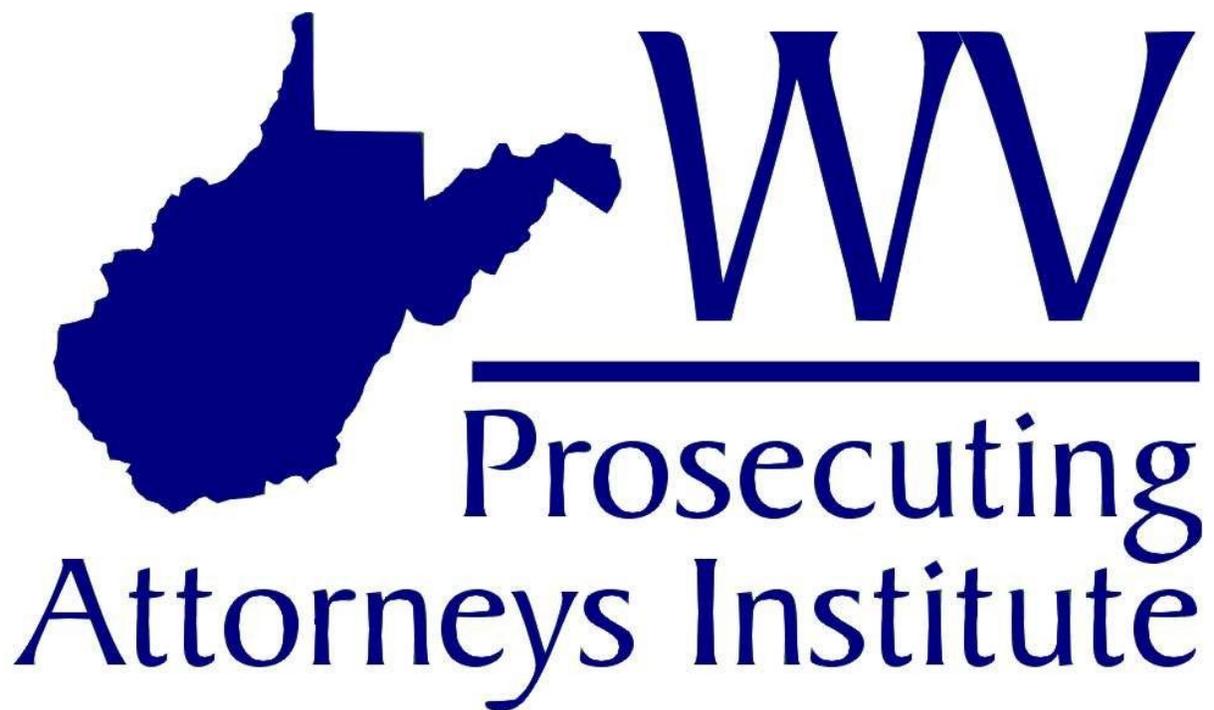


ANNUAL REPORT  
TO THE  
WEST VIRGINIA LEGISLATURE  
2008



**WEST VIRGINIA  
PROSECUTING ATTORNEYS  
INSTITUTE**

**SELECTED SUMMARY**

**2008**

## I. SUMMARY OF INSTITUTE ACTIVITIES

- SPECIAL PROSECUTORS
  - 171 cases from 48 counties assigned to Special Prosecutors during 2008
  - Estimated savings to the counties during 2008 of **\$338,580.00**
  - 2,915 cases assigned to Special Prosecutors on behalf of all 55 counties since creation of Institute
  - Since the creation of the Institute, counties have realized an estimated savings of **\$5,771,700.00**
  
- TRAINING
  - The Institute provided 2 **Regular Training Courses** during 2008
  - **3 Specialized Training Courses** for prosecutors
    - Forensic Interviewing of Children – *Finding Words* – a five day national program for the frontline child abuse professional
    - DNA Short Course - A litigation course specifically targeted at crucial areas unique to Prosecutors
    - The Newly Elected Prosecutors Course – An Omnibus view of the topic
    - **Savings** on prosecutor training of **\$82,400.00** during 2008
  - **Other Prosecution-Related Training**
    - 64 Key Personnel and Victim Advocates trained
    - 385 Law Enforcement trained
    - 1202 first responders and other DEC members trained
  - These trainings are crucial for successful administration of justice and no fees were charged for the instruction or materials from **over 70 training dates** in 2008
  
- PUBLICATIONS
  - Updates on legislation, court cases, court rules, policies and procedures, and new practices are essential information. In 2006 the Institute provided the **Hot Sheet**, (later renamed '**Crash Boom Bang**') a quarterly traffic safety newsletter, to prosecutors and assistant prosecutors statewide.
  
- TECHNOLOGY IN THE COURTROOM
  - Provided technical equipment and assistance to county prosecutors for use in prosecution related activities at an estimated **savings** of **\$44,100.00** during 2008 and **\$705,185.00** since the beginning of the Institute. Technical support, including legal, yielded another **\$40,525.00** in county savings.

