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CHAPTER 35. OKLAHOMA WITNESS PROTECTION PROGRAM

SUBCHAPTER 1. OKLAHOMA WITNESS PROTECTION PROGRAM

75:35-1-1. Purpose and Applicability

The rules found in this Chapter are(a) Purpose. This chapter is hereby adopted by the Attorney General of Oklahoma for the purpose of to implementing the Oklahoma Witness Protection Plan Oklahoma Witness Protection Plan pursuant to authority granted by Title 74 O.S. 2012, §as authorized by title 74, section 18p-10 (c) of the Oklahoma Statutes.

- (b) Applicability. The rules found in this Chapter shall be applicable to and govern the manner and procedure for:
 - (1) Applications submitted by a witness seeking support through the Program;
 - (2) Decisions for granting or denying support to a witness applying for support;
 - (3) Payments of all support upon approved applications;
 - (4) Duration of support under the Program; and
 - (5) Grounds for termination of a participant from the Program, whether initiated by a district attorney or the Attorney General.

75:35-1-2. Definitions

The following words shall be understood in these rules to have the following meanings: The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Attorney General" means the Attorney General of Oklahoma.

"Case investigator" means a representative of the Oklahoma Office of Attorney General through whom contact is maintained with the witness and through whom delivery of Support to the witness is ordinarily made and documented.

"Criminal action" means a criminal proceedings proceeding initiated pursuant to the provisions of Title 22 of the Oklahoma Statutes law.

"Dangerous perpetrator" means a person who has committed or is committing, or who is alleged to have committed or is alleged to be committing, a criminal act, and who has by present or past conduct allegedly:

- (A) killed any person,
- (B) arranged with another to kill any person,
- (C) expressed or shown a willingness to kill any person,
- (D) expressed or shown a willingness to arrange a killing of any person,
- (E) inflicted serious bodily harm upon any person,
- (F) arranged the infliction of bodily harm upon any person,
- (G) expressed or shown a willingness to inflict bodily harm upon any person,
- (H) expressed or shown a willingness to inflict bodily harm upon any witness having evidence relevant to the prosecution of a criminal act,
- (I) expressed or shown a willingness to inflict bodily harm upon any relative or significant other to any witness having evidence relevant to the prosecution of a criminal act,
- (J) closely allied with or associated with a person who is a dangerous perpetrator.
- "Government investigator" <u>means</u> a duly commissioned <u>Federal federal</u>, <u>State state</u>, <u>County county</u>, <u>municipal</u>, or <u>tribal Municipal</u> law enforcement officer.

"Grand jury" includes means both a County county and or Multicounty multicounty grand juries jury empaneled pursuant to the Oklahoma Constitution and the in accordance with Oklahoma Statutes law.

"Immediate family" means a spouse, parent, child, stepchild, sibling, grandparent, <u>or</u> household member, or legal representative of a witness, except when such person is in custody for an offense or is the dangerous perpetrator regarding whom the witness is actively assisting law enforcement.

"Investigation" means the gathering of evidence of criminal activity by either a grand jury, or governmentallaw enforcement officers, or by a combination thereof, or Also included are investigative

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depositions pursuant to 22 O.S.2011, § 258(Second)title 22, section 258 of the Oklahoma Statutes.

