

1 **Senate Bill No. 565**

2 (By Senators Palumbo, Wills, Foster and Kessler (Acting
3 President))

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5 [Introduced February 21, 2011; referred to the Committee on the
6 Judiciary.]
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11 A BILL to amend and reenact §61-11A-2 and §61-11A-6 of the Code of
12 West Virginia, 1931, as amended; and to amend and reenact §62-
13 12-23 of said code, all relating to adding persons who resided
14 with crime victims to those who are provided notice of matters
15 in the prosecutorial process and the right to be heard at
16 sentencing and parole proceedings.

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

18 That §61-11A-2 and §61-11A-6 of the Code of West Virginia,
19 1931, as amended, be amended and reenacted; and that §62-12-23 of
20 said code be amended and reenacted, all to read as follows:

21 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

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

23 **§61-11A-2. Testimony of crime victim at sentencing hearing.**

24 (a) For the purposes of this section, "victim" means a person
25 who is a victim of a felony, the fiduciary of a deceased victim's
26 estate or a member of a deceased victim's immediate family or a

1 nonrelated person who resided with the victim at the time of the
2 crime for at least twelve months preceding the crime.

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

22 (c) Within a reasonable time prior to the imposition of
23 sentence upon such defendant, the prosecuting attorney or assistant
24 prosecuting attorney in charge of the case shall, in writing,
25 advise the person who was the victim of such crime or, in the case
26 of a minor, the parent or guardian of such minor or the fiduciary

1 of his or her estate if he or she be then deceased, of the date,
2 time and place of the original sentencing hearing and of the
3 victim's rights 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.

9 **§61-11A-6. State guidelines for fair treatment of crime victims**
10 **and witnesses in the criminal justice system.**

11 (a) No later than July 1, 1984, the Attorney General shall
12 promulgate rules and regulations in accordance with the provisions
13 of chapter twenty-nine-a of this code, establishing guidelines for
14 law-enforcement agencies and prosecuting attorneys' offices
15 consistent with the purposes of this article. The Attorney General
16 shall seek the advice of the ~~department of public safety and~~
17 ~~department of human services~~ West Virginia State Police and
18 Department of Health and Human Resources in preparing such rules
19 and regulations. In preparing such rules and regulations, the
20 following objectives shall be considered:

21 (1) The arresting law-enforcement agency should ensure that
22 victims routinely receive emergency social and medical services as
23 soon as possible and are given information on the following:

24 (A) Availability of crime victim compensation, where
25 applicable;

26 (B) Community-based victim treatment programs;

1 (C) The role of the victim in the criminal justice process
2 including what they can expect from the system as well as what the
3 system expects from them; and

4 (D) Stages in the criminal justice process of significance to
5 a crime victim and the manner in which information about such
6 stages can be obtained.

7 (2) The prosecuting attorney or his or her assistant should
8 ensure that victims and witnesses receive information on steps that
9 law-enforcement officers and prosecuting attorneys can take to
10 protect victims and witnesses from intimidation.

11 (3) All victims and witnesses who have been scheduled to
12 attend criminal justice proceedings should be notified by the
13 prosecuting attorneys' offices as soon as possible of any
14 scheduling changes which will affect their appearances.

15 (4) Victims, witnesses, ~~and~~ one member of the immediate family
16 ~~of those victims and witnesses~~ and any nonrelated person who
17 resided with the victim for at least twelve months preceding the
18 crime should, if such persons provide the appropriate official with
19 a current address and telephone number, receive prompt advance
20 notification, if possible, of judicial proceedings relating to
21 their case, from the prosecuting attorney's office, including:

22 (A) The arrest of an accused;

23 (B) The initial appearance of an accused before a judicial
24 officer;

25 (C) The release of the accused pending judicial proceedings;
26 and

1 (D) Proceedings in the prosecution of the accused including,
2 but not limited to, the entry of a plea of guilty, trial,
3 sentencing, and, where a term of imprisonment is imposed, the
4 release of the accused from such imprisonment.

5 (5) The victim of a serious crime, or in the case of a minor
6 child or a homicide, the family of the victim, shall be consulted
7 by the prosecuting attorney in order to obtain the views of the
8 victim or family about the disposition of any criminal case brought
9 as a result of such crime including the views of the victim or
10 family about:

11 (A) Dismissal;

12 (B) Release of the accused pending judicial proceedings;

13 (C) Plea negotiations; and

14 (D) Pretrial diversion program.

