

FILED

2001 MAY -1 P 6: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

SENATE BILL NO. 601

(By Senator Tomblin, Mr. President, et AL **)**

PASSED April 14, 2001

In Effect July 1, 2001 **Passage**

FILED

2001 MAY -1 P 6: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 601

(BY SENATORS TOMBLIN, MR. PRESIDENT, REDD (BY REQUEST),
WOOTON, HUNTER, BURNETTE, ROWE, MITCHELL, JACKSON,
SNYDER, BAILEY, PLYMALE, UNGER, EDGELL, KESSLER,
MINARD, ANDERSON, CHAFIN, SHARPE, ROSS, CALDWELL,
MCCABE, LOVE AND HELMICK)

[Passed April 14, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact sections three and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to payment of awards to crime victims; allowing payment of claims for crime scene cleanup, victim relocation, mental health counseling for secondary victims of crime and certain travel expenses; clarifying that mental health counseling is an allowable expense; and increasing the total award that may be made for victims left permanently and totally disabled.

Be it enacted by the Legislature of West Virginia:

That sections three and fourteen, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred

thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,
3 whether residents or nonresidents of this state, who claim
4 an award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not
6 include a nonresident of this state where the criminally
7 injurious act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim; or in the event that the deceased victim is a minor,
10 the parents, legal guardians and siblings of the victim;

11 (3) A third person other than a collateral source who
12 legally assumes or voluntarily pays the obligations of a
13 victim, or of a dependent of a victim, which obligations are
14 incurred as a result of the criminally injurious conduct
15 that is the subject of the claim;

16 (4) A person who is authorized to act on behalf of a
17 victim, dependent or a third person who is not a collateral
18 source; and, in the event that the victim, dependent or
19 third person who is not a collateral source is a minor or
20 other legally incompetent person, the duly qualified
21 fiduciary of the minor;

22 (5) A person who is a secondary victim in need of mental
23 health counseling due to the person's exposure to the crime
24 committed. An award to a secondary victim may not
25 exceed one thousand dollars.

26 (b) "Collateral source" means a source of benefits or
27 advantages for economic loss otherwise compensable that
28 the victim or claimant has received, or that is readily
29 available to him or her, from any of the following sources:

30 (1) The offender, including any restitution received from
31 the offender pursuant to an order by a court of law
32 sentencing the offender or placing him or her on probation
33 following a conviction in a criminal case arising from the
34 criminally injurious act for which a claim for compensa-
35 tion is made;

36 (2) The government of the United States or any of its
37 agencies, a state or any of its political subdivisions or an
38 instrumentality of two or more states;

39 (3) Social security, medicare and medicaid;

40 (4) State-required, temporary, nonoccupational disabil-
41 ity insurance; other disability insurance;

42 (5) Workers' compensation;

43 (6) Wage continuation programs of any employer;

44 (7) Proceeds of a contract of insurance payable to the
45 victim or claimant for loss that was sustained because of
46 the criminally injurious conduct;

47 (8) A contract providing prepaid hospital and other
48 healthcare services or benefits for disability; and

49 (9) That portion of the proceeds of all contracts of
50 insurance payable to the claimant on account of the death
51 of the victim which exceeds twenty-five thousand dollars.

52 (c) "Criminally injurious conduct" means conduct that
53 occurs or is attempted in this state or in any state not
54 having a victim compensation program which by its nature
55 poses a substantial threat of personal injury or death and
56 is punishable by fine or imprisonment or death or would
57 be so punishable but for the fact that the person engaging
58 in the conduct lacked capacity to commit the crime under
59 the laws of this state. Criminally injurious conduct also
60 includes an act of terrorism, as defined in 18 U.S.C. §2331,
61 committed outside of the United States against a resident
62 of this state. Criminally injurious conduct does not

63 include conduct arising out of the ownership, maintenance
64 or use of a motor vehicle, except when the person engaging
65 in the conduct intended to cause personal injury or death,
66 or except when the person engaging in the conduct com-
67 mitted negligent homicide, driving under the influence of
68 alcohol, controlled substances or drugs or reckless driving.