- EXPERT WITNESSES
  - Maintained an expert witness database
  - Assisted local prosecutors with information concerning various experts
- LEGAL RESEARCH AND ADVICE
  - Provided frequent legal research on a variety of issues facing local prosecutors
- VICTIM & WITNESS SERVICES COORDINATOR/ PARALEGAL
  - Paralegal position in charge of coordinating the Drug Endangered Children Workgroup for the State of West Virginia
- APPALACHIA HIDTA ASSISTANT PROSECUTOR
  - Assistant Prosecuting Attorney with focus on drug cases within HIDTA counties in conjunction with the United States Attorney's Office for the Southern District of West Virginia
- TRAFFIC SAFETY RESOURCE PROSECUTOR
  - Provided resources and assistance to local prosecutors in area of serious traffic offenses and traffic safety
- CASE-MANAGEMENT DATABASE ADMINISTRATION
  - Prosecutor Dialog state-wide system for data collection and docket control
- INTERNET WEB PAGE
  - Internet access for information to prosecutors
- TECHNICAL SUPPORT SERVICES
  - Technical support to local prosecutors
- FORENSIC MEDICAL EXAMINATION FUND
  - Administration of the fund, providing payment for costs associated with sexual assault victim medical examinations
- SEXUAL ASSAULT NURSE EXAMINERS TRAINING
  - Facilitation of Sexual Assault Nurse Examiners and others

## **II. HISTORICAL INFORMATION**

In the late 1980's and early 1990's, elected prosecuting attorneys in the fifty-five counties in the State of West Virginia realized the need for a central office to provide certain essential services to prosecutor's= offices. The ever-increasing complexity of criminal prosecution and the increasing workload imposed upon prosecutors' offices highlighted the need for professionalization of prosecution. Prosecutors concluded that the first step was to establish a central office to provide training and educational materials for each of the fifty-five county prosecutors' offices.

The West Virginia Prosecuting Attorneys Association, with the cooperation of the Kanawha County Commission and the Kanawha County prosecutor's office, applied for and received a grant from the West Virginia Criminal Justice and Highway Safety Office through the Edward Byrne Trust Fund. The first grant commenced on October 1992. A central office was established in the Kanawha County Prosecutors Office. Thereafter, the central office began to provide educational materials and training to prosecutors across West Virginia.

**WV Prosecuting Attorneys Institute**  
Created in 1995

The central office received two additional grants in the name of the Kanawha County Commission. However, funds received by the Edward Byrne Trust Fund and the Governor's Criminal Justice Office operate in a four-year cycle. Following the fourth year, no funds were available for the continuation of any project, including the continuation of the coordinator's office. The Board of Directors of the West Virginia Prosecuting Attorneys Association approached the Governor's Office, legislative leadership, and the membership of the West Virginia Association of County Officials to develop a plan for the continued funding of the central office. The basic concept was developed wherein each county would be assessed an annual fee based on population, assessed valuation, and other factors. The money generated would be placed in a fund to be known as the "West Virginia Prosecuting Attorneys Institute Fund." This would insure continued operation of the West Virginia Prosecuting Attorneys Institute.

With the support of the Governor's Office and legislative leadership, West Virginia Code '7-4-6 created the West Virginia Prosecuting Attorneys Institute which commenced on June 8, 1995 and would continue to exist until July 1, 1998. The 1998 Regular Session of the Legislature continued the Institute until 2001, by the 2001 Regular Session of the Legislature until July 1, 2005 and by the 2005 Regular Session of the Legislature until July 1, 2008.

### **III. STATUTORY DUTIES OF THE INSTITUTE**

The Prosecuting Attorneys Institute is a public body, whose membership consists of the fifty-five elected county prosecuting attorneys in the state. It is overseen by an executive council consisting of five prosecuting attorneys, elected by the membership, and two persons appointed by the county commissioner's association of West Virginia.

Daily activities of the Institute are handles by an executive director, employed by the executive council. The executive director of the West Virginia Prosecuting Attorneys Institute serves at the will and pleasure of the executive council must be licensed to practice law in the state of West Virginia and is full time and may not engage in the private practice of law.

**PROSECUTING ATTORNEYS INSTITUTE**  
Membership - 55 Elected County Prosecutors  
Overseen by Executive Council  
Daily activities handled by Executive Director

West Virginia Code '7-4-6(d) establishes the duties and responsibilities of the West Virginia Prosecuting Attorneys Institute. The duties and responsibilities of the institute, as implemented by and through its executive council and its executive director, shall include the following:

(1) The provision for special prosecuting attorneys to pursue a criminal matter in any county upon the request of a circuit court judge of that county and upon the approval of the executive council;

(2) The establishment and implementation of general and specialized training programs for prosecuting attorneys and their professional staffs and all statutorily authorized law enforcement or investigative agencies of the state or its political subdivisions;

(3) The provision of materials for prosecuting attorneys and their professional staffs, including legal research, technical assistance and technical and professional publications;

(4) The compilation and dissemination of information on behalf of prosecuting attorneys and their professional staffs on current developments and changes in the law and the administration of criminal justice;

(5) The establishment and implementation of uniform reporting procedures for prosecuting attorneys and their professional staffs in order to maintain and to provide accurate and timely data and information relative to criminal prosecutorial matters;

(6) The acceptance and expenditure of, grants and gifts and acceptance of services from any public or private source;

(7) The entering into of agreements and contracts with public or private agencies or educational institutions;

(8) The identification of experts and other resources for use by prosecutors in criminal matters;

(9) The recommendation to the Legislature or the supreme court of appeals of the state of West Virginia on measures required, or procedural rules to be promulgated, to make uniform the processing of juvenile cases in the fifty-five counties; and

(10) The development of a written handbook for prosecutors and their assistants to use which delineates relevant information concerning the elements of various crimes in West Virginia and other information the institute considers appropriate

Other statutory duties of the Institute include:

(1) Develop reporting procedures for inclusion in the central abuse registry in conjunction with the criminal identification bureau and the office of the administrator of the Supreme Court of Appeals pursuant to West Virginia Code ' 15-2C-3;

(2) Nominate members for the child fatality review team pursuant to West Virginia Code ' 49-5D-5;

(3) Mediate and provide a prompt resolution with the Secretary of the Department of Health and Human Resources when a dispute arises between the prosecuting attorney and the Department of Health and Human Resources about an action proposed by the other that is believed to place the child at imminent risk of abuse or serious neglect pursuant to West Virginia Code ' 49-6-10a; and

(4) Administer the Forensic Medical Examination Fund to provide for payment of forensic medical examinations performed on victims of sexual assault pursuant to West Virginia Code ' 61-8B-15 through 18

## **IV. INSTITUTE ACTIVITIES**

The broad outline of the duties and responsibilities of the West Virginia Prosecuting Attorneys Institute is contained in West Virginia Code § 7-4-6. The Institute's duties and responsibilities are implemented by the executive council through the executive director.