15 (6) Victims and other prosecution witnesses should ~~if~~
16 ~~practical, be provided prior to court appearance,~~ be provided a
17 waiting area that is separate from all other witnesses prior to
18 court appearances, if feasible.

19 (7) Law-enforcement agencies should promptly return ~~victim's~~
20 victims' property held for evidentiary purposes unless there is a
21 compelling law-enforcement reason for retaining it.

22 (8) A victim or witness who so requests should be assisted by
23 law-enforcement agencies and prosecuting attorneys in informing
24 employers that the need for victim and witness cooperation in the
25 prosecution of the case may necessitate absence of that victim or
26 witness from work. A victim or witness who, as a direct result of

1 a crime or of cooperation with law-enforcement agencies or
2 attorneys for the government, is subjected to serious financial
3 strain, should be assisted by the appropriate state agencies in
4 dealing with creditors.

5 (b) Nothing in this section shall be construed as creating a
6 cause of action against the State of West Virginia or any of its
7 political subdivisions.

8 **CHAPTER 62. CRIMINAL PROCEDURE.**

9 **ARTICLE 12. PROBATION AND PAROLE.**

10 **§62-12-23. Notification of parole hearing; victim's right to be**
11 **heard; notification of release on parole.**

12 (a) Following the sentencing of a person who has been
13 convicted of murder, aggravated robbery, sexual assault in the
14 first or second degree, kidnapping, child abuse resulting in
15 injury, child neglect resulting in injury, arson or a sexual
16 offense against a minor, the prosecuting attorney who prosecuted
17 the offender shall prepare a "Parole Hearing Notification Form".
18 This form shall contain the following information:

19 (1) The name of the county in which the offender was
20 prosecuted and sentenced;

21 (2) The name of the court in which the offender was prosecuted
22 and sentenced;

23 (3) The name of the prosecuting attorney or assistant
24 prosecuting attorney who prosecuted the offender;

25 (4) The name of the judge who presided over the criminal case
26 and who sentenced the offender;

1 (5) The names of the law-enforcement agencies and officers who
2 were primarily involved with the investigation of the crime for
3 which the offender was sentenced; and

4 (6) The names, addresses and telephone numbers of the victims
5 of the crime for which the offender was sentenced or the names,
6 addresses and telephone numbers of the immediate family members of
7 each victim of the crime including, but not limited to, each
8 victim's spouse, father, mother, brothers, ~~and~~ sisters and any
9 nonrelated person who resided with an adult victim at the time of
10 the crime and for at least twelve months preceding the crime.

11 (b) The prosecuting attorney shall retain the original of the
12 Parole Hearing Notification Form and shall provide copies of it to
13 the circuit court which sentenced the offender, the Parole Board,
14 the Commissioner of Corrections and to all persons whose names and
15 addresses are listed on the ~~"Parole Hearing Notification Form"~~.
16 form.

17 (c) At least forty-five days prior to the date of a parole
18 hearing, the Parole Board shall notify all persons who are listed
19 on the Parole Hearing Notification Form of the date, time and place
20 ~~at which a parole hearing will be held.~~ of the hearing. Such notice
21 shall be sent by certified mail, return receipt requested. The
22 notice shall state that the victims of the crime have the right to
23 submit a written statement to the Parole Board and to attend the
24 parole hearing to be heard regarding the propriety of granting
25 parole to the prisoner. The notice shall also state that only the
26 victims may submit written statements and speak at the parole

1 hearing unless a victim is deceased, is a minor or is otherwise
2 incapacitated.

3 (d) The panel considering the parole shall inquire during the
4 parole hearing as to whether the victims of the crime or their
5 representatives, as provided in this section, are present. If so,
6 the panel shall permit those persons to speak at the hearing
7 regarding the propriety of granting parole for the prisoner.

8 (e) If the panel grants parole, it shall immediately set a date
9 on which the prisoner will be released. Such date shall be no
10 earlier than thirty days after the date on which parole is granted.
11 On the date on which parole is granted, the Parole Board shall
12 notify all persons listed on the Parole Hearing Notification Form
13 that parole has been granted and ~~that the prisoner will be released~~
14 ~~on a particular date.~~ the date of release. A written statement of
15 reasons for releasing the prisoner, prepared pursuant to subdivision
16 (4), subsection (b), section thirteen of this article, shall be
17 provided upon request to all persons listed on the Parole Hearing
18 Notification Form.

(NOTE: The purpose of this bill is to provide notice and the ability to be heard during certain criminal and parole hearings to person who have resided with a victim for at least one year prior to the crime.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)