

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 204

(SENATORS UNGER AND KESSLER (MR. PRESIDENT),
ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]

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[Passed March 8, 2014; in effect from passage.]

AN ACT 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; eliminating the authority to make awards of compensation for damage caused by operation of a methamphetamine laboratory under certain circumstances; modifying required time period in which a claimant should report offense to law enforcement under certain circumstances; requiring that a criminal complaint being filed is a prerequisite to receipt of compensation in certain circumstances; providing circumstances in which a criminal complaint need not be filed as a prerequisite to receipt of compensation; 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:

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
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;

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

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

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

40 (3) Social Security, Medicare and Medicaid;

41 (4) State-required, temporary, nonoccupational disability
42 insurance or other disability insurance;

43 (5) Workers' compensation;

44 (6) Wage continuation programs of an employer;

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

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

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

53 (c) "Criminally injurious conduct" means conduct that
54 occurs or is attempted in this state, or in any state not having
55 a victim compensation program, which poses a substantial
56 threat of personal injury or death and is punishable by fine or
57 imprisonment. "Criminally injurious conduct" also includes
58 criminally injurious conduct committed outside of the United
59 States against a resident of this state. "Criminally injurious
60 conduct" does not include conduct arising out of the
61 ownership, maintenance or use of a motor vehicle unless the
62 person engaging in the conduct intended to cause personal
63 injury or death or committed negligent homicide, driving
64 under the influence of alcohol, controlled substances or
65 drugs, leaving the scene of the accident or reckless driving.

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

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

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

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

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

99 (3) Victim relocation costs not to exceed \$2,500;

100 (4) Reasonable travel expenses not to exceed \$1,000 for
101 a claimant to attend court proceedings conducted for the
102 prosecution of the offender;

103 (5) Reasonable travel expenses for a claimant to return a
104 person who is a minor or incapacitated adult who has been

105 unlawfully removed from this state to another state or country
106 if the removal constitutes a crime under the laws of this state
107 which may not exceed \$2,000 for expenses to another state or
108 \$3,000 to another country; and

109 (6) Reasonable travel expenses for the transportation of
110 a victim to and from a medical facility.

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

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

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

136 (j) “Dependent’s replacement service loss” means loss
137 reasonably incurred or to be incurred by dependents after a
138 victim’s death in obtaining ordinary and necessary services
139 in lieu of those the victim would have performed for their
140 benefit if he or she had not suffered the fatal injury. This
141 amount is reduced by expenses avoided due to the victim’s
142 death but which are not already subtracted in calculating a
143 dependent’s economic loss.

144 (k) “Victim” means the following:

145 A person who suffers personal injury or death as a result
146 of any one of the following:

147 (A) Criminally injurious conduct;

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

150 (C) The good faith effort of the person to apprehend a
151 person that the injured person has observed engaging in
152 criminally injurious conduct or who the injured person has
153 reasonable cause to believe has engaged in criminally
154 injurious conduct immediately prior to the attempted
155 apprehension.

156 (l) “Contributory misconduct” means any conduct of the
157 claimant or of the victim through whom the claimant claims
158 an award that is unlawful or intentionally tortious and that,
159 without regard to the conduct’s proximity in time or space to
160 the criminally injurious conduct, has a causal relationship to
161 the criminally injurious conduct that is the basis of the claim
162 and includes the voluntary intoxication of the claimant, either
163 by the consumption of alcohol or the use of any controlled
164 substance, when the intoxication has a causal connection or
165 relationship to the injury sustained.

166 (m) “Lost scholarship” means a scholarship, academic
167 award, stipend, student loan or other monetary scholastic
168 assistance which had been awarded, conferred upon or
169 obtained by a victim in conjunction with a post-secondary
170 school educational program and which the victim is unable to
171 receive or use, in whole or in part, due to injuries received
172 from 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 four claim investigators to be employed within the
3 Office of the Clerk of the Court of Claims, who shall carry
4 out 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
7 the Clerk of the Court of Claims. The compensation of claim
8 investigators shall be fixed by the court, and such
9 compensation, together with travel, clerical and other
10 expenses of the Clerk of the Court of Claims relating to a
11 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
14 the crime victims compensation fund as appropriated for such
15 purpose by the Legislature.