### **A. SPECIAL PROSECUTOR APPOINTMENTS**

When a county prosecutor is disqualified from handling a criminal matter, and upon request of the circuit court judge, the Institute provides a prosecutor from another county to handle the represent the State's interests. No attorney fees are assessed to the requesting county and no additional compensation is received by the responding prosecuting attorney or assistant prosecuting attorney assigned to handle the case.

**171 REQUESTS FOR SPECIAL PROSECUTORS IN CY 2008  
FROM 48 COUNTIES  
A TOTAL OF 2,915 REQUESTS SINCE CREATION OF  
INSTITUTE FROM ALL FIFTY-FIVE COUNTIES**

This system results in substantial savings to the counties, which would otherwise bear the costs of hiring special prosecutors at industry standard rates, and provides a professional prosecutor in the event of disqualification. The process has gained wide acceptance by the circuit judges across the state and is operating well. Prior to the creation of the Institute, counties had to pay high attorney fees to part-time prosecutors or assistants from other counties or private attorneys for representation in these cases.

During calendar year 2008 the Institute received **171** requests for the appointment of special prosecuting attorneys. These requests came from **48** counties. As of December 31, 2008, a total of **2,915** requests for special prosecutors have been received, from all fifty-five counties, over the 13 year life of the Institute.

Although no requirement exists to compel special prosecutors to keep records of the time expended on these appointments, many do. Because of the nature of, and time lines involved in, criminal prosecution, such records received during calendar year 2008 do not necessarily correspond to the cases assigned. For example, one case assigned in May of 2008 might not be completed until sometime in 2008 whereas another case assigned on the same date might be completed within the same month.

ATTORNEY FEES CY 2007  
ESTIMATED SAVINGS TO COUNTIES OF  
\$396,00.00

Every criminal case is unique and the time spent on these cases varies with the particularities of each case. A recent sampling of time records received by the Institute revealed an average of 13.2 hours being expended per case assigned.<sup>1</sup>

Based upon the sampling, and calculating the compensation of hiring attorneys at an average hourly rate of One Hundred Fifty Dollars (\$150.00) per hour, the counties realized an **estimated savings** for the calendar year 2008 of **\$338,580.00**.<sup>2</sup>

Assuming the same average number of hours for all **2,915** cases assigned since the creation of the Institute the counties will, upon completion of the remaining 2008 cases, realize an estimated total savings of **\$5,771,700.00**<sup>3</sup>

ATTORNEY FEES – TOTAL ESTIMATED SAVINGS  
SINCE CREATION OF THE INSTITUTE

**\$ 5,771,700.00**

ESTIMATED TOTAL SAVINGS TO COUNTIES

<sup>1</sup> Sample size was all 49 reported special prosecutor assignments received in 2005, with a total 646 hours reported. This average is slightly lower than the calculated average hours per case reported in previous years and yields an average of 13.2 hours per assignment. The high ratio of misdemeanors to felonies explains the low average hours per assignment for that calendar year. This is a conservative estimate of time expended. Actual time expended may be greater. Post general election year totals will generally spike and then decrease annually till the next post election year (2009).

<sup>2</sup> The minimum savings was calculated as follows: 171 cases X 13.2 average hours per case X \$150 per hour = \$338,580.00.

<sup>3</sup> Estimated total savings since inception of Institute were calculated as follows: 2,915 cases X 13.2 average hours per case X \$150 per hour = \$5,771,700.00

## **B. TRAINING**

The West Virginia Prosecuting Attorneys Institute provides or facilitates a variety of trainings to the state's prosecutors, law enforcement officers and others within the criminal justice system as a part of its statutory duties. ***The Institute produced over 76 training dates in 2008.***

### **1. Regular Prosecutor Seminars**

The Institute produces two (2) regular training sessions on topics of concern and interest to prosecutors in the winter, summer of each calendar year at different locations throughout the state. These educational activities generally consist of ten to twelve hours of continuing legal education over a two-day period covering all aspects of prosecutorial duties and feature speakers who are experts in areas of criminal justice. Efforts are made to schedule at least one nationally recognized speaker per session; West Virginia experts, including prosecutors and assistant prosecutors, representatives of the West Virginia Attorney General's Office, various state agencies, the court system, law enforcement and others present as well.

The Mandatory Continuing Legal Education Commission of the West Virginia State Bar has approved each training session for the requested seminar credits. West Virginia's prosecuting attorneys and assistant prosecuting attorneys are able to obtain all MCLE credits and are able to keep up to date on legal issues, technology, state and federal case law, case investigation, case preparation and more. Prepared materials are distributed to the participants including course information and resource material to be used both during the course and as a resource at the participant's local office library.

Regular prosecutor training seminars were held in January 2008 in Charleston, WV, at which **112** attorneys attended, in June 2008 at Oglebay Resort, Wheeling WV, at which **122** attorneys attended. Mandatory Continuing Legal Education hours were as follows: Charleston – **12** (including 1 hour of ethics) Oglebay – **12** (including 4 hours of ethics).

These courses provide uniformity in the approach to prosecution of criminal violations throughout the state. Common issues and problems, the crossing of county boundaries by those who commit crimes and the need to keep current on a wide range of issues and topics now facing prosecutors makes this training an absolute necessity and something that cannot be obtained elsewhere.