- "Office" means the Oklahoma Office of the Attorney General.
- "Participant" means any Witnesses witness approved pursuant to these rules. Immediate family if approved for participation pursuant to these rules.
 - "Program" means the Oklahoma Witness Protection Program.
- "Prosecuting attorney" Eithermeans the Attorney General, thea District Attorney, or one of their assistants Assistant District Attorney with venue jurisdiction for the offense under investigation, or a Unit Chief of jurisdiction for the offense under investigation, Office of Attorney General of Oklahoma.
- "Prosecution" includes means all phases of the investigation, charging, and litigation of a criminal act or acts.
 - "Support" means the provision of State funds for certain financial support of participants in the program; including, but not limited to:
 - (A) Temporary living costs including lodging rent and per diem not to exceed the per diem authorized to State employees traveling on State business;
 - (B) Witness relocation (moving) expenses, including but not limited to the relocation of the person of program participants and the moving and/or storing of personal property of program participants;
 - (C) Security deposits for residential rental property used by relocated witnesses;
 - (D) Travel expenses to and from court not to exceed those authorized to State employees traveling on official business;
 - (E) Other necessary approved temporary expenses related to relocation or transition."
- "VSU" "VASU" means the Victims Advocacy and Services Unit of the Oklahoma Office of Attorney General.
- "Witness" means any natural person having evidence relevant to the prosecution of a criminal act who is actively aiding the prosecution of a dangerous perpetrator by:
 - (A) providing truthful information regarding criminal activity to a government investigator; or;
 - (B) being subpoenaed to and/or testifying before a grand jury; or,
 - (C) being subpoenaed to and/or testifying in any investigative deposition admissible as evidence in a grand jury proceeding; or,
 - (D) being subpoenaed to and/or testifying in any phase of a criminal action, including all preliminary hearings, motion hearings, and trial proceedings.
- "Witness" also includes any such person after the person has given truthful information to a government investigator and/or testified at grand jury, and/or testified in an investigative deposition, and/or testified in proceedings in any phase of a criminal action.

75:35-1-3. Applicability [REVOKED]

The rules found in this Chapter shall govern the manner and procedure governing the making of all applications for Support by a witness seeking Support through the Program, all decisions for granting or denying Support thereon, all payments of all Support upon approved applications, the duration of Support under the Program and grounds for termination of a Participant from the Program; whether initiated through a District Attorney of jurisdiction or through Unit Chief of jurisdiction in the Oklahoma Office of Attorney General.

75:35-1-4. Scope of the Program

The <u>Program Program</u> is <u>only legally</u> authorized to provide <u>only certain limited and temporary</u> <u>Support services to <u>Participants participants</u>. Physical protection of <u>Participants participants</u> accepted into the <u>Program Program</u> remains a function of local law enforcement.</u>

75:35-1-5. Administration and Procedure

- (a) The Program shall be administered pursuant to these Rules by the Victims Services Unit of the Oklahoma Office of Attorney General.
- (b) A witness seeking Support under the Program shall complete an Application for Support Services using the approved form, See 75:35-1-7.

