

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 643**

4 (By Senators Unger, Kessler (Mr. President) and Laird)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported March 28, 2013.]
8 _____

9
10 A BILL to amend and reenact §14-2A-3, §14-2A-9 and §14-2A-12 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 compensation awards to victims of crimes; redefining terms;
13 increasing the amount of victim relocation costs; permitting
14 a victim's reasonable travel costs to attend probation
15 hearings of the offender; allowing student loans obtained by
16 a victim to be treated as a lost scholarship in certain
17 instances; permitting the Court of Claims to hire more than
18 two claim investigators; and permitting claim investigators to
19 acquire autopsy reports, including toxicology results, from
20 the State Medical Examiner.

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

22 That §14-2A-3, §14-2A-9 and §14-2A-12 of the Code of West
23 Virginia, 1931, as amended, be amended and reenacted, all to read
24 as follows:

25 **ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

1 **§14-2A-3. Definitions.**

2 As used in this article, the term:

3 (a) "Claimant" means any of the following persons, whether
4 residents or nonresidents of this state, who claim an award of
5 compensation under this article:

6 (1) A victim, except the term "victim" does not include a
7 nonresident of this state where the criminally injurious act did
8 not occur in this state;

9 (2) A dependent, spouse or minor child of a deceased victim
10 or, if the deceased victim is a minor, the parents, legal guardians
11 and siblings of the victim;

12 (3) A third person, other than a collateral source, who
13 legally assumes or voluntarily pays the obligations of a victim or
14 a victim's dependent when the obligations are incurred as a result
15 of the criminally injurious conduct that is the subject of the
16 claim;

17 (4) A person who is authorized to act on behalf of a victim,
18 dependent or a third person who is not a collateral source
19 including, but not limited to, assignees, persons holding power of
20 attorney or others who hold authority to make or submit claims in
21 place of or on behalf of a victim, a dependent or third person who
22 is not a collateral source and if the victim, dependent or third
23 person who is not a collateral source is a minor or other legally
24 incompetent person, their duly qualified fiduciary;

25 (5) A person who is a secondary victim in need of mental
26 health counseling due to the person's exposure to the crime

1 committed whose award may not exceed \$1,000; and

2 (6) A person who owns real property damaged by the operation
3 of a methamphetamine laboratory without the knowledge or consent of
4 the owner of the real property.

5 (b) "Collateral source" means a source of benefits or
6 advantages for economic loss otherwise compensable that the victim
7 or claimant has received or that is readily available to him or her
8 from any of the following sources:

9 (1) The offender, including restitution received from the
10 offender pursuant to an order by a court sentencing the offender or
11 placing him or her on probation following a conviction in a
12 criminal case arising from the criminally injurious act for which
13 a claim for compensation is made;

14 (2) The government of the United States or its agencies, a
15 state or its political subdivisions or an instrumentality of two or
16 more states;

17 (3) Social Security, Medicare and Medicaid;

18 (4) State-required, temporary, nonoccupational disability
19 insurance or other disability insurance;

20 (5) Workers' compensation;

21 (6) Wage continuation programs of an employer;

22 (7) Proceeds of a contract of insurance payable to the victim
23 or claimant for loss that was sustained because of the criminally
24 injurious conduct;

25 (8) A contract providing prepaid hospital and other health
26 care services or benefits for disability; and

1 (9) That portion of the proceeds of all contracts of insurance
2 payable to the claimant on account of the death of the victim which
3 exceeds \$25,000.

4 (c) "Criminally injurious conduct" means conduct that occurs
5 or is attempted in this state, or in any state not having a victim
6 compensation program, which poses a substantial threat of personal
7 injury or death and is punishable by fine, imprisonment or death or
8 would be so punishable but for a finding by a court of competent
9 jurisdiction that the person committing the crime lacked capacity.
10 Criminally injurious conduct also includes criminally injurious
11 conduct committed outside of the United States against a resident
12 of this state. Criminally injurious conduct does not include
13 conduct arising out of the ownership, maintenance or use of a motor
14 vehicle unless the person engaging in the conduct intended to cause
15 personal injury or death or committed negligent homicide, driving
16 under the influence of alcohol, controlled substances or drugs,
17 leaving the scene of the accident or reckless driving.

18 (d) "Dependent" means an individual who received over half of
19 his or her support from the victim. For the purpose of making this
20 determination there shall be taken into account the amount of
21 support received from the victim as compared to the entire amount
22 of support the individual received from all sources including
23 self-support. The term "support" includes, but is not limited to,
24 food, shelter, clothing, medical and dental care and education.
25 The term "dependent" includes a child of the victim born after his
26 or her death.

1 (e) "Economic loss" means economic detriment consisting only
2 of allowable expense, work loss and replacement services loss. If
3 criminally injurious conduct causes death, economic loss includes
4 a dependent's economic loss and a dependent's replacement services
5 loss. Noneconomic detriment is not economic loss, however, economic
6 loss may be caused by pain and suffering or physical impairment.
7 For purposes of this article, the term "economic loss" includes a
8 lost scholarship as defined in this section.

9 (f) "Allowable expense" includes the following:

10 (1) Reasonable charges incurred or to be incurred for
11 reasonably needed products, services and accommodations including
12 those for medical care, mental health counseling, prosthetic
13 devices, eye glasses, dentures, rehabilitation and other remedial
14 treatment and care but does not include that portion of a charge
15 for a room in a hospital, clinic, convalescent home, nursing home
16 or other institution engaged in providing nursing care and related
17 services which is in excess of a reasonable and customary charge
18 for semiprivate accommodations unless accommodations other than
19 semiprivate accommodations are medically required;

20 (2) A total charge not in excess of \$10,000 for expenses in
21 any way related to funerals, cremations and burials;

22 (3) A charge, not to exceed \$10,000, for cleanup of real
23 property damaged by a methamphetamine laboratory or a charge not to
24 exceed \$1,000 for any other crime scene cleanup;

25 (4) Victim relocation costs not to exceed ~~\$2,000~~ \$2,500;

26 (5) Reasonable travel expenses not to exceed \$1,000 for a

1 claimant to attend court proceedings and parole hearings conducted
2 for the prosecution of the offender;

3 (6) Reasonable travel expenses for a claimant to return a
4 person who is a minor or incapacitated adult who has been
5 unlawfully removed from this state to another state or country if
6 the removal constitutes a crime under the laws of this state which
7 may not exceed \$2,000 for expenses to another state or \$3,000 to
8 another country; and

9 (7) Reasonable travel expenses for the transportation of a
10 victim to and from a medical facility.

11 (g) "Work loss" means loss of income from work that the
12 injured person would have performed if he or she had not been
13 injured and expenses reasonably incurred or to be incurred by him
14 or her to obtain services in lieu of those he or she would have
15 performed for income. "Work loss" is reduced by income from
16 substitute work actually performed or to be performed by him or her
17 or by income he or she would have earned in available appropriate
18 substitute work that he or she was capable of performing but
19 unreasonably failed to undertake. "Work loss" also includes loss
20 of income from work by the parent or legal guardian of a minor
21 victim who must miss work to take care of the minor victim.

22 (h) "Replacement services loss" means expenses reasonably
23 incurred or to be incurred in obtaining ordinary and necessary
24 services in lieu of those the injured person would have performed
25 for the benefit of himself or herself or his or her family if he or
26 she had not been injured. "Replacement services loss" does not

1 include services an injured person would have performed to generate
2 income.

3 (i) "Dependent's economic loss" means loss after a victim's
4 death of contributions or things of economic value to his or her
5 dependents but does not include services they would have received
6 from the victim if he or she had not suffered the fatal injury.
7 This amount is reduced by expenses avoided by the dependent due to
8 the victim's death.

9 (j) "Dependent's replacement service loss" means loss
10 reasonably incurred or to be incurred by dependents after a
11 victim's death in obtaining ordinary and necessary services in lieu
12 of those the victim would have performed for their benefit if he or
13 she had not suffered the fatal injury. This amount is reduced by
14 expenses avoided due to the victim's death but which are not
15 already subtracted in calculating a dependent's economic loss.

16 (k) "Victim" means the following:

17 (1) A person who suffers personal injury or death as a result
18 of any one of the following:

19 (A) Criminally injurious conduct;

20 (B) The good faith effort of the person to prevent criminally
21 injurious conduct; or

22 (C) The good faith effort of the person to apprehend a person
23 that the injured person has observed engaging in criminally
24 injurious conduct or who the injured person has reasonable cause to
25 believe has engaged in criminally injurious conduct immediately
26 prior to the attempted apprehension.

1 (2) The owner of real property damaged by the operation of a
2 methamphetamine laboratory which operation was without his or her
3 knowledge or consent.

4 (1) "Contributory misconduct" means any conduct of the
5 claimant or of the victim through whom the claimant claims an award
6 that is unlawful or intentionally tortious and that, without regard
7 to the conduct's proximity in time or space to the criminally
8 injurious conduct, has a causal relationship to the criminally
9 injurious conduct that is the basis of the claim and includes the
10 voluntary intoxication of the claimant, either by the consumption
11 of alcohol or the use of any controlled substance, when the
12 intoxication has a causal connection or relationship to the injury
13 sustained.

14 (m) "Lost scholarship" means a scholarship, academic award,
15 stipend, student loan or other monetary scholastic assistance which
16 had been awarded, ~~or~~ conferred upon or obtained by a victim in
17 conjunction with a post-secondary school educational program and
18 which the victim is unable to receive or use, in whole or in part,
19 due to injuries received from criminally injurious conduct.

20 **§14-2A-9. Claim investigators; compensation and expenses;**
21 **paralegals and support staff.**

22 The Court of Claims is hereby authorized to hire ~~not more than~~
23 ~~two~~ claim investigators to be employed within the office of the
24 clerk of the Court of Claims, who shall carry out the functions and
25 duties set forth in section twelve of this article. Claim
26 investigators shall serve at the pleasure of the Court of Claims

1 and under the administrative supervision of the clerk of the Court
2 of Claims. The compensation of claim investigators shall be fixed
3 by the court, and such compensation, together with travel, clerical
4 and other expenses of the clerk of the Court of Claims relating to
5 a claim investigator carrying out his or her duties under this
6 article, including the cost of obtaining reports required by the
7 investigator in investigating a claim, shall be payable from the
8 crime victims compensation fund as appropriated for such purpose by
9 the Legislature.

10 The Court of Claims is hereby authorized to hire as support
11 staff such paralegal or paralegals and secretary or secretaries to
12 be employed within the office of the clerk of the Court of Claims,
13 necessary to carry out the functions and duties of this article.
14 Such support staff shall serve at the will and pleasure of the
15 Court of Claims and under the administrative supervision of the
16 clerk of the Court of Claims.

17 **§14-2A-12. Investigation and recommendations by claim**
18 **investigator.**

19 (a) The clerk of the Court of Claims shall transmit a copy of
20 the application to the claim investigator within seven days after
21 the filing of the application.

22 (b) The claim investigator, upon receipt of an application for
23 an award of compensation from the clerk of the Court of Claims,
24 shall investigate the claim. After completing the investigation,
25 the claim investigator shall make a written finding of fact and
26 recommendation concerning an award of compensation. He or she

1 shall file with the clerk the finding of fact and recommendation
2 and all information or documents that he or she used in his or her
3 investigation: *Provided*, That the claim investigator shall not
4 file information or documents which have been the subject of a
5 protective order entered under the provisions of subsection (c) of
6 this section.

7 (c) The claim investigator, while investigating the claim, may
8 require the claimant to supplement the application for an award of
9 compensation with any further information or documentary materials,
10 including any medical report readily available, which may lead to
11 any relevant facts aiding in the determination of whether, and the
12 extent to which, a claimant qualifies for an award of compensation.

13 The claim investigator, while investigating the claim, may
14 also require law-enforcement officers and prosecuting attorneys
15 employed by the state or any political subdivision thereof, to
16 provide him or her with reports, information, witness statements or
17 other data gathered in the investigation of the criminally
18 injurious conduct that is the basis of any claim to enable him or
19 her to determine whether, and the extent to which, a claimant
20 qualifies for an award of compensation. The prosecuting attorney
21 and any officer or employee of the prosecuting attorney or of the
22 law-enforcement agency shall be immune from any civil liability
23 that might otherwise be incurred as the result of providing such
24 reports, information, witness statements or other data relating to
25 the criminally injurious conduct to the claim investigator.

26 The claim investigator, while investigating the claim, may

1 also require the office of the State Medical Examiner to provide
2 autopsy reports including toxicology results.

3 Upon motion of any party, court or agency from whom such
4 reports, information, witness statements or other data is sought,
5 and for good cause shown, the court may make any order which
6 justice requires to protect a witness or other person, including,
7 but not limited to, the following: (1) That the reports,
8 information, witness statements or other data not be made
9 available; (2) that the reports, information, witness statements or
10 other data may be made available only on specified terms and
11 conditions, including a designation of time and place; (3) that the
12 reports, information, witness statements or other data be made
13 available only by a different method than that selected by the
14 claim investigator; (4) that certain matters not be inquired into,
15 or that the scope of the claim investigator's request be limited to
16 certain matters; (5) that the reports, information, witness
17 statements or other data be examined only by certain persons
18 designated by the court; (6) that the reports, information, witness
19 statements or other data, after being sealed, be opened only by
20 order of the court; and (7) that confidential information or the
21 identity of confidential witnesses or informers not be disclosed,
22 or disclosed only in a designated manner.

23 However, in any case wherein the claim investigator has reason
24 to believe that his or her investigation may interfere with or
25 jeopardize the investigation of a crime by law-enforcement
26 officers, or the prosecution of a case by prosecuting attorneys, he

1 or she shall apply to the Court of Claims, or a judge thereof, for
2 an order granting leave to discontinue his or her investigation for
3 a reasonable time in order to avoid such interference or
4 jeopardization. When it appears to the satisfaction of the court,
5 or judge, upon application by the claim investigator or in its own
6 discretion, that the investigation of a case by the claim
7 investigator will interfere with or jeopardize the investigation or
8 prosecution of a crime, the court, or judge, shall issue an order
9 granting the claim investigator leave to discontinue his or her
10 investigation for such time as the court, or judge, deems
11 reasonable to avoid such interference or jeopardization.

12 (d) The finding of fact that is issued by the claim
13 investigator pursuant to subsection (b) of this section shall
14 contain the following:

15 (1) Whether the criminally injurious conduct that is the basis
16 for the application did occur, the date on which the conduct
17 occurred and the exact nature of the conduct;

18 (2) If the criminally injurious conduct was reported to a
19 law-enforcement officer or agency, the date on which the conduct
20 was reported and the name of the person who reported the conduct;
21 or, the reasons why the conduct was not reported to a
22 law-enforcement officer or agency; or, the reasons why the conduct
23 was not reported to a law-enforcement officer or agency within
24 seventy-two hours after the conduct occurred;

25 (3) The exact nature of the injuries that the victim sustained
26 as a result of the criminally injurious conduct;

1 (4) If the claim investigator is recommending that an award be
2 made, a specific itemization of the economic loss that was
3 sustained by the victim, the claimant or a dependent as a result of
4 the criminally injurious conduct;

5 (5) If the claim investigator is recommending that an award be
6 made, a specific itemization of any benefits or advantages that the
7 victim, the claimant or a dependent has received or is entitled to
8 receive from any collateral source for economic loss that resulted
9 from the conduct;

10 (6) Whether the claimant is the spouse, parent, child, brother
11 or sister of the offender, or is similarly related to an accomplice
12 of the offender who committed the criminally injurious conduct;

13 (7) Any information which might be a basis for a reasonable
14 reduction or denial of a claim because of contributory misconduct
15 of the claimant or of a victim through whom he or she claims;

16 (8) Any additional information that the claim investigator
17 deems to be relevant to the evaluation of the claim.

18 (e) The recommendation that is issued by the claim
19 investigator pursuant to subsection (b) of this section shall
20 contain the following:

21 (1) Whether an award of compensation should be made to the
22 claimant and the amount of the award;

23 (2) If the claim investigator recommends that an award not be
24 made to the claimant, the reason for his or her decision.

25 (f) The claim investigator shall file his or her finding of
26 fact and recommendation with the clerk within six months after the

1 filing of the application: *Provided*, That where there is active
2 criminal investigation or prosecution of the person or persons
3 alleged to have committed the criminally injurious conduct which is
4 the basis for the claimant's claim, the claim investigator shall
5 file his or her finding of fact and recommendation within six
6 months after the first of any final convictions or other final
7 determinations as to innocence or guilt, or any other final
8 disposition of criminal proceedings. In any case, an additional
9 time period may be provided by order of any Court of Claims judge
10 or commissioner upon good cause shown.

NOTE: The purpose of this bill is to increase the amount for a victim's relocation costs from \$2,000 to \$2,500. The bill permits a victim to receive reasonable travels costs to attend probation hearings of the offender. The bill permits the Court of Claims to hire more than two claim investigators. The bill permits claim investigators to acquire autopsy reports, including toxicology results, from the State Medical Examiner. The bill redefines the term "lost scholarship" to include a student loan.

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