

E N G R O S S E D
COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 204

(By Senators Unger and Kessler (Mr. President))

[Originating in the Committee on Finance;
reported February 24, 2014.]

A BILL to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-14 and §14-2A-18 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes generally; redefining terms; increasing the amount of victim relocation costs; allowing student loans obtained by a victim to be treated as a lost scholarship in certain instances; modifying required time period in which a claimant should

report offense to law enforcement; clarifying that, absent the identity of a perpetrator being unknown, a criminal complaint being filed is a prerequisite to filing a claim; allowing victims of sexual offenses to undergo a forensic examination rather than reporting to law enforcement; permitting the Court of Claims to hire two additional claim investigators; and permitting claim investigators to acquire autopsy reports from the State Medical Examiner.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-14 and §14-2A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§14-2A-3. Definitions.

- 1 As used in this article, the term:
- 2 (a) “Claimant” means any of the following persons,
- 3 whether residents or nonresidents of this state, who claim an
- 4 award of compensation under this article:

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

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

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

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

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

28 ~~(6) A person who owns real property damaged by the~~
29 ~~operation of a methamphetamine laboratory without the~~
30 ~~knowledge or consent of the owner of the real property.~~

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

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

40 (2) The government of the United States or its agencies,
41 a state or its political subdivisions or an instrumentality of
42 two or more states;

43 (3) Social Security, Medicare and Medicaid;

44 (4) State-required, temporary, nonoccupational disability

45 insurance or other disability insurance;

46 (5) Workers' compensation;

47 (6) Wage continuation programs of an employer;

48 (7) Proceeds of a contract of insurance payable to the

49 victim or claimant for loss that was sustained because of the

50 criminally injurious conduct;

51 (8) A contract providing prepaid hospital and other health

52 care services or benefits for disability; and

53 (9) That portion of the proceeds of all contracts of

54 insurance payable to the claimant on account of the death of

55 the victim which exceeds \$25,000.

56 (c) "Criminally injurious conduct" means conduct that

57 occurs or is attempted in this state, or in any state not having

58 a victim compensation program, which poses a substantial

59 threat of personal injury or death and is punishable by fine or

60 imprisonment. ~~or death or would be so punishable but for a~~

61 ~~finding by a court of competent jurisdiction that the person~~

62 ~~committing the crime lacked capacity.~~ "Criminally injurious

63 conduct” also includes criminally injurious conduct
64 committed outside of the United States against a resident of
65 this state. “Criminally injurious conduct” does not include
66 conduct arising out of the ownership, maintenance or use of
67 a motor vehicle unless the person engaging in the conduct
68 intended to cause personal injury or death or committed
69 negligent homicide, driving under the influence of alcohol,
70 controlled substances or drugs, leaving the scene of the
71 accident or reckless driving.

72 (d) “Dependent” means an individual who received over
73 half of his or her support from the victim. For the purpose
74 of making this determination there shall be taken into
75 account the amount of support received from the victim as
76 compared to the entire amount of support the individual
77 received from all sources including self-support. The term
78 “support” includes, but is not limited to, food, shelter,
79 clothing, medical and dental care and education. The term
80 “dependent” includes a child of the victim born after his or
81 her death.

82 (e) “Economic loss” means economic detriment consisting
83 only of allowable expense, work loss and replacement services
84 loss. If criminally injurious conduct causes death, “economic
85 loss” includes a dependent’s economic loss and a dependent’s
86 replacement services loss. Noneconomic detriment is not
87 economic loss; however, economic loss may be caused by pain
88 and suffering or physical impairment. For purposes of this
89 article, the term “economic loss” includes a lost scholarship as
90 defined in this section.

91 (f) “Allowable expense” includes the following:

92 (1) Reasonable charges incurred or to be incurred for
93 reasonably needed products, services and accommodations
94 including those for medical care, mental health counseling,
95 prosthetic devices, eye glasses, dentures, rehabilitation and
96 other remedial treatment and care but does not include that
97 portion of a charge for a room in a hospital, clinic,
98 convalescent home, nursing home or other institution
99 engaged in providing nursing care and related services which
100 is in excess of a reasonable and customary charge for

101 semiprivate accommodations unless accommodations other
102 than semiprivate accommodations are medically required;

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

105 ~~(3) A charge, not to exceed \$10,000, for cleanup of real~~
106 ~~property damaged by a methamphetamine laboratory or a~~
107 ~~charge not to exceed \$1,000 for any other crime scene~~
108 ~~cleanup;~~

109 ~~(4)~~ (3) Victim relocation costs not to exceed \$2,000
110 \$2,500;

111 ~~(5)~~ (4) Reasonable travel expenses not to exceed \$1,000
112 for a claimant to attend court proceedings conducted for the
113 prosecution of the offender;

114 ~~(6)~~ (5) Reasonable travel expenses for a claimant to
115 return a person who is a minor or incapacitated adult who has
116 been unlawfully removed from this state to another state or
117 country if the removal constitutes a crime under the laws of
118 this state which may not exceed \$2,000 for expenses to
119 another state or \$3,000 to another country; and

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120 ~~(7)~~ (6) Reasonable travel expenses for the transportation
121 of a victim to and from a medical facility.

