

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2 ☐

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FILED

2002 APR -2 A 10:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Prosecuting Attorneys Institute TITLE NUMBER: 168

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code §61-8b-18

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Payment for Costs of Forensic Medical Examination

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 10, 2002 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Prosecuting Attorneys Institute
90 MacCorkle Ave. SW Ste. 202
South Charleston, WV 25303

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

Willie L. Clark

Gregory A. Burton
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

SUMMARY OF PROPOSED RULE

This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute.

STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE

W. Va. Code §61-8b-18 requires the Prosecuting Attorneys Institute to file rules for the administration of the forensic medical examination fund. Although the WVP AI has developed and used written guidelines for administering the fund, a rule must be filed to comply with the statutory requirement.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Payment for Costs of Forensic Medical Examination

Type of Rule: _____ Legislative _____ Interpretive ☒ _____ Procedural

Agency: Prosecuting Attorneys Institute

Address: 90 MacCorkle Avenue SW Ste. 202

South Charleston, WV 25303

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0				
PERSONAL SERVICES	0				
CURRENT EXPENSE	0				
REPAIRS & ALTERATIONS	0				
EQUIPMENT	0				
OTHER	0				

2. Explanation of Above Estimates:

The Prosecuting Attorneys Institute Currently administers the Forensic Medical Examination Fund required by federal law, and this fund is currently included in the budget.

3. Objectives of These Rules:

The statute creating the Prosecuting Attorneys Institute required that these rules be filed. The rule is intended to make the process of paying for rape kit testing for victims of sexual assault more efficient.

Rule Title: Payment for Costs of Forensic Medical Examination

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:
None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of
Citizens: None

C. Economic Impact on Citizens/Public at Large.
None

Date: April 1, 2002

Signature of Agency Head or Authorized Representative:

A handwritten signature in black ink, appearing to read "M. J. [unclear]", is written over a horizontal line.

16.588 ASSISTANCE CONSIDERATIONS:

Formula and Matching Requirements: The Federal share of these grants may not exceed 75 percent of the total costs of the projects described in the applications. States may satisfy this 25 percent match through in-kind services. Indian tribes that are subgrantees of a State under this program may meet the 25 percent matching requirement for this program by using funds appropriated by Congress for the activities of any agency of an Indian tribal government or for the activities of the Bureau of Indian Affairs performing law enforcement functions on any Indian lands. All funds designated as match are restricted to the same uses as the Violence Against Women Program funds and must be expended within the grant period.

Length and Time Phasing of Assistance: Funds are released via the Letter of Credit Electronic Certification System (LOCES) on an as needed basis to the State. The State in turn subgrants the money to the eligible public and/or private nonprofit programs via drawdowns.

Uses and Use Restrictions: A State, Indian tribal government, or unit of local government shall not be entitled to funds under this program unless the State, Indian tribal government, or another governmental entity incurs the full out-of-pocket cost of forensic medical examinations for victims of sexual assault. Further, a State shall not be entitled to funds under this program unless it (1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal or local jurisdiction or (2) assures the Attorney General that its laws, policies, and practices will be in compliance with these provisions by the date on which the next session of the tribal legislature ends or October 28, 2002. Grants shall provide personnel, training, technical assistance, data collection and other equipment for the most widespread apprehension, prosecution, and adjudication of persons committing violent crimes against women. States must allocate a minimum of 25 percent of each year's grant award to each of the following areas: prosecution and law enforcement. In addition, States must allocate a minimum of 30 percent to victim services, a minimum of 5 percent to courts, and 15 percent to discretionary within the statutory purpose areas.

FILED

**TITLE 168
PROCEDURAL RULE
PROSECUTING ATTORNEYS INSTITUTE**

2002 APR -2 A 10:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 1
PAYMENT FOR COSTS OF FORENSIC MEDICAL EXAMINATION**

§168-1-1. General.

1.1. Scope. -- This rule outlines procedures for paying the costs of forensic medical examinations for victims of sexual offenses from the forensic medical examination fund administered by the West Virginia Prosecuting Attorneys Institute. This rule is not intended to set standards for the conduct of a criminal investigation or to affect in any manner the admissibility of evidence.

1.2. Authority. -- W. Va. Code §61-8b-18.

1.3. Filing Date. --

1.4. Effective Date. --

§168-1-2. Definitions.

2.1. Terms Defined by Statute -- Terms defined in W. Va. Code §61-8B have the same meanings when used in this rule unless the context or subject matter clearly requires a different interpretation.

2.2. Terms Defined -- As used in this rule, the following terms have the following meanings unless the context or subject matter clearly requires a different interpretation:

2.2.1. "Licensed health care professional" means a state-licensed health care professional licensed, registered or certified under Chapter 30 of the W. Va. Code.

