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**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE**

*41 N.J.R. 2626(a)*

**Proposed Readoption with Amendments: *N.J.A.C. 13:78***

[Click here to view Interested Persons Statement](#)

**Administration of Victim and Witness Advocacy Fund**

Authorized By: Deborah L. Gramiccioni, Director, Division of Criminal Justice.

Authority: N.J.S.A. 2C:43-3.1a(6)(c) and *52:4B-43.1*.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2009-191.

Submit written comments via overnight or regular mail **only** by September 4, 2009 to:

Heddy Levine-Sabol, Acting Chief  
State Office of Victim Witness Advocacy  
Division of Criminal Justice  
P.O. Box 085  
Trenton, New Jersey 08625-0085

The agency proposal follows:

**Summary**

The Division of Criminal Justice (Division) proposes to readopt *N.J.A.C. 13:78*, establishing rules on the administration of the Victim and Witness Advocacy Fund. Pursuant to Executive Order No. 66 (1978), the rules in this chapter are scheduled to expire on May 20, 2009. In accordance with N.J.S.A. 52:14B-5.1c, the submission of this notice of proposal to the Office of Administrative Law extends the expiration date 180 days to November 16, 2009.

The Division has reviewed the rules and determined they remain necessary, reasonable, adequate and responsive to the purposes for which the Division originally promulgated this chapter. The Division proposes to readopt this chapter with amendments. Because the Division has provided a 60-day comment period, this notice is excepted from the rulemaking calendar pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Should these rules not be readopted, the Division will not be able to fulfill the requirements imposed by the Legislature concerning the administration of funds, development and provision of services and related administrative costs for the benefit of victims and witnesses of crimes.

In 1989 the Director of the Division adopted new rules to govern the administration of the Victim and Witness Advocacy Fund (Fund), created [page=2627] pursuant to N.J.S.A. 2C:43-3.1a. These rules governed the distribution, disbursement and use of moneys from the Fund to the State Office of Victim Witness Advocacy in the Division, the county Offices of Victim Witness Advocacy in the offices of the county prosecutors and other public entities as deemed appropriate for the implementation of the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, *N.J.S.A. 52:4B-44*.

With the adoption of *N.J.S.A. 52:4B-43.1* in 1991, the Legislature authorized the continued use of the moneys from the Fund to the Division, county prosecutors and other public entities and expanded the public entities and non-profit organizations eligible to apply for an award from the Fund.

In order to satisfy the requirements of Executive Order 66 (1978) and the amendments to the statutory mandate, the rules at *N.J.A.C. 13:78* were readopted in 1993, which included the adoption of new Subchapters 2, 3 and 4 and the recodification of existing Subchapters 2, 3 and 4 as Subchapters 5, 6 and 7, respectively.

Chapter 78, the Administration of Victim and Witness Advocacy Fund, was readopted in 1998, repealing Subchapter 2, Eligibility Public Entities and Not-for-Profit, and adopting new Subchapter 2, Eligibility Criteria. The chapter was readopted, effective May 20, 2004, which included amending the application process in Subchapter 2 and the order of allocation and disbursement of moneys from the Fund in Subchapter 5.

The Director of the Division proposes to readopt the existing rules, with amendments.

A summary of each section of the chapter proposed for readoption and a summary of the proposed amendments follows:

*N.J.A.C. 13:78-1.1* sets forth the purpose of the rules. An amendment is proposed to this and other sections to clarify that funds are distributed under a grant process. Accordingly, the term "moneys" has been replaced with "grant" and "grant award," as appropriate. This amendment conforms to Division practice.

*N.J.A.C. 13:78-1.2* sets forth the legal authority and charges the Director with the responsibility of implementing the rules.

*N.J.A.C. 13:78-1.3* describes the scope of the rules.

*N.J.A.C. 13:78-1.4* sets forth the definitions of terms used in this chapter.

*N.J.A.C. 13:78-2.1* establishes eligibility criteria for public entities and not-for-profit organizations. An amendment is proposed to add the term "grant" to conform to current Division practice.

*N.J.A.C. 13:78-3.1* describes the application process. Amendments to this section are proposed to replace the section heading, "Annual application for moneys" with "Grant application" and replacing the term "money" with "a grant award." Proposed amendments further provide for a grant application and award process that conforms to the grant application and award procedures utilized by the Division by adding a new subsection (d), listing application

requirements: project need, purpose, duration, objectives and performance measures.

*N.J.A.C. 13:78-4.1* outlines the amount of moneys available for awards.

