

**ENROLLED**

**Senate Bill No. 331**

(BY SENATORS WILLS AND MILLER)

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[Passed March 9, 2012; in effect ninety days from passage.]

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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 adding persons who reside 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:

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

**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 the commission of a felony or a misdemeanor, the  
4 following persons shall be notified if known by the prosecu-  
5 tor: A member of the deceased victim’s immediate family, the  
6 fiduciary of the deceased victim’s estate or an adult house-  
7 hold member residing with the victim.

8 (b) Prior to the imposition of sentence upon a defendant  
9 who has been found guilty of a felony, or of a misdemeanor  
10 if death occurs during the commission of a crime, or has  
11 pleaded guilty or nolo contendere to a felony, or to a misde-  
12 meanor if death occurs during the commission of a crime, the  
13 court shall permit the victim of the crime to appear before  
14 the court to make an oral statement for the record if the  
15 victim notifies the court of his or her desire to make such a  
16 statement after receiving notification provided in subsection  
17 (c) of this section. If the victim fails to notify the court, the  
18 failure is a waiver of the right to make an oral statement. In  
19 lieu of the appearance and oral statement, the victim may  
20 submit a written statement to the court or to the probation  
21 officer in charge of the case. The probation officer shall  
22 forthwith file the statement delivered to his or her office  
23 with the sentencing court and the statement must be made a  
24 part of the record at the sentencing hearing. The statement,  
25 whether oral or written, must relate solely to the facts of the  
26 case and the extent of 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 the defendant, the prosecuting attorney or  
31 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 the crime, the parent or guardian of a  
34 minor who was the victim of a crime, the fiduciary of the  
35 victim's estate if the victim is deceased and the immediate  
36 family members of the victim if the victim is deceased and if  
37 their whereabouts are known to the prosecutor or assistant  
38 prosecutor. The writing will provide the date, time and place  
39 of the original sentencing hearing and of the victim's right to  
40 submit a written or oral statement to the sentencing court.

41 (d) The oral or written statement given or submitted by  
42 a victim in accordance with the provisions of this section is  
43 in addition to and not in lieu of the victim impact statement  
44 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 objec-  
10 tives 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  
23 about such stages can be obtained.

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

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

33 (4) Victims, witnesses, one member of the immediate  
34 family and any adult household member residing with the  
35 victim should, if such persons provide the appropriate  
36 official with a current address and telephone number,  
37 receive prompt advance notification, if possible, of judicial  
38 proceedings relating to their case, from the prosecuting  
39 attorney's office, including:

40 (A) The arrest of an accused;

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

43 (C) The release of the accused pending judicial proceed-  
44 ings; and

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

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

55 (A) Dismissal;

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

57 (C) Plea negotiations; and

58 (D) Pretrial diversion program.

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

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

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

75 (b) Nothing in this section shall be construed as creating  
76 a cause of action against the State of West Virginia or any of  
77 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 immedi-  
23 ate family members of each victim of the crime, including,  
24 but not limited to, each victim's spouse, father, mother,  
25 brothers, sisters and any adult household member residing  
26 with the victim.

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

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

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

50 (e) If the panel grants parole, it shall immediately set a  
51 date on which the prisoner will be released. Such date shall  
52 be no earlier than thirty days after the date on which parole

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