

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4965

By Delegate Steele

[Originating in the Committee on the Judiciary;

Reported on January 29, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by amending §14-2A-3 relating to
2 a proviso that any award of restitution awarded pursuant to the provisions of §17C-5-2c of
3 this code shall not be considered as a collateral source, and by adding thereto a new
4 section, designated §17C-5-2c, related to discretionary restitution to children of victims of
5 negligent homicide and mandatory restitution to children of victims of driving under the
6 influence causing death; relating to eligibility of restitution; relating to factors relevant to
7 determining the amount of restitution; relating to how restitution is to be handled during
8 incarceration; relating to when restitution payments shall commence after release from
9 incarceration; relating to court approved payment plans; relating to interest on arrearages;
10 and relating to enforcement when there is non-compliance.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

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 the
5 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 a
7 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, a
14 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 \$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 a
23 court sentencing the offender or placing him or her on probation following a conviction in a criminal
24 case arising from the criminally injurious act for which a claim for compensation is made: Provided,
25 That any award of restitution awarded pursuant to the provisions of §17C-5-2c of this code shall
26 not be considered as a collateral source for purposes of this article;

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

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

30 (4) State-required, temporary, nonoccupational disability insurance or other disability
31 insurance;

32 (5) Workers' compensation;

33 (6) Wage continuation programs of an employer;

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

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

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

40 (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or
41 in any state not having a victim compensation program, which poses a substantial threat of
42 personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct"
43 also includes criminally injurious conduct committed outside of the United States against a
44 resident of this state. "Criminally injurious conduct" does not include conduct arising out of the
45 ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct
46 intended to cause personal injury or death or committed negligent homicide, driving under the
47 influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless
48 driving.

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

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

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

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

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

71 (3) Victim relocation costs not to exceed \$4,500;

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

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

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

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

88 victim, or the parent or legal guardian of a minor victim who must miss work to attend court
89 proceedings conducted for the prosecution of the offender.

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

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

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

104 (k) "Victim" means the following:

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

106 (A) Criminally injurious conduct;

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

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

112 (l) "Contributory misconduct" means any conduct of the claimant or of the victim through
113 whom the claimant claims an award that is unlawful or intentionally tortious and that, without

114 regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal
115 relationship to the criminally injurious conduct that is the basis of the claim and includes the
116 voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any
117 controlled substance, when the intoxication has a causal connection or relationship to the injury
118 sustained.

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

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2c. Discretionary restitution for child of victim of negligent homicide and mandatory restitution for driving under the influence of alcohol or controlled substances causing death; eligibility for restitution; relevant factors for determination of amount of restitution; arrearages; and remedies available for enforcement of noncompliance.

1 (a) A trial court, after a defendant is convicted of an offense under §17C-5-1 of this code
2 may order, or, if convicted under §17C-5-2(b) of this code shall order the defendant to pay
3 restitution for a child whose parent or guardian was the victim of the offense.

4 (b) The trial court shall determine an amount to be paid monthly for the support of the child
5 until the child reaches 18 years of age or has graduated from high school, whichever is later.

6 (c) The defendant may not be required to pay restitution under this article to an individual
7 who is 19 years of age or older unless that individual is enrolled in high school.

8 (d) The court shall determine an amount for restitution under this article that is reasonable
9 and necessary to support the child, considering all relevant factors including:

10 (1) The financial needs and resources of the child that existed prior to the death of the
11 victim of the offense;

12 (2) The financial needs and resources of the surviving parent or guardian or other current
13 guardian of the child or if applicable the financial resources of the state if the Department of
14 Human Services has been court ordered or otherwise appointed to act as temporary or permanent
15 guardian or custodian of the child;

16 (3) The standard of living to which the child is accustomed;

17 (4) The physical and emotional condition of the child and the child's educational needs;

18 (5) The child's physical and legal custody arrangements;

19 (6) The reasonable work-related childcare expenses of the surviving parent, guardian, or
20 other current guardian, if applicable; and

21 (7) The financial resources of the defendant.

22 (e) The order must require restitution payments to be:

23 (1) Delivered in a specific manner as directed by the court; and

24 (2) Directed to the parent or guardian of the child or the Department of Human Services, as
25 applicable.

26 (f) If a defendant ordered to pay restitution under this article is unable to make the required
27 restitution payments because the defendant is confined or imprisoned in a correctional facility, the
28 defendant shall begin payments not later than six months after the date of the defendant's release
29 from the facility. The defendant may enter into a court-approved payment plan to address any
30 arrearage that exists on the date of the defendant's release. The defendant must pay all
31 arrears regardless of whether the restitution payments were scheduled to terminate while the
32 defendant was confined or imprisoned in a jail or correctional facility. For purposes of this section,

33 a child is entitled to interest from the date of the entry of the order awarding restitution and the
34 interest will be calculated at the legal rate for post-judgment interest.

35 (g) A restitution order issued under this article may be enforced in the circuit court that
36 issued the restitution order by the office of the prosecuting attorney that secured the underlying
37 conviction, or by a person, or a parent or guardian of the person named in the order to receive the
38 restitution, in the same manner as a judgment in a civil action.

NOTE: The purpose of this bill is to mandate restitution to children of victims of negligent homicide or driving under the influence causing death.

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