122 (g) “Work loss” means loss of income from work that the
123 injured person would have performed if he or she had not
124 been injured and expenses reasonably incurred or to be
125 incurred by him or her to obtain services in lieu of those he
126 or she would have performed for income. “Work loss” is
127 reduced by income from substitute work actually performed
128 or to be performed by him or her or by income he or she
129 would have earned in available appropriate substitute work
130 that he or she was capable of performing but unreasonably
131 failed to undertake. “Work loss” also includes loss of income
132 from work by the parent or legal guardian of a minor victim
133 who must miss work to take care of the minor victim.

134 (h) “Replacement services loss” means expenses
135 reasonably incurred or to be incurred in obtaining ordinary
136 and necessary services in lieu of those the injured person
137 would have performed for the benefit of himself or herself or
138 his or her family if he or she had not been injured.

139 “Replacement services loss” does not include services an
140 injured person would have performed to generate income.

141 (i) “Dependent’s economic loss” means loss after a
142 victim’s death of contributions or things of economic value
143 to his or her dependents but does not include services they
144 would have received from the victim if he or she had not
145 suffered the fatal injury. This amount is reduced by expenses
146 avoided by the dependent due to the victim’s death.

147 (j) “Dependent’s replacement service loss” means loss
148 reasonably incurred or to be incurred by dependents after a
149 victim’s death in obtaining ordinary and necessary services
150 in lieu of those the victim would have performed for their
151 benefit if he or she had not suffered the fatal injury. This
152 amount is reduced by expenses avoided due to the victim’s
153 death but which are not already subtracted in calculating a
154 dependent’s economic loss.

155 (k) “Victim” means the following:

156 (†) A person who suffers personal injury or death as a
157 result of any one of the following:

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158 (A) Criminally injurious conduct;

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

161 (C) The good faith effort of the person to apprehend a
162 person that the injured person has observed engaging in
163 criminally injurious conduct or who the injured person has
164 reasonable cause to believe has engaged in criminally injurious
165 conduct immediately prior to the attempted apprehension.

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

169 (1) “Contributory misconduct” means any conduct of the
170 claimant or of the victim through whom the claimant claims an
171 award that is unlawful or intentionally tortious and that, without
172 regard to the conduct’s proximity in time or space to the
173 criminally injurious conduct, has a causal relationship to the
174 criminally injurious conduct that is the basis of the claim and
175 includes the voluntary intoxication of the claimant, either by the
176 consumption of alcohol or the use of any controlled substance,

177 when the intoxication has a causal connection or relationship to
178 the injury sustained.

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

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

1 The Court of Claims is hereby authorized to hire not more
2 than ~~two~~ four claim investigators to be employed within the
3 Office of the Clerk of the Court of Claims, who shall carry out
4 the functions and duties set forth in section twelve of this
5 article. Claim investigators shall serve at the pleasure of the
6 Court of Claims and under the administrative supervision of the
7 Clerk of the Court of Claims. The compensation of claim
8 investigators shall be fixed by the court, and such

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9 compensation, together with travel, clerical and other expenses
10 of the Clerk of the Court of Claims relating to a claim
11 investigator carrying out his or her duties under this article,
12 including the cost of obtaining reports required by the
13 investigator in investigating a claim, shall be payable from the
14 crime victims compensation fund as appropriated for such
15 purpose by the Legislature.

16 The Court of Claims is hereby authorized to hire as support
17 staff such paralegal or paralegals and secretary or secretaries to
18 be employed within the Office of the Clerk of the Court of
19 Claims, necessary to carry out the functions and duties of this
20 article. Such support staff shall serve at the will and pleasure of
21 the Court of Claims and under the administrative supervision of
22 the Clerk of the Court of Claims.

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

1 (a) The Clerk of the Court of Claims shall transmit a copy
2 of the application to the claim investigator within seven days
3 after the filing of the application.