69 (d) "Dependent" means an individual who received over
70 half of his or her support from the victim. For the purpose
71 of determining whether an individual received over half of
72 his or her support from the victim, there shall be taken
73 into account the amount of support received from the
74 victim as compared to the entire amount of support which
75 the individual received from all sources, including support
76 which the individual himself or herself supplied. The term
77 "support" includes, but is not limited to, food, shelter,
78 clothing, medical and dental care and education. The term
79 "dependent" includes a child of the victim born after his
80 or her death.

81 (e) "Economic loss" means economic detriment consist-
82 ing only of allowable expense, work loss and replacement
83 services loss. If criminally injurious conduct causes death,
84 economic loss includes a dependent's economic loss and a
85 dependent's replacement services loss. Noneconomic
86 detriment is not economic loss; however, economic loss
87 may be caused by pain and suffering or physical impair-
88 ment. For purposes of this article, the term "economic
89 loss" includes a lost scholarship as defined in this section.

90 (f) (1) "Allowable expense" means reasonable charges
91 incurred or to be incurred for reasonably needed products,
92 services and accommodations, including those for medical
93 care, mental health counseling, prosthetic devices, eye
94 glasses, dentures, rehabilitation and other remedial
95 treatment and care.

96 (2) Allowable expense includes a total charge not in
97 excess of six thousand dollars for expenses in any way
98 related to funeral, cremation and burial. It does not

99 include that portion of a charge for a room in a hospital,
100 clinic, convalescent home, nursing home or any other
101 institution engaged in providing nursing care and related
102 services in excess of a reasonable and customary charge
103 for semiprivate accommodations, unless accommodations
104 other than semiprivate accommodations are medically
105 required.

106 (3) Allowable expense also includes:

107 (A) A charge, not to exceed one thousand dollars, for
108 crime scene cleanup;

109 (B) Victim relocation costs, not to exceed one thousand
110 dollars; and

111 (C) Reasonable travel expenses, not to exceed one
112 thousand dollars, for a claimant to attend court proceed-
113 ings that are conducted for the prosecution of the offender.

114 (g) "Work loss" means loss of income from work that the
115 injured person would have performed if he or she had not
116 been injured and expenses reasonably incurred or to be
117 incurred by him or her to obtain services in lieu of those he
118 or she would have performed for income, reduced by any
119 income from substitute work actually performed or to be
120 performed by him or her, or by income he or she would
121 have earned in available appropriate substitute work that
122 he or she was capable of performing but unreasonably
123 failed to undertake.

124 (h) "Replacement services loss" means expenses reason-
125 ably incurred or to be incurred in obtaining ordinary and
126 necessary services in lieu of those the injured person would
127 have performed, not for income but for the benefit of
128 himself or herself or his or her family, if he or she had not
129 been injured.

130 (i) "Dependent's economic loss" means loss after a
131 victim's death of contributions or things of economic value
132 to his or her dependents, not including services they would

133 have received from the victim if he or she had not suffered
134 the fatal injury, less expenses of the dependents avoided
135 by reason of the victim's death.

136 (j) "Dependent's replacement service loss" means loss
137 reasonably incurred or to be incurred by dependents after
138 a victim's death in obtaining ordinary and necessary
139 services in lieu of those the victim would have performed
140 for their benefit if he or she had not suffered the fatal
141 injury, less expenses of the dependents avoided by reason
142 of the victim's death and not subtracted in calculating
143 dependent's economic loss.

144 (k) "Victim" means a person who suffers personal injury
145 or death as a result of any one of the following: (1)
146 Criminally injurious conduct; (2) the good faith effort of
147 the person to prevent criminally injurious conduct; or (3)
148 the good faith effort of the person to apprehend a person
149 that the injured person has observed engaging in crimi-
150 nally injurious conduct or who the injured person has
151 reasonable cause to believe has engaged in criminally
152 injurious conduct immediately prior to the attempted
153 apprehension.