## 2. Specialized Training for Prosecutors

### a. Forensic Interviewing of Children (*Finding Words*)

*Finding Words* is a unique course designed by and for the frontline child abuse professional. The course is offered to multidisciplinary teams that typically consist of prosecutors, law enforcement officers, child protection workers and forensic interviewers. The goal is to train these professionals to work together throughout the investigation, from receipt of the initial report to the interview of the child, and to prosecution when appropriate. This course was developed and is implemented through assistance by the American Prosecutors Research Institute (APRI), the non-profit research, training and technical assistance affiliate of the National District Attorneys Association.

Because the demand for *Finding Words* is so great, states are assisted in establishing their own five-day courses that are locally run and taught. The Institute completed a rigorous qualification schedule several years ago, met all of the outlined criteria and was certified by APRI as a *Finding Words* state.

Training sessions for *Finding Words* and Advanced Finding Words were held in at Camp Dawson, in Logan, WV, and in Huntington, WV. **97** persons received certification. Prosecutors attending this training earned 40 mandatory continuing legal education hours, 32.25 continuing education units were earned by licensed social workers and 40 hours of in-service hours for law enforcement officers. There was no charge to the participants or their agencies for the training.

### b. Newly Elected Course & DNA Short Course

The Institute presented an 8 hour course regarding Prosecution for the Newly Elected Prosecutors at the Charleston Marriott December 2008. The Institute also presented an 8 hour hands on course regarding DNA at the WV State Police Academy in December 2008. The DNA curriculum was compressed from a four day course offered at the National Advocacy Center and utilized one of the State's most experienced trainers as well as nationally recognized faculty and a forensic scientist from the Marshall University Forensic Science Center. The credit for the course was 8 hours continuing legal education (including .5 hours ethics). **The Institute reached 43 prosecutors in this endeavor as well as 18 of the 21 Newly Elected Prosecutors in the Newly Elected Course.**

PROSECUTOR TRAINING  
2006

Regular Training Seminars

Charleston, WV January '06	112
Oglebay, WV June, '06	122

Specialized Prosecutor Training

Newly Elected	18
Crash Cross Course	43

TOTAL ATTENDANCE ALL TRAININGS	295
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On a per hour per person basis a total of **2808** continuing legal education hours were provided to the state's prosecutors at the Institute's regular training meetings, with an additional **488** hours at the specialized trainings, for a total of **3296** continuing legal education hours and all at no cost during 2008. Commercial continuing legal education costs upwards to \$45.00 per hour. State supported continuing legal education costs attendees an approximate average of \$25.00 per hour. As a result, counties realized a minimal savings of **\$82,400.00**.<sup>4</sup> Privately sponsored legal education is much more expensive.

CONTINUING LEGAL EDUCATION SAVINGS - 2008

**\$ 82,400.00**

<sup>4</sup> Savings were calculated using the lesser amount of \$25.00 per hour of continuing legal education provided in-state by the Institute and does not include continuing legal education hours earned by prosecutors or assistance who obtained such hours at out-of-state courses for which funding was obtained through the Institute and at no charge to the participant.

### 3. Key Personnel

Since 1997, the Institute has sponsored annual training for key personnel of prosecutor's offices. Key personnel include administrative assistants, paralegals, secretaries, and other non-attorney staff members. Because these individuals play key roles in maintaining and assisting in the operation of a prosecutor's office, the Institute has recognized the importance of providing specialized training to these personnel. Such specialized training was held in conjunction with the prosecutors' summer meeting in June 2008.

### 4. Victim Advocates

A specialized training for victim advocates has been held annually since 2000. This two-day seminar is free of charge to all prosecutor-based victim advocates and includes training in a wide range of victim issues. The training was held in June of 2008 in conjunction with the prosecutor summer meeting at Snowshoe, WV.

TRAININGS – OTHER PROSECUTOR OFFICE PERSONNEL	
KEY PERSONNEL	
VICTIM ADVOCATES	
Total Trained	64

### 5. DEC Trainings

The Victim & Witness Services Coordinator has overseen formation of a Drug Endangered Children Task Force which, in 2008, coordinated and conducted **15** trainings throughout the state of West Virginia educating **992** individuals throughout West Virginia counties on various aspects regarding drug endangered children and another **210** individuals were trained at the statewide DEC conference.

## 6. Law Enforcement

### a. West Virginia State Police Academy

The Institute began providing basic criminal procedure training for each class at the West Virginia State Police Academy in calendar year 2005 and assisted in revision of that part of the curriculum. In 2008 the Institute trained **243** basic officers and cadets from six different classes resulting in **12,636** class hours on a per hour per student basis. Critique and evaluation forms indicate an over 98% satisfaction rate for this course.

### b. Generalized Annual In-Service Training

The Institute continues to provide in-service training for law enforcement officers across the State. Prosecutors believe this training is extremely important in helping elevate the quality of West Virginia law enforcement. The Institute produced a general in-service program for the other law enforcement agencies in West Virginia as well, taking place in May & June of 2008. It consisted of **8** credit hours and was attended by approximately **120** Law Enforcement Officers (and others) or another **960** class hours of instruction.

### c. Specialized In-Service Training

The forensic interviewing of children course, *Finding Words*, was also available to police officers. A total of **17** officers attending this five-day course received **40** hours apiece of law enforcement in-service credit and another **5** received **40** hours credit for Advanced Finding Words.

All law enforcement in-service trainings provided by the West Virginia Prosecuting Attorneys Institute are approved by the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction. In sum these law enforcement trainings have totaled **14,228** hours of instruction when taken on a per student basis.