16 The Court of Claims is hereby authorized to hire as
17 support staff such paralegal or paralegals and secretary or
18 secretaries to be employed within the Office of the Clerk of
19 the Court of Claims, necessary to carry out the functions and
20 duties of this article. Such support staff shall serve at the will
21 and pleasure of the Court of Claims and under the
22 administrative supervision of the Clerk of the Court of
23 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 documents
11 that he or she used in his or her investigation: *Provided*, That
12 the claim investigator shall not file information or documents
13 which have been the subject of a protective order entered
14 under the 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
24 attorneys employed by the state or any political subdivision
25 thereof, to provide him or her with reports, information,
26 witness statements or other data gathered in the investigation
27 of the criminally injurious conduct that is the basis of any
28 claim to enable him or her to determine whether, and the
29 extent to which, a claimant qualifies for an award of
30 compensation. The prosecuting attorney and any officer or

31 employee of the prosecuting attorney or of the
32 law-enforcement agency shall be immune from any civil
33 liability that might otherwise be incurred as the result of
34 providing such reports, information, witness statements or
35 other data relating to the criminally injurious conduct to the
36 claim investigator.

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

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

62 However, in any case wherein the claim investigator has
63 reason to believe that his or her investigation may interfere

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

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

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

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

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

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

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

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

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

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

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

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

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

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121 (f) The claim investigator shall file his or her finding of
122 fact and recommendation with the clerk within six months
123 after the filing of the application: *Provided*, That where there
124 is active criminal investigation or prosecution of the person
125 or persons alleged to have committed the criminally injurious
126 conduct which is the basis for the claimant's claim, the claim
127 investigator shall file his or her finding of fact and
128 recommendation within six months after the first of any final
129 convictions or other final determinations as to innocence or
130 guilt, or any other final disposition of criminal proceedings.
131 In any case, an additional time period may be provided by
132 order of any Court of Claims judge or commissioner upon
133 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 award
9 of compensation if the criminally injurious conduct upon
10 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 ninety-six hours after the occurrence of
14 the conduct, unless it is determined that good cause existed
15 for the failure to report the conduct or undergo a forensic
16 medical examination within the 96-hour period: *Provided*,
17 That no reporting to a law-enforcement officer or agency or
18 a forensic medical examination is required if the claimant is

19 a juvenile in order for a judge or commissioner to approve an
20 award of compensation.

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

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

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

35 (f) After reaching a decision to approve an award of
36 compensation, but prior to announcing the approval, the
37 judge or commissioner shall require the claimant to submit
38 current information as to collateral sources on forms
39 prescribed by the Clerk of the Court of Claims. The judge or
40 commissioner shall reduce an award of compensation or deny
41 a claim for an award of compensation that is otherwise
42 payable to a claimant to the extent that the economic loss
43 upon which the claim is based is or will be recouped from
44 other persons, including collateral sources, or if the reduction
45 or denial is determined to be reasonable because of the
46 contributory misconduct of the claimant or of a victim
47 through whom he or she claims. If an award is reduced or a
48 claim is denied because of the expected recoupment of all or
49 part of the economic loss of the claimant from a collateral
50 source, the amount of the award or the denial of the claim

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51 shall be conditioned upon the claimant's economic loss being
52 recouped by the collateral source: *Provided*, That if it is
53 thereafter determined that the claimant will not receive all or
54 part of the expected recoupment, the claim shall be reopened
55 and an award shall be approved in an amount equal to the
56 amount of expected recoupment that it is determined the
57 claimant will not receive from the collateral source, subject
58 to the limitation set forth in subsection (g) of this section.

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

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

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

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

1 The court, or a judge or commissioner thereof, may
2 approve an award of compensation whether or not any person
3 is convicted for committing the conduct that is the basis of
4 the award. The filing of a criminal charge shall be a

5 prerequisite for receipt of compensation: *Provided*, That no
6 criminal charges need be filed if: (1) The claimant is an adult
7 at the time the conduct giving rise to the claim occurred and
8 no criminal charges were filed for reasons other than the
9 desire of the claimant and a law-enforcement agency
10 confirms that the available evidence supports a finding that
11 a crime occurred; or (2) the claimant was a juvenile at the
12 time the conduct giving rise to the claim occurred. Proof of
13 conviction of a person whose conduct gave rise to a claim is
14 conclusive evidence that the crime was committed, unless an
15 application for rehearing, an appeal of the conviction or
16 certiorari is pending, or a rehearing or new trial has been
17 ordered.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

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Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor