



Select Victims' Rights – West Virginia

USING THIS RESOURCE

This resource is intended to provide a base of knowledge regarding crime victims' rights in West Virginia and promising practices to ensure compliance with and enforcement of those rights. To keep this *Guide* as user-friendly as possible in light of the breadth, complexity and evolving nature of law, the *Guide* does not include all laws. The *Guide* is intended for informational purposes only. It does not constitute legal advice, nor does it substitute for legal advice. For more in-depth information about the laws governing privacy, confidentiality and privilege in West Virginia, see the companion resource: *Law Enforcement-Based Victim Services in West Virginia: Privacy, Privilege and Confidentiality*.

The following icons are used throughout this resource to highlight key moments for the user.



= Promising Practices: As used in this *Guide*, the “promising practices” highlights procedures, methods or techniques, grounded in victim-centered and trauma-informed research and experience, that afford victims meaningful rights in the justice system.



= Take Note: As used in this *Guide*, the “take note” indicator provides context for the law cited or discussed. For example, if a law has a particularly narrow application or does not explicitly prohibit an action the “take note” indicator is used to highlight or provide clarity around the law.


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¹ This table of contents and index of rights provides specific page references for many of the victims' rights laws contained within this *Guide*. The referenced laws are often narrower in scope than the broader rights identified in the index and may contain components of multiple core rights. Not all of the laws contained within this *Guide* are referenced in the table of contents and index; therefore, it is recommended that this document be reviewed in full.

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SELECT DEFINITIONS	West Virginia Statutes
<p>State Guidelines for Fair Treatment of Crime Victims and Witnesses in the Criminal Justice System Definitions.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p> These definitions apply to West Virginia’s Attorney General procedural rules, providing “for the fair treatment of crime victims and witnesses in the criminal justice system[,]” W. Va. Code R. §§ 142-4-1 through 142-4-6.</p>	<p>W. Va. Code R. § 142-4-3.</p>

<p>Domestic Violence Act Definitions.</p> <p>“Advocacy” means assisting victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children, in securing rights, remedies and services, by directly providing for, or referring to public and private agencies to provide for, safety planning; shelter; housing; legal services; outreach; counseling; case management; information and referral; training; employment; child care; health care; transportation; financial literacy education, financial planning and related economic empowerment services; parenting and other educational services; and other support services. W. Va. Code Ann. § 48-26-202.</p> <p>“Batterer intervention and prevention program”, previously referred to as a program of intervention for perpetrators, means a licensed educational program that provides classes to individuals who commit acts of domestic violence or abuse, offering nonviolent strategies and values that promote respect and equality in intimate partner relationships. W. Va. Code Ann. § 48-26-203.</p> <p>“Board” means the Family Protection Services Board created pursuant to Chapter 53 of the Acts of the Legislature of 1989 and subsequently recodified by this article. W. Va. Code Ann. § 48-26-204.</p> <p>“Closure” means the temporary or permanent prohibition of specified services and the corresponding suspension of licensure of a program or program component that violates the standards established by the board or that threatens the health, well being or safety of its program participants or staff. W. Va. Code Ann. § 48-26-205.</p> <p>“Department” means the Department of Health and Human Resources. W. Va. Code Ann. § 48-26-206.</p> <p>“Domestic Violence Legal Services Fund” means the special revenue account established by section six hundred three of this article for the purposes set forth in that section. W. Va. Code Ann. § 48-26-207.</p>	<p>W. Va. Code Ann. §§ 48-26-202 through 48-26-214.</p>
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“Domestic violence program” means a licensed program of a locally controlled nonprofit organization, established primarily for the purpose of providing advocacy services, comprising both a shelter component and an outreach component, to victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children: Provided, That the board may temporarily or permanently close either the shelter component or the outreach component of a domestic violence program. W. Va. Code Ann. § 48-26-208.

“Family Protection Fund” means the special revenue account established by Chapter 74 of the Acts of the Legislature of 1981, held by the department, for the purpose of collecting marriage license fees pursuant to section ten, article one, chapter fifty-nine of this code, divorce surcharge fees pursuant to section twenty-eight-a, article one, chapter fifty-nine of this code, fees for failure to present a premarital education course completion certificate pursuant to section ten, article one, chapter fifty-nine of this code and any other funding source, including any source created in another section of this code, and distributed to licensed domestic violence programs, in accordance with the formula designated by the board. W. Va. Code Ann. § 48-26-209.

“Intimate partner” means a current or former spouse, a person with whom one shares a child in common, a person with whom one is cohabiting or has cohabited, or a person with whom one is or has been in a relationship of a romantic or intimate nature. W. Va. Code Ann. § 48-26-210.

(a) “Conditional license” means a license issued for up to ninety days, to programs that have violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program, or that have a history or pattern of noncompliance with established standards.

(b) “Provisional license” means a license issued for up to one hundred and eighty days, to programs that are not in compliance with nonlife threatening safety, programmatic, facility or administrative standards, that may be extended for an additional six months, if the board determines that the program is making active progress toward compliance.

(c) “Full license” means a license issued for up to the maximum licensure period of three

years, to programs that are in compliance with the standards established by the board and have no violations of safety or accountability standards that may threaten the health, well-being or safety of its program participants or staff, or the responsible operation of the program.

W. Va. Code Ann. § 48-26-211.

(a) “Monitored parenting” means the contact between a parent without custodial responsibility, guardian or other adult and one or more children, in the presence of a third person who monitors the contact to promote the safety of the participants.

(b) “Monitored exchange” means the observation of movement of a child or children from the custodial responsibility of one parent or guardian to the custodial responsibility of the other parent or other adult without allowing contact between the adults.

(c) “Monitored parenting and exchange program” means a licensed program offered by a locally controlled nonprofit organization for purposes of providing a neutral, safe and child-friendly environment to allow the child or children access to a parent or other adult without allowing contact between the adults.

W. Va. Code Ann. § 48-26-212.

“Outreach” means a licensed domestic violence program’s community-based activities that increase awareness and availability of services, in every county within the program’s regional service area, to victims and survivors of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children. W. Va. Code Ann. § 48-26-213.

“Shelter” means residential services offered by a licensed domestic violence program on a temporary basis, to persons who are victims of domestic violence, dating violence, sexual assault, stalking or human trafficking, and their children. W. Va. Code Ann. § 48-26-214.



These definitions apply to West Virginia’s Domestic Violence Act, §§ 48-26-101 through 48-26-1101. Some of the provisions of the Act are included below in the section “Select Victims’ Rights.”



For purposes of the Domestic Violence Act, “the words or terms defined in this article,

<p>and any variation of those words or terms required by the context, have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.” W. Va. Code Ann. § 48-26-201.</p>	
<p>Prevention and Treatment of Domestic Violence Definitions.</p> <p>“Domestic violence” or “abuse” means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:</p> <ol style="list-style-type: none"> (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) Placing another in reasonable apprehension of physical harm; (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts; (4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and (5) Holding, confining, detaining or abducting another person against that person’s will. <p>W. Va. Code Ann. § 48-27-202.</p> <p>“Emergency hearing” means the hearing before a magistrate upon the filing of a petition for a protective order. An emergency hearing may be held ex parte. W. Va. Code Ann. § 48-27-203.</p> <p>“Family or household members” means persons who:</p> <ol style="list-style-type: none"> (1) Are or were married to each other; (2) Are or were living together as spouses; (3) Are or were sexual or intimate partners; (4) Are or were dating: Provided, That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; (5) Are or were residing together in the same household; (6) Have a child in common regardless of whether they have ever married or lived together; (7) Have the following relationships to another person: 	<p>W. Va. Code Ann. §§ 48-27-202 through 48-27-209.</p>

<p>(A) Parent;</p> <p>(B) Stepparent;</p> <p>(C) Brother or sister;</p> <p>(D) Half-brother or half-sister;</p> <p>(E) Stepbrother or stepsister;</p> <p>(F) Father-in-law or mother-in-law;</p> <p>(G) Stepfather-in-law or stepmother-in-law;</p> <p>(H) Child or stepchild;</p> <p>(I) Daughter-in-law or son-in-law;</p> <p>(J) Stepdaughter-in-law or stepson-in-law;</p> <p>(K) Grandparent;</p> <p>(L) Step grandparent;</p> <p>(M) Aunt, aunt-in-law or step aunt;</p> <p>(N) Uncle, uncle-in-law or step uncle;</p> <p>(O) Niece or nephew;</p> <p>(P) First or second cousin; or</p> <p>(8) Have the relationships set forth in paragraphs (A) through (P), subdivision (7) of this section to a family or household member, as defined in subdivisions (1) through (6) of this section.</p> <p>W. Va. Code Ann. § 48-27-204.</p> <p>“Final hearing” means the hearing before a family court judge following the entry of an order by a magistrate as a result of the emergency hearing. W. Va. Code Ann. § 48-27-205.</p> <p>(a) “Law-enforcement agency” means and is limited to:</p> <p>(1) The state police and its members;</p> <p>(2) A county sheriff and his or her law-enforcement deputies; and</p> <p>(3) A police department in any municipality as defined in section two, article one, chapter eight of this code;</p> <p>(4) Any federal agency whose purpose includes enforcement, maintenance and gathering of information of both criminal and civil records relating to domestic violence under federal law.</p> <p>(b) The term “law-enforcement agency” includes, but is not limited to, the Department of</p>	
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Health and Human Resources in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.

W. Va. Code Ann. § 48-27-206.

“Program for victims of domestic violence” means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training. W. Va. Code Ann. § 48-27-207.

“Program of intervention for perpetrators” means a licensed program, where available, or if no licensed program is available, a program that:

- (1) Accepts perpetrators of domestic violence into educational intervention groups or counseling pursuant to a court order; or
- (2) Offers educational intervention groups to perpetrators of domestic violence.

W. Va. Code Ann. § 48-27-208.

“Protective order” means an emergency protective order entered by a magistrate as a result of the emergency hearing or a protective order entered by a family court judge upon final hearing. W. Va. Code Ann. § 48-27-209.



These definitions apply to certain statutory provisions governing rights of domestic violence victims, W. Va. Code Ann. §§ 48-27-101 through 48-27-1105. Some of these statutory provisions are included below in the section “Select Crime Victims’ Rights.”



For the purposes of Article 26 and Article 27 of West Virginia’s Domestic Relations laws, the words or terms defined above “and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.” W. Va. Code Ann. § 48-27-201.

Child-Victims' Rights Regarding Statements and Testimony Definitions.

W. Va. Code Ann. § 62-6B-2.

For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Child witness" means a person under the age of sixteen years of age who is or will be called to testify in a criminal matter concerning an alleged violation of the provisions of sections three, four, five and seven, article eight-b, chapter sixty-one of this code in which the child is the alleged victim.


(2) "Live, closed-circuit television" means a simultaneous transmission, by closed-circuit television or other electronic means, between the courtroom and the testimonial room.

(3) "Operator" means the individual authorized by the court to operate the closed-circuit television equipment used in accordance with the provisions of this article.

(4) "Testimonial room" means a room within the courthouse other than the courtroom from which the testimony of a child witness or the defendant is transmitted to the courtroom by means of live, closed-circuit television.

(5) "Interviewed child" shall mean any person under the age of eighteen who has been interviewed by means of any type of recording equipment in connection with alleged criminal behavior or allegations of abuse or neglect of any child under the age of eighteen.

(6) "Recorded interview" means any electronic recording of the interview, and any transcript thereof, of an interviewed child conducted by: (1) An employee or representative of a child advocacy center as that term is defined in section one hundred one, article three, chapter forty-nine of this code; (2) any psychologist, psychiatrist, physician, nurse, social worker or other person appointed by the court to interview the interviewed child as provided in subsection (c), section three of this article; or (3) a child protective services worker, law-



<p>enforcement officer, prosecuting attorney or any representative of his or her office, or any other person investigating allegations of criminal behavior or behavior alleged to constitute abuse or neglect of a child.</p> <p> These definitions apply to statutory provisions governing child-victims' rights regarding their statements and testimony, W. Va. Code Ann. §§ 62-6B-1 through 62-6B-6. Many of these statutory provisions are included below in the section "Select Crime Victims' Rights."</p>	
<p>Address Confidentiality Program Definitions</p> <p>As used in this article, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>(1) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking, and who has been designated by the respective agency or nonprofit program, and trained, accepted and registered by the Secretary of State to assist individuals in the completion of program participation applications.</p> <p>(2) "Designated address" means the address assigned to a program participant by the Secretary of State pursuant to section one hundred three of this article.</p> <p>(3) "Mailing address" means an address that is recognized for delivery by the United States Postal Service.</p> <p>(4) "Program" means the Address Confidentiality Program established by this article.</p> <p>(5) "Program participant" means a person certified by the Secretary of State to participate in the program.</p> <p>(6) "Residential Address" means a residential street, school or work address of an individual, as specified on the individual's application to be a program participant under this article.</p>	<p>W. Va. Code Ann. § 48-28A-102.</p>



These definitions apply to West Virginia's Address Confidentiality Program, W. Va. Code Ann. §§ 48-28A-101 through 48-28A-110. Many of these statutory provisions are included below in the section "Select Victims' Rights Laws."

SELECT CRIME VICTIMS' RIGHTS	West Virginia Statutes and Rules
<p>Victim Protection Act of 1984: Legislative Findings and Purpose.</p> <p>(a) The legislature finds and declares that without the cooperation of victims and witnesses, the criminal justice system would cease to function, yet too often these individuals are either ignored by the criminal justice system or simply used as tools to identify and punish offenders.</p> <p>The legislature finds further that all too often the victim of a serious crime is forced to suffer physical, psychological or financial hardship first as a result of the criminal act and then as a result of contact with a criminal justice system not totally responsive to the needs of such victims.</p> <p>The legislature finds further that under the current law, law-enforcement agencies must have cooperation from a victim of crime and yet neither the agencies nor the legal system can offer adequate protection or assistance when the victim, as a result of such cooperation, is threatened or intimidated.</p> <p>The legislature finds further that while the defendant is provided with counsel who can explain both the criminal justice process and the rights of the defendant, the victim or witness has no counterpart and is usually not even notified when the defendant is released on bail, the case is dismissed, a plea to a lesser charge is accepted or a court date is changed.</p> <p>The legislature finds further that the victim or witness who cooperates with the prosecutor often finds that the transportation, parking facilities and child care services at the court are unsatisfactory and they must often share the pretrial waiting room with the defendant or his family and friends.</p> <p>The legislature finds further that the victim may lose valuable property to a criminal only to lose it again for long periods of time to law-enforcement officials, until the trial and appeals are over; many times the property is damaged or lost, which is particularly stressful for the elderly or poor.</p> <p>(b) The legislature declares that the purposes of this article are to enhance and protect the</p>	<p>W. Va. Code Ann. § 61-11A-1.</p>

<p>necessary role of crime victims and witnesses in the criminal justice process and to ensure that the state and local governments do all that is possible within the limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant.</p>	
<p>Victims' Sentencing-Related Rights.</p> <p>(a) For the purposes of this section, "victim" means a person who is a victim of a felony, or, where a death occurs during the commission of a felony or a misdemeanor, the following persons shall be notified if known by the prosecutor: A member of the deceased victim's immediate family, the fiduciary of the deceased victim's estate or an adult household member residing with the victim.</p> <p>(b) Prior to the imposition of sentence upon a defendant who has been found guilty of a felony, or of a misdemeanor if death occurs during the commission of a crime, or has pleaded guilty or nolo contendere to a felony, or to a misdemeanor if death occurs during the commission of a crime, the court shall permit the victim of the crime to appear before the court to make an oral statement for the record if the victim notifies the court of his or her desire to make such a statement after receiving notification provided in subsection (c) of this section. If the victim fails to notify the court, the failure is a waiver of the right to make an oral statement. In lieu of the appearance and oral statement, the victim may submit a written statement to the court or to the probation officer in charge of the case. The probation officer shall forthwith file the statement delivered to his or her office with the sentencing court and the statement must be made a part of the record at the sentencing hearing. The statement, whether oral or written, must relate solely to the facts of the case and the extent of injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced.</p> <p>(c) Within a reasonable time prior to the imposition of sentence upon the defendant, the prosecuting attorney or assistant prosecuting attorney in charge of the case shall make reasonable efforts, in writing, to advise the person who was the victim of the crime, the parent or guardian of a minor who was the victim of a crime, the fiduciary of the victim's</p>	<p>W. Va. Code Ann. § 61-11A-2.</p>

<p>estate if the victim is deceased and the immediate family members of the victim if the victim is deceased and if their whereabouts are known to the prosecutor or assistant prosecutor. The writing will provide the date, time and place of the original sentencing hearing and of the victim's right to submit a written or oral statement to the sentencing court.</p> <p>(d) The oral or written statement given or submitted by a victim in accordance with the provisions of this section is in addition to and not in lieu of the victim impact statement required by the provisions of section three of this article.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights.</p> <p> A promising practice is to be familiar with the acceptable formats for victim impact statements so that victims can be informed about all of their options. Depending on your jurisdiction's law, victims may choose to: (1) read or speak their impact statement aloud at the sentencing proceeding, or have another person do it for them; (2) submit a written victim impact statement to the court in advance of sentencing; (3) provide an impact statement using technology to facilitate remote attendance; and/or (4) play or submit an impact statement that was created using audio and video technology.</p>	
<p>Victims' Right to Notification of Crime Victims Compensation Fund.</p> <p>Whenever the prosecuting attorney's office presents a case to a grand jury or proceeds in the circuit court on an information, the prosecutor or assistant prosecutor shall within thirty days following said presentment or information notify in writing each victim of the alleged offense of the existence and basic provisions of article two-a, chapter fourteen of this code. Nothing in this section shall be construed as precluding the prosecuting attorney's office from other notification to victims of crime, or as creating a cause of action for damages against any prosecuting attorney or their staff, or against the state of West Virginia or any of its political subdivisions.</p>	<p>W. Va. Code Ann. § 61-11A-2a.</p>

Victim Impact Statements: When Required; Preparation by Probation Officer; Contents.

W. Va. Code Ann. § 61-11A-3.

(a) In every case in which a presentence report is ordered by the court, such presentence report shall contain a victim impact statement unless the court orders otherwise, if the defendant, in committing a felony or misdemeanor, caused physical, psychological or economic injury or death of the victim.

(b) The victim impact statement shall be prepared by the probation officer and shall include the identity of the victim, an itemization of any economic loss suffered by the victim as a result of the offense, a description of the nature and extent of any physical or psychological injury suffered by the victim as a result of the offense, the details of any change in the victim's personal welfare, lifestyle or family relationships as a result of the offense, whether there has been any request for psychological or medical services initiated by the victim or the victim's family as a result of the offense and such other information related to the impact of the offense upon the victim as may be required by the court.



(c) If the court does not order a presentence investigation and report, the prosecuting attorney may request that the probation officer prepare a victim impact statement. The victim impact statement shall be considered by the court as a factor in determining the appropriate sentence. Additionally, the statement may be utilized for the determination of claims by victims of crimes pursuant to the provisions of article two-a, chapter fourteen of this code.

(d) In cases that involve child victims of offenses defined in section twelve, article eight of this chapter or article eight-b or eight-d of this chapter, any victim impact statement in a presentence report may include a statement from a therapist, psychologist or physician who is providing treatment to the child as to the recommendations regarding the effect that possible disposition may have on the child.

(e) A victim impact statement prepared in accordance with the provisions of this section, other than for claims by victims of crimes pursuant to the provisions of article two-a, chapter fourteen of this code, shall be made available to the defendant, and his counsel if he is so

<p>represented, at least ten days prior to the date set for pronouncement of his sentence. The court shall, upon motion by or on behalf of the defendant, grant the defendant a hearing, whereby he may introduce testimony or other information related to any alleged factual inaccuracies in the statement.</p>	
<p>Victims' Right to Restitution.</p> <p>(a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological, or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense to the greatest extent economically practicable when considering the defendant's financial circumstances.</p> <p>If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.</p> <p>(b) The order shall require that the defendant:</p> <p>(1) In the case of an offense resulting in damage to, loss of, or destruction of property of a victim of the offense:</p> <p>(A) Return the property to the owner of the property or someone designated by the owner; or</p> <p>(B) If return of the property under paragraph (A) of this subdivision is impossible, impractical, or inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of sentencing; or (ii) the value of the property on the date of the damage, loss, or destruction less the value (as of the date the property is returned) of any part of the property that is returned;</p> <p>(2) In the case of an offense resulting in bodily injury to a victim:</p> <p>(A) Pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;</p> <p>(B) Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and</p>	<p>W. Va. Code Ann. § 61-11A-4.</p>

- (C) Reimburse the victim for income lost by the victim as a result of the offense;
- (3) In the case of an offense resulting in bodily injury that also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services; and
- (4) In any case, if the victim (or if the victim is deceased, the victim's estate) consents, or if payment is impossible or impractical, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate.
- (c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.
- (d) The court shall impose an order of restitution to the extent that the order is as fair as possible to the victim and the imposition of the order will not unduly complicate or prolong the sentencing process.
- (e) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation from a third party: *Provided*, That the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all restitution to victims under the order be made before any restitution to any other person under the order is made. As used in this section, the term "any person who has compensated the victim for loss" shall include the West Virginia Crime Victims Compensation Fund.
- (f) The court may require that such defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than: (1) The end of the period of probation, if probation is ordered; (2) five years after the end of the term of imprisonment imposed, if the court does not order probation; and (3) five years after the date of sentencing in any other case.
- If not otherwise provided by the court under this subsection, restitution shall be made immediately.
- (g) If the defendant is placed on probation or paroled under this article, any restitution

<p>ordered under this section shall be a condition of the probation or parole unless the court or Parole Board finds restitution to be wholly or partially impractical as set forth in this article.</p> <p>The court may revoke probation and the Parole Board may revoke parole if the defendant fails to comply with the order. In determining whether to revoke probation or parole, the court or Parole Board shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.</p> <p>(h) An order of restitution may be enforced by the state or a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.</p> <p>(i) Notwithstanding any provision of this section to the contrary, the court may order, in addition to or in lieu of, restitution, that a defendant be required to contribute monetarily, or through hours of service, to a local crime victim's assistance program or juvenile mediation program which meets the following requirements:</p> <ol style="list-style-type: none"> (1) The program is approved by a circuit judge presiding in the judicial circuit; and (2) The program is a nonprofit organization certified as a corporation in this state, and is governed by a board of directors. <p> The procedure for issuing a restitution order is governed by W. Va. Code Ann. § 61-11A-5.</p> <p> Victims should be informed that they are entitled to seek restitution upon the conviction of defendant for losses caused by defendant's criminal conduct. Assisting victims with the documentation of their losses—including anticipated future expenses—is recommended from the earliest moments of the case.</p>	
<p>State Guidelines for Fair Treatment of Crime Victims in the Criminal Justice System.</p> <p>(a) No later than July 1, 1984, the Attorney General shall promulgate rules and regulations</p>	<p>W. Va. Code Ann. § 61-11A-6.</p>

in accordance with the provisions of chapter twenty-nine-a of this code, establishing guidelines for law-enforcement agencies and prosecuting attorneys' offices consistent with the purposes of this article. The Attorney General shall seek the advice of the West Virginia State Police and Department of Health and Human Resources in preparing such rules and regulations. In preparing such rules and regulations, the following objectives shall be considered:

(1) The arresting law-enforcement agency should ensure that victims routinely receive emergency social and medical services as soon as possible and are given information on the following:

(A) Availability of crime victim compensation (where applicable);

(B) Community-based victim treatment programs;

(C) The role of the victim in the criminal justice process, including what they can expect from the system as well as what the system expects from them; and

(D) Stages in the criminal justice process of significance to a crime victim, and the manner in which information about such stages can be obtained.

(2) The prosecuting attorney or his or her 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.

(3) 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) Victims, witnesses, one member of the immediate family and any adult household member residing with the victim 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, but not limited to, 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.

(5) 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

<p>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:</p> <p>(A) Dismissal;</p> <p>(B) Release of the accused pending judicial proceedings;</p> <p>(C) Plea negotiations; and</p> <p>(D) Pretrial diversion program.</p> <p>(6) Victims and other prosecution witnesses should be provided a waiting area that is separate from all other witnesses prior to court appearances, if feasible.</p> <p>(7) Law-enforcement agencies should promptly return victims' property held for evidentiary purposes unless there is a compelling law-enforcement reason for retaining it.</p> <p>(8) 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.</p> <p>(b) Nothing in this section shall be construed as creating a cause of action against the State of West Virginia or any of its political subdivisions.</p> <p> Pursuant to this statutory provision, legislative rules and procedures were established for the fair treatment of crime victims in the criminal justice system. W. Va. Code R. § 142-4-1. These rules “apply to all law-enforcement agencies and prosecuting attorneys’ offices in the State of West Virginia” and their enforcement is “vested in the Office of the Attorney General.” <i>Id.</i> at § 142-4-2. These rules, contained in W. Va. Code R. § 142-4-4, are included below. Relevant definitions are included above in the section “Select Definitions.”</p>	
<p>Victims’ Right to Notification of an Offender’s Release, Placement or Escape from Custody.</p> <p>(a) At the time a criminal prosecution is commenced by the filing of a complaint, if the complaint charges a person with committing an offense described in subsection (e) of this</p>	<p>W. Va. Code Ann. § 61-11A-8.</p>

section, then the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of any release of the accused from custody pending judicial proceedings.

(b) If a person is convicted of an offense described in subsection (e) of this section, the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of sentencing if the convicted person will be placed on work release, home confinement or probation.

(c) If a person is convicted of an offense described in subsection (e) of this section and is imprisoned in a state correctional facility or confined in a county or regional jail, the commissioner of corrections, the regional jail supervisor or the sheriff, as the case may be, is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of:

- (1) Releasing the convicted person from imprisonment in any correctional facility;
- (2) Releasing the convicted person from confinement in any jail;
- (3) Placing the convicted person in a halfway house or other nonsecure facility to complete his or her sentence; or
- (4) Any escape by the convicted person from a state correctional facility or a jail.

(d) The notice shall include instructions for the victim or the victim family member on how to request the notification.

(e) Offenses which are subject to the provisions of this section are as follows:

- (1) Murder;
- (2) Aggravated robbery;
- (3) Sexual assault in the first degree;
- (4) Kidnapping;
- (5) Arson;
- (6) Any sexual offense against a minor; or
- (7) Any violent crime against a person.

(f) The Commissioner of Corrections, a regional jail supervisor, a sheriff or a prosecuting attorney who receives a written request for notification shall provide notice, in writing or by telephone, to the last known address or addresses or telephone number or numbers provided by the victim or a member of the victim's family, or in the case of a minor child, to the custodial parent, guardian or custodian of the child, in accordance with the provisions of this section. In case of escape, notification shall be by telephone, if possible.

(g) If one or more family members of a victim request notification and if the victim is an adult and is alive and competent, notification shall be sent to the victim, if possible, notwithstanding that he or she did not request the notification. If the victim is deceased or an adult who is alive but not competent, the notice shall be sent to the first family member requesting notice in conformity with this section.

(h) If notification by telephone to a victim is attempted, notification is not complete unless it is given directly to the person requesting notification and after that person's identity has been verified. An attempted notification made to a voice mail or another recording device or to another member of the household is insufficient.


(i) For the purposes of this section, the following words or phrases defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.



(1) "Filing of a complaint" means the filing of a complaint in accordance with the West Virginia Rules of Criminal Procedure promulgated by the Supreme Court of Appeals or the provisions of this code.

(2) "Victim" means a victim of a crime listed in subsection (e) of this section who is alive and competent.

(3) "Victim's family member" means a member of the family of a victim of a crime listed in subsection (e) of this section who is not alive and competent.

(j) In addition to those persons required to be notified under this section, a victim may designate an additional adult individual to receive notice provided for by this section: *Provided*, That the obligation to notify the additional individuals under this section only

<p>arises if the additional adult individual's contact information is provided in writing by the victim to the appropriate notifying entity.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully document a victim's request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.</p>	
<p>Sexual Assault Victims' Bill of Rights.</p> <p>(a) In addition to those rights afforded victims of crime by other provisions of this code, a sexual assault victim has the following rights:</p> <p>(1) The right to a personal representative of the victim's choice to accompany him or her to a hospital or other health care facility and to attend proceedings concerning the alleged assault, including police interviews and court proceedings: <i>Provided</i>, That nothing in this subsection shall be construed to violate established forensic interview protocols;</p> <p>(2) The right to receive a forensic medical examination consistent with the provisions of § 61-8B-1(12) of this code conducted by a qualified medical provider in accordance with best practices, taking into consideration the age of the victim and circumstances of the offense;</p> <p>(3) The right to have a sexual assault evidence collection kit tested and preserved by the investigating law-enforcement agency;</p> <p>(4) The right to be informed by the investigating law-enforcement agency of any results of the forensic medical examination, if such disclosure would not impede or compromise an ongoing investigation;</p> <p>(5) The right to be informed in writing of the policies governing the forensic medical examination and preservation of evidence obtained from the examination;</p> <p>(6) The right to receive, upon his or her written request, notification by United States mail, restricted delivery, to his or her last known address, from the custodian of the evidence obtained from the forensic medical examination no fewer than 60 days prior to the date of the intended destruction or disposal of the evidence: <i>Provided</i>, That notice to a victim which</p>	<p>W. Va. Code Ann. § 61-11A-9.</p>

<p>meets the requirements of this subdivision, whether received by the addressee or not, meets all notice requirements imposed by this section;</p> <p>(7) The right, upon his or her written request, to have the evidence obtained from the forensic medical examination preserved for an additional period not to exceed 10 years; and</p> <p>(8) The right to be informed of the rights afforded a victim pursuant to this section.</p> <p>(b) As used in this section, “sexual assault” means any sexual act proscribed by § 61-8-1 et seq., § 61-8B-1 et seq., and § 61-8D-1 et seq. of this code.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must “request” the exercise of certain rights. Agencies should carefully document a victim’s request to exercise rights. Victims who wish to receive the type of notice identified here should be reminded, throughout their participation in the justice system, that their contact information must be kept current with relevant agencies.</p> <p> A promising practice is to have a policy and procedure in place to ensure that victims are provided information about their rights. Consideration should be given to providing written notice in the primary language of the victim, as well as in a form accessible to those with vision impairment.</p>	
<p>State Guidelines for Fair Treatment of Crime Victims and Witnesses in the Criminal Justice System: Services to Victims of Crime.</p> <p>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:</p> <p>(a) The availability of crime victim compensation through the West Virginia Crime Reparation Act of 1981;</p> <p>(b) Community-based victim treatment programs;</p> <p>(c) The role of the victim in the criminal justice process; and</p>	<p>W. Va. Code R. § 142-4-4.</p>

(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 (1) 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 West Virginia Code section two, article eleven-a, chapter sixty-one 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 West Virginia Code section two, article eleven-a, chapter sixty-one.

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.



W. Va. Code R. § 142-4-3 defines the terms used in these regulations. These definitions are included above in the section “Select Definitions.”








W. Va. Code Ann. § 61-11A-6 calls for the Attorney General to create fair treatment guidelines for victims. That statutory provision authorizes these rules and regulations. W. Va. Code R. § 142-4-1.



These rules “apply to all law-enforcement agencies and prosecuting attorneys’ offices in the State of West Virginia” and their enforcement is “vested in the Office of the Attorney General.” W. Va. Code R. § 142-4-2.



Law-enforcement agencies and prosecuting attorneys must comply with these rules and regulations “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.” W. Va. Code R. § 142-4-5.

<p> Nothing in these rules and regulations or in the state's victims' rights laws, W. Va. Code Ann. §§ 61-11A-1 through 61-11A-9, "shall be construed as creating a cause of action against the State of West Virginia or any of its political subdivisions." W. Va. Code R. § 142-4-6.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, that victims must "request" the exercise of certain rights. Agencies should carefully document a victim's request to exercise rights.</p> <p> A promising practice is to have a policy and procedure in place that clearly defines what "promptly" means in the context of the victim's right to return of property. Instructions should be ready and available to provide to victims, explaining how they may promptly obtain their property, and including the name of a person they may contact to check the status of the return.</p> <p> A promising practice is to have a policy and procedure in place to notify victims, at the first opportunity, of their employment- and creditor-related rights.</p> <p> A promising practice is to have a policy and procedure in place to provide employers with information regarding victims' employment-related rights.</p>	
<p>Interview Limitations and Related Rights for Child-Victims of Incest; Inadmissibility of Evidence of Specific Instances of the Victim's Sexual Conduct; Exceptions.</p> <p>(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law-enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of</p>	<p>W. Va. Code Ann. § 61-8-13.</p>

the public and the defendant.


(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.


(c) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: *Provided*, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: *Provided*, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

<p>In Addition to Penalties and Restitution Imposed, Court May Order Convicted Offender to Pay Costs of Sex Offense Victims' Medical and Mental Health Treatment.</p> <p>In addition to any penalty provided under this article and any restitution, which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the defendant is convicted, whether or not the victim is considered to have sustained bodily injury.</p>	<p>W. Va. Code Ann. § 61-8B-13.</p>
<p>Interview Limitations and Related Rights for Child-Victims of Sexual Abuse.</p> <p>In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is a child who is eleven years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogations while at the same time preserve the rights of the public and the defendant.</p>	<p>W. Va. Code Ann. § 61-8B-14.</p>
<p>Sex Offense Victims' Rights Regarding Forensic Medical Examinations.</p> <p>(a) When any person alleges that he or she has been the victim of an offense proscribed by this article, the West Virginia prosecuting attorneys institute shall pay to a licensed medical facility from the forensic medical examination fund the cost of the forensic medical examination for the alleged victim on the following conditions and in the following manner:</p> <p>(1) The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;</p> <p>(2) The costs of additional nonforensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund:</p>	<p>W. Va. Code Ann. § 61-8B-16.</p>

<p><i>Provided</i>, That nothing in this section shall be construed to prohibit a licensed medical facility from seeking payment for services referred to in this subdivision from the alleged victim or his or her insurer, if any;</p> <p>(3) The forensic medical examination must have been conducted within a reasonable time of the alleged violation;</p> <p>(4) The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;</p> <p>(5) The licensed medical facility shall certify that the forensic medical examination was performed and may submit a statement of charges to the West Virginia Prosecuting Attorneys Institute for payment from the fund.</p> <p>(b) No licensed medical facility may collect the costs of a forensic medical examination from the alleged victim of a violation of this article or from the alleged victim's insurance coverage, if any.</p> <p>(c) Nothing in this section shall be construed to require an alleged victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination pursuant to the provisions of this section.</p> <p> A promising practice is to have a policy and procedure in place ensuring that officers inform victims of sexual offenses that their right to a free forensic medical examination is not contingent upon participation in the criminal justice system or cooperation with law enforcement.</p>	
<p>Interview Limitations and Related Rights for Child-Victims of Child Pornography.</p> <p>(a) In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.</p>	<p>W. Va. Code Ann. § 61-8C-5.</p>

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.	
<p>Sex Offense Victims' Right to Refuse Examination by Polygraph or Other Truth Telling Device.</p> <p>No law-enforcement officer, prosecutor or any other government official may ask or require the adult, youth or child victim of an alleged sexual offense, as set forth in the provisions of section six, article eight, chapter sixty-one of this code; section six, article twelve of said chapter; section five, article eight-d, of said chapter; and article eight-b of said chapter, or any other sexual offense as defined under state or local law, to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law-enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination.</p> <p> A promising practice is to have a policy and procedure in place to ensure that law enforcement officers are aware that a victim's agreement to submit to a polygraph cannot be made a condition for proceeding with a criminal investigation or prosecution, and that victims are informed in writing of this fact.</p>	W. Va. Code Ann. § 62-6-8.
<p>Child-Victims' Rights Regarding Statements and Testimony: Legislative Findings.</p> <p>The Legislature hereby finds that there are rare occasions when the interests of justice cannot be served because a child who is alleged to be the victim of certain offenses is unable to testify while in the physical presence of the defendant in the courtroom.</p> <p>The Legislature further finds that the constitutional right of the accused to be confronted with the witnesses against him or her must be protected and that this constitutional guarantee</p>	W. Va. Code Ann. § 62-6B-1.

<p>can be protected while, at the same time, allowing a child to testify outside of the physical presence of a defendant in the courtroom.</p> <p>The Legislature further finds that a child, more so than an adult, may be subject to coercion and pressure by interested adults and the interests of justice would be served by requiring, unless infeasible, memorialization of child victim statements in certain criminal matters.</p>	
<p>Child-Victims' Rights Regarding Statements and Testimony: Findings of Fact Required for Testimony By Closed-Circuit Television; Considerations for Court.</p> <p>(a) Upon a written motion filed by the prosecuting attorney, the child's attorney or the child's guardian ad litem, and upon findings of fact determined pursuant to subsection (b) of this section, a circuit court may order that the testimony of a child witness may be taken at a pretrial proceeding or at trial through the use of live, closed-circuit television.</p> <p>(b) Prior to ordering that the testimony of a child witness may be taken through the use of live, closed-circuit television, the circuit court must find by clear and convincing evidence, after conducting an evidentiary hearing on this issue, that:</p> <ol style="list-style-type: none"> (1) The child is an otherwise competent witness; (2) That, absent the use of live, closed-circuit television the child witness will be unable to testify due solely to being required to be in the physical presence of the defendant while testifying; (3) The child witness can only testify if live, two-way closed-circuit television is used in the trial; and (4) That the state's ability to proceed against the defendant without the child witness' live testimony would be substantially impaired or precluded. <p>(c) The court shall consider the following factors in determining the necessity of allowing a child witness to testify by the use of live, closed-circuit television:</p> <ol style="list-style-type: none"> (1) The age and maturity of the child witness; (2) The facts and circumstances of the alleged offense; (3) The necessity of the child's live testimony to the prosecution's ability to proceed as well 	<p>W. Va. Code Ann. § 62-6B-3.</p>






<p>as any prejudice to the defendant by allowing testimony through closed-circuit television;</p> <p>(4) Whether or not the facts of the case involve the alleged infliction of bodily injury to the child witness or the threat of bodily injury to the child or another; and</p> <p>(5) Any mental or physical handicap of the child witness.</p> <p>(d) In determining whether to allow a child witness to testify through live, closed-circuit television the court shall appoint a psychiatrist or a licensed psychologist with at least five years clinical experience who shall serve as an advisor or friend of the court to provide the court with an expert opinion as to whether, to a reasonable degree of professional certainty, the child witness will suffer severe emotional harm, be unable to testify based solely on being in the physical presence of the defendant while testifying and that the child witness does not evidence signs of being subjected to undue influence or coercion. The opinion of the psychiatrist or licensed psychologist shall be filed with the circuit court at least thirty days prior to the final hearing on the use of live, closed-circuit television and the defendant shall be allowed to review the opinion and present evidence on the issue by the use of an expert or experts or otherwise.</p> <p> The terms used in this section are defined in W. Va. Code Ann. § 62-6B-2. These definitions are included above in the section "Select Definitions."</p>	
<p>Child-Victims' Rights Regarding Statements and Testimony: Procedures for Taking Testimony of Child-Victim by Closed-Circuit Television; Additional Accommodations; Recordings and Confidentiality.</p> <p>(a) If the court determines that the use of live, two-way closed-circuit testimony is necessary and orders its use the defendant may, at any time prior to the child witness being called, elect to absent himself from the courtroom during the child witness' testimony. If the defendant so elects the child shall be required to testify in the courtroom.</p> <p>(b)(1) If live, closed-circuit television is used in the testimony of the child witness, he or she shall be taken into the testimonial room and be televised live, by closed-circuit equipment to the view of the defendant, counsel, the court and, if applicable, the jury. The projected</p>	<p>W. Va. Code Ann. § 62-6B-4.</p>

image of the defendant shall be visible for child witness to view if he or she chooses to do so and the view of the child witness available to those persons in the courtroom shall include a full body view. Only the prosecuting attorney, the attorney for the defendant, and the operator of the equipment may be present in the room with the child witness during testimony. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little psychological trauma as possible under the circumstances. The court shall permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. The court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the testimony.

(2) If the defendant elects to not be physically present in the courtroom during the testimony of the child witness, the defendant shall be taken into the testimonial room and be televised live, by two-way closed-circuit equipment to the view of the finder of fact and others present in the courtroom. The defendant shall be taken to the testimonial room prior to the appearance of the child witness in the courtroom. There shall be made and maintained a recording of the images and sounds of all proceedings which were televised pursuant to this article. While the defendant is in the testimonial room, the defendant shall be permitted to view the live, televised image of the child witness and the image of those other persons in the courtroom whom the court determines the defendant is entitled to view. Only the court, the prosecuting attorney and the attorney for the defendant may question the child. In pro se proceedings, the court may modify the provisions of this subdivision relating to the role of the attorney for the defendant to allow the pro se defendant to question the child witness in such a manner as to cause as little emotional distress as possible under the circumstances. The transmission from the courtroom to the testimonial room shall be sufficient to permit the defendant to observe and hear the testimony of the child witness contemporaneous with the taking of the testimony. No proceedings other than the taking of the testimony of the child witness shall occur while the defendant is outside the courtroom. In the event that the defendant elects that the attorney for the defendant remain in the courtroom while the defendant is in the testimonial room, the court shall provide electronic means for the defendant and the attorney for the defendant to confer confidentially during the taking of the

<p>testimony.</p> <p>(c) In every case where the provisions of the article are used, the jury, at a minimum, shall be instructed, unless such instruction is waived by the defendant, that the use of live, closed-circuit television is being used solely for the child's convenience, that the use of the medium cannot as a matter of law and fact be considered as anything other than being for the convenience of the child witness and that to infer anything else would constitute a violation of the oath taken by the jurors.</p> <p> The terms used in this section are defined in W. Va. Code Ann. § 62-6B-2. These definitions are included above in the section "Select Definitions."</p>	
<p>Child-Victims' Rights Regarding Statements and Testimony: Memorialization of Statements of Certain Child-Victims by Law Enforcement and Others; Admissibility; Hearing.</p> <p>(a) After [May 9, 2018], whenever any law-enforcement officer, physician, psychologist, social worker, or investigator, in the course of his or her employment or profession or while engaged in an active criminal investigation as a law-enforcement officer or an agent of a prosecuting attorney, obtains a statement from a child 13 years of age or younger who is an alleged victim in an investigation or prosecution alleging a violation of the provisions of § 61-8B-3, § 61-8B-4, § 61-8B-5, or § 61-8B-7 of this code, he or she shall immediately make a contemporaneous written notation and recitation of the statement received or obtained. An audio recording or video recording with sound capability of the statement may be used in lieu of the written recitation required by the provisions of this section. Failure to comply with the provisions of this section creates a presumption that the statement is inadmissible. The statement may be admitted if, after a hearing on the matter, the court finds by clear and convincing evidence that the failure to comply with the provisions of this section was a good faith omission and that the content of the proffered statement is an accurate recital of the information provided by the child and is otherwise admissible.</p> <p>(b) The provisions of this section shall not apply to:</p>	<p>W. Va. Code Ann. § 62-6B-5.</p>

<p>(1) Medical personnel and other persons performing a forensic medical examination of a child who is an alleged victim; and</p> <p>(2) Prosecuting attorneys when counseling with a child in preparation for eliciting the child's testimony in court.</p> <p> The terms used in this section are defined in W. Va. Code Ann. § 62-6B-2. These definitions are included above in the section "Select Definitions."</p> <p> It is a promising practice to have a policy and procedure in place regarding how law enforcement officers will memorialize child-victims' statements as required by this statutory provision.</p>	
<p>Child-Victims' Rights Regarding Statements and Testimony: Confidentiality of Recorded Interviews.</p> <p>(a) Except as provided by the provisions of this article, recorded interviews of an interviewed child in any judicial or administrative proceeding shall not be published or duplicated except pursuant to the terms of an order of a court of competent jurisdiction. All written documentation in any form that is related to the recorded interview shall also be deemed confidential.</p> <p>(b) Prior to the commencement of formal proceedings as contemplated in subsection (a) of this section, the persons or agencies listed in subdivision (6), section two of this article shall be entitled to access to or copies of the recorded interview of an interviewed child: <i>Provided</i>, That such persons or agencies may provide access to the recorded interview of a child to a legal parent, guardian or custodian of such child when: (1) Such parent, guardian or custodian is not alleged to have been involved or engaged in conduct that may give rise to a judicial or administrative proceeding; and (2) it would not undermine or frustrate an ongoing investigation: <i>Provided, however</i>, That prior to the commencement of formal proceedings only psychologists, psychiatrists, physicians, nurses and social workers who are providing services to the interviewed child may be afforded reasonable access to the recorded</p>	<p>W. Va. Code Ann. § 62-6B-6.</p>

<p>interview.</p> <p>(c) The Supreme Court of Appeals is requested to promulgate a rule or rules regulating in the courts of this state the publication and duplication of recorded interviews, including use, duplication and publication by counsel, and to include in any such rule limitations upon the publication, duplication, distribution or use of the recorded statements of a child.</p> <p>(d) Any person who knowingly and willfully duplicates or publishes a recorded interview in violation of the terms of an order entered by a court of competent jurisdiction or in violation of the provisions of subsection (b) of this section shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not less than ten days nor more than one year or fined not less than \$2,000 nor more than \$10,000, or both fined and confined.</p> <p> The terms used in this section are defined in W. Va. Code Ann. § 62-6B-2. These definitions are included above in the section "Select Definitions."</p>	
<p>Victims' Parole Hearing-Related Rights.</p> <p>(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a parole hearing notification form. This form shall contain the following information.</p> <p>(1) The name of the county in which the offender was prosecuted and sentenced;</p> <p>(2) The name of the court in which the offender was prosecuted and sentenced;</p> <p>(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;</p> <p>(4) The name of the judge who presided over the criminal case and who sentenced the offender;</p> <p>(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and</p> <p>(6) The names, addresses and telephone numbers of the victims of the crime for which the</p>	<p>W. Va. Code Ann. § 62-12-23.</p>



offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim's spouse, father, mother, brothers, sisters and any adult household member residing with the victim.

(b) The prosecuting attorney shall retain the original of the parole hearing notification form and shall provide copies of it to the circuit court which sentenced the offender, the Parole Board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the form.

(c) At least forty-five days prior to the date of a parole hearing, the Parole Board shall notify all persons who are listed on the parole hearing notification form, including the circuit court which sentenced the offender, the prosecuting attorney's office that prosecuted the offender and the law-enforcement agency and officer primarily involved in the offense underlying the sentence, of the date, time and place of the hearing. Such notice shall be sent by regular mail, properly addressed and postage prepaid, by electronic mail, or by facsimile. Notice to the victims of the crime for which the offender was sentenced or the immediate family members of each victim of the crime shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the Parole Board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.

(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the Parole Board shall notify all persons listed on the parole hearing notification form, including the circuit court which sentenced

<p>the offender and office of the prosecuting attorney that prosecuted the offender, that parole has been granted and the date of release. This notice shall be sent by the method prescribed in subsection (c) of this section. A written statement of reasons for releasing the prisoner, prepared pursuant to subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the parole hearing notification form, including the circuit court which sentenced the offender and office of the prosecuting attorney that prosecuted the offender.</p> <p> A promising practice is to have a policy and procedure in place to remind victims, throughout their participation in the justice system, that to protect their notification rights their contact information must be kept current with relevant agencies.</p>	
<p>Domestic Violence Victims' Right to Information from Health Care Facilities.</p> <p>(a) The bureau for public health of the department of health and human resources shall make available to health care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.</p> <p>(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to the patient, and every health care facility shall make available to all patients, a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-26-202 through 48-26-214. These definitions are included above in the section "Select Definitions."</p>	<p>W. Va. Code Ann. § 48-26-502.</p>

Confidentiality of Information and Records Pertaining to Program Victim-Participants; Includes Domestic Violence, Dating Violence, Sexual Assault and Trafficking Victims; Exceptions.

W. Va. Code Ann. § 48-26-701.

(a) A program licensed pursuant to this article may not disclose, reveal, or release or be compelled to disclose, reveal, or release, any written records or personal or personally identifying information about a program participant created or maintained in providing services, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected, pursuant to this article except:

- (1) Upon written consent, or upon oral consent in emergency situations defined by legislative rule, of the person seeking or who has sought services from the program;
- (2) In any proceeding brought under § 9-6-4 and § 9-6-5 of this code or § 49-4-601 through § 49-4-610 of this code;
- (3) As mandated by § 49-2-801 through § 49-2-814 and § 9-6-1 *et seq.* of this code;
- (4) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;
- (5) To protect against a clear and substantial danger of imminent injury by a person receiving services to himself or herself or another; or
- (6) As authorized by the releases signed by batterer intervention and prevention program participants pursuant to the provisions of subsection (b) of this section.

(b) Batterer intervention and prevention program participants shall authorize the release of information by signing the following releases:

- (1) Allowing the provider to inform the victim or alleged victim and the victim's advocates that the batterer is participating in a batterer intervention and prevention program with the provider and to provide information to the victim or alleged victim and her or his advocates, if necessary, for the victim's or alleged victim's safety;
- (2) Allowing prior and current service providers to provide information about the batterer to the provider;
- (3) Allowing the provider, for good cause, to provide information about the batterer to relevant legal entities, including courts, parole officers, probation officers, child protective

services, adult protective services, law enforcement, licensed domestic violence programs, or other referral agencies;

(4) Allowing the provider to report to the court, if the participation was court ordered, and to the victim or alleged victim, if she or he requests and provides a method of notification, and to her or his advocate, any assault, failure to comply with program requirements, failure to attend the program, threat of harm by the batterer, reason for termination, and recommendations for changes in the court order; and

(5) Allowing the provider to report to the victim or alleged victim, or her or his advocate, without the participant's authorization, all perceived threats of harm, the participant's failure to attend, and reason for termination.



(c) Monitored parenting and exchange programs may disclose to one parent or guardian, without the permission of the other parent or guardian, any perceived threat of harm or violation of the court order or violation of the monitored parenting and exchange program rules by the other parent or guardian.


(d) A monitored parenting and exchange program may not release information about the child without consent of the parent with custodial responsibility or guardian.



(e) In addition to the provisions set forth in this section, the release of a victim's personally identifying information is subject to the provisions of 42 U.S.C. § 13925(b)(2).

(f) A consent or authorization for the transmission or disclosure of confidential information is not effective unless it is signed by the program participant whose information is being disclosed. Every person signing an authorization shall be given a copy.



(g) A victim of domestic violence, dating violence, sexual assault, or stalking shall not be required to provide consent to release his or her personally identifying information as a condition of eligibility for the services, nor may any personally identifying information be shared in order to comply with federal or state reporting, evaluation, or data collection requirements: *Provided*, That nothing in this section prohibits a program from reporting suspected abuse or neglect, as defined by law, when the program is mandated by law to report suspected abuse or neglect.



 The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-26-202 through 48-26-214. These definitions are included above in the section “Select Definitions.”	
<p>Domestic Violence Victims’ Right to Shelter Referral.</p> <p>Where shelters are available, the law-enforcement officer or other public authority investigating an alleged incident of domestic violence shall advise the victim of the availability of the family protection shelter to which that person may be admitted.</p>  The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-26-202 through 48-26-214. These definitions are included above in the section “Select Definitions.”	W. Va. Code Ann. § 48-26-1101.
<p>Prevention and Treatment of Domestic Violence: Findings and Purposes.</p> <p>(a) The Legislature of this state finds that:</p> <p>(1) Every person has a right to be safe and secure in his or her home and family and to be free from domestic violence.</p> <p>(2) Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic violence;</p> <p>(3) Domestic violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and</p> <p>(4) Domestic violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.</p>	W. Va. Code Ann. § 48-27-101.