## LAW ENFORCEMENT OFFICER TRAINING

Academy class members trained	226
8-hour General In-Service Training	120
40-hour Specialized In-Service Training (FW)	19
Total officers trained	403

**d. Other Trainings**

The West Virginia Prosecuting Attorneys Institute has also provided or arranged for instructors and training for numerous other state agencies or groups involved in the criminal justice system on an as-needed or requested basis. In 2006, for instance, the Institute trained agencies or groups such as Worker's Compensation Investigators various law enforcement officers, West Virginia Sheriff's and the West Virginia Public Service Commission. In 2008 we trained the WV State Auditor's Securities Fraud Investigation Unit. We foresee more training of this nature in 2009.

**C. MANUALS AND PUBLICATIONS**

The Institute provides, on an on-going basis, written materials and publications to West Virginia's prosecutors. The Institute provides prosecuting attorneys with updates on court cases, changes in court rules and new practices in the criminal justice system, polices and procedures and other information of interest to prosecutors.

In conjunction with 2 general prosecutor trainings (winter, summer and fall) and the specialized program written materials of instructors and presenters are prepared and distributed at no cost to the participants. Additionally, the Institute electronically publishes a periodic general information newsletter with information and updates for every prosecutor and assistant prosecutors, key personnel, Office of the Attorney General and all circuit court judges. Faxes and electronic mail messages containing news clips and other information relating to criminal justice issues are also sent to prosecutors and assistant prosecutors throughout the state on a per occurrence basis.

The Traffic Safety Resource Prosecutor publishes a quarterly newsletter designed specifically to address issues related to serious criminal traffic offenses such as Driving under the Influence of Alcohol, Negligent Homicide and related crimes. This quarterly newsletter, the *Crash, Boom, Bang*, is emailed and mailed to each prosecutor and assistant prosecutor at no charge to the local offices. Copies are also sent to the Governor's Office, select Legislative leadership, personnel of the Governor's Highway Safety Program and other traffic safety professionals. It is also available electronically through the Prosecuting Attorney Institute's web site.

After the regular legislative session each year, the executive director of the Institute prepares a summary of all legislation that impacts the criminal justice system

and provides this summary to all prosecuting attorneys, assistant prosecuting attorneys, law enforcement agencies, circuit court judges and various other individuals who have expressed interest therein.

## **D. TECHNOLOGY IN THE COURTROOM**

The West Virginia Prosecuting Attorneys Institute has utilized grant funds to purchase a significant amount of audio, video and computer equipment that is available for use, at no cost, by local prosecutors' offices and law enforcement agencies for use in criminal case preparation and trial. Technical assistance is available and provided by the Institute staff to county personnel in the set-up and use of the equipment.

The Institute and local prosecutors have learned that by visualizing evidence, jurors are better able to understand both the evidence being presented and the issues at trial. Some of the equipment includes television, camcorders, PowerPoint® computer programs, data projections, visualizers and lap top computers. This equipment is loaned out by the Institute to local prosecutors' offices either individually or as sets. For instance, the visualizers can be used to enlarge and display photographs or other evidence. The PowerPoint® computer program is valuable as a tool in evidence presentation, opening statements and closing arguments. This equipment, if rented, could easily cost the counties hundreds to thousands of dollars a day.

During calendar year 2008, **3** counties were provided with technical equipment on multiple occasions. If the counties had paid commercial rental rates for the same equipment, it is estimated that the Institute saved the counties **\$44,100.00** during that period. The counties have realized an estimated total of **\$705,185.00** in savings on technical equipment rentals since the inception of the Institute.

The Institute also provided the counties technical assistance in the form of answers to technical questions regarding the uses of the equipment previously mentioned as well as other technical equipment used by prosecutors. This assistance was rendered in the field on multiple occasions (30 hours), via phone (approximately 25 hours) and by email to often to count. Using an average rate of \$175.00 per hour as a benchmark these counties have realized a calendar year 2008 savings of in excess of **\$9,625.00** as well not including the email support.

The Institute also gives technical advice and assistance to Prosecutors in the highly specialized legal field of Prosecution in an average of approximately 3 hours per week via phone and email as well as, in 2008, in excess of 50 hours in the field. Assuming the conservative, hourly legal rate assigned to special prosecutions of \$150.00 the counties have saved somewhere on the order of another **\$30,900.00**.

<b>EQUIPMENT RENTAL SAVINGS TO COUNTIES</b>	
<b>CALENDAR YEAR 2008</b>	<b>SINCE INCEPTION OF INSTITUTE</b>
<b>\$44,100.00</b>	<b>\$705,185.00</b>
<b>TECHNICAL SAVINGS TO COUNTIES</b>	
<b>TECHNICAL SUPPORT</b>	<b>LEGAL TECHNICAL ASSISTANCE</b>
<b>\$9,625.00</b>	<b>\$30,900.00</b>

**E. EXPERT WITNESSES**

The Institute identifies experts needed in trial preparation, trial and technical assistance, along with related resources, for use by local prosecutors in criminal cases and investigative matters. This information comes from either national sources or from fellow West Virginia prosecutors. Through ties with the National Association of Prosecutor Coordinators, the National District Attorneys Association and the American Prosecutors Research Institute, experts are readily made available to local prosecutors, together with materials and information to challenge defense experts.

**F. LEGAL RESEARCH AND ADVICE**

The Institute provides legal research and advice to individual prosecutors and counties on a frequent basis. Local prosecutors may contact Institute staff who can then provide immediate assistance which includes research, resources, technical assistance and coordination. Conservative estimates of time expended for this purpose may be found included within the above section regarding technical legal assistance. This information is then used in development of training programs, to direct the workings of boards, committees and task forces and assisting other prosecutors who share similar problems.