154 (l) "Contributory misconduct" means any conduct of the
155 claimant, or of the victim through whom the claimant
156 claims an award, that is unlawful or intentionally tortious
157 and that, without regard to the conduct's proximity in
158 time or space to the criminally injurious conduct, has
159 causal relationship to the criminally injurious conduct that
160 is the basis of the claim and shall also include the volun-
161 tary intoxication of the claimant, either by the consump-
162 tion of alcohol or the use of any controlled substance when
163 the intoxication has a causal connection or relationship to
164 the injury sustained. The voluntary intoxication of a
165 victim is not a defense against the estate of a deceased
166 victim.

167 (m) "Lost scholarship" means a scholarship, academic
168 award, stipend or other monetary scholastic assistance

169 which had been awarded or conferred upon a victim in
170 conjunction with a postsecondary school educational
171 program and, which the victim is unable to receive or use,
172 in whole or in part, due to injuries received from crimi-
173 nally injurious conduct.

**§14-2A-14. Grounds for denial of claim or reduction of awards;
maximum awards.**

1 (a) Except as provided in subsection (b), section ten of
2 this article, the judge or commissioner may not approve an
3 award of compensation to a claimant who did not file his
4 or her application for an award of compensation within
5 two years after the date of the occurrence of the criminally
6 injurious conduct that caused the injury or death for
7 which he or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an
9 award of compensation if the criminally injurious conduct
10 upon which the claim is based was not reported to a
11 law-enforcement officer or agency within seventy-two
12 hours after the occurrence of the conduct, unless it is
13 determined that good cause existed for the failure to
14 report the conduct within the seventy-two hour period.

15 (c) The judge or commissioner may not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his or her
20 accomplice.

21 (d) A judge or commissioner, upon a finding that the
22 claimant or victim has not fully cooperated with appropri-
23 ate law-enforcement agencies or the claim investigator,
24 may deny a claim, reduce an award of compensation or
25 reconsider a claim already approved.

26 (e) A judge or commissioner may not approve an award
27 of compensation if the injury occurred while the victim

28 was confined in any state, county or regional jail, prison,
29 private prison or correctional facility.

30 (f) After reaching a decision to approve an award of
31 compensation, but prior to announcing the approval, the
32 judge or commissioner shall require the claimant to submit
33 current information as to collateral sources on forms
34 prescribed by the clerk of the court of claims. The judge or
35 commissioner shall reduce an award of compensation or
36 deny a claim for an award of compensation that is other-
37 wise payable to a claimant to the extent that the economic
38 loss upon which the claim is based is or will be recouped
39 from other persons, including collateral sources, or if the
40 reduction or denial is determined to be reasonable because
41 of the contributory misconduct of the claimant or of a
42 victim through whom he or she claims. If an award is
43 reduced or a claim is denied because of the expected
44 recoupment of all or part of the economic loss of the
45 claimant from a collateral source, the amount of the award
46 or the denial of the claim shall be conditioned upon the
47 claimant's economic loss being recouped by the collateral
48 source: *Provided*, That if it is thereafter determined that
49 the claimant will not receive all or part of the expected
50 recoupment, the claim shall be reopened and an award
51 shall be approved in an amount equal to the amount of
52 expected recoupment that it is determined the claimant
53 will not receive from the collateral source, subject to the
54 limitation set forth in subsection (g) of this section.

55 (g) (1) Except in the case of death, or as provided in
56 subdivision (2) of this subsection, compensation payable to
57 a victim and to all other claimants sustaining economic
58 loss because of injury to that victim may not exceed
59 twenty-five thousand dollars in the aggregate. Compensa-
60 tion payable to all claimants because of the death of the
61 victim may not exceed thirty-five thousand dollars in the
62 aggregate.

63 (2) In the event the victim's personal injuries are so
64 severe as to leave the victim with a disability, as defined in

65 section 223 of the social security act, as amended, as
66 codified in 42 U.S.C. 423, the court may award an addi-
67 tional amount, not to exceed one hundred thousand
68 dollars, for special needs attributable to the injury.

69 (h) If an award of compensation of five thousand dollars
70 or more is made to a minor, a guardian shall be appointed
71 pursuant to the provisions of article ten, chapter forty-four
72 of this code to manage the minor's estate.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
Day of *April*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/25/01

Time 5:20 pm