

1 COMMITTEE SUBSTITUTE

2 FOR

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4 FOR

5 **Senate Bill No. 204**

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

7 _____
8 [Originating in the Committee on Finance;
9 reported February 24, 2014.]
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12
13 A BILL to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-
14 14 and §14-2A-18 of the Code of West Virginia, 1931, as
15 amended, all relating to compensation awards to victims of
16 crimes generally; redefining terms; increasing the amount of
17 victim relocation costs; allowing student loans obtained by a
18 victim to be treated as a lost scholarship in certain
19 instances; modifying required time period in which a claimant
20 should report offense to law enforcement; clarifying that,
21 absent the identity of a perpetrator being unknown, a criminal
22 complaint being filed is a prerequisite to filing a claim;
23 allowing victims of sexual offenses to undergo a forensic
24 examination rather than reporting to law enforcement;
25 permitting the Court of Claims to hire two additional claim
26 investigators; and permitting claim investigators to acquire

1 autopsy reports from the State Medical Examiner.

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

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

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

7 **§14-2A-3. Definitions.**

8 As used in this article, the term:

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

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

15 (2) A dependent, spouse or minor child of a deceased victim
16 or, if the deceased victim is a minor, the parents, legal guardians
17 and siblings of the victim;

18 (3) A third person, other than a collateral source, who
19 legally assumes or voluntarily pays the obligations of a victim or
20 a victim's dependent when the obligations are incurred as a result
21 of the criminally injurious conduct that is the subject of the
22 claim;

23 (4) A person who is authorized to act on behalf of a victim,
24 dependent or a third person who is not a collateral source
25 including, but not limited to, assignees, persons holding power of
26 attorney or others who hold authority to make or submit claims in

1 place of or on behalf of a victim, a dependent or third person who
2 is not a collateral source and if the victim, dependent or third
3 person who is not a collateral source is a minor or other legally
4 incompetent person, their duly qualified fiduciary;

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

8 (6) A person who owns real property damaged by the operation
9 of a methamphetamine laboratory without the knowledge or consent of
10 the owner of the real property.

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

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

20 (2) The government of the United States or its agencies, a
21 state or its political subdivisions or an instrumentality of two or
22 more states;

23 (3) Social Security, Medicare and Medicaid;

24 (4) State-required, temporary, nonoccupational disability
25 insurance or other disability insurance;

26 (5) Workers' compensation;

1 (6) Wage continuation programs of an employer;

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

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

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

10 (c) "Criminally injurious conduct" means conduct that occurs
11 or is attempted in this state, or in any state not having a victim
12 compensation program, which poses a substantial threat of personal
13 injury or death and is punishable by fine or imprisonment. ~~or death~~
14 ~~or would be so punishable but for a finding by a court of competent~~
15 ~~jurisdiction that the person committing the crime lacked capacity.~~

16 "Criminally injurious conduct" also includes criminally injurious
17 conduct committed outside of the United States against a resident
18 of this state. "Criminally injurious conduct" does not include
19 conduct arising out of the ownership, maintenance or use of a motor
20 vehicle unless the person engaging in the conduct intended to cause
21 personal injury or death or committed negligent homicide, driving
22 under the influence of alcohol, controlled substances or drugs,
23 leaving the scene of the accident or reckless driving.

24 (d) "Dependent" means an individual who received over half of
25 his or her support from the victim. For the purpose of making this
26 determination there shall be taken into account the amount of

1 support received from the victim as compared to the entire amount
2 of support the individual received from all sources including
3 self-support. The term "support" includes, but is not limited to,
4 food, shelter, clothing, medical and dental care and education.
5 The term "dependent" includes a child of the victim born after his
6 or her death.

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

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

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

26 (2) A total charge not in excess of \$10,000 for expenses in

1 any way related to funerals, cremations and burials;

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

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

6 (5) Reasonable travel expenses not to exceed \$1,000 for a
7 claimant to attend court proceedings conducted for the prosecution
8 of the offender;

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

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

17 (g) "Work loss" means loss of income from work that the
18 injured person would have performed if he or she had not been
19 injured and expenses reasonably incurred or to be incurred by him
20 or her to obtain services in lieu of those he or she would have
21 performed for income. "Work loss" is reduced by income from
22 substitute work actually performed or to be performed by him or her
23 or by income he or she would have earned in available appropriate
24 substitute work that he or she was capable of performing but
25 unreasonably failed to undertake. "Work loss" also includes loss
26 of income from work by the parent or legal guardian of a minor

1 victim who must miss work to take care of the minor victim.

2 (h) "Replacement services loss" means expenses reasonably
3 incurred or to be incurred in obtaining ordinary and necessary
4 services in lieu of those the injured person would have performed
5 for the benefit of himself or herself or his or her family if he or
6 she had not been injured. "Replacement services loss" does not
7 include services an injured person would have performed to generate
8 income.

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

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

22 (k) "Victim" means the following:

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

25 (A) Criminally injurious conduct;

26 (B) The good faith effort of the person to prevent criminally

1 injurious conduct; or

2 (C) The good faith effort of the person to apprehend a person
3 that the injured person has observed engaging in criminally
4 injurious conduct or who the injured person has reasonable cause to
5 believe has engaged in criminally injurious conduct immediately
6 prior to the attempted apprehension.

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

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

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

26 **§14-2A-9. Claim investigators; compensation and expenses;**

paralegals and support staff.