**G. BOARDS, COMMITTEES AND COMMISSIONS**

The executive director and staff attorneys of the Institute participate on numerous boards, commissions, task force and planning committees to assist in the development of policy, coordinate efforts and to recommend and implement legislation. It is through these boards, commissions, task forces and planning committees that much of the

efforts of various state agencies are coordinated. The Institute has worked with these agencies to help develop a coordinated criminal justice system.

Some of the agencies, boards, and committees with which the Institute works include, but is not limited to, the Governor's Committee on Crime, Delinquency and Correction, The Oversight Committee for West Virginia's Criminal Justice Statistical Analysis Center, the Drug and Violent Crime Policy Control Board, the Executive Committee of the Appalachia High Intensity Drug Trafficking Area, the Sex Offender Advisory Board, the Sex Offender Registration Review Task Force, the Sexual Predator Task Force, the Eyewitness Identification Best Practices Task Force, the Family Violence Coordinating Council, the Sexual Assault Nurse Examiner Advisory Board, the Crime Scene Investigator Certification Board, the National Highway Transportation Safety Administration, and the Governor's Highway Safety Program.

## **H. APPALACHIA HIDTA ASSISTANT PROSECUTOR**

In April 1998 selected counties in West Virginia, Tennessee and Kentucky were designated as a High Intensity Drug Trafficking Area (HIDTA) for the cultivation and trafficking of marijuana. This designation allowed West Virginia to receive a significant portion of Federal money allocated to the three states to provide personnel and material support for investigation of the violations of cultivation and trafficking of marijuana within this geographical area.

Changing with the times this initiative now assigns high priority to other drugs in addition to marijuana, prosecuting violent felons who are members of illegal drug organizations, and targets for seizure and forfeiture equipment and property used in, and assets derived from illegal drug trafficking. This team attacks interstate traffickers by interdicting and prosecuting drug traffickers at commercial shipping terminals and hubs and traffickers who use the U. S. Mail to facilitate their criminal enterprises.

The West Virginia Prosecution Team normally consists of two Assistant United States Attorneys, one state prosecutor from the West Virginia Prosecuting Attorneys Institute. The Institute prosecutor is physically located at the United States Attorneys Office, Southern District of West Virginia, and is cross-designated a Special Assistant United States Attorney.

The team works with law enforcement agencies within the HIDTA designated West Virginia counties to facilitate the development of witnesses and informants and to identify and prosecute all levels of conspiratorial groups. This often leads to joint state and federal prosecutions. This coordinated effort helps local, state and federal law enforcement officers and joint drug and violent crime task forces to develop shared intelligence, better investigate cases and provides for swifter, more vigorous prosecutions.

## **I. TRAFFIC SAFETY RESOURCE PROSECUTOR**

The Traffic Safety Resource Prosecutor (TSRP) position was established to improve the ability of the state's prosecutors to effectively prosecute serious traffic violations, particularly focusing on driving while under the influence of or impaired by alcohol and/or drugs, negligent homicide, and vehicle crashes involving personal injury. These types of cases, particularly driving under the influence of alcohol and/or drugs, are highly technical and often some of the most difficult cases for prosecutors to present and handle successfully. Coupled with this difficulty has been the significant national and state-wide focus on reducing impaired driver-related traffic fatalities through increased enforcement efforts, resulting in an increased number of serious traffic offense arrests.

The objectives of the TSRP are as follows:

1. To provide continuing professional education opportunities to all new and experienced prosecuting and assistant prosecuting attorneys to improve their ability to effectively prosecute all levels of traffic safety violations.
2. To provide general in-service and advanced training to law enforcement officers and other traffic safety professionals to improve their ability in the detection, apprehension and prosecution of traffic safety violators.
3. To provide quality, up to date legal reference material to assist prosecutors, law enforcement officers and other traffic safety professionals to more effectively prosecute traffic safety cases.
4. To provide a dedicated liaison between and among state prosecutors, law enforcement and the traffic safety community to work for the better coordination in the prosecution of serious traffic safety violations.
5. To raise awareness of traffic safety issues by providing information and education to the motoring public, law enforcement, prosecutors and traffic safety professionals.

In accomplishing these objectives, the TSRP provides valuable assistance to local prosecutors and law enforcement agencies through training, technical assistance, publications, serving as a liaison, public information and judicial education.

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Training for prosecutors has been provided through both general prosecutor trainings as well as specialized traffic offense related courses. Law enforcement training for both the State Police Cadet and Basic Officer courses at the West Virginia State Police Academy on constitutional law, court systems, police power and authority, search and seizure, DUI trial tips, trial testimony and standardized field sobriety testing; and annual in-service training for all Law-Enforcement as well.

Technical assistance was provided through responding to requests for information and assistance in a variety of areas, including, but not limited to, administrative license revocation, search warrants, prior offenses, Horizontal Gaze Nystagmus, "Crawford" evidentiary issues, DUI with injury, impounding vehicles, sobriety checkpoints, Blood Alcohol Content reverse extrapolation, DUI with death, defense experts, visual aids, charging decisions, DUI of drugs, negligent homicide, Daubert scientific issues, blood draws, bifurcation, joinder, traffic stop jurisdiction, stop and frisk, predicate questions, source codes for breath testing instruments, application of passenger restraint statute and NHTSA regulations, emergency vehicle lighting, search and seizure, implied consent, SFST, witness interviews, roadblocks and license checks, search of motor vehicles, drug impaired driving, dog sniffs, toxicology, yielding to emergency vehicles, breath test refusal, officer training, crash reconstruction, voir dire, fingerprint records and driver's license/identity theft.

