

# Senate Bill No. 331

(By Senators Wills and Miller)

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[Introduced January 18, 2012; referred to  
the Committee on the Judiciary.]

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A BILL 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 fiduciary of a deceased victim's estate or a member of a  
5 deceased victim's immediate family, if known to the prosecu-  
6 tor, or a nonrelated person who resided with the victim at  
7 the time of the crime for at least twelve months preceding  
8 the crime.

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

29 the crime for which the defendant is being sentenced.

30 (c) Within a reasonable time prior to the imposition of  
31 sentence upon the 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 the crime, the parent or guardian of a  
35 minor who was the victim of a crime, the fiduciary of the  
36 victim's estate if the victim is deceased and the immediate  
37 family members of the victim if the victim is deceased and if  
38 their whereabouts are known to the prosecutor or assistant  
39 prosecutor. The writing will provide the date, time and place  
40 of the original sentencing hearing and of the victim's right to  
41 submit a written or oral statement to the sentencing court.

42 (d) The oral or written statement given or submitted by  
43 a victim in accordance with the provisions of this section is  
44 in addition to and not in lieu of the victim impact statement  
45 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 ~~depart-~~  
7 ~~ment of public safety and department of human services~~

8 West Virginia State Police and Department of Health and  
9 Human Resources in preparing such rules and regulations. In  
10 preparing such rules and regulations, the following objec-  
11 tives shall be considered:

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

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

18 (B) Community-based victim treatment programs;

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

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

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

30 (3) All victims and witnesses who have been scheduled to

31 attend criminal justice proceedings should be notified by the  
32 prosecuting attorneys' offices as soon as possible of any  
33 scheduling changes which will affect their appearances.

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

42 (A) The arrest of an accused;

43 (B) The initial appearance of an accused before a judicial  
44 officer;

45 (C) The release of the accused pending judicial proceed-  
46 ings; and

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

51 (5) The victim of a serious crime, or in the case of a minor

52 child or a homicide the family of the victim, shall be con-  
53 sulted by the prosecuting attorney in order to obtain the  
54 views of the victim or family about the disposition of any  
55 criminal case brought as a result of such crime, including the  
56 views of the victim or family about:

57 (A) Dismissal;

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

59 (C) Plea negotiations; and

60 (D) Pretrial diversion program.

61 (6) Victims and other prosecution witnesses should ~~if~~  
62 ~~practical, be provided prior to court appearance; be provided~~  
63 a waiting area that is separate from all other witnesses prior  
64 to court appearances, if feasible.

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

69 (8) A victim or witness who so requests should be  
70 assisted by law-enforcement agencies and prosecuting  
71 attorneys in informing employers that the need for victim  
72 and witness cooperation in the prosecution of the case may

73 necessitate absence of that victim or witness from work. A  
74 victim or witness who, as a direct result of a crime or of  
75 cooperation with law-enforcement agencies or attorneys for  
76 the government, is subjected to serious financial strain  
77 should be assisted by the appropriate state agencies in  
78 dealing with creditors.

79 (b) Nothing in this section shall be construed as creating  
80 a cause of action against the State of West Virginia or any of  
81 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, ~~and~~ sisters and any nonrelated person who resided  
26 with an adult victim at the time of the crime and for at least  
27 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 "~~Parole~~  
33 ~~Hearing Notification Form~~" form.

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

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

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

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

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(NOTE: The purpose of this bill is to provide notice and the ability to be heard during certain criminal and parole hearings to persons 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.)