

March 12, 1996

OPINION NO. 96-014

Colonel Warren H. Davies, Superintendent  
Ohio State Highway Patrol  
660 E. Main Street  
Columbus, Ohio 43205

Donald C. Anderson, Director  
Department of Natural Resources  
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Columbus, Ohio 43224-1387

Dear Colonel Davies and Director Anderson:

I am in receipt of your inquiries concerning the effect of domestic violence enforcement legislation upon the Ohio State Highway Patrol, the Department of Natural Resources (DNR), and the law enforcement officers who serve those entities. In separate letters, you have asked essentially the following questions:

1. Are troopers of the State Highway Patrol peace officers described in R.C. 2935.03(B)(1), so that the troopers are subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Patrol is required to adopt a domestic violence policy pursuant to R.C. 2935.032?
2. Are forest officers, preserve officers, wildlife officers, park officers, and watercraft officers of the Department of Natural Resources peace officers described in R.C. 2935.03(B)(1), so that the officers are subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Department is required to adopt a domestic violence policy pursuant to R.C. 2935.032?

Because your questions are closely related, I am discussing them in a single opinion.

Your correspondence indicates that there is an increasing possibility that troopers will become involved in domestic violence situations at rest areas, state offices, and institutions. Similarly, officers in the various divisions of DNR may encounter domestic violence situations in

the exercise of their duties. You need to know how statutory provisions concerning domestic violence enforcement affect your agencies and their personnel.

Your questions relate to statutory provisions that permit specified types of peace officers to make warrantless arrests for certain types of offenses without witnessing the commission of those offenses, if there is reasonable ground to believe that one of the offenses has been committed and reasonable cause to believe that a particular individual is guilty of the offense. R.C. 2935.03(B)(1). The list of offenses contained in the statute includes the offense of domestic violence as defined in R.C. 2919.25 and the offense of violating a protection order or consent agreement as defined in R.C. 2919.27. R.C. 2935.03(B)(1). For purposes of this opinion, those types of offenses are referred to collectively as "domestic violence offenses."

Your questions arose in light of Am. Sub. H.B. 335, 120th Gen. A. (1994) (eff. Dec. 9, 1994), which amended R.C. 2935.03(B) and enacted R.C. 2935.032. R.C. 2935.03(B)(3) contains provisions governing arrests in domestic violence situations. It identifies circumstances in which a peace officer described in R.C. 2935.03(B)(1) has reasonable cause to make arrests for domestic violence offenses and it specifies circumstances in which arrest is the preferred course of action. *See* R.C. 2935.03(B)(3).

R.C. 2935.032 requires that an agency, instrumentality or political subdivision that is served by a peace officer described in R.C. 2935.03(B)(1) adopt written policies and procedures for the implementation of the domestic violence arrest provisions. In addition, it permits such an entity to adopt procedures that require the arrest of an alleged offender or grant less discretion in deciding whether to arrest than provided by statute. That section also establishes requirements for reporting investigations of domestic violence incidents. R.C. 2935.032; *see also* R.C. 2935.03(B)(3)(c).

The domestic violence arrest provisions, by their terms, apply only to peace officers described in R.C. 2935.03(B)(1). *See* R.C. 2935.03(B)(3). R.C. 2935.03(B)(1) lists certain peace officers to whom its provisions relate.<sup>1</sup> The list does not include those officials who are the subject of your questions -- namely, troopers of the State Highway Patrol, *see* R.C. 5503.01; forest officers of the Division of Forestry, *see* R.C. 1503.29; preserve officers of the Division of Natural Areas and Preserves, *see* R.C. 1517.10; wildlife officers of the Division of Wildlife, *see* R.C. 1531.13; park officers of the Division of Parks and Recreation, *see* R.C. 1541.10; and watercraft officers of the Division of Watercraft, *see* R.C. 1547.521.<sup>2</sup> Therefore, those troopers and officers are not peace

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<sup>1</sup> Effective July 1, 1996, R.C. 2935.03(B)(1) will not itself contain the complete list but, instead, will include by reference peace officers described in R.C. 2935.03(A)(1). *See* Am. Sub. S.B. 2, 121st Gen. A. (1995) (eff. Nov. 9, 1995, with certain provisions, including amendments to R.C. 2935.03, eff. July 1, 1996). This amendment will not change the operation of R.C. 2935.03 and will not incorporate troopers or DNR officers as peace officers described in R.C. 2935.03(B)(1).

<sup>2</sup> For purposes of this opinion, law enforcement officers of the various divisions of the Department of Natural Resources are referred to collectively as "DNR officers."

officers described in R.C. 2935.03(B)(1). Since the domestic violence arrest provisions are directed exclusively to peace officers described in R.C. 2935.03(B)(1), troopers and DNR officers are not subject to those provisions. *See* R.C. 2935.03(B)(3). *See generally* 1986 Op. Att'y Gen. No. 86-073 at 2-407 to 2-408.

Similarly, the domestic violence policy requirements, which require the adoption of written policies and procedures for the implementation of the domestic violence arrest provisions, apply only to an "agency, instrumentality, or political subdivision that is served by any peace officer described in [R.C. 2935.03(B)(1)]." R.C. 2935.032(A). Since the troopers and officers in question are not described in R.C. 2935.03(B)(1), it follows that the domestic violence policy requirements are not applicable to the State Highway Patrol or the Department of Natural Resources. Therefore, the State Highway Patrol and the Department of Natural Resources are not required to adopt domestic violence policies pursuant to R.C. 2935.032.

Even though the Patrol and its troopers and DNR and its officers are not named as agencies or persons that are subject to the domestic violence enforcement provisions, you are concerned that they may somehow become subject to those provisions because of specific statutory language that references R.C. 2935.03. I consider, first, statutes pertaining to the State Highway Patrol.

R.C. 5503.02, which sets forth the powers and duties of the State Highway Patrol, states that any trooper may enforce the criminal laws on state-owned or state-leased properties or institutions and, when ordered by the governor in the event of riot, civil disorder, or insurrection, "may, pursuant to sections 2935.03 to 2935.05 of the Revised Code," arrest criminal offenders anywhere within the state if the violations occurred upon, or resulted in injury to, persons or property on state properties or institutions or under the conditions described in R.C. 5503.02(B). R.C. 5503.02(B) describes conditions of riot, civil disorder, or insurrection, or the reasonable threat of those occurrences, in which a sheriff or mayor requests the assistance of the Patrol for criminal law enforcement.

Further, R.C. 5503.02(D) permits a trooper, in certain circumstances, to render emergency assistance to a peace officer who has arrest authority under R.C. 2935.03 and provides that the trooper "has the same authority as the peace officer for or with whom he is providing emergency assistance." R.C. 5503.02(D)(3)(c). A trooper similarly has authority to "arrest, without a warrant, any person, who is the driver of or a passenger in any vehicle ... on a state highway, whom the ... trooper has reasonable cause to believe is guilty of a felony, under the same circumstances and with the same power that any peace officer may make such an arrest." In addition, a trooper who provides security for the governor or other officials or dignitaries is granted "the same arrest powers as other peace officers to apprehend offenders against the criminal laws who endanger or threaten the security of any person being protected, no matter where the offense occurs." R.C. 5503.02(E)(3).

The reference to R.C. 2935.03-.05 in connection with law enforcement during time of crisis permits a trooper to make arrests without warrants for the offenses listed in R.C. 2935.03(B)(1), including domestic violence offenses. The granting of the same authority as other peace officers

similarly defines the arrest powers of the trooper. These references, however, do not bring the trooper within the list of peace officers contained in R.C. 2935.03(B)(1). Since a trooper is not a peace officer described in R.C. 2935.03(B)(1), a trooper is not subject to the domestic violence arrest provisions, which by their terms apply only to the peace officers described in R.C. 2935.03(B)(1). *See* R.C. 2935.03(B)(3).

The reference to R.C. 2935.03-.05 encompasses R.C. 2935.032, which requires certain entities to adopt written policies and procedures for implementing domestic violence arrest provisions. The operation of the domestic violence policy requirement, however, is restricted to an "agency, instrumentality, or political subdivision that is served by any peace officer described in [R.C. 2935.03(B)(1)]." R.C. 2935.032(A). Since a trooper is not described in that statute, the Patrol is not subject to the domestic violence policy requirements of R.C. 2935.032.

You have noted that R.C. 2935.01(B) contains a definition of "peace officer," applicable to R.C. Chapter 2935, that "for the purpose of arrests within those areas, and for the purposes of [R.C. Chapter 5503], and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the superintendent and troopers of the state highway patrol." The domestic violence enforcement provisions enacted by Am. Sub. H.B. 335, however, do not apply to the general category of "peace officers." Instead, they are directed specifically to "peace officer[s] described in" R.C. 2935.03(B)(1).<sup>3</sup> R.C. 2935.03(B)(3); R.C. 2935.032. Since a trooper is not described in R.C. 2935.03(B)(1), the trooper is not subject to the domestic violence enforcement provisions. The inclusion of troopers as peace officers for the purposes set forth in R.C. 2935.01(B) is simply irrelevant to the issues addressed in this opinion.

Based on the statutory language, I conclude, therefore, that, because troopers of the State Highway Patrol are not peace officers described in R.C. 2935.03(B)(1), the troopers are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Patrol is not required to adopt a domestic violence policy pursuant to R.C. 2935.032.

I turn now to an analysis of statutory provisions governing DNR officers. By express statutory reference, forest officers, preserve officers, wildlife officers, park officers, and watercraft officers, when acting on lands or waters owned, controlled, maintained, or administered by DNR, or in other specified circumstances, have the authority vested in police officers under R.C. 2935.03 to keep the peace, to enforce applicable laws and rules, and to make arrests. The provisions governing the different officers vary and contain grants of additional powers. *See* R.C. 1503.29; R.C. 1517.10; R.C. 1531.13; R.C. 1541.10; R.C. 1547.521. Among their enforcement and investigatory powers,

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<sup>3</sup> The unqualified terms "peace officer" and "officer" appear in various provisions of R.C. 2935.03(B)(3) and R.C. 2935.032. *See* R.C. 2935.03(B)(3)(b); R.C. 2935.032(A), (B), (D). It is clear from the context, however, that the terms are used to refer to peace officers described in R.C. 2935.03(B)(1), who are subject to the domestic violence enforcement provisions. *See* R.C. 2935.03(B)(3)(a), (c)-(h); R.C. 2935.032(A).

some DNR officers are authorized to render assistance to other state or local law enforcement officers on request, in emergency situations, or pursuant to a mutual aid compact. *See* R.C. 1501.02; R.C. 1503.29 (forest officers); R.C. 1541.10 (park officers); R.C. 1547.521 (watercraft officers). In specific instances, the jurisdiction of DNR officers is expressly made concurrent with that of peace officers of the county, township, or municipal corporation in which the violation occurs. *See* R.C. 1503.29 (forest officers); R.C. 1517.10 (preserve officers); R.C. 1541.10 (park officers); R.C. 1547.521 (watercraft officers).

These statutes define the jurisdiction and arrest powers of DNR officers. They do not, however, bring DNR officers within the list of peace officers contained in R.C. 2935.03(B)(1). Therefore, DNR officers are not peace officers described in R.C. 2935.03(B)(1) and are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3).

As discussed above, the provisions of R.C. 2935.032 apply only to entities that are served by peace officers described in R.C. 2935.03(B)(1). Since DNR officers are not so described, the Department is not subject to the domestic violence policy requirements of R.C. 2935.032.

I conclude, therefore, that, because DNR officers are not peace officers described in R.C. 2935.03(B)(1), the officers are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Department is not required to adopt a domestic violence policy pursuant to R.C. 2935.032.

For the reasons discussed above, it is my opinion and you are advised:

1. Because troopers of the State Highway Patrol are not peace officers described in R.C. 2935.03(B)(1), the troopers are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Patrol is not required to adopt a domestic violence policy pursuant to R.C. 2935.032.
2. Because forest officers under R.C. 1503.29, preserve officers under R.C. 1517.10, wildlife officers under R.C. 1531.13, park officers under R.C. 1541.10, and watercraft officers under R.C. 1547.521 are not peace officers described in R.C. 2935.03(B)(1), the officers are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3) and the Department is not required to adopt a domestic violence policy pursuant to R.C. 2935.032.

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

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SYLLABUS:

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2. Because forest officers under R.C. 1503.29, preserve officers under R.C. 1517.10, wildlife officers under R.C. 1531.13, park officers under R.C. 1541.10, and watercraft officers under R.C. 1547.521 are not peace officers described in R.C. 2935.03(B)(1), the officers are not subject to the domestic violence arrest provisions of R.C. 2935.03(B)(3), and the Department is not required to adopt a domestic violence policy pursuant to R.C. 2935.032.