

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 2451**

(By Delegate Smith)



Passed March 12, 2011

In Effect Ninety Days From Passage

# **E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

## **H. B. 2451**

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(BY DELEGATE SMITH)

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[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-12-23 of said code, all relating to clarifying definition of “victim” requiring prosecutors to make reasonable efforts to contact victims; expanding coverage of sentencing allocation to misdemeanors where death occurs; adding persons who resided with crime victims to those who are provided notice of matters in the prosecutorial process and the right to be heard at sentencing and parole proceedings.

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

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

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

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

1 (a) For the purposes of this section, "victim" means a  
2 person who is a victim of a felony, or where a death occurs  
3 during commission of a misdemeanor the fiduciary of a  
4 deceased victim's estate or a member of a deceased victim's  
5 immediate family or a nonrelated person who resided with  
6 the deceased victim at the time of the crime for at least  
7 twelve months preceding the crime if such person is known  
8 to the prosecutor.

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

30 (c) Within a reasonable time prior to the imposition of  
31 sentence upon such defendant, the prosecuting attorney or

32 assistant prosecuting attorney in charge of the case shall  
33 make reasonable efforts, in writing, to advise the person who  
34 was the victim of such crime or, in the case of a minor, the  
35 parent or guardian of such minor or the fiduciary of his or her  
36 estate if he or she be then deceased, of the date, time and  
37 place of the original sentencing hearing and of the victim's  
38 rights to submit a written or oral statement to the sentencing  
39 court.

40 (d) The oral or written statement given or submitted by a  
41 victim in accordance with the provisions of this section is in  
42 addition to and not in lieu of the victim impact statement  
43 required by the provisions of section three of this article.

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

1 (a) No later than July 1, 1984, the Attorney General shall  
2 promulgate rules and regulations in accordance with the  
3 provisions of chapter twenty-nine-a of this code, establishing  
4 guidelines for law-enforcement agencies and prosecuting  
5 attorneys' offices consistent with the purposes of this article.  
6 The Attorney General shall seek the advice of the West  
7 Virginia State Police and Department of Health and Human  
8 Resources in preparing such rules and regulations. In  
9 preparing such rules and regulations, the following objectives  
10 shall be considered:

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

15 (A) Availability of crime victim compensation, where  
16 applicable;

17 (B) Community-based victim treatment programs;

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

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

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

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

32 (4) Victims, witnesses, one member of the immediate  
33 family and any nonrelated person who resided with the  
34 victim for at least twelve months preceding the crime should,  
35 if such persons provide the appropriate official with a current  
36 address and telephone number, receive prompt advance  
37 notification, if possible, of judicial proceedings relating to  
38 their case, from the prosecuting attorney's office, including:

39 (A) The arrest of an accused;

40 (B) The initial appearance of an accused before a judicial  
41 officer;

42 (C) The release of the accused pending judicial  
43 proceedings; and

44 (D) Proceedings in the prosecution of the accused  
45 including, but not limited to, the entry of a plea of guilty,  
46 trial, sentencing, and, where a term of imprisonment is  
47 imposed, the release of the accused from such imprisonment.

48 (5) The victim of a serious crime, or in the case of a  
49 minor child or a homicide, the family of the victim, shall be  
50 consulted by the prosecuting attorney in order to obtain the  
51 views of the victim or family about the disposition of any  
52 criminal case brought as a result of such crime including the  
53 views of the victim or family about:

54 (A) Dismissal;

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

56 (C) Plea negotiations; and

57 (D) Pretrial diversion program.

58 (6) Victims and other prosecution witnesses should be  
59 provided a waiting area that is separate from all other  
60 witnesses prior to court appearances, if feasible.

61 (7) Law-enforcement agencies should promptly return  
62 victims' property held for evidentiary purposes unless there  
63 is a compelling law-enforcement reason for retaining it.

64 (8) A victim or witness who so requests should be  
65 assisted by law-enforcement agencies and prosecuting  
66 attorneys in informing employers that the need for victim and  
67 witness cooperation in the prosecution of the case may  
68 necessitate absence of that victim or witness from work. A  
69 victim or witness who, as a direct result of a crime or of  
70 cooperation with law-enforcement agencies or attorneys for  
71 the government, is subjected to serious financial strain,  
72 should be assisted by the appropriate state agencies in dealing  
73 with creditors.

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

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 12. PROBATION AND PAROLE.**

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

1 (a) Following the sentencing of a person who has been  
2 convicted of murder, aggravated robbery, sexual assault in  
3 the first or second degree, kidnapping, child abuse resulting  
4 in injury, child neglect resulting in injury, arson or a sexual  
5 offense against a minor, the prosecuting attorney who  
6 prosecuted the offender shall prepare a "Parole Hearing  
7 Notification Form". This form shall contain the following  
8 information:

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

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

13 (3) The name of the prosecuting attorney or assistant  
14 prosecuting attorney who prosecuted the offender;

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

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

20 (6) The names, addresses and telephone numbers of the  
21 victims of the crime for which the offender was sentenced or  
22 the names, addresses and telephone numbers of the  
23 immediate family members of each victim of the crime

24 including, but not limited to, each victim's spouse, father,  
25 mother, brothers, sisters and any nonrelated person who  
26 resided with an adult victim at the time of the crime and for  
27 at least twelve months preceding the crime.

28 (b) The prosecuting attorney shall retain the original of  
29 the Parole Hearing Notification Form and shall provide  
30 copies of it to the circuit court which sentenced the offender,  
31 the Parole Board, the Commissioner of Corrections and to all  
32 persons whose names and addresses are listed on the form.

33 (c) At least forty-five days prior to the date of a parole  
34 hearing, the Parole Board shall notify all persons who are  
35 listed on the Parole Hearing Notification Form of the date,  
36 time and place of the hearing. Such notice shall be sent by  
37 certified mail, return receipt requested. The notice shall state  
38 that the victims of the crime have the right to submit a written  
39 statement to the Parole Board and to attend the parole hearing  
40 to be heard regarding the propriety of granting parole to the  
41 prisoner. The notice shall also state that only the victims may  
42 submit written statements and speak at the parole hearing  
43 unless a victim is deceased, is a minor or is otherwise  
44 incapacitated.

45 (d) The panel considering the parole shall inquire during  
46 the parole hearing as to whether the victims of the crime or  
47 their representatives, as provided in this section, are present.  
48 If so, the panel shall permit those persons to speak at the  
49 hearing regarding the propriety of granting parole for the  
50 prisoner.

51 (e) If the panel grants parole, it shall immediately set a  
52 date on which the prisoner will be released. Such date shall  
53 be no earlier than thirty days after the date on which parole  
54 is granted. On the date on which parole is granted, the Parole  
55 Board shall notify all persons listed on the Parole Hearing



56 Notification Form that parole has been granted and the date  
57 of release. A written statement of reasons for releasing the  
58 prisoner, prepared pursuant to subdivision (4), subsection (b),  
59 section thirteen of this article, shall be provided upon request  
60 to all persons listed on the Parole Hearing Notification Form.

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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2011.

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*Governor*