- (c) A witness seeking Support under the Program shall also approve and attach to the Application for Support Services a Memorandum of Understanding using the approved form, See 75:35-1-7. In the event any immediate family members over the age of eighteen (18) years of age will also be seeking Support services in connection to the witness, such persons must also separately approve and sign a Memorandum of Understanding that must also be attached to the witness' Application for Support Services. All persons making application for Support services shall subscribe the following statement under penalty of perjury: "I am either a citizen of the United States or am a qualified alien under the federal Immigration and Nationality Act, and accordingly I am lawfully present in the United States."
- (d) Copies of all approved program forms may be obtained by a witness:
 - (1) through the Victim Witness Coordinator of the local Office of District Attorney,
 - (2) through a posting on the website of the Office of Attorney General.
 - (3) An Application for Support Services, upon completion and together with all attachments, shall initially be submitted to and reviewed by the Prosecuting Attorney who shall either recommend approval or rejection of the application based upon the facts known to the Prosecuting Attorney that have been developed in the investigation for which the applicant is a witness and the suspect/defendant is shown to be a dangerous perpetrator. The Prosecuting Attorney shall attach either an investigation report(s) or witness summary factually showing the applicant to be a material witness to an offense involving a dangerous perpetrator. The Prosecuting Attorney shall also attach a Triple I criminal background check regarding the applicant witness and any other person seeking support services in connection to the witness.
 - (4) Upon completion and review by the *Prosecuting Attorney*, all *Applications for Support Services* shall be submitted to the Unit Chief for the *VSU* for processing pursuant to these Rules. The *VSU* shall prepare and attach to the *Application* an itemized calculation of *Support* needed by the witness and/or immediate family.
 - (5) The award of Support under the Program is not an entitlement, but may be approved at the discretion of the Attorney General of Oklahoma or the First Assistant Attorney General as based upon need demonstrated in the Application for Support Services together with its attachments and the actual availability of funds. An adult relocated program participant shall ordinarily be expected to promptly establish employment in the place of relocation. Except under extraordinary circumstances approved solely at the discretion of the Office of Attorney General, an adult program participant shall not receive Support in either per diem living expenses nor rent for any period more than six (6) months from the date of the approval of an Application for Support Services, or until the witness becomes locally employed and capable of self-support, whichever is shorter. Any extension of Support beyond this period shall require submission and approval of a new Application for Support Services.
 - (6) Any award of Support under the Program shall always be conditioned upon the strict compliance by the program participant to all of the requirements set forth in the Memorandums of Understanding attached to the participant's Application for Support Services, as determined by Office of Attorney General.
 - (7) All Support paid directly to a witness under the Program shall ordinarily be in the form of currency that shall ordinarily be delivered in person to the program participant by a case investigator. Alternatively, payments of currency made directly to a witness as Support may be delivered through a person approved by the Unit Chief of the VSU. Payment of Support may also be paid directly to a private provider of services when such payment is determined by the Office of Attorney General to be advisable. Documentation of the payment of Support to a program participant shall always be made in the form of a written receipt signed by the program participant in the presence of the case investigator or approved designee who shall also certify thereon the payment's date of delivery, See 75:35-1-7.
 - (8) Prior to trial in the case, and at such other times determined to be necessary, the case investigator shall prepare a report in writing disclosing all *Support* payments made by the Program to the witness by amount, date, and reason for the payment, shall transmit a copy of the report to the prosecuting attorney in the case, and provide a copy thereof to the Unit Chief of the *VSU* of the Office of Attorney General.

- (9) Payment for all approved *Support* shall be from available funds deposited to the Attorney General's Evidence Fund, Title 74 O.S. 2012, § 19, or from funds received from any federal grants awarded for the operation of the *Program*, *See* 74 O.S. Supp. 2012, §18p-10(A). Determination of the availability of funds shall be within the sole judgment of the Attorney General or the First Assistant Attorney General reviewing the application.
- (10) In the administration of the *Program*, the Office of Attorney General will not unlawfully discriminate on the basis of race, sex, color, age, religion, creed, political affiliation, disability, or national origin.
- (a) Application required. To be considered for support under the Program, a witness seeking support under the Program shall complete an application using the Office's prescribed form.
- (b) Required forms. A witness seeking support under the Program shall also sign and attach to the Application for Support Services a Memorandum of Understanding using the approved form. In the event any immediate family members over the age of eighteen (18) years of age will also be seeking support in connection to the witness, such persons must also separately approve and sign a Memorandum of Understanding that must also be attached to the witness' Application for Support Services. The VASU is authorized to assist any applicant with completing the required forms.
- (c) **Declaration of applicant.** Each applicant shall subscribe to the following declaration under the penalty of perjury: "I am either a citizen of the United States or am a qualified alien under the federal Immigration and Nationality Act, and accordingly I am lawfully present in the United States."
- (d) Availability of Program forms. Copies of all approved program forms may be obtained by a witness from:
 - (1) A victim witness coordinator for a local district attorney,
 - (2) The Office's website, or
 - (3) In person at the Office.
- (e) Initial review. An Application for Support Services, upon completion and together with all attachments, shall initially be submitted to and reviewed by the Prosecuting Attorney who shall either recommend approval or rejection of the application based upon the facts known to the Prosecuting Attorney that have been developed in the investigation for which the applicant is a witness and the suspect/defendant is shown to be a dangerous perpetrator. The Prosecuting Attorney shall attach either an investigation report(s) or witness summary factually showing the applicant to be a material witness to an offense involving a dangerous perpetrator. The Prosecuting Attorney shall also attach a criminal background check regarding the applicant witness and any other person seeking support services in connection to the witness. The criminal background check shall include a query of the Interstate Identification Index and the National Fingerprint File Program.