2.2.2. "Licensed medical facility" or "hospital" means a hospital, critical access hospital or other health facility licensed under W. Va. Code §16-5B, a similarly licensed out-of-state hospital that accepts West Virginia medicaid patients in a county adjacent to the West Virginia county in which venue lies, or a facility authorized and operated under W. Va. Code §16-2.

2.2.3. "Physician" means a physician licensed under W. Va. Code §30-3 or §30-14.

2.2.4. "Sexual assault nurse examiner" or "SANE" means a registered nurse who has received at least forty (40) hours of sexual assault nurse examiner classroom training in the area of sexual assault through an accredited school of nursing or a program approved for continuing education credit by the West Virginia Board of Examiners of Registered Professional Nurses, and who has completed the associated clinical experience requirement.

§168-1-3. Responsibilities of the licensed medical facility.

3.1. In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

3.1.1. Each hospital performing medical examinations must use either the WV State Police Sexual Assault Kit or kits containing, at a minimum, the items contained in the WV State Police Sexual Assault Kit. Each hospital may order sexual assault kits free of charge from the WV State Police.

3.1.2. If an investigating officer is not present at the time the alleged victim arrives at the hospital, an investigating officer or local police agency should be contacted immediately through appropriate emergency channels.

3.1.3. Prior to conducting a forensic medical examination, the prosecuting attorney or assistant prosecuting attorney in the county where the alleged assault occurred must be notified and approve conducting a forensic medical examination. If the prosecuting attorney or assistant prosecuting attorney is not available, then approval must be obtained from the investigating officer or police agency. The hospital should keep on hand copies of the Forensic Medical Examination Fund Certification Form, available upon request from the Prosecuting Attorneys Institute. The obtaining of consents included in the sexual assault kit and any additional consents which may be required by law is the responsibility of the hospital.

3.1.4. If possible, the forensic medical examination should be conducted by a physician, a sexual assault nurse examiner (SANE), a physician assistant working under the direct supervision of a physician, or an advanced practice nurse. Recognizing, however, that sensitivity to the needs of a victim of sexual assault may preclude delays in conducting the examination, payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

3.1.5. Hospital personnel should take note of any physical evidence, such as statements made by the alleged victim, as well as articles of clothing, etc. It is strongly recommended that the hospital preserve documents concerning this evidence and record the methods of collection.

3.1.6. After gathering the forensic evidence, the sexual assault kit shall be sealed and turned over to the investigating officer or police agency. Any and all other evidence collected by hospital staff shall also be turned over to the investigating officer or police agency.

3.1.7. Following the completion of a forensic medical examination, the hospital shall submit within a reasonable time of the date of examination an original invoice for the forensic medical examination to the prosecuting attorney in the county where the alleged offense occurred. The invoice shall contain the name of the alleged victim and the date of the alleged offense.

3.1.8. A second original invoice should be sent to the WV Prosecuting Attorneys

Institute at its regular business address, Attention: Forensic Medical Examination Fund. Reimbursement from the Fund is limited to \$350.00 for the cost of a forensic medical examination or, when that sum appears to be less than all reasonable, customary and usual costs of the forensic medical examination, a greater sum determined by resolution of the Executive Counsel of the West Virginia Prosecuting Attorneys Institute after consultation with providers and consideration of the limits of available funding. A licensed medical facility may not bill the victim of an alleged violation for costs of a forensic medical examination authorized and approved by a Prosecuting Attorney, investigating officer or police agency.

§168-1-4. Responsibilities of law enforcement agencies.

4.1. The investigating officer or law enforcement agency is responsible for the following duties:

4.1.1. The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay for the cost of the forensic medical examination if the examination is conducted as part of a criminal investigation. The investigating officer need not secure a victim's agreement to pursue prosecution of the case as a condition of obtaining the examination. Payment from the fund may not be refused for the reason that the victim later fails or refuses to pursue prosecution.

4.1.2. The investigating officer is responsible for contacting the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred in order for the prosecutor to approve conducting the forensic medical examination.

4.1.3. When the prosecuting attorney or assistant prosecuting attorney in the county where the alleged offense occurred is unavailable to give approval to the hospital to conduct a forensic medical exam, the investigating officer may give approval for the administration of the exam. If the investigating officer approves the exam, that officer must complete and sign the Forensic Medical Examination Fund Certification Form.

4.1.4. Regardless of who initially approves the examination, the prosecuting attorney in the county where the alleged offense occurred must sign the certification form for payment to be authorized. Therefore, the investigating officer must send a certification form signed by the officer or police agency to the appropriate prosecuting attorney. An investigating officer may transmit a signed form by fax.

4.1.5. Upon completion of the forensic medical exam, the investigating officer is responsible for promptly transferring all evidence to the WV State Police Crime Laboratory in South Charleston, West Virginia for evaluation.

§168-1-5. Responsibilities of the prosecuting attorney.