*N.J.A.C. 13:78-5.1* sets forth the disbursement of available money and grant awards by the Director. Amendments are proposed to expand the uses of Fund moneys by the Division to include services to victims and witnesses, Statewide initiatives and related administrative costs. The proposed amendments delete the order of allocation and disbursement of moneys, after an allocation to the Division and replace it with an offer of grant funds, at the discretion of the Director, to county offices of victim-witness advocacy, other public entities, eligible public entities and eligible not-for-profit organizations. Further amendment to paragraph (a)2, recodified as (b)3 to replace the term "other eligible public entities" with the term "other public entities."

*N.J.A.C. 13:78-5.2* describes the disbursement of moneys to the State and the grant award procedures for disbursing funds to the county prosecutors' offices. Amendments are proposed to clarify the application and grant award process by identifying the Director to determine the amount of grant awards, deleting the requirement of submitting a budget and estimation of costs to operate the office and replacing with submitting an application for grant funds to supplement the office on forms prescribed by the Director. The required certification will state the official who authorizes the application. The requirement that unexpended balances may be subject to return to the State is deleted and replaced with a request that a grant award be expended in the local budget year received. Proposed amendments delete the subsection regarding funding applications by county prosecutors for purposes other than for victim and witness services pursuant to N.J.S.A. 52:4B-44b and 52:4B-45.

*N.J.A.C. 13:78-5.3* describes the disbursement of moneys to other public entities. Proposed amendments provide for grant awards rather than allocation of moneys to these public entities and the replacement of a committee designated by the Director with the State Office of Victim Witness Advocacy to make funding recommendations.

*N.J.A.C. 13:78-5.4* describes the disbursement of moneys to eligible public entities and not-for-profit organizations. Proposed amendments provide for the disbursement of moneys by grant awards and the State Office of Victim Witness Advocacy to review the applications and make funding recommendations.

*N.J.A.C. 13:78-5.5* requires public entities receiving Fund moneys to comply with the "Local Public Contracts Law," N.J.S.A. 40A:11-1 et seq.

*N.J.A.C. 13:78-5.6* describes the notification process. Amendments are proposed to clarify the language. An amendment is proposed indicating that the Attorney General or designee executes grant awards to conform to current Division practice. No grant disbursements are permitted before the Attorney General or designee executes the award. An amendment deleting subsection (d), requiring an annual notice in the New Jersey Register listing all Fund allocations and awards, is proposed to reduce redundancy since the Director annually reports to the Governor and Legislature on Fund administration and awards, N.J.S.A. 52:4B-43.1e.

*N.J.A.C. 13:78-6.1* requires the county prosecutors' offices to use Fund moneys to implement the legislative mandates and Attorney General Standards. Amendments are proposed to replace the term "moneys" with "grant awards."

*N.J.A.C. 13:78-6.2* requires eligible public entities and eligible not-for-profit organizations to use Fund moneys for direct services to victims and witnesses. An amendment is proposed to replace the term "moneys" with "grant awards."

*N.J.A.C. 13:78-7.1* outlines the accounting, reporting and audit requirements. Amendments are proposed to replace the term "moneys" with "grant awards" and to delete the requirement that unexpended balances at the end of the State Fiscal Year are subject to return.

## **Social Impact**

The rules proposed for readoption with amendments will have a positive social impact since they implement the legislation creating the Victim and Witness Advocacy Fund. Moneys from the Fund may be allocated to the State Office of Victim-Witness Advocacy to meet the statutory mandates and the Attorney General Standards to Ensure the Rights of Crime Victims. Fund moneys may also be awarded, at the discretion of the Director and without priority, to county Offices of Victim-Witness Advocacy and other public entities to meet the statutory mandates and Attorney General Standards and to eligible public entities and not-for-profit organizations to provide direct services to victims of crime.

### **Economic Impact**

The Legislature determined that persons convicted of certain offenses shall be assessed fees in addition to fines imposed by statute. These fees are assessed pursuant to *N.J.S.A. 2C:43-3.1*. This statute also created the "Victim and Witness Advocacy Fund," a separate, non-lapsing, revolving fund administered by the Division. All moneys deposited in the Fund shall be used for the benefit of victims and witnesses of crime and related administrative costs.

These rules ensure that Fund moneys are awarded to public entities that provide services consistent with the Attorney General Standards and eligible public entities and eligible not-for-profit organizations that provide direct services to victims and witnesses without an order of priority. The administration of these moneys reduces the need to utilize public funds available for services to victims and witnesses and improves the ability to extend services throughout the State.