 (e) Processing applications. Upon completion and review by the Prosecuting Attorney, all Applications for Support Services shall be submitted to the VASU for processing. The VSU shall prepare and attach to the Application an itemized calculation of support needed by the witness or immediate family.
- (f) Applicants not entitled to support. Support under the Program is not an entitlement. Participation in the Program is subject to the approval and discretion of the Attorney General of Oklahoma or his or her designee based upon demonstrated need in the application and other required forms and the actual availability of funds.
- (g) Expectation of employment. An adult relocated program participant shall ordinarily be expected to promptly establish employment in the place of relocation.
- (h) **Duration of support.** Except under extraordinary circumstances approved solely at the discretion of the Office of Attorney General, an adult program participant shall not receive Support in either per diem living expenses nor rent for any period more than six (6) months from the date of the approval of an application, or until the witness becomes locally employed and capable of self-support, whichever is shorter. Any extension of support beyond this period shall require submission and approval of a new application.
- (i) Strict compliance. Any award of support under the Program shall always be conditioned upon the participant's strict compliance with all of the Program requirements set forth in the memorandum of understanding.
- (j) Termination. In accordance with the grounds provided below, the Prosecuting Attorney may initiate termination of a participant's participation in the Program. The Prosecuting Attorney shall provide a participant with written notice of the Prosecuting Attorney's intent to initiate termination prior to doing so. The grounds for termination include:
 - (1) Engages in criminal conduct which violates the criminal laws of the United States or any state;

- (2) Provides incomplete or false information to relevant law enforcement officers related to relevant investigations or proceedings;
- (3) Failure to comply with legal obligations or civil judgments against the participant;
- (4) Failure to cooperate with reasonable requests of any law enforcement officer, employees of the State, or the Prosecuting Attorney;
- (5) Takes action or actions willfully and knowingly to be detected by others or making it known to others the witness's participation in the Program, receipt of support, or protection services;
- (6) Failure to promptly seek and obtain regular employment in the participant's place of relocation, unless:
 - (A) The participant cannot perform basic life tasks,
 - (B) The participant cannot be employed due to safety concerns, or
 - (C) Exigent circumstances exist that make employment either dangerous to the participant or officers providing protection, or impracticable.
- (k) Delivery of support payments. All Support paid directly to a witness under the Program shall ordinarily be in the form of currency that shall ordinarily be delivered in person to the program participant by a case investigator. Alternatively, payments of currency made directly to a witness as Support may be delivered through a person approved by the VASU. Payment of support may also be paid directly to a private provider of services when such payment is determined by the Office of Attorney General to be advisable. Documentation of the payment of Support to a program participant shall always be made in the form of a written receipt signed by the program participant in the presence of the case investigator or approved designee who shall also certify thereon the payment's date of delivery.
- (l) Support payment reporting. Prior to trial in a case, and at such other times determined to be necessary, the case investigator shall prepare a written report disclosing all support payments made by the Program to a witness including the amounts, dates of support payments, and reason for the support payment. The case investigator shall provide the report to the Prosecuting Attorney and to the VASU.
- (m) Availability of funds. Payment for all approved Support shall be from available funds deposited to the Attorney General's Evidence Fund or from funds received from any federal grants awarded for the Program's operations. The determination of availability of funds shall be within the sole judgment of the Attorney General or his or her designee.
- (n) Non-discrimination policy. The Office will not unlawfully discriminate on the basis of race, sex, color, age, religion, creed, political affiliation, disability, or national origin in administering the Program.

75:35-1-6. Confidentiality of Program Records

The purpose of the *Program* is for the State of Oklahoma to provide witness protection services to persons who by reason of actively aiding the State of Oklahoma may be in danger of death or bodily harm, See 74 O.S. Supp. 2012, §18p-10(A). The Attorney General hereby finds that open access to records pertaining to the Program will defeat the legal purpose for the program by identifying Program applicants and/or participants and by providing past or current locations for such persons. Accordingly, all records pertaining to the Program including, but not limited to all applications for Support under the Program, together with all records of any and every kind related thereto, are hereby found and declared to be confidential and privileged from disclosure as trial preparation materials of the State of Oklahoma, See 12 O.S. 2011, § 3226(B) and exempt from disclosure under the Oklahoma Open Records Act, See 51 O.S. 2011, § 24a.5(1)(a). See also, 51 O.S. 2011, § 24A.12, 22 O.S. 2011, § 2510, 74 O.S. 2011, § 19a, and Merrill v. Oklahoma Tax Commission, 831 P.2d 634, 639-640 [holding that State agencies shall make the initial determination whether its records are exempt from Open Records disclosure], and shall be disclosed only as provided in these rules. All Program records shall be subject to the regular audit of the State Auditor and Inspector and disclosed to that Office for such purposes as required for the performance of such audits, See 74 O.S. 2011, § 212; provided auditors and audits shall keep confidential the actual and/or alias identities and locations of all persons applying for and/or receiving Support under the Program.

Because the Program provides witness protection services to persons who by reason of actively aiding the State may be in danger of death or bodily harm, the Attorney General hereby finds that open access to records relating to the Program will defeat its legal purpose. The identification of Program applicants or participants and by providing past or current locations for such persons could place applicants and participants

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in danger of death or bodily harm. Further, the release of Program records will not assist the people or public in efficiently and intelligently exercising their inherent political power. Accordingly, all records pertaining to the Program including, but not limited to all applications for support under the Program, together with all records of any and every kind related thereto, are hereby found and declared to be confidential and privileged from disclosure as trial preparation materials of the State of Oklahoma. See 12 O.S. § 3226(B). Further, these records are exempt from disclosure under the Oklahoma Open Records Act, See 51 O.S. § 24A.5(1)(a); see also, 51 O.S. § 24A.12; 22 O.S. § 2510; and 74 O.S. § 19a. Program records shall be disclosed only as provided in these rules. All Program records shall be subject to the regular audit of the State Auditor and Inspector and disclosed to the State Auditor and Inspector for such purposes as required for the performance of such audits under title 74, section 212 of the Oklahoma Statutes. Auditors and audits shall keep confidential the actual or alias identities and locations of all persons applying for or receiving support under the Program.

75:35-1-7. Required Forms

(a) The Application for Support Services shall be upon Form 1 consisting of three (3) pages, a copy of which is appended hereto.

(b) The Memorandum of Understanding with a witness or other program participant over the age of eighteen (18) years of age shall be upon Form 2 consisting of one (1) page, a copy of which is also appended hereto. (c) Receipt for Support shall be documented upon Form 3, a copy of which is appended hereto. Subject to the Attorney General's approval, the Office shall develop forms as required to fulfill the duties set forth in title 74, section 18p-10 of the Oklahoma Statutes. As it deems it necessary, the Office shall also update the forms subject to the Attorney General's approval. All forms shall be available for a copy at the Office or on the Office's website. The forms may include, but shall not be limited to: an application for support, memorandum of understanding, and receipt for support.

APPENDIX A. APPLICATION [REVOKED]

Figure 1

The Attorney General of the State of Oklahoma Witness Protection Program Application for Support Services ((man 1)								
Nam First:	eMiddle Initial:Last:							
Curr Addı	ent ress:							
Name	es of all persons also living at the above address, together with relationship to you:							
upon	I hereby make application for Support services due to my being a witness in an tigation of and/or criminal proceeding regarding — it is shown to believe it a dangerous person for one or more of the following reasons based my knowledge or belief (check all applicable): person:							
I.	has killed another person,							
П.	has arranged with another to kill another person,							
Ш.	has expressed or has shown a willingness to kill another person,							
IV.	has expressed or has shown a willingness to arrange a killing of any person,							
v.	has inflicted serious bodily harm upon another person,							
VI.	has arranged the infliction of bodily harm upon another person,							
VII.	has expressed or shown a willingness to inflict bodily harm upon another person,							
VIII.	has expressed or shown a willingness to inflict bodily harm upon me or my friends or family if I give truthful testimony about what I know about this person,							

Figure 2

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IX.	is closely allied with or associated with another person who is also dangerous for one of
	more of the above reasons.

