

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4307

BY DELEGATES CAPITO, GARCIA, PINSON, PUSHKIN AND

LOVEJOY

[Introduced January 20, 2022; referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating
2 to increasing and expanding certain benefits payable from the Crime Victims'
3 Compensation Fund; increasing the limit on allowable benefits for travel and relocation;
4 increasing the limit on the allowable benefit for mental health counseling for secondary
5 victims; and expanding the definition of "work loss" to compensate victims and responsible
6 adults for work lost to attend court proceedings.

Be it enacted by the Legislature of West Virginia:

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 residents or nonresidents of
3 this state, who claim an award of compensation under this article:

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

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

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

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

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

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

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

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

27 (3) Social Security, Medicare, and Medicaid;

28 (4) State-required, temporary, nonoccupational disability insurance or other disability
29 insurance;

30 (5) Workers' compensation;

31 (6) Wage continuation programs of an employer;

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

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

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

38 (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state,
39 or in any state not having a victim compensation program, which poses a substantial threat of
40 personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct"
41 also includes criminally injurious conduct committed outside of the United States against a
42 resident of this state. "Criminally injurious conduct" does not include conduct arising out of the

43 ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct
44 intended to cause personal injury or death or committed negligent homicide, driving under the
45 influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless
46 driving.

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

53 (e) "Economic loss" means economic detriment consisting only of allowable expense, work
54 loss, and replacement services loss. If criminally injurious conduct causes death, economic loss
55 includes a dependents economic loss and a dependents replacement services loss.
56 Noneconomic detriment is not economic loss; however, economic loss may be caused by pain
57 and suffering or physical impairment. For purposes of this article, the term economic loss includes
58 a lost scholarship as defined in this section.

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

60 (1) Reasonable charges incurred or to be incurred for reasonably needed medical care,
61 including products, services, and accommodations related to medical and psychological care,
62 prosthetic devices, eye glasses, dentures, rehabilitation, and other remedial treatment and care
63 but does not include that portion of a charge for a room in a hospital, clinic, convalescent home,
64 nursing home, or other institution engaged in providing nursing care and related services which
65 is in excess of a reasonable and customary charge for semiprivate accommodations unless
66 accommodations other than semiprivate accommodations are medically required;

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

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

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

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

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

78 (g) "Work loss" means loss of income from work that the injured person would have
79 performed if he or she had not been injured and expenses reasonably incurred or to be incurred
80 by him or her to obtain services in lieu of those he or she would have performed for income. "Work
81 loss" is reduced by income from substitute work actually performed or to be performed by him or
82 her or by income he or she would have earned in available appropriate substitute work that he or
83 she was capable of performing but unreasonably failed to undertake. "Work loss" ~~also~~ includes
84 loss of income from work by the parent or legal guardian of a minor victim who must miss work to
85 take care of the minor victim. "Work loss" also includes loss of income from work by the claimant,
86 the victim, or the parent or legal guardian of a minor victim who must miss work to attend court
87 proceedings conducted for the prosecution of the offender.

88 (h) "Replacement services loss" means expenses reasonably incurred or to be incurred in
89 obtaining ordinary and necessary services in lieu of those the injured person would have
90 performed for the benefit of himself or herself or his or her family if he or she had not been injured.
91 "Replacement services loss" does not include services an injured person would have performed
92 to generate income.

93 (i) "Dependents' economic loss" means loss after a victim's death of contributions or things
94 of economic value to his or her dependents but does not include services they would have

95 received from the victim if he or she had not suffered the fatal injury. This amount is reduced by
96 expenses avoided by the dependent due to the victim's death.

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

102 (k) "Victim" means the following:

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

104 (A) Criminally injurious conduct;

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

106 (C) The good faith effort of the person to apprehend a person that the injured person has
107 observed engaging in criminally injurious conduct or who the injured person has reasonable cause
108 to believe has engaged in criminally injurious conduct immediately prior to the attempted
109 apprehension.

110 (l) "Contributory misconduct" means any conduct of the claimant or of the victim through
111 whom the claimant claims an award that is unlawful or intentionally tortious and that, without
112 regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal
113 relationship to the criminally injurious conduct that is the basis of the claim and includes the
114 voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any
115 controlled substance, when the intoxication has a causal connection or relationship to the injury
116 sustained.

117 (m) "Lost scholarship" means a scholarship, academic award, stipend, student loan, or
118 other monetary scholastic assistance which had been awarded, conferred upon, or obtained by a
119 victim in conjunction with a post-secondary school educational program and which the victim is

120 unable to receive or use, in whole or in part, due to injuries received from criminally injurious
121 conduct.

NOTE: The purpose of this bill is to increase the amounts of payable benefits for victims' travel and relocation expenses and for mental health counseling for secondary victims. These amounts have not been changed in more than 15 years. This bill expands the definition of "work loss" to include time off from work to attend court proceedings.

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