<p>(b) This article shall be liberally construed and applied to promote the following purposes:</p> <ul style="list-style-type: none"> (1) To assure victims of domestic violence the maximum protection from abuse that the law can provide; (2) To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic violence has continuing contact; (3) To expand the ability of law-enforcement officers to assist victims, to enforce the domestic violence law more effectively, and to prevent further abuse; (4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers; (5) To recognize that domestic violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and (6) To recognize that the existence of a former or on-going familial or other relationship should not serve to excuse, explain or mitigate acts of domestic violence which are otherwise punishable as crimes under the laws of this state. <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-27-202 through 48-27-209. These definitions are included above in the section “Select Definitions.”</p>	
<p>Prevention and Treatment of Domestic Violence: Law Enforcement’s Responsibilities Regarding Service of Pleadings and Orders.</p> <p>Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all protective orders without delay: <i>Provided</i>, That service of process shall be attempted within seventy-two hours of law enforcement’s receipt of the order to every address provided by petitioner. Any law-enforcement agency that serves pleadings or orders pursuant to this section may receive the fee authorized therefor by Rule 4 of the Rules of Practice and Procedure for Domestic Violence Civil Proceedings. If service is not made,</p>	<p>W. Va. Code Ann. § 48-27-701.</p>

<p>law enforcement shall continue to attempt service on the respondent until proper service is made.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-27-202 through 48-27-209. These definitions are included above in the section “Select Definitions.”</p>	
<p>Prevention and Treatment of Domestic Violence: Law-Enforcement Officers to Provide Information and Transportation and to Report Suspicions of Animal Cruelty.</p> <p>(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.</p> <p>(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim, upon the request of such victim, to a shelter or an appropriate court.</p> <p>(c) Whenever a law-enforcement officer, pursuant to a response to an alleged incident of domestic violence, forms a reasonable suspicion that an animal is a victim of cruel or inhumane treatment, he or she shall report the suspicion and the grounds therefor to the county humane officer within twenty-four hours of the response to the alleged incident of domestic violence.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-27-202 through 48-27-209. These definitions are included above in the section “Select</p>	<p>W. Va. Code Ann. § 48-27-702.</p>

Definitions.”	
<p>Prevention and Treatment of Domestic Violence: Law Enforcement Reports of Domestic Violence to State Police.</p> <p>(a) Each law-enforcement agency shall maintain records on all incidents of domestic violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the state police, listing all such incidents of domestic violence. Such reports shall include:</p> <ol style="list-style-type: none"> (1) The age and sex of the victim and the perpetrator of domestic violence; (2) The relationship between the parties; (3) The type and extent of abuse; (4) The number and type of weapons involved; (5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency’s action and the victim’s request for assistance; (6) Whether any prior reports have been made, received or filed regarding domestic violence on any prior occasion and if so, the number of such prior reports; and (7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim: <i>Provided</i>, That no information which will permit the identification of the parties involved in any incident of domestic violence shall be included in such report. <p>(b) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:</p> <ol style="list-style-type: none"> (1) The number of domestic violence complaints received; (2) The number of complaints investigated; (3) The number of complaints received from alleged victims of each sex; (4) The average time lapse in responding to such complaints; 	<p>W. Va. Code Ann. § 48-27-801.</p>

<p>(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;</p> <p>(6) The number of aggravated assaults and homicides resulting from such repeat incidents;</p> <p>(7) The type of police action taken in disposition of the cases; and</p> <p>(8) The number of alleged violations of protective orders.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-27-202 through 48-27-209. These definitions are included above in the section “Select Definitions.”</p>	
<p>Prevention and Treatment of Domestic Violence: Training of Law-Enforcement Officers in Domestic Violence.</p> <p>All law-enforcement officers shall receive training relating to response to calls involving domestic violence.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. §§ 48-27-202 through 48-27-209. These definitions are included above in the section “Select Definitions.”</p>	W. Va. Code Ann. § 48-27-1103.
<p>Address Confidentiality Program: Purpose.</p> <p>The Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking frequently find it necessary to establish a new address in order to prevent their assailants or probable assailants from finding them. The purpose of this article is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic abuse, sexual assault, or stalking; to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic abuse, sexual assault, or stalking; and to enable state and local agencies to accept an address designated by the Secretary of State by a program</p>	W. Va. Code Ann. § 48-28A-101.

<p>participant as a substitute for a residential or mailing address.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. § 48-28A-102. These definitions are included above in the section “Select Definitions.</p> <p> For more information on West Virginia’s Address Confidentiality Program, <i>see</i> W. Va. Code Ann. § 48-28A-103 (applications and participation); <i>id.</i> at § 48-28A-104 (program cancellation); <i>id.</i> at § 48-28A-105 (use of designated address); <i>id.</i> at § 48-28A-106 (disclosure to law enforcement and state agencies); <i>id.</i> at § 48-28A-107 (disclosure pursuant to court order or canceled certification); <i>id.</i> at § 48-28A-108 (confidentiality).</p>	
<p>Address Confidentiality Program: Applications and Participation.</p> <p>(a) On or after the effective date of the enactment of this article, the Secretary of State shall create an Address Confidentiality Program to be staffed by full time employees who have been subjected to a criminal history records search.</p> <p>(b) Upon recommendation of an application assistant, an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the Secretary of State to have a designated address assigned by the Secretary of State.</p> <p>(c) The Secretary of State may approve an application only if it is filed with the office of the Secretary of State in the manner established by rule and on a form prescribed by the Secretary of State. A completed application must contain the following information:</p> <ol style="list-style-type: none"> (1) The application preparation date, the applicant’s signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant; (2) A designation of the Secretary of State as agent for purposes of service of process and for receipt of certain first-class mail; (3) The mailing address where the applicant may be contacted by the Secretary of State or a 	<p>W. Va. Code Ann. § 48-28A-103.</p>

designee and the telephone number or numbers where the applicant may be contacted by the Secretary of State or the Secretary of State's designee; and

(4) A residential or mailing address or both types of addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.

(d) Upon receipt of a properly completed application, the Secretary of State may certify the applicant as a program participant. A program participant is certified for a period of four years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The Secretary of State shall send notification of a lapsing certification and a reapplication form to a program participant at least four weeks prior to the expiration of the program participant's certification.

(e) The Secretary of State shall forward to the program participant first-class mail received at the program participant's designated address.

(f)(1) An applicant may not file an application knowing that it:

(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:




(A) Contains false or incorrect information; or

(B) Falsely claims that disclosure of either the applicant's residential or mailing address or both types of addresses threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(g) A person who violates the provisions of subsection (f) of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for a period of not more than one year.



The terms used in this statutory provision are defined in W. Va. Code Ann. § 48-28A-

<p>102. These definitions are included above in the section “Select Definitions.”</p> <p> For more information on West Virginia’s Address Confidentiality Program, <i>see</i> W. Va. Code Ann. § 48-28A-101 (purpose); <i>id.</i> at § 48-28A-104 (program cancellation); <i>id.</i> at § 48-28A-105 (use of designated address); <i>id.</i> at § 48-28A-106 (disclosure to law enforcement and state agencies); <i>id.</i> at § 48-28A-107 (disclosure pursuant to court order or canceled certification); <i>id.</i> at § 48-28A-108 (confidentiality).</p>	
<p>Address Confidentiality Program: Disclosure to Law Enforcement and State Agencies.</p> <p>(a) The Secretary of State may make a program participant’s residential or mailing address available for inspection or copying, under the following circumstances:</p> <p>(1) Upon request of a law-enforcement agency in the manner provided for by rule; or</p> <p>(2) Upon request of the head of a state agency or designee in the manner provided for by rule and upon a showing of a bona fide statutory or administrative requirement for the use of the program participant’s residential or mailing address, such that the agency head or designee is unable to fulfill statutory duties and obligations without the program participant’s residential or mailing address.</p> <p> The terms used in this statutory provision are defined in W. Va. Code Ann. § 48-28A-102. These definitions are included above in the section “Select Definitions.”</p> <p> For more information on West Virginia’s Address Confidentiality Program, <i>see</i> W. Va. Code Ann. § 48-28A-101 (purpose); <i>id.</i> at § 48-28A-103 (applications and participation); <i>id.</i> at § 48-28A-104 (program cancellation); <i>id.</i> at § 48-28A-105 (use of designated address); <i>id.</i> at § 48-28A-107 (disclosure pursuant to court order or canceled certification); <i>id.</i> at § 48-28A-108 (confidentiality).</p>	<p>W. Va. Code Ann. § 48-28A-106.</p>

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