There is no adverse impact on the public since the Fund is supported by assessments against convicted offenders.

### [page=2628] **Federal Standards Statement**

A Federal standards analysis is not required because these rules are not proposed under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

### **Jobs Impact**

The rules proposed for readoption with amendments are not expected to result in the increase or loss of jobs in the State.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will not have any impact on the agricultural industry in New Jersey or elsewhere.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments apply to the Division, county prosecutors' offices, public agencies and not-for-profit organizations. Some not-for-profit organizations may be established as small businesses, as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. These not-for-profit organizations, if awarded grant moneys, will be required to demonstrate their not-for-profit status; maintain detailed records, which separately identify all receipts, expenditures and unexpended balances of moneys received from the Fund; and to submit quarterly reports and an annual report. The administrative costs for compliance with these requirements should not be significant and should not require professional services. The maintenance of detailed records and submission of reports are requirements for all public entities and organizations receiving Fund moneys and are necessary to ensure proper and efficient use of awarded funds. Small organizations generally have fewer internal fiscal controls resulting in greater opportunities for misappropriation of funds, therefore, no lesser requirements or exemptions are provided based on the size of the not-for-profit organization.

### Smart Growth Impact

The rules proposed for readoption with amendments will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

### Housing Affordability Impact

The rules proposed for readoption with amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing since the rules concern the disbursement of moneys for services to crime victims and witnesses.

### Smart Growth Development Impact

The rules proposed for readoption with amendments will have an insignificant impact on smart growth development. There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey since the rules concern the disbursement of moneys for services to crime victims and witnesses.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 13:78*.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 13:78-1.1 Purpose

The rules in this chapter govern the administration of the Victim and Witness Advocacy Fund, created pursuant to P.L. 1979, [c.396, § 2] **c. 396, §2** (N.J.S.A. 2C:43-3.1a(6)(c)), as amended by P.L. 1991, [c.329, § 3] **c. 329, §3** and P.L. 1991, [c.329, § 20] **c. 329, §20** (*N.J.S.A. 52:4B-43.1*). This Fund is legislatively mandated to support the State Office of Victim-Witness Advocacy, county Offices of Victim-Witness Advocacy and other public entities with the development and provision of services to victims and witnesses of crimes, and for related administrative costs. [Moneys] **Grant awards** disbursed to other public entities according to this chapter shall be used to implement the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, promulgated pursuant to *N.J.S.A. 52:4B-44*. The Director may award [moneys] **grants** to public entities and not-for-profit organizations who provide specific direct services to victims and witnesses.

## SUBCHAPTER 2. ELIGIBILITY CRITERIA

### 13:78-2.1 Eligibility criteria

Applicants for **grant** funding must demonstrate that they are a public entity or not-for-profit organization providing direct services. Eligibility will be determined pursuant to the criteria set forth at N.J.S.A. 52:4B-43.1c. Eligibility of a public entity or not-for-profit organization shall be determined by the Director, based upon the information contained in the [annual] application for [money] **a grant** (*N.J.A.C. 13:78-3.1*).

## SUBCHAPTER 3. APPLICATION FOR [MONEYS] **GRANTS** BY ELIGIBLE PUBLIC ENTITIES AND ELIGIBLE NOT-FOR-PROFIT ORGANIZATIONS

13:78-3.1 [Annual] **Grant** applications [for moneys]

(a) Public entities and not-for-profit organizations, which meet eligibility requirements shall submit an [annual] application, on forms prescribed by the Director, for [moneys] **a grant award** from the Victim and Witness Advocacy Fund.

(b) Application forms and instructions may be obtained from the State Office of Victim-Witness Advocacy and shall be available [when] **after** the Notice of Availability of Funds is published in the New Jersey Register.

(c) Application forms and related materials shall be completed, in full, and returned to the Director no later than the close of business on the due date indicated on the application.

**(d) Each application for a grant project shall describe:**

**1. The need for project funding;**

**2. The purpose and duration of the project;**

**3. How the funding will be used to further the objectives; and**

**4. Indicators by which progress in achieving these objectives and the project purposes will be measured.**

(e) The Director reserves the right to request oral presentations and/or additional information from applicants and to conduct pre-award surveys with any applicant. Applicants shall comply with all requirements in this rule and submit an application by the due date provided in the Notice of Availability of Funds.

13:78-4.1 Amount of moneys available for **grant** awards

(a) (No change.)

