

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2451**

4  
5 (By Delegate Smith)

6 (Originating in the Committee on the Judiciary)

7  
8 [January 25, 2011]

9  
10 A BILL to amend and reenact §61-11A-2 of the Code of West Virginia,  
11 1931, as amended, relating to victim impact statements;  
12 including in the definition of "victim" the immediate family  
13 members or estate representative of a person killed during the  
14 commission of a misdemeanor; and providing that a prosecuting  
15 attorney make reasonable efforts to contact certain persons  
16 who are known to the prosecuting attorney.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §61-11A-2 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

21 **§61-11A-2. Testimony of crime victim at sentencing hearing.**

22 (a) For the purposes of this section, "victim" means a person  
23 who is a victim of a felony, or, where a death occurs during the  
24 commission of a felony or a misdemeanor, the fiduciary of a  
25 deceased victim's estate or a member of a deceased victim's  
26 immediate family, if known to the prosecutor.

27 (b) Prior to the imposition of sentence upon any defendant who  
28 has been found guilty of a felony, or of a misdemeanor if death

1 occurs during the commission of a crime, or has pleaded guilty or  
2 nolo contendere to any felony, or to a misdemeanor if death occurs  
3 during the commission of a crime, the court shall permit the victim  
4 of the crime to appear before the court ~~for the purpose of making~~  
5 to make an oral statement for the record if the victim notifies the  
6 court of his or her desire to make such a statement after receiving  
7 notification provided in subsection (c) of this section. If the  
8 victim fails to ~~so~~ notify the court, ~~such~~ the failure ~~shall~~  
9 ~~constitute~~ is a waiver of the right to make an oral statement. In  
10 lieu of ~~such~~ the appearance and oral statement, the victim may  
11 submit a written statement to the court or to the probation officer  
12 in charge of the case. ~~Such~~ The probation officer shall forthwith  
13 file ~~any such~~ the statement delivered to his or her office with the  
14 sentencing court and the statement ~~shall~~ must be made a part of the  
15 record at the sentencing hearing. ~~Any such~~ The statement, whether  
16 oral or written, ~~shall~~ must relate solely to the facts of the case  
17 and the extent of ~~any~~ injuries, financial losses and loss of  
18 earnings directly resulting from the crime for which the defendant  
19 is being sentenced.

20 (c) Within a reasonable time prior to the imposition of  
21 sentence upon ~~such~~ the defendant, the prosecuting attorney or  
22 assistant prosecuting attorney in charge of the case shall make  
23 reasonable efforts, in writing, to advise the person who was the  
24 victim of ~~such~~ the crime, ~~or in the case of a minor,~~ the parent or  
25 guardian of ~~such~~ a minor who was the victim of a crime, ~~or~~ the  
26 fiduciary of ~~his~~ the victim's estate if ~~he be then~~ the victim is  
27 deceased and the immediate family members of the victim if the  
28 victim is deceased and if their whereabouts are known to the

1 prosecutor or assistant prosecutor. The writing will provide of  
2 the date, time and place of the original sentencing hearing and of  
3 the victim's right to submit a written or oral statement to the  
4 sentencing court. ~~as hereinabove provided.~~

5 (d) The oral or written statement given or submitted by ~~any~~ a  
6 victim in accordance with the provisions of this section ~~shall be~~  
7 is in addition to and not in lieu of the victim impact statement  
8 required by the provisions of section three of this article.