is likely to suffer physical injury. Make reasonable efforts to assure victim safety.

10.5. When the law enforcement officer has a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.

## 10.6. Elderly persons or incapacitated adult victims.

10.6.1. When a victim of domestic violence is an elderly person or an incapacitated adult, the accused is the sole caretaker and an arrest is indicated, or when the victim of domestic violence is the sole caretaker of an elderly person or an incapacitated adult, and the victim can no longer provide care ( for example, when the victim is hospitalized) the law enforcement officer should attempt to provide and secure appropriate care and assistance for the well-being of the elderly person or an incapacitated adult including referrals to licensed domestic violence programs and Adult Protective Services (as mandated in §9-6-9).

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

10.6.3. In addition to providing the notification required by other provisions of this rule, the law enforcement officer should advise the elderly person or incapacitated adult of the availability of protective services through Adult Protective Services.

## 10.7. Child victims and dependents.

10.7.1. When the victim of abuse is a minor child, the law enforcement officer shall arrest the perpetrator if the law enforcement officer observes the commission of a crime and shall report to Child Protective Services, as required by W. Va. Code §49-2-803. The law enforcement officers should provide notification, to an adult caretaker of the child who is not the perpetrator of the abuse.

10.7.2. If the victim is the sole caretaker of a child and can no longer provide care (for example, when the victim is hospitalized) and is not incapacitated, the officer shall consult with the victim about arrangements for the child. If the accused is arrested and was the sole caretaker of a child or if both caretakers are arrested, the law enforcement officer shall contact Child Protective Services (CPS). CPS will determine whether there is a responsible relative who can care for the child. The law enforcement officer shall remain with the child until CPS arrives.

## **§149-3-11. Violation of a Protective Order.**

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

11.2. The accused shall be taken before a magistrate in the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia

for initial appearances in criminal cases.

11.3. The arresting law enforcement officer should inform the magistrate or court of any circumstances surrounding the arrest of the accused which would have an effect on conditions of bond, provided that the amount and conditions of bond are a judicial decision that rests solely with the magistrate or court. The officer present at the arraignment should convey information regarding highly dangerous/potentially lethal behaviors of the offender to the Magistrate.

**§149-3-12. Reporting.**

12.1. A Domestic Violence Incident Report, as required by W. Va. Code §48-27-801, shall be completed by the law enforcement officer responding to any call covered by this rule.

12.2. Data collection.

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

12.2.2. The report, or another document or computer entry generated from the report, shall become a domestic violence tracking report.

12.2.3. To the extent possible, the domestic violence tracking report shall be accessible to dispatchers and the law enforcement officer.