

DEPARTMENT OF LAW
Department of Criminal Litigation
(Amended at ARRS Committee)

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

RELATES TO: KRS 15.247

STATUTORY AUTHORITY: KRS 15.247

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.247 requires the Attorney General to promulgate administrative regulations establishing requirements for 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.
- (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 .
- (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);
 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;
 - (b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case;
 - (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;
 2. A fiscal court;
 3. A city government; or
 4. Other fund sources available to the law enforcement agency;
 - (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 if 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.
 - (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 .
 - (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.

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) 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) 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) 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.
- (8) The advance of program funds shall be limited to the amount recommended by the prosecutor.
- (9) 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) 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) 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) 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) 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

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 (08/21)";
 - (b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (08/21)"; and

(c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (08/21)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, 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., or at ag.ky.gov.
(25 Ky.R. 1265; eff. 1-19-1999; 48 Ky.R. 852, 1722; eff. 3-1-2022.)

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.