5.1. The prosecuting attorney is responsible for the following duties:

5.1.1. The prosecuting attorney or an assistant prosecuting attorney in the county where

the alleged sexual offense occurred will be notified by the licensed medical facility prior to administering the forensic medical exam. If the prosecuting attorney or assistant prosecuting attorney agrees that the examination is in connection with a criminal investigation in that county, the prosecutor shall authorize the forensic medical examination and shall complete and sign a Forensic Medical Examination Fund Certification Form. If the prosecuting attorney or assistant prosecuting attorney from the appropriate county cannot be reached, the investigating officer or local police agency may approve conducting the examination.

5.1.2. Following completion of the forensic medical exam, the licensed medical facility will send an original examination invoice to the prosecuting attorney in the county where the alleged offense occurred.

5.1.3. The prosecuting attorney shall review the forensic information presented in the invoice. If appropriate, the prosecuting attorney shall certify that the examination was conducted as part of a criminal investigation. When a law enforcement officer authorized the initial examination, the prosecuting attorney may add his or her certification on the same form. The completed certification form should be attached to the original invoice.

5.1.4. The prosecuting attorney shall forward as quickly as possible, but in any event within a reasonable time, the invoice and completed certification form to the WV Prosecuting Attorneys Institute at its regular business address, Attention: Forensic Medical Examination Fund.

5.1.5. Upon approval by the State Auditor, the Prosecuting Attorneys Institute may accept faxed transmittals of the certification form and first original invoice. When transmitting documents by fax, the Prosecuting Attorney shall keep the original documents on file in his or her office.

§168-1-6. Responsibilities of Prosecuting Attorneys Institute.

6.1. Upon receipt of an original invoice and a Prosecuting Attorney's certificate in proper form the Prosecuting Attorneys Institute shall promptly transmit, at intervals no less often than monthly, all necessary documentation, in a form acceptable to the Auditor, to the Department of Administration for computer entry and further payment processing.

6.2. Upon receipt of a faxed documents from the offices of the Prosecuting Attorneys, the Prosecuting Attorney's Institute shall:

6.2.1. Identify the source of the transmission by verifying that it originated from the office of a Prosecuting Attorney;

6.2.2. Authenticate the Prosecutor's signature on the transmission by comparing it with an original signed exemplar on file with the Prosecuting Attorney's Institute; and

6.2.3. Affix to the certificate a stamp and original signature of authorized staff of the Prosecuting Attorneys Institute, attesting that the source of the transmission has been identified

and the signature authenticated.

§168-1-7. Limitations on use of fund.

7.1. A licensed medical facility performing a forensic medical examination must administer the exam within a reasonable time of the alleged sexual assault in order to be eligible for reimbursement from the Fund. Generally, a reasonable time is as soon as possible and will not exceed seventy-two (72) hours from the time of the alleged assault. If, however, in the judgment of the prosecuting attorney or law enforcement officer, special circumstances exist and the forensic examination should be authorized and conducted even after the passage of seventy-two hours, the judgment of the prosecuting attorney or law enforcement officer will be given great weight in determining whether the time elapsed from the date of the alleged assault is reasonable.

7.2. Medical exams are primarily restricted to the collection of forensic evidence.

7.3. The West Virginia Forensic Medical Examination Fund covers only the cost of forensic medical exams. The Fund does not cover the cost of any treatment of injuries, pregnancy prevention or additional testing for pregnancy or sexually transmitted diseases.



BOB WISE
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
OFFICE OF THE CABINET SECRETARY

GREGORY A. BURTON
CABINET SECRETARY

April 2, 2002

Via Hand-Delivery

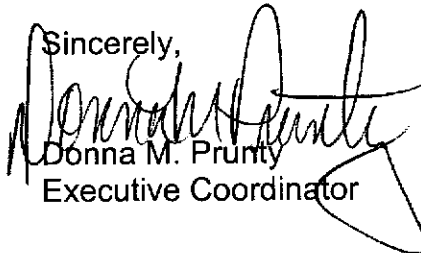
The Honorable Joe Manchin, III
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305

**Re: Legislative Rules
Prosecuting Attorneys Institute
Payment for Costs of Forensic Medical Examination**

Dear Secretary Manchin,

I am enclosing a "Notice of a Comment Period on a Proposed Rule" herein for filing. The proposed rules are to outline the procedures for the payment of costs of forensic medical examinations by the Prosecuting Attorneys Institute within the Department of Administration. Attached to the Notice of a Comment Period is a "Summary of Proposed Rule", a "Statement of Circumstances Requiring The Proposed Rule", a "Fiscal Note for Proposed Rules", an "Assistance Consideration" and the "Proposed Rules".

Thank you very much for your assistance. If you have any questions, or need any additional information, please do not hesitate to give me a call.

Sincerely,

Donna M. Prunty
Executive Coordinator

DMP:dp
Enclosures

cc: Gregory A. Burton, Cabinet Secretary, Department of Administration
William Charnock, Executive Director, Prosecuting Attorneys Institute