



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHAUNCEY H. BROWNING
ATTORNEY GENERAL

September 26, 1984

The Honorable A. James Manchin
Secretary of State
Room 157-K, State Capitol
Charleston, West Virginia 25305

Attention: Mr. Robert Jackson, Administrative
Law Division

Re: State Register Proposed Permanent
Legislative Rules, WV Adm. Reg.
(Attorney General) 61-11A, Ser. I
(1984)

Dear Mr. Secretary:

Please publish this letter in the State Register as notice to the public concerning public hearing on the above-noted proposed legislative rules.

Very truly yours,

John E. Shank
JOHN E. SHANK
ASSISTANT ATTORNEY GENERAL

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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JES/cln

NOTICE OF PUBLIC HEARING

All interested parties shall take notice that a public hearing shall be had on proposed legislative rules, State guidelines for fair treatment of crime victims and witnesses in the criminal justice system, WV Adm Reg. (Attorney General) 61-11A, Ser. I (1984). Said public hearing shall be had at the Office of the Attorney General, Room 26-E, State Capitol Building, Charleston, West Virginia 25305, at 3:00 p.m. on November 15, 1984. All public comments on the proposed legislative rules shall be limited to written material. Said written comments may be submitted at any time up to the date of the hearing.

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WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS
OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA

State guidelines for fair treatment
of crime victims and witnesses in
the criminal justice system.

Chapter 61-11A
Series I
(1984)

INDEX

| | Page |
|--|------|
| Section 1. General | 1 |
| Section 2. Application and Enforcement | 1 |
| Section 3. Definitions | 2 |
| Section 4. Services to Victims of Crime | 2 |
| Section 5. Compliance Within Limits of Available Resources and Constitutional Requirements | 7 |
| Section 6. No Cause of Action Created | 7 |

WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS
OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA

Chapter 61-11A
Series I
(1984)

Subject: State Guidelines for Fair Treatment of Crime Victims
and Witnesses in the Criminal Justice System

Section 1. General.

1.1. Scope - These legislative rules apply to all law-enforcement agencies and prosecuting attorney's offices within the State of West Virginia and establish procedures for the fair treatment of crime victims and witnesses in the criminal justice system.

1.2. Authority - These legislative rules are issued under the authority of and are related to Chapter 61, Article 11A, Section 6 of the West Virginia Code of 1931, as amended.

1.3. Filing Date - These legislative rules were promulgated on the June 29, 1984, and were filed on June 29, 1984, in the Secretary of State's office.

1.4. Effective Date - These legislative rules became effective on the 1st day of July, 1984.

Section 2. Application and Enforcement.

These legislative rules apply to all law-enforcement agencies and prosecuting attorneys' offices in the State of West Virginia.

Enforcement of these rules shall be vested in the Office of the Attorney General.

Section 3. Definitions.

3.1. Law-Enforcement Agency - The term "law enforcement agency" shall include the police forces of all incorporated municipalities, sheriffs, departments, and the department of public safety. The term "law enforcement agency" shall not include conservation officers, correctional officers or security guards at state institutions.

3.2. Arresting Law-enforcement Agency - The term "arresting law-enforcement agency" shall mean that law enforcement agency which has made either an actual arrest or, in those cases where a crime has occurred but no arrest has yet been made, assumed primary responsibility for the investigation of the crime.

3.3. Victim - The term "victim" shall mean a person who is a victim of a felony, the fiduciary of a deceased victim's estate, a member of a deceased victim's immediate family or, in the case of a minor child who is the victim of a felony, a member of the child's immediate family or legal guardian.

3.4. Serious Crime - The term "serious crime" shall mean a crime committed by an adult which is a felony under the laws of the State of West Virginia.

Section 4. Services to Victims of Crime.

4.1. Duties of arresting law-enforcement agency - The arresting law-enforcement agency shall ensure the victims routinely receive emergency social and medical services as soon

as possible. The arresting law-enforcement agency shall provide to victims information on the following:

- (a) the availability of crime victim compensation through the West Virginia Crime Reparation Act of 1981;
- (b) community-based victim treatment programs;
- (c) the role of the victim in the criminal justice process;
and
- (d) stages in the criminal justice process of significance to the crime victim, and the manner in which information about such stages can be obtained.

