

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1991

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SECRETARY OF STATE

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**ENROLLED**

**SENATE BILL NO.** 620

(By Senator Felton)

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**PASSED** March 8