(b) Moneys are available for expenditure during the State Fiscal Year (SFY) of **the grant** award.

(c) (No change.)

13:78-5.1 [Allocation of moneys] **Disbursing** available **moneys and grant awards** from Victim and Witness Advocacy Fund

[(a) Available moneys deposited in the Fund shall be allocated by the Director as follows:

1.] (a) [Moneys] **Available moneys in the Fund** first shall be allocated **by the Director** to provide complete funding for the State Office of Victim-Witness Advocacy within the Division of Criminal Justice, established pursuant to *N.J.S.A. 52:4B-43*, and shall be in an amount sufficient to provide for all [staff] salaries, **support the development and provision of services to victims and witnesses of crimes, implement Statewide initiatives benefitting victims of crimes, related administrative costs** and any other necessary operational expenses.

[2.] (b) After the allocation of moneys to the State Office of Victim-Witness Advocacy, [moneys shall be allocated to the county] **grant funds may be offered, in the discretion of the Director, to any of the following:**

**1. County** Offices of Victim-Witness Advocacy based on a formula, **as determined by the Director**, that may include a base amount, a county's population, crime rate[,] and number of cases reviewed by the prosecutor's office[.]; [The

Director shall determine the formula [page=2629] periodically, based upon the needs of identified victim populations throughout the State.]

[3.] **2.** [The Director may allocate additional funding to other eligible] **Other** public entities and for special projects or other purposes [over and above the regular allocation] as the Director deems appropriate for implementing the Attorney General Standards[.]; **or**

[4.] **3.** [After the allocation of moneys to the State Office of Victim-Witness Advocacy, the county Offices of Victim-Witness Advocacy and other eligible public entities, the Director may allocate moneys for a grant program for] **Eligible public entities and eligible not-for-profit organizations for a grant program to provide** direct services to crime victims based upon the availability of funds.

13:78-5.2 Disbursement of moneys to State and **grant awards to** county Offices of Victim-Witness Advocacy

(a) (No change.)

(b) [In disbursing moneys] **The Director shall determine the amount of grant awards that are disbursed** to the county Offices of Victim-Witness Advocacy within each county prosecutor's office, established pursuant to N.J.S.A. 52:4B-44b and 52:4B-45[, the following procedures shall be followed:]

1. Each county prosecutor shall provide the State Office of Victim-Witness Advocacy with [an estimation of the costs to operate the county office of Victim-Witness Advocacy in that county, extracted to the extent possible from the overall budget to be submitted to the respective county governing body. These estimated figures shall be supplied on a form provided by the Director. The estimated budget request figures shall indicate the salary costs for the County Victim-Witness Coordinator and other personnel, as well as an approximation of other expenses such as supplies, equipment, motor vehicles, travel, training, and other operating expenses.] **a completed application for grant funds to supplement the operation of the county Office of Victim-Witness Advocacy on forms prescribed by the Director.**

2. Each county prosecutor shall submit a certification executed by each of the following county officials: the county prosecutor; the chief executive or chief appointed official; the chief financial officer; and the freeholder director or president. The certification shall state **that they authorize the application and** that the [moneys allocated] **grants awarded** from the Fund will be expended solely for the development, provision and/or enhancement of services to victims and witnesses in accordance with legislative mandates or the Attorney General Standards[,] and related administrative and training costs.

[3. Each county prosecutor shall certify that money allocated from the Fund will be expended within the State Fiscal Year of the allocation. Any unexpended balances at the end of the State Fiscal Year are subject to return to the State. Failure to expend allocated funds may result in reduction of future allocations.]

**3. A county should expend a grant award in the local budget year in which it is received.**

4. [Moneys] **A grant award** from the Fund may be withheld from a county until that county's governing body approves the county prosecutor's budget request for the county Office of Victim-Witness Advocacy. [If the county governing body appropriates an amount to the county prosecutor which differs from the original budget request, the Director shall modify the disbursement authorized accordingly.]

[5. A committee designated by the Director shall review any funding application submitted by a county prosecutor for special projects or other such purposes other than the moneys allocated pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, and shall make recommendations to the Director concerning the allocation of any additional moneys. The Director may allocate to a county prosecutor additional funding for special projects or other such purposes over and above the regular

allocation pursuant to N.J.S.A. 52:4B-44b and 52:4B-45. A county prosecutor seeking such additional funding shall comply with application procedures specified for other public entities.]