4 (b) The claim investigator, upon receipt of an application
5 for an award of compensation from the Clerk of the Court of
6 Claims, shall investigate the claim. After completing the
7 investigation, the claim investigator shall make a written
8 finding of fact and recommendation concerning an award of
9 compensation. He or she shall file with the clerk the finding
10 of fact and recommendation and all information or
11 documents that he or she used in his or her investigation:
12 *Provided*, That the claim investigator shall not file
13 information or documents which have been the subject of a
14 protective order entered under the provisions of subsection
15 (c) of this section.

16 (c) The claim investigator, while investigating the claim,
17 may require the claimant to supplement the application for an
18 award of compensation with any further information or
19 documentary materials, including any medical report readily
20 available, which may lead to any relevant facts aiding in the
21 determination of whether, and the extent to which, a claimant
22 qualifies for an award of compensation.

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23 The claim investigator, while investigating the claim,
24 may also require law-enforcement officers and prosecuting
25 attorneys employed by the state or any political subdivision
26 thereof, to provide him or her with reports, information,
27 witness statements or other data gathered in the investigation
28 of the criminally injurious conduct that is the basis of any
29 claim to enable him or her to determine whether, and the
30 extent to which, a claimant qualifies for an award of
31 compensation. The prosecuting attorney and any officer or
32 employee of the prosecuting attorney or of the
33 law-enforcement agency shall be immune from any civil
34 liability that might otherwise be incurred as the result of
35 providing such reports, information, witness statements or
36 other data relating to the criminally injurious conduct to the
37 claim investigator.

38 The claim investigator, while investigating the claim,
39 may obtain autopsy reports including results from the Office
40 of the State Medical Examiner to be used solely for
41 determining eligibility for compensation awards.

42 Upon motion of any party, court or agency from whom
43 such reports, information, witness statements or other data is
44 sought, and for good cause shown, the court may make any
45 order which justice requires to protect a witness or other
46 person, including, but not limited to, the following: (1) That
47 the reports, information, witness statements or other data not
48 be made available; (2) that the reports, information, witness
49 statements or other data may be made available only on
50 specified terms and conditions, including a designation of
51 time and place; (3) that the reports, information, witness
52 statements or other data be made available only by a different
53 method than that selected by the claim investigator; (4) that
54 certain matters not be inquired into, or that the scope of the
55 claim investigator's request be limited to certain matters; (5)
56 that the reports, information, witness statements or other data
57 be examined only by certain persons designated by the court;
58 (6) that the reports, information, witness statements or other
59 data, after being sealed, be opened only by order of the court;
60 and (7) that confidential information or the identity of

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61 confidential witnesses or informers not be disclosed, or
62 disclosed only in a designated manner.

63 However, in any case wherein the claim investigator has
64 reason to believe that his or her investigation may interfere
65 with or jeopardize the investigation of a crime by
66 law-enforcement officers, or the prosecution of a case by
67 prosecuting attorneys, he or she shall apply to the Court of
68 Claims, or a judge thereof, for an order granting leave to
69 discontinue his or her investigation for a reasonable time in
70 order to avoid such interference or jeopardization. When it
71 appears to the satisfaction of the court, or judge, upon
72 application by the claim investigator or in its own
73 discretion, that the investigation of a case by the claim
74 investigator will interfere with or jeopardize the
75 investigation or prosecution of a crime, the court, or judge,
76 shall issue an order granting the claim investigator leave to
77 discontinue his or her investigation for such time as the
78 court, or judge, deems reasonable to avoid such interference
79 or jeopardization.

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

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

86 (2) If the criminally injurious conduct was reported to a
87 law-enforcement officer or agency, the date on which the
88 conduct was reported and the name of the person who
89 reported the conduct; or the reasons why the conduct was not
90 reported to a law-enforcement officer or agency; or the
91 reasons why the conduct was not reported to a
92 law-enforcement officer or agency within seventy-two hours
93 after the conduct occurred;

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

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

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

105 (6) Whether the claimant is the spouse, parent, child,
106 brother or sister of the offender, or is similarly related to an
107 accomplice of the offender who committed the criminally
108 injurious conduct;

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

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

115 (e) The recommendation that is issued by the claim
116 investigator pursuant to subsection (b) of this section shall
117 contain the following:

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

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

123 (f) The claim investigator shall file his or her finding of
124 fact and recommendation with the clerk within six months
125 after the filing of the application: *Provided*, That where there
126 is active criminal investigation or prosecution of the person
127 or persons alleged to have committed the criminally injurious
128 conduct which is the basis for the claimant's claim, the claim
129 investigator shall file his or her finding of fact and
130 recommendation within six months after the first of any final
131 convictions or other final determinations as to innocence or
132 guilt, or any other final disposition of criminal proceedings.
133 In any case, an additional time period may be provided by
134 order of any Court of Claims judge or commissioner upon
135 good cause shown.

**§14-2A-14. Grounds for denial of claim or reduction of awards;
maximum awards.**

1 (a) Except as provided in subsection (b), section ten of
2 this article, the judge or commissioner may not approve an
3 award of compensation to a claimant who did not file his or
4 her application for an award of compensation within two
5 years after the date of the occurrence of the criminally
6 injurious conduct that caused the injury or death for which he
7 or she is seeking an award of compensation.

8 (b) The judge or commissioner may not approve an
9 award of compensation if the criminally injurious conduct
10 upon which the claim is based was not reported to a law-
11 enforcement officer or agency or, in the case of sexual
12 offense, the claimant did not undergo a forensic medical
13 examination, within ~~seventy-two~~ ninety-six hours after the
14 occurrence of the conduct, unless it is determined that good
15 cause existed for the failure to report the conduct or undergo
16 a forensic medical examination within the ~~72-hour~~ 96-hour
17 period.

18 (c) The judge or commissioner may not approve an award
19 of compensation to a claimant who is the offender or an
20 accomplice of the offender who committed the criminally
21 injurious conduct, nor to any claimant if the award would
22 unjustly benefit the offender or his or her accomplice.

23 (d) A judge or commissioner, upon a finding that the
24 claimant or victim has not fully cooperated with appropriate
25 law-enforcement agencies or the claim investigator, may
26 deny a claim, reduce an award of compensation or reconsider
27 a claim already approved.

28 (e) A judge or commissioner may not approve an award
29 of compensation if the injury occurred while the victim was
30 confined in any state, county or regional jail, prison, private
31 prison or correctional facility.

32 (f) After reaching a decision to approve an award of
33 compensation, but prior to announcing the approval, the
34 judge or commissioner shall require the claimant to submit
35 current information as to collateral sources on forms
36 prescribed by the Clerk of the Court of Claims. The judge or

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37 commissioner shall reduce an award of compensation or deny
38 a claim for an award of compensation that is otherwise
39 payable to a claimant to the extent that the economic loss
40 upon which the claim is based is or will be recouped from
41 other persons, including collateral sources, or if the reduction
42 or denial is determined to be reasonable because of the
43 contributory misconduct of the claimant or of a victim
44 through whom he or she claims. If an award is reduced or a
45 claim is denied because of the expected recoupment of all or
46 part of the economic loss of the claimant from a collateral
47 source, the amount of the award or the denial of the claim
48 shall be conditioned upon the claimant's economic loss being
49 recouped by the collateral source: *Provided*, That if it is
50 thereafter determined that the claimant will not receive all or
51 part of the expected recoupment, the claim shall be reopened
52 and an award shall be approved in an amount equal to the
53 amount of expected recoupment that it is determined the
54 claimant will not receive from the collateral source, subject
55 to the limitation set forth in subsection (g) of this section.

56 (g) (1) Except in the case of death, or as provided in
57 subdivision (2) of this subsection, compensation payable to
58 a victim and to all other claimants sustaining economic loss
59 because of injury to that victim may not exceed \$35,000 in
60 the aggregate. Compensation payable to all claimants
61 because of the death of the victim may not exceed \$50,000 in
62 the aggregate.

63 (2) In the event the victim's personal injuries are so
64 severe as to leave the victim with a disability, as defined in
65 Section 223 of the Social Security Act, as amended, as
66 codified in 42 U. S. C. §423, the court may award an
67 additional amount, not to exceed \$100,000, for special needs
68 attributable to the injury.

69 (h) If an award of compensation of \$5,000 or more is
70 made to a minor, a guardian shall be appointed pursuant to
71 the provisions of article ten, chapter forty-four of this code to
72 manage the minor's estate.

**§14-2A-18. Effect of no criminal charges being filed or
conviction of offender.**

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1 The court, or a judge or commissioner thereof, may
2 approve an award of compensation whether or not any person
3 is ~~prosecuted or~~ convicted for committing the conduct that is
4 the basis of the award. The filing of a criminal charge shall
5 be a prerequisite for receipt of compensation unless it is
6 determined that no charges were filed due to the identity of
7 the perpetrator being unknown. Proof of conviction of a
8 person whose conduct gave rise to a claim is conclusive
9 evidence that the crime was committed, unless an application
10 for rehearing, an appeal of the conviction or certiorari is
11 pending, or a rehearing or new trial has been ordered.

12 The court, or a judge or commissioner thereof, shall
13 suspend, upon a request of the claim investigator, the
14 proceedings in any claim for an award of compensation
15 pending disposition of a criminal prosecution that has been
16 commenced or is imminent.