

COMMITTEE SUBSTITUTE

FOR

H. B. 2451

(BY DELEGATE SMITH)

(Originating in the Committee on the Judiciary)
[January 25, 2011]

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

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 person
2 who is a victim of a felony, or, where a death occurs during the
3 commission of a felony or a misdemeanor, the fiduciary of a
4 deceased victim’s estate or a member of a deceased victim’s
5 immediate family, if known to the prosecutor.

6 (b) Prior to the imposition of sentence upon any
7 defendant who has been found guilty of a felony, or of a
8 misdemeanor if death occurs during the commission of a
9 crime, or has pleaded guilty or nolo contendere to any felony,
10 or to a misdemeanor if death occurs during the commission
11 of a crime, the court shall permit the victim of the crime to
12 appear before the court ~~for the purpose of making~~ to make an
13 oral statement for the record if the victim notifies the court of
14 his or her desire to make such a statement after receiving
15 notification provided in subsection (c) of this section. If the
16 victim fails to ~~so~~ notify the court, ~~such the~~ the failure ~~shall~~
17 ~~constitute~~ is a waiver of the right to make an oral statement.
18 In lieu of ~~such the~~ the appearance and oral statement, the victim
19 may submit a written statement to the court or to the
20 probation officer in charge of the case. ~~Such The~~ The probation

21 officer shall forthwith file ~~any such~~ the statement delivered
22 to his or her office with the sentencing court and the
23 statement ~~shall~~ must be made a part of the record at the
24 sentencing hearing. ~~Any such~~ The statement, whether oral or
25 written, ~~shall~~ must relate solely to the facts of the case and
26 the extent of ~~any~~ injuries, financial losses and loss of
27 earnings directly resulting from the crime for which the
28 defendant is being sentenced.

29 (c) Within a reasonable time prior to the imposition of
30 sentence upon ~~such~~ the defendant, the prosecuting attorney
31 or assistant prosecuting attorney in charge of the case shall
32 make reasonable efforts, in writing, to advise the person who
33 was the victim of ~~such~~ the crime, ~~or in the case of a minor,~~
34 the parent or guardian of ~~such~~ a minor who was the victim of
35 a crime, or the fiduciary of his the victim's estate if ~~he be~~
36 then the victim is deceased and the immediate family
37 members of the victim if the victim is deceased and if their
38 whereabouts are known to the prosecutor or assistant
39 prosecutor. The writing will provide of the date, time and
40 place of the original sentencing hearing and of the victim's
41 right to submit a written or oral statement to the sentencing
42 court. ~~as hereinabove provided.~~

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