

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2818**

5 (By Delegates Manchin, Caputo, Fleischauer, Fragale, Guthrie,
6 Poore, Skaff, Doyle and Stowers)

7
8 [Passed March 10, 2011; in effect ninety days from passage.]
9

10 AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia,
11 1931, as amended, relating to increasing the allowable expense
12 under the Crime Victims Award Program; increasing the amount
13 that may be paid for the clean-up of real property damage by
14 a methamphetamine laboratory; increasing allowable
15 reimbursement for funeral expenses; and making technical
16 revisions.

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

18 That §14-2A-3 of the Code of West Virginia, 1931, as amended,
19 be amended to read as follows:

20 **ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

21 **§14-2A-3. Definitions.**

22 As used in this article, the term:

23 (a) "Claimant" means any of the following persons, whether
24 residents or nonresidents of this state, who claim an award of

1 compensation under this article:

2 (1) A victim, except the term "victim" does not include a
3 nonresident of this state where the criminally injurious act did
4 not occur in this state;

5 (2) A dependent, spouse or minor child of a deceased victim
6 or, if the deceased victim is a minor, the parents, legal guardians
7 and siblings of the victim;

8 (3) A third person, other than a collateral source, who
9 legally assumes or voluntarily pays the obligations of a victim or
10 a victim's dependent when the obligations are incurred as a result
11 of the criminally injurious conduct that is the subject of the
12 claim;

13 (4) A person who is authorized to act on behalf of a victim,
14 dependent or a third person who is not a collateral source
15 including, but not limited to, assignees, persons holding power of
16 attorney or others who hold authority to make or submit claims in
17 place of or on behalf of a victim, a dependent or third person who
18 is not a collateral source and if the victim, dependent or third
19 person who is not a collateral source is a minor or other legally
20 incompetent person, their duly qualified fiduciary;

21 (5) A person who is a secondary victim in need of mental
22 health counseling due to the person's exposure to the crime
23 committed whose award may not exceed \$1,000; and

24 (6) A person who owns real property damaged by the operation
25 of a methamphetamine laboratory without the knowledge or consent of

1 the owner of the real property.

2 (b) "Collateral source" means a source of benefits or
3 advantages for economic loss otherwise compensable that the victim
4 or claimant has received or that is readily available to him or her
5 from any of the following sources:

6 (1) The offender, including restitution received from the
7 offender pursuant to an order by a court sentencing the offender or
8 placing him or her on probation following a conviction in a
9 criminal case arising from the criminally injurious act for which
10 a claim for compensation is made;

11 (2) The government of the United States or its agencies, a
12 state or its political subdivisions or an instrumentality of two or
13 more states;

14 (3) Social Security, Medicare and Medicaid;

15 (4) State-required, temporary, nonoccupational disability
16 insurance or other disability insurance;

17 (5) Workers' compensation;

18 (6) Wage continuation programs of an employer;

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

22 (8) A contract providing prepaid hospital and other health
23 care services or benefits for disability; and

24 (9) That portion of the proceeds of all contracts of insurance
25 payable to the claimant on account of the death of the victim which

1 exceeds \$25,000.

2 (c) "Criminally injurious conduct" means conduct that occurs
3 or is attempted in this state, or in any state not having a victim
4 compensation program, which poses a substantial threat of personal
5 injury or death and is punishable by fine, imprisonment or death or
6 would be so punishable but for a finding by a court of competent
7 jurisdiction that the person committing the crime lacked capacity.
8 Criminally injurious conduct also includes criminally injurious
9 conduct committed outside of the United States against a resident
10 of this state. Criminally injurious conduct does not include
11 conduct arising out of the ownership, maintenance or use of a motor
12 vehicle unless the person engaging in the conduct intended to cause
13 personal injury or death or committed negligent homicide, driving
14 under the influence of alcohol, controlled substances or drugs,
15 leaving the scene of the accident or reckless driving.

16 (d) "Dependent" means an individual who received over half of
17 his or her support from the victim. For the purpose of making this
18 determination there shall be taken into account the amount of
19 support received from the victim as compared to the entire amount
20 of support the individual received from all sources including
21 self-support. The term "support" includes, but is not limited to,
22 food, shelter, clothing, medical and dental care and education.
23 The term "dependent" includes a child of the victim born after his
24 or her death.

25 (e) "Economic loss" means economic detriment consisting only

1 of allowable expense, work loss and replacement services loss. If
2 criminally injurious conduct causes death, economic loss includes
3 a dependent's economic loss and a dependent's replacement services
4 loss. Noneconomic detriment is not economic loss, however, economic
5 loss may be caused by pain and suffering or physical impairment.
6 For purposes of this article, the term "economic loss" includes a
7 lost scholarship as defined in this section.