1
2 The Court of Claims is hereby authorized to hire not more than
3 ~~two~~ four claim investigators to be employed within the Office of
4 the clerk of the Court of Claims, who shall carry out the functions
5 and duties set forth in section twelve of this article. Claim
6 investigators shall serve at the pleasure of the Court of Claims
7 and under the administrative supervision of the Clerk of the Court
8 of Claims. The compensation of claim investigators shall be fixed
9 by the court, and such compensation, together with travel, clerical
10 and other expenses of the Clerk of the Court of Claims relating to
11 a claim investigator carrying out his or her duties under this
12 article, 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 purpose by
15 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 Claims,
19 necessary to carry out the functions and duties of this article.
20 Such support staff shall serve at the will and pleasure of the
21 Court of Claims and under the administrative supervision of the
22 Clerk of the Court of Claims.

23 **§14-2A-12. Investigation and recommendations by claim**
24 **investigator.**

25 (a) The clerk of the Court of Claims shall transmit a copy of
26 the application to the claim investigator within seven days after

1 the filing of the application.

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

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

19 The claim investigator, while investigating the claim, may
20 also require law-enforcement officers and prosecuting attorneys
21 employed by the state or any political subdivision thereof, to
22 provide him or her with reports, information, witness statements or
23 other data gathered in the investigation of the criminally
24 injurious conduct that is the basis of any claim to enable him or
25 her to determine whether, and the extent to which, a claimant
26 qualifies for an award of compensation. The prosecuting attorney

1 and any officer or employee of the prosecuting attorney or of the
2 law-enforcement agency shall be immune from any civil liability
3 that might otherwise be incurred as the result of providing such
4 reports, information, witness statements or other data relating to
5 the criminally injurious conduct to the claim investigator.

6 The claim investigator, while investigating the claim, may
7 obtain autopsy reports including results from the Office of the
8 State Medical Examiner to be used solely for determining
9 eligibility for compensation awards.

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

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

4 However, in any case wherein the claim investigator has reason
5 to believe that his or her investigation may interfere with or
6 jeopardize the investigation of a crime by law-enforcement
7 officers, or the prosecution of a case by prosecuting attorneys, he
8 or she shall apply to the Court of Claims, or a judge thereof, for
9 an order granting leave to discontinue his or her investigation for
10 a reasonable time in order to avoid such interference or
11 jeopardization. When it appears to the satisfaction of the court,
12 or judge, upon application by the claim investigator or in its own
13 discretion, that the investigation of a case by the claim
14 investigator will interfere with or jeopardize the investigation or
15 prosecution of a crime, the court, or judge, shall issue an order
16 granting the claim investigator leave to discontinue his or her
17 investigation for such time as the court, or judge, deems
18 reasonable to avoid such interference or jeopardization.

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

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

25 (2) If the criminally injurious conduct was reported to a
26 law-enforcement officer or agency, the date on which the conduct

1 was reported and the name of the person who reported the conduct;
2 or the reasons why the conduct was not reported to a
3 law-enforcement officer or agency; or the reasons why the conduct
4 was not reported to a law-enforcement officer or agency within
5 seventy-two hours after the conduct occurred;

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

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

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

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

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

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

25 (e) The recommendation that is issued by the claim
26 investigator pursuant to subsection (b) of this section shall

1 contain the following:

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

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

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

18 **§14-2A-14. Grounds for denial of claim or reduction of awards;**
19 **maximum awards.**

20 (a) Except as provided in subsection (b), section ten of this
21 article, the judge or commissioner may not approve an award of
22 compensation to a claimant who did not file his or her application
23 for an award of compensation within two years after the date of the
24 occurrence of the criminally injurious conduct that caused the
25 injury or death for which he or she is seeking an award of
26 compensation.

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

10 (c) The judge or commissioner may not approve an award of
11 compensation to a claimant who is the offender or an accomplice of
12 the offender who committed the criminally injurious conduct, nor to
13 any claimant if the award would unjustly benefit the offender or
14 his or her accomplice.

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

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

23 (f) After reaching a decision to approve an award of
24 compensation, but prior to announcing the approval, the judge or
25 commissioner shall require the claimant to submit current
26 information as to collateral sources on forms prescribed by the

1 Clerk of the Court of Claims. The judge or commissioner shall
2 reduce an award of compensation or deny a claim for an award of
3 compensation that is otherwise payable to a claimant to the extent
4 that the economic loss upon which the claim is based is or will be
5 recouped from other persons, including collateral sources, or if
6 the reduction or denial is determined to be reasonable because of
7 the contributory misconduct of the claimant or of a victim through
8 whom he or she claims. If an award is reduced or a claim is denied
9 because of the expected recoupment of all or part of the economic
10 loss of the claimant from a collateral source, the amount of the
11 award or the denial of the claim shall be conditioned upon the
12 claimant's economic loss being recouped by the collateral source:
13 *Provided*, That if it is thereafter determined that the claimant
14 will not receive all or part of the expected recoupment, the claim
15 shall be reopened and an award shall be approved in an amount equal
16 to the amount of expected recoupment that it is determined the
17 claimant will not receive from the collateral source, subject to
18 the limitation set forth in subsection (g) of this section.

19 (g) (1) Except in the case of death, or as provided in
20 subdivision (2) of this subsection, compensation payable to a
21 victim and to all other claimants sustaining economic loss because
22 of injury to that victim may not exceed \$35,000 in the aggregate.
23 Compensation payable to all claimants because of the death of the
24 victim may not exceed \$50,000 in the aggregate.

25 (2) In the event the victim's personal injuries are so severe
26 as to leave the victim with a disability, as defined in Section 223

1 of the Social Security Act, as amended, as codified in 42 U. S. C.
2 §423, the court may award an additional amount, not to exceed
3 \$100,000, for special needs attributable to the injury.

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

8 **§14-2A-18. Effect of no criminal charges being filed or**
9 **conviction of offender.**

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

21 The court, or a judge or commissioner thereof, shall suspend,
22 upon a request of the claim investigator, the proceedings in any
23 claim for an award of compensation pending disposition of a
24 criminal prosecution that has been commenced or is imminent.