Inced	the following help:	Amount
X.	money to assist me to move from my current residence.	S
XI.	money to pay a rent deposit for another residence.	\$
XI.	money to temporarily assist me to pay rent because I have become unemployed or temporarily cannot go to work at my present job.	s
XII.	money to temporarily assist me to purchase food because I have become temporarily cannot go to work at my present job.	unemployed or \$
хш.	money to temporarily assist me to travel to a new place of residence.	S
XIV.	other needs: (completely describe your other monetary needs caused by your need to relocate. Use reverse side of form as necessary):	s

APPLICANT'S CERTIFICATION

I believe I am presently in physical danger because I am a witness and that I need to re-locate my residence. I understand that this application for Support Service from the Okhibam Attorney General Witness Protection Program is only for the purpose of receiving a grant of public money as temporary Support services in order to relocate where I presently lives and that my physical protection remains a function of Iceal law enforcement and is not guaranteed by acceptance into this assistance program. I moderistand and agree that II if an acceptance are into Okhibam Attorney General Witness and Support any our and address. I also understand and agree that II if an acquered a permitted presental provide me Support payments for which I will always be required to sign written receipt(s). I further understand and agree to conform myself to all of the provisions of the attached Memoradum of Inderstanding and Corners and their immediate termination of all Support may occur upon the failure by me or by any of my protected family members to comply with the provisions of the attached Memoradum of Inderstanding compliance with the Memoradum of Understanding and Contract, I will return all monies paid to me for Support to the Okhabom Attorney General Witness Protection Porgum. I lake loss understand and agree that I will need to promptly seek and obtain employment in my place of relocation because absent extraordinary circumstances all temporary Support in the form for per dien integra expenses and residential rent will ferminate no later than six (6) months from and after the date of my acceptance in the Program. I IEEE/CAN MAKET THE FOLLOWING STATIMENTS (INDER PENALTY) of PERALDEN: "All information for the and based upon my personal knowledge and understanding. I an either a

Figure 3

	(Signature of Applicant)								
Prosecuting Attorney's Review									
I am	the	prosecuting	attorney	regarding	the r	natter	involving	the fo	llowing
suspect/defen	dant			T	his is a	person	who, based	on info	rmation
available to m	ne, (is	is not) a da	angerous p	erpetrator of	iue to or	ne or m	ore of the	criteria	set forth
above on page	1 of th	his applicati	on. The w	ithin applic	ant has p	resente	ed this appl	ication t	o me for
review and ba	sed up	on the facts	that have	been devel	oped in t	he inve	estigation re	ported	to me as
prosecuting at	torney	I (do / do no	ot) believe	this applica	nt to be	a mater	ial witness	to this r	natter as
illustrated by	the a	ttached inv	estigation	report(s)	or witne	ss sun	ımary, and	regard	ing this
application for	r Supp	ort services i	needed for	relocation	of the wi	tness'	current resi	dence:	
	XIII.	I recomme	nd that the	witness be	provide	d supp	ort services		
	XIV.	I do not re	commend	that the wit	ness be j	provide	d support s	ervices	
				. (S	ignature)			
			Attorne	(T ey General	itle) Action				
I herel Support Servi purposes:		, based upor							
	XV. Service	That need to Unit in the		rt as furth dum attach				OAG	Victims
	XVI.	That Supp	ort is denie	ed.					
				(S	ignature)			

APPENDIX B. MEMEORANDUM OF UNDERSTANDING [REVOKED]

Figure 1

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The Attorney General of the State of Oklahoma Witness Protection Program

APPENDIX C. RECEIPT [REVOKED]

Figure 1

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