

DEPARTMENT OF LAW
Department of Criminal Litigation
(Amendment)

40 KAR 6:010. Kentucky Victim and Witness Protection Program.

RELATES TO: ~~KRS 15.247 [1998 Ky. Acts ch. 606, sec. 50, ch. 616, Part 1, Operating Budget, A. Government Operations, 5. Attorney General]~~

STATUTORY AUTHORITY: ~~KRS 15.247 [1998 Ky. Acts ch. 606, sec. 50(1), (2), (6)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.247 ~~[1998 Ky. Acts ch. 606, sec. 50]~~ provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

Section 1. Definitions. (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.

(2) "Law enforcement agency" means a lawfully organized police unit or police force of county, city, or metropolitan government, employing law enforcement officers as that term is defined in KRS 15.310.[

- ~~(a) The Kentucky State Police;~~
- ~~(b) A sheriff's office;~~
- ~~(c) A county police department; or~~
- ~~(d) A city police department.]~~

(3) "Program" means the Kentucky Victim and Witness Protection Program.

(4) "Prosecutor" means a:

- (a) Commonwealth's attorney or his or her authorized assistant; or
- (b) County attorney or his or her authorized assistant.

(5) "Protective services" is defined by KRS 15.247 ~~[1998 Ky. Acts ch. 606, sec. 50]~~.

(6) "Victim or witness at risk of harm" means a person who is:

- (a)1. A crime victim as defined in KRS 421.500(1); or
- 2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or
- 3. A member of the immediate family of a crime victim or crime witness; and
- (b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; and
- (c) At substantial risk of imminent serious physical injury; and
- (d) Unable to provide protective services to himself.

Section 2. Eligible Costs. (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.

(2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.

(3) Reimbursement shall be limited to the costs for protective services that:

- (a) Were paid by the law enforcement agency with the funds of:
 - 1. The law enforcement agency; or
 - 2. A fiscal court; or

3. A city government; or
 4. Other fund sources available to the law enforcement agency; and
- (b) Meet the requirements established by the provisions of this administrative regulation; and
- (c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.
- (4) Reimbursement shall be limited to the costs of protective services that were necessary and reasonable for the protection of a victim or witness at risk of harm.
- (5) The following costs of protective services shall be deemed reasonable:
- (a) The regular hourly wage and benefit rate, or the regular overtime hourly wage and benefit rate when applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.
 - (b) Cost of lodging that:
 1. Is the most economical lodging, at government rates if available; and
 2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (c) Cost of meals shall be reimbursed at the rates provided in 200 KAR 2:006. ~~[Meals, as follows:~~
 1. ~~Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and~~
 2. ~~Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper.]~~
 - (d) Cost of the most economical personal hygiene products.
 - (e) Cost of emergency long distance phone calls to family members or employers.
 - (f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.
 - (g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (h) Cost of the temporary emergency use of a cellular phone.
 - (i) Actual mileage at the rate designated on the Office of the Controller's Web site listed in Section 1(6) in 200 KAR 2:006 ~~[at twenty seven (27) cents per mile].~~
 - (j) Cost of a rental vehicle at the most economical rate available.
 - (k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.
 - (l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.
 - (m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.
 - (n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.
- (6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.

(7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that met the needs of the protective services.

(8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

(9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.

(10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for Reimbursement. (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.

(2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form. [

~~(3) An application for reimbursement shall include:~~

~~(a) The name of the law enforcement agency.~~

~~(b) The criminal case name and number or defendant's name, if known.~~

~~(c) The name of the person receiving the protective services.~~

~~(d) A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.~~

~~(e) A complete description of the protective services provided, including:~~

~~1. The type of protective services provided;~~

~~2. The name of person who received the services;~~

~~3. The dates the services were provided;~~

~~4. The cost of the protective services;~~

~~5. A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and~~

~~6. A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.~~

~~(f) Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.~~

~~(g) A statement signed by the head of the law enforcement agency or his authorized agent that the:~~

~~1. Law enforcement agency requests reimbursement of the costs of the protective services provided;~~

~~2. Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and~~

~~3. Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.~~

~~(4) The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.]~~

Section 4. Prosecutor's Application for Reimbursement. (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement that he recommends reimbursement of all or part of the costs of the protective services.

(3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.

(4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.

(5) The council shall consider applications in the order received.

(6) The council shall recommend that:

(a) All or part of an application for reimbursement be approved; or

(b) An application for reimbursement be denied.

(7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.

(8) The council shall submit its recommendation to the Attorney General.

(9) The Attorney General shall review the recommendation of the council and determine whether to:

(a) Approve all or part of an application for reimbursement; or

(b) Deny an application for reimbursement.

(10) If the Attorney General approves all or part of an application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.

(11) An application for reimbursement of the costs of protective services may be submitted at any time, after the protective services were provided, during the state fiscal year in which the services were provided.