4.2. Development of uniform victim information - It shall be the responsibility of the prosecuting attorney of each county to coordinate the development that uniform information material relating the services available to victims of crime in the county be distributed to victims. The various law-enforcement agencies of each county shall assist the prosecuting attorney in developing informational material describing the responsibilities and rights contained in section 4.1 above.

4.3. Notification of Availability of Protection - The prosecuting attorney or his assistant should ensure that victims and witnesses receive information on steps that law-enforcement officers and prosecuting attorneys can take to protect victims and witnesses from intimidation.

4.4. Scheduling Changes - All victims and witnesses who have been scheduled to attend criminal justice proceedings should be notified by the prosecuting attorneys' offices as soon as

possible of any scheduling changes which will affect their appearances.

4.5. Prompt Notification to Victims of Major Serious Crimes - Victims, witnesses, and one member of the immediate family of those victims and witnesses should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of judicial proceedings relating to their case, from the prosecuting attorney's office, including:

- (A) The arrest of an accused;
- (B) The initial appearance of an accused before a judicial officer;
- (C) The release of the accused pending judicial proceedings; and
- (D) Proceedings in the prosecution of the accused, including the entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, the release of the accused from such imprisonment.

4.6. Duty to Obtain Information - All law-enforcement officers and prosecuting attorneys, in the course of developing cases, shall accurately obtain all information available, at the time of their investigation of offenses, regarding victims, their losses or injuries, any reimbursements for losses or recovery of property and/or any treatment for injuries or funeral/cremation costs involved, which should be made available to the investigating probation officer, if a presentence report and/or Victim Impact statement is ordered by the court.

4.7. Consultation with Victim - The victim of a serious crime, or in the case of a minor child or a homicide, the family of the victim, shall be consulted by the prosecuting attorney in order to obtain the views of the victim or family about the disposition of any criminal case brought as a result of such crime, including the views of the victim or family about:

- (A) Dismissal;
- (B) Release of the accused pending judicial proceedings;
- (C) Plea negotiations; and
- (D) Pretrial diversion program.

4.8. Separate Waiting Area - Victims and other prosecution witnesses should, if practical, be provided prior to court appearance, a waiting area that is separate from all other witnesses.

4.9. Property Return - Law-enforcement agencies should promptly return victim's property held for evidentiary purposes unless there is a compelling law-enforcement reason for retaining it.

4.10. Notification to Employer - A victim or witness who so requests should be assisted by law-enforcement agencies and prosecuting attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. A victim or witness who, as a direct result of a crime or of cooperation with law-enforcement agencies or attorneys for the government, is subjected to serious financial strain, should be

assisted by the appropriate state agencies in dealing with creditors.

4.11. Notification of the Right of Victim to Testify at Sentencing Hearing - The prosecuting attorney or assistant prosecutor shall in all felony cases notify the victim of their right under W. Va. Code § 61-11A-2 to submit a statement to the sentencing court. Such notification shall:

- (A) Be in writing;
- (B) Be within a reasonable time prior to the sentencing hearing;
- (C) State the date, time and place of the sentencing hearing; and
- (D) Notify the victim of their right to submit a written or oral statement to the sentencing court as provided in W. Va. Code § 61-11A-2.

4.12. Duty of Prosecuting Attorney to Consider Preparation of a Victim Impact Statement - In all cases where the court does not order a presentence investigation and report, the prosecuting attorney may nevertheless request that a victim impact statement be prepared. In making such a determination for a request, the prosecuting attorney should consider the fact that such a report may significantly assist victims in the determination of any compensation they may be eligible for under the West Virginia Crime Reparation Act of 1981.

Section 5. Compliance Within Limits of Available Resources and Constitutional Requirements.

These regulations shall be complied with by all law-enforcement agencies and prosecuting attorneys to the extent that it is possible with the limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant.

Section 6. No Cause of Action Created.

Nothing in W. Va. Code § 61-11-1 et seq. or these regulations shall be construed as creating a cause of action against the state of West Virginia or any of its political subdivisions.