In addition a quarterly traffic safety newsletter; '*Crash Boom Bang*', is distributed to all prosecutors, law enforcement officers and other traffic safety professionals. As a liaison between state, national and local law enforcement, prosecutor and traffic safety organizations, the TSRP participated in-state in the WV Highway Safety Management Committee relating to high risk drivers, the Governors Highway Safety Program roundtables, WV Commission on Drunk Driving Prevention, development of the WV Strategic Highway Safety Plan. On a national level, the TSRP participated in the NHTSA Mid-Atlantic Region annual conference, Lifesavers Conference, TSRP national meeting and the National Association of Prosecutor Coordinators.

## TRAFFIC SAFETY RESOURCE PROSECUTOR

### Trainings / Presentations

Prosecuting DUI (Basic Trial Advocacy)  
Train the Trainers  
WV State Police Academy  
Sobriety Checkpoint Operation  
Summer PA meeting  
NHTSA Mid-Atlantic Impaired Drivers Summit  
WV Governor's Highway Safety Program  
Public Service Commission  
Law Enforcement In-service  
Sheriffs and Chief Deputies

### Publications / Memos

'*Crash, Boom, Bang*' quarterly newsletter  
Intoximeter handbook  
Winter PA Meeting  
*Sobriety Checkpoint Model Policy*  
Uniform citation memo  
Seat Belt memo  
DMV Administrative Plea Agreement memo  
DMV Administrative No Contest Plea memo

## J. Victim & Witness Services Coordinator

In January 2005 the Institute eliminated the Drug & Violent Crime Prosecutor and traditional Paralegal positions replacing them with a Victim & Witness Services Coordinator (also a paralegal) for the purpose of public education. After June of 2005 the emphasis shifted from elder abuse to child protection and in October 2005 this position became partially funded by the Department of Health and Human Resources with an emphasis on Drug Endangered Children (DEC).

The Victim & Witness Services Coordinator has since begun a Drug Endangered Children Task Force which, in 2008, held **4** regular meetings and a number of trainings on Drug Endangered Children and child protection protocols. These events reached approximately hundreds of members of various disciplines including first responders, child protective services workers and many more.

In addition, the second statewide DEC Conference was attended by **210** participants and included several local and national trainers. This course provided guidelines for establishing protocols through cooperation, sharing of information, and case coordination. The training helped participants learn how to establish collaborative, multi-disciplinary response to children discovered in clandestine methamphetamine labs thus breaking the cycle of "child abuse" caused by those who manufacture, sell, and use drugs and laid the foundations for regional/county DEC programs. Also demonstrated were techniques for filing additional charges of child endangerment and/or enhancements against clandestine lab operators and education of community partners on recognizing and responding to drug endangered environments in order to prevent further physical and emotional damage to the children and families.

In 2008, in addition to the quarterly task force meetings, the WV DEC Task Force has coordinated and conducted **15** trainings throughout the state of West Virginia educating **992** individuals throughout West Virginia counties on various aspects regarding drug endangered children.

The DEC focus shifted a bit to getting the program into the individual communities of West Virginia and educating first responders and the community on all the drugs that effect children. The Meth epidemic certainly helped to launch the drug endangered children movement but other drugs have devastating effects on children. Alcohol, cocaine, heroin, marijuana, and prescription drug abuse all effect the parent or guardians ability to care for their children. Date rape drugs and inhalants affect older children who have access to these drugs. The training and outreach this year focused on all drugs.

## **K. CASE-MANAGEMENT DATABASE ADMINISTRATION**

The Institute previously secured grant funds totaling \$137,000.00 to develop a coordinated statewide system of data collection and docket control for prosecutors. The inability to gather statistical information concerning criminal offenses, offenders, victims and outcomes has been a hindrance to law enforcement agencies, the courts and policy makers. Lack of any organized system of case management resulted in inefficiencies and inequities. In 1998 the Institute hired a database system administrator to implement the case management system and a computer program, Prosecutor Dialog®, which was purchased from Graphic Computer Solutions and customized for West Virginia's needs. Prosecutor Dialog® was been made available at no cost to all fifty-five county prosecutors.

Ultimately, after three to four years, Prosecutor Dialog® fell out of favor with the various Prosecutor Offices for a variety of reasons and until the Institute can achieve consensus amongst those offices the impetus for unified Case-Management Database Administration has been placed on the slow track.

Till then the database administrator has been assisting another software developer in the development of a case management system to replace Prosecutor Dialog® and its installation and oversight in pilot project counties. It is the hope of the Institute that this newer case management system will address the concerns which caused the other to fall out of favor. In addition, when not engaged in technical assistance functions as detailed above, the database administrator continues to service the few counties still using Prosecutor Dialog® till the new system gains widespread acceptance.

## **L. INTERNET WEB PAGE**

The Institute maintains an agency web page which contains information about the Institute, services and information of use to local prosecutors and links relating to various aspects of the criminal justice system. Available on the web page are: the Institutes purpose and objectives, Institute staff and contact information, a listing of all county prosecutors together with a link to those having their own web pages, information concerning the Forensic Medical Examination Fund, a calendar of events and trainings, a traffic safety resource section, copies of the safety newsletters, utilities and a copy of the uniform criminal jury instructions previously written on behalf of the Institute. The database administrator oversees the administration of the web page.

## **M. TECHNICAL SUPPORT SERVICES**

The database administrator maintains all electronic equipment for the agency, including computer and telephone systems. He is also available and routinely provides technical support services to the local prosecuting attorney offices without additional charge in accord with the statutory mandate of the Institute. As can be seen above this results in a substantial savings to local prosecutors who would otherwise have to contract for such services at a significant hourly rate.

## **N. FORENSIC MEDICAL EXAMINATION FUND**

The Violence Against Women Act provides that each state must have a method to pay the cost of forensic medical examinations for victims of sexual assault. Effectively these type funds are 'earnest money' necessary for the States to qualify to then apply for VAWA grant moneys. In accord with this mandate, the West Virginia Forensic Medical Examination Fund was created by the West Virginia Legislature and is contained in WV Code Section 61-8B-1 and WV Code Section 61-8B-15 through 18.