13:78-5.3 Disbursement of [moneys] **grant awards** to other public entities

[After the allocation of moneys to the State Office of Victim-Witness Advocacy and county Offices of Victim-Witness Advocacy, a committee designated by the Director] **The State Office of Victim-Witness Advocacy** shall review any funding applications submitted by other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and make **grant award** recommendations to the Director [concerning the award of any available moneys]. The Director may [disburse funds] **award grants** to other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and as deemed appropriate for the implementation of the legislative mandates and the Attorney General Standards.

13:78-5.4 Disbursement of [moneys] **grant awards** to eligible public entities and eligible not-for-profit organizations

(a) [A committee designated by the Director] **The State Office of Victim-Witness Advocacy** shall review the funding application (N.J.A.C. 13:78-3) submitted by each eligible public entity and each eligible not-for-profit organization and shall make recommendations to the Director concerning the award of [moneys] **grant funds**.

(b) At the discretion of the Director, [moneys] **grant funds** may be awarded to eligible public entities and eligible not-for-profit organizations whose [funding] applications will satisfy the statutory criteria (N.J.S.A. 52:4B-43.1c) to establish or enhance direct services to victims and witnesses.

(c) [Moneys] **Grant awards** from the Fund may be withheld by the Director from eligible public entities and eligible not-for-profit organizations who are awarded grants until all fiscal **and programmatic** reporting requirements are met.

13:78-5.6 Notification of [allocation and] **grant** awards

(a) The Director shall notify **each** county prosecutor[s] of [allocations to] **the grant award for the county Office[s]** of Victim-Witness Advocacy [in the form of a] **by** letter.

(b) The Director shall notify county prosecutors applying for additional funds [over and above the regular allocation], other public entities, eligible public entities and eligible not-for-profit organizations whose funding applications have been found, by the Director, to satisfy the statutory criteria concerning victim and witness assistance or advocacy by letter.

[(c) In a notification of an award, the Director shall include an agreement which shall be executed and returned to the Director before any moneys can be disbursed.

(d) In addition, the Director shall publish a public notice in the New Jersey Register listing all awards made for a particular SFY as well as all allocations to county Offices of Victim-Witness Advocacy.]

**(c) The Director shall forward grant agreements to the Attorney General or designee, who shall execute the grant agreements on behalf of the State. A grant agreement must be fully executed before any moneys can be disbursed.**

13:78-6.1 Use of Victim and Witness Advocacy Fund by county Offices of Victim-Witness Advocacy or other public entities

[Moneys] **Grant awards** from the Fund, which are disbursed to the county Offices of Victim-Witness Advocacy or other public entities shall implement the legislative mandates and the Attorney General Standards and shall not

supplant budgeted funding or any other available funding currently in existence. These [moneys] **grant awards** may be used to [establish or enhance victim-witness waiting rooms, to] hire and train personnel to provide services in accordance with the legislative mandates and the Attorney General Standards, **to enhance victim-witness waiting rooms**, to purchase computer equipment to maintain communications with victims and witnesses[,] or for such other purposes as the Director may authorize.

13:78-6.2 Use of Victim-Witness Advocacy Fund by eligible public entities and eligible not-for-profit organizations

[Moneys] **Grant awards** from the Fund, which are disbursed, pursuant to N.J.S.A. 52:4B-43.1c, shall be used to establish or enhance direct services to victims and witnesses.

13:78-7.1 Accounting, reporting and audit

(a) Any county prosecutor, other public entity[,] or eligible public entity, which receives [moneys] **a grant award** from the Fund shall maintain a separate account in which [such moneys] **the grant award** shall be held, along with detailed records of all receipts, expenditures and unexpended balances. Each county prosecutor, other public entity[,] or [page=2630] eligible public entity shall submit to the Director, a quarterly report, as well as an annual report at the end of each State Fiscal Year identifying, separately, all receipts, expenditures and unexpended balances of [moneys] **each grant award** received from the Fund. [Any unexpended balances at the end of the SFY are subject to return to the State.] For the purpose of uniformity the Director may prepare forms for these reports.

(b) Any eligible not-for-profit organization, which receives [moneys] **a grant award** from the Fund shall maintain detailed records [which] **that** identify, separately, all receipts, expenditures and unexpended balances of [moneys] **each grant award** received from the Fund. Each eligible not-for-profit organization shall submit to the Director, on forms provided by the Director, a quarterly report, as well as an annual report at the end of each State Fiscal Year. [Any unexpended balances at the end of the State Fiscal Year are subject to return to the State.]

(c) (No change.)