Section 5. Application for Advance of Funds. (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.

(2) An advance of program funds shall be limited to a maximum of \$500 for each application for an advance of program funds.

(3) An advance of program funds shall be limited to the payment of the costs of protective services that:

(a) Have been provided by the law enforcement agency to a victim or witness at risk of harm; and

(b) Cannot be paid with other funds available to the law enforcement agency.

(4) An application for an advance of Program funds shall be made on a "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds" form.

(5) ~~[An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:~~

~~(a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;~~

~~(b) It requests an advance of program funds;~~

~~(c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;~~

~~(d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and~~

~~(e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.~~

~~(6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.~~

~~(7)~~ The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

~~(6)~~~~(8)~~ If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:

- (a) Sign a statement that he recommends all or part of the advance; and
- (b) Submit the application for an advance of program funds to the Attorney General.

~~(7)~~~~(9)~~ The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.

~~(10) The distribution of an advance of program funds shall be made during the Office of the Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.~~

~~(8)~~~~(11)~~ The advance of program funds shall be limited to the amount recommended by the prosecutor.

~~(9)~~ ~~(12)~~ The advance of program funds shall be made payable to the:

- (a) Law enforcement agency;
- (b) Head of the law enforcement agency; or
- (c) Authorized agent of the head of the law enforcement agency.

~~(10)~~ ~~(13)~~ The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.

~~(11)~~ ~~(14)~~ The law enforcement agency shall:

- (a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor; and
- (b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.

~~(12)~~~~(15)~~ The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.

~~(13)~~~~(16)~~ A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:

- (a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;
- (b) Received an advance of Program funds; and
- (c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs. (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.

(2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.

(3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.[]

~~(4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:~~

~~(a) Funding has been obligated; and~~

~~(b) If additional funding for the program becomes available, applicants:~~

~~1. Will be notified; and~~

~~2. May resubmit applications for funding.]~~

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) “Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-03 [~~VWPP04~~] (08/21 [~~10/98~~])”;

(b) “Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (08/21 [~~10/98~~])”; and

(c) “Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (08/21 [~~10/98~~])”.

(2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DANIEL CAMERON, Attorney General

APPROVED BY AGENCY: August 13, 2021

FILED WITH LRC: August 13, 2021 at 11:20 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 22, 2021, at 1:00 p.m. Eastern Time at 1024 Capital Center Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Theresa Gargan, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601; phone 502-696-5436; fax 502-573-1009; email Theresa.gargan@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Theresa Gargan

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes the program for the protection of crime victims and witnesses and their immediate families required by KRS 15.247.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the program for the protection of crime victims and witnesses and their immediate families required by KRS 15.247.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute, KRS 15.247, because it establishes the program for the protection of crime victims and witnesses and their immediate families.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of KRS 15.247 by defining the terms and forms used to administer the program for the protection of crime victims and witnesses and their immediate families.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(b) The necessity of the amendment to this administrative regulation: This amendment aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 15.247 authorizes the Attorney General to develop and administer a program for the protection of crime victims and witnesses and their immediate families.

(d) How the amendment will assist in the effective administration of the statutes: This amendment aligns reimbursement for meals and mileage with the rates for state employees as established by the Finance and Administration Cabinet.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation affects all agencies providing protective services for which they will seek reimbursement under the program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An agency seeking reimbursement for protective services must comply with this regulation and submit the required forms, which are incorporated by reference.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with this administrative regulation or amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): An agency that complies with the administrative regulation and submits the required forms will be eligible for reimbursement for the provisions of protective services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no additional cost, as a result of the amendment, to administer this administrative regulation initially. The Office of the Attorney General will continue to monitor the

balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(b) On a continuing basis: There is no additional cost, as a result of the amendment, to administer this administrative regulation on a continuing basis. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The witness protection program is funded by proceeds from the Master Tobacco Settlement Agreement. The current balance in the fund is roughly \$11,500.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. During the last five fiscal years, the witness protection program has expended roughly \$400 per year. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate. Currently, there is no need to increase funding to implement this amendment to the administrative regulation; however, additional funding may be necessary to implement this administrative regulation in the future.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the Office of the Attorney General, prosecutors, and law enforcement agencies that provide protective services.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 15.247 requires and authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? To administer the program under the amendments to the regulation will not substantially increase costs during the first year. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

(d) How much will it cost to administer this program for subsequent years? To administer the program under the amendments to the regulation will not substantially increase costs during subsequent years. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program and make funding requests as appropriate.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): During the last five fiscal years, the witness protection program has expended roughly \$400 per year. At this rate, and assuming there is no increased need in subsequent years, the program is sufficiently funded. The Office of the Attorney General will continue to monitor the balance of the fund in relation to requests for reimbursement under the terms of the program. Currently, there is no need to increase funding to implement this amendment to the administrative regulation.

Other Explanation: Not applicable.