Prior to the establishment of the Forensic Examination Fund, West Virginia had no specific mechanism to pay for this type of examination. In the statutory provisions creating the WV Forensic Medical Examination Fund, the WV Prosecuting Attorneys Institute was charged with the responsibility of administering the Fund and providing reimbursement to licensed medical facilities performing forensic medical examinations.

## **171 CLAIMS PROCESSED DURING 2008**

The legislation provides that following a forensic medical examination medical facilities submit a statement of charges to the prosecuting attorney of the county in which the alleged offense occurred and a duplicate invoice to the Institute. The Institute collects a certification from the prosecutor and pays for the examination from the Forensic Medical Examination Fund.

The statutory objective of the Forensic Medical Examination Fund is to provide payment for forensic medical examinations in sexual assault cases. However, additional benefits include providing a more effective prosecution of persons alleged to have committed a sexual assault while protecting the rights and dignity of victims. Also, in conjunction with the Foundation for Rape Information Services, the Institute provides a variety of information to individuals who work with sexual assault victims.

The West Virginia Legislature set aside just over \$140,000.00 for FY 2008 for this Fund to provide kits to hospitals, allow payment for costs associated with the collection of forensic evidence and a personnel slot for administration of the fund. The Institute processed all 171 claims for payment in CY2008 and processed over 99% of those within 21 days of receipt of the claim.

#### **O. SEXUAL ASSAULT NURSE EXAMINERS' TRAINING (SANE)**

The Institute also, in conjunction with the Foundation for Rape Information Services, facilitates the development of the Sexual Assault Nurse Examiner (SANE) program through technical assistance to licensed medical facilities and co-coordination of statewide SANE training. This program seeks to increase the conviction rate of sexual assault offenders by facilitating training for nurses, physicians, law enforcement officers, prosecutors, victim advocates and others, to create and implement a method of data collection to identify the number of completed examinations and to facilitate evaluation of the collection of evidence. The Institute previously distributed a comprehensive CD which includes the SANE Manual, the Forensic Medical Examination Fund Manual, an instructional video @How to Gather Rape Evidence@ and a presentation on the prosecution of sexual assault cases. This training aid was distributed to all prosecutors' offices, hospitals and victim service providers in the state.

### **V. SOURCES OF FUNDING**

Primary funding for the West Virginia Prosecuting Attorneys Institute is provided from a variety of sources including county premiums, grants and federal funds. General revenue funds are limited and are used only for the Forensic Medical Examination Fund and to match grant monies.

COUNTY PREMIUMS. West Virginia Code § 7-4-6 provides for the payment of monthly premiums on a sliding scale by the fifty-five counties. The monthly premium for the largest counties was set at \$400.00 per month, while the smallest counties pay only \$50.00 per month. All premiums received are deposited in the "West Virginia Prosecuting Attorneys Institute Fund." Premiums collected are used for personnel costs, expenses, supplies, rent and other costs associated with continuation of the West Virginia Prosecuting Attorneys Institute. The total amount of funds collected for fiscal year 2006 was \$204,000.00

GRANTS. A major source of funding for the Institute is from a variety of grants. The Institute was approved to receive the following grants although we were unable to use some of the awarded amounts below:

HIDTA <sup>5</sup>	79,140.00
Violence Against Women Act (VAWA) <sup>6</sup>	6167.00
WV Governor's Highway Safety Program <sup>7</sup>	128,500.00
Benedum Foundation Grant (Finding Words Program) <sup>8</sup>	40,500.00
Drug Endangered Children Grant (from DHHR)	38,000.00

FORENSIC MEDICAL EXAMINATION FUND. This Legislature funded the Forensic Medical Examination Fund for 2006 in the amount of just over \$140,000.00. This funding, while sufficient to pay the costs of the fund also makes the state eligible to receive over \$3,000,000.00 in federal Violence Against Women Act monies.

GRANT MATCH. Many grant programs require a cash match in order to receive such funds. The required match ranges from ten to twenty-five percent of the grant. The Legislature provided just over \$99,000.00 in general revenue funds as cash match funding for the Institute. With that amount the Institute has been able to receive a significant portion of its operating expenses through grant funds as noted above.

## **VII. CONCLUSION**

Prosecutors, assistant prosecutors, law enforcement and others across West Virginia recognize the West Virginia Prosecuting Attorneys Institute as a vitally important and necessary component of the criminal justice system. In providing professional training and educational materials, technical support, prosecution services and myriad other services not only to prosecutors' offices, but also to the various other agencies and individuals servicing the criminal justice system, the Institute has proven to be a vital and necessary component of the system.

The Institute not only provides stability and uniformity to the administration of justice within the State of West Virginia to the benefit of the state's citizens, it does so in a cost effective manner. All aspects of the Institute's work greatly benefit prosecutors and others within the criminal justice system. Absent these services the State of West Virginia and its counties would have to shoulder the burden of the costs represented in this report as savings and suffer the lack of centralization of services in the process.

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<sup>5</sup> Amount is for FY 2008 only. Funding is all-inclusive for position, services and supplies. Total grant funding for this project is \$199,468.00 bi-annually because of the superimposition of the federal fiscal year over the state year.

<sup>6</sup> Funds for speaker fees and expenses for prosecutor trainings on violence against women and includes \$1,665.00 in matching funds.

<sup>7</sup> Funds the position of Traffic Safety Resource Prosecutor. Grant obtained from National Association of Prosecutor Coordinators and National Highway Transportation Safety Administration

<sup>8</sup> For Calendar Year 2008