8 (f) "Allowable expense" includes the following:

9 (1) Reasonable charges incurred or to be incurred for
10 reasonably needed products, services and accommodations including
11 those for medical care, mental health counseling, prosthetic
12 devices, eye glasses, dentures, rehabilitation and other remedial
13 treatment and care but does not include that portion of a charge
14 for a room in a hospital, clinic, convalescent home, nursing home
15 or other institution engaged in providing nursing care and related
16 services which is in excess of a reasonable and customary charge
17 for semiprivate accommodations unless accommodations other than
18 semiprivate accommodations are medically required;

19 (2) A total charge not in excess of \$10,000 for expenses in
20 any way related to funerals, cremations and burials;

21 (3) A charge, not to exceed \$10,000, for cleanup of real
22 property damaged by a methamphetamine laboratory or a charge not to
23 exceed \$1,000 for any other crime scene cleanup;

24 (4) Victim relocation costs not to exceed \$2,000;

25 (5) Reasonable travel expenses not to exceed \$1,000 for a

1 claimant to attend court proceedings conducted for the prosecution
2 of the offender;

3 (6) Reasonable travel expenses for a claimant to return a
4 person who is a minor or incapacitated adult who has been
5 unlawfully removed from this state to another state or country if
6 the removal constitutes a crime under the laws of this state
7 which may not exceed \$2,000 for expenses to another state or \$3,000
8 to another country; and

9 (7) Reasonable travel expenses for the transportation of a
10 victim to and from a medical facility.

11 (g) "Work loss" means loss of income from work that the
12 injured person would have performed if he or she had not been
13 injured and expenses reasonably incurred or to be incurred by him
14 or her to obtain services in lieu of those he or she would have
15 performed for income. "Work loss" is reduced by income from
16 substitute work actually performed or to be performed by him or her
17 or by income he or she would have earned in available appropriate
18 substitute work that he or she was capable of performing but
19 unreasonably failed to undertake. "Work loss" also includes loss
20 of income from work by the parent or legal guardian of a minor
21 victim who must miss work to take care of the minor victim.

22 (h) "Replacement services loss" means expenses reasonably
23 incurred or to be incurred in obtaining ordinary and necessary
24 services in lieu of those the injured person would have performed
25 for the benefit of himself or herself or his or her family if he or

1 she had not been injured. "Replacement services loss" does not
2 include services an injured person would have performed to generate
3 income.

4 (i) "Dependent's economic loss" means loss after a victim's
5 death of contributions or things of economic value to his or her
6 dependents but does not include services they would have received
7 from the victim if he or she had not suffered the fatal injury.
8 This amount is reduced by expenses avoided by the dependent due to
9 the victim's death.

10 (j) "Dependent's replacement service loss" means loss
11 reasonably incurred or to be incurred by dependents after a
12 victim's death in obtaining ordinary and necessary services in lieu
13 of those the victim would have performed for their benefit if he or
14 she had not suffered the fatal injury. This amount is reduced by
15 expenses avoided due to the victim's death but which are not
16 already subtracted in calculating a dependent's economic loss.

17 (k) "Victim" means the following:

18 (1) A person who suffers personal injury or death as a result
19 of any one of the following:

20 (A) Criminally injurious conduct;

21 (B) The good faith effort of the person to prevent criminally
22 injurious conduct; or

23 (C) The good faith effort of the person to apprehend a person
24 that the injured person has observed engaging in criminally
25 injurious conduct or who the injured person has reasonable cause to

1 believe has engaged in criminally injurious conduct immediately
2 prior to the attempted apprehension.

3 (2) The owner of real property damaged by the operation of a
4 methamphetamine laboratory which operation was without his or her
5 knowledge or consent.

6 (1) "Contributory misconduct" means any conduct of the
7 claimant or of the victim through whom the claimant claims an award
8 that is unlawful or intentionally tortious and that, without regard
9 to the conduct's proximity in time or space to the criminally
10 injurious conduct, has a causal relationship to the criminally
11 injurious conduct that is the basis of the claim and includes the
12 voluntary intoxication of the claimant, either by the consumption
13 of alcohol or the use of any controlled substance, when the
14 intoxication has a causal connection or relationship to the injury
15 sustained.

16 (m) "Lost scholarship" means a scholarship, academic award,
17 stipend or other monetary scholastic assistance which had been
18 awarded or conferred upon a victim in conjunction with a post-
19 secondary school educational program and which the victim is unable
20 to receive or use, in whole or in part, due to injuries received
21 from criminally injurious conduct.