

H. B. 3112

(BY DELEGATE(S) RAINES, LANE, MILEY,
OVERINGTON AND POORE)

[Introduced March 25, 2013; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §14-2A-3, §14-2A-9 and §14-2A-12 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes; increasing the amount of victim relocation costs; permitting a victim's reasonable travels costs to attend probation hearings of the offender; redefining a term; permitting the Court of Claims to hire more than two claim investigators; and permitting claim investigators to acquire autopsy reports, including toxicology results, from the State Medical Examiner.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3, §14-2A-9 and §14-2A-12 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, whether
3 residents or nonresidents of this state, who claim an award of
4 compensation under this article:

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

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

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

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

24 (5) A person who is a secondary victim in need of mental
25 health counseling due to the person's exposure to the crime
26 committed whose award may not exceed \$1,000; and

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

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

34 (1) The offender, including restitution received from the
35 offender pursuant to an order by a court sentencing the offender

36 or placing him or her on probation following a conviction in a
37 criminal case arising from the criminally injurious act for which
38 a claim for compensation is made;

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

42 (3) Social Security, Medicare and Medicaid;

43 (4) State-required, temporary, nonoccupational disability
44 insurance or other disability insurance;

45 (5) Workers' compensation;

46 (6) Wage continuation programs of an employer;

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

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

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

55 (c) "Criminally injurious conduct" means conduct that
56 occurs or is attempted in this state, or in any state not having a

57 victim compensation program, which poses a substantial threat
58 of personal injury or death and is punishable by fine,
59 imprisonment or death or would be so punishable but for a
60 finding by a court of competent jurisdiction that the person
61 committing the crime lacked capacity. Criminally injurious
62 conduct also includes criminally injurious conduct committed
63 outside of the United States against a resident of this state.
64 Criminally injurious conduct does not include conduct arising
65 out of the ownership, maintenance or use of a motor vehicle
66 unless the person engaging in the conduct intended to cause
67 personal injury or death or committed negligent homicide,
68 driving under the influence of alcohol, controlled substances or
69 drugs, leaving the scene of the accident or reckless driving.

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

77 education. The term “dependent” includes a child of the victim
78 born after his or her death.

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

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

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

97 customary charge for semiprivate accommodations unless
98 accommodations other than semiprivate accommodations are
99 medically required;

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

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

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

106 (5) Reasonable travel expenses not to exceed \$1,000 for a
107 claimant to attend court proceedings and parole hearings
108 conducted for the prosecution of the offender;

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

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

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

129 (h) “Replacement services loss” means expenses reasonably
130 incurred or to be incurred in obtaining ordinary and necessary
131 services in lieu of those the injured person would have
132 performed for the benefit of himself or herself or his or her
133 family if he or she had not been injured. “Replacement services
134 loss” does not include services an injured person would have
135 performed to generate income.

136 (i) “Dependent’s economic loss” means loss after a victim’s
137 death of contributions or things of economic value to his or her

138 dependents but does not include services they would have
139 received from the victim if he or she had not suffered the fatal
140 injury. This amount is reduced by expenses avoided by the
141 dependent due to the victim's death.

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

150 (k) "Victim" means the following:

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

153 (A) Criminally injurious conduct;

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

156 (C) The good faith effort of the person to apprehend a person
157 that the injured person has observed engaging in criminally

158 injurious conduct or who the injured person has reasonable cause
159 to believe has engaged in criminally injurious conduct
160 immediately prior to the attempted apprehension.

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

164 (l) “Contributory misconduct” means any conduct of the
165 claimant or of the victim through whom the claimant claims an
166 award that is unlawful or intentionally tortious and that, without
167 regard to the conduct’s proximity in time or space to the
168 criminally injurious conduct, has a causal relationship to the
169 criminally injurious conduct that is the basis of the claim and
170 includes the voluntary intoxication of the claimant, either by the
171 consumption of alcohol or the use of any controlled substance,
172 when the intoxication has a causal connection or relationship to
173 the injury sustained.

174 (m) “Lost scholarship” means a scholarship, academic
175 award, stipend, student loan or other monetary scholastic
176 assistance which had been awarded, ~~or~~ conferred ~~upon~~ or
177 obtained by a victim in conjunction with a post-secondary school

178 educational program and which the victim is unable to receive or
179 use, in whole or in part, due to injuries received from criminally
180 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~~ claim investigators to be employed within the office of
3 the clerk of the Court of Claims, who shall carry out the
4 functions and duties set forth in section twelve of this article.
5 Claim investigators shall serve at the pleasure of the Court of
6 Claims and under the administrative supervision of the clerk of
7 the Court of Claims. The compensation of claim investigators
8 shall be fixed by the court, and such compensation, together with
9 travel, clerical and other expenses of the clerk of the Court of
10 Claims relating to a claim investigator carrying out his or her
11 duties under this article, including the cost of obtaining reports
12 required by the investigator in investigating a claim, shall be
13 payable from the crime victims compensation fund as
14 appropriated for such purpose by the Legislature.

15 The Court of Claims is hereby authorized to hire as support
16 staff such paralegal or paralegals and secretary or secretaries to

17 be employed within the office of the clerk of the Court of
18 Claims, necessary to carry out the functions and duties of this
19 article. Such support staff shall serve at the will and pleasure of
20 the Court of Claims and under the administrative supervision of
21 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 of
2 the application to the claim investigator within seven days after
3 the filing of the application.

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

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

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

35 The claim investigator, while investigating the claim, may
36 also require the office of the State Medical Examiner to provide
37 autopsy reports including toxicology results.

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

55 order of the court; and (7) that confidential information or the
56 identity of confidential witnesses or informers not be disclosed,
57 or disclosed only in a designated manner.

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

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

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

79 (2) If the criminally injurious conduct was reported to a
80 law-enforcement officer or agency, the date on which the
81 conduct was reported and the name of the person who reported
82 the conduct; or, the reasons why the conduct was not reported to
83 a law-enforcement officer or agency; or, the reasons why the
84 conduct was not reported to a law-enforcement officer or agency
85 within seventy-two hours after the conduct occurred;

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

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

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

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

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

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

106 (e) The recommendation that is issued by the claim
107 investigator pursuant to subsection (b) of this section shall
108 contain the following:

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

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

113 (f) The claim investigator shall file his or her finding of fact
114 and recommendation with the clerk within six months after the
115 filing of the application: *Provided*, That where there is active
116 criminal investigation or prosecution of the person or persons

117 alleged to have committed the criminally injurious conduct
118 which is the basis for the claimant's claim, the claim investigator
119 shall file his or her finding of fact and recommendation within
120 six months after the first of any final convictions or other final
121 determinations as to innocence or guilt, or any other final
122 disposition of criminal proceedings. In any case, an additional
123 time period may be provided by order of any Court of Claims
124 judge 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.

The Committee on Finance moves to amend the title of the bill to read as follows:

H. B. 3112 - "A BILL to amend and reenact §14-2A-3, §14-2A-9 and §14-2A-12 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes; increasing the amount of victim relocation costs; permitting a victim's reasonable travels costs to attend parole hearings of the offender; including student loans in definition of lost scholarship; permitting the Court of Claims to hire more than two claim investigators; and permitting claim investigators to acquire autopsy reports, including toxicology results, from the State Medical Examiner."

