



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHAUNCEY H. BROWNING
ATTORNEY GENERAL

Notice of Agency Approval

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

The above titled legislative rule constitutes the official rule approved by the West Virginia Attorney General on the 4th day of January, 1985, and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.

Chauncey H. Browning
CHAUNCEY H. BROWNING
ATTORNEY GENERAL

FILED
1985 JAN - 7 AM 10:17
OFFICE OF THE SECRETARY OF STATE

JAN 04 1985
Entered

Notice

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

The above titled legislative rule is hereby submitted to the Legislative Rule-Making Review Committee.

Chauncey H. Browning
CHAUNCEY H. BROWNING
ATTORNEY GENERAL

JAN 04 1985
Entered

FISCAL NOTE FOR PROPOSED RULES

WV Adm. Reg. (Attorney General) State guidelines for fair treatment
 Rule No. 61-11A, Ser. I (1984) Subject of crime victims and witnesses in
the criminal justice system
 Type of Rule: Legislative Interpretive Procedural
 Agency Attorney General Address 26-E - State Capitol Building
Charleston, West Virginia 25305

Authorized Representative J. E. Shank, Assistant Attorney Gen Phone 348-2021

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense	NONE				
Repairs and Alterations					
Equipment					
Others					

2. Explanation of above estimates.

See attached page

3. Date September 26, 1984 Agency Attorney General

Signature of Agency Head

Signature of Authorized Representative

John Ernest Shank

FILED
 1984 SEP 26 1005 JOHN S 7 AM 10:18
 OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

2. Explanation of above estimates

These regulations impose no increase or decrease in costs for any State agency. The regulations impose no costs to any group beyond what costs were already imposed by the implementation of the Victim Protection Act of 1984, therefore any fiscal note for the Act would have equal applicability to these regulations. The most substantial costs that may be anticipated will be born by prosecuting attorneys' office. They will have increased costs because of the notice requirements of the Act and, subsequently, these regulations. Depending on such factors as the size of the county, the crime rate and the interest that local crime victims have in receiving notice of hearings in the criminal process, the cost to provide such notification may range from a negligible amount to a considerable expenditure of time, printing, postage, etc.

FILED

1985 JAN -7 AM 10:18

PROPOSED

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1984 SEP 26 AM 10:13

FILED

PROPOSED

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 attorneys' 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 June 29, 1984, and were filed on September 26, 1984, in the Secretary of State's office.

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

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 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 that 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 of uniform information material relating to 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 a 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 victims 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 victims 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.

DOCUMENTATION OF NOVEMBER 15, 1984, PUBLIC HEARING

1. No one attended the public hearing in the Attorney General's Office on November 15, 1984, with the exception of Assistant Attorney General, John Ernest Shank.

2. No comments on the proposed State guidelines for fair treatment of crime victims and witnesses in the criminal justice system were received.

3. Because no comments on the proposed rules were received, no amendments were made.


CHAUNCEY H. BROWNING
ATTORNEY GENERAL

FILED
1985 JAN - 7 AM 10: 18
OFFICE OF M. ST. VIRGINIA
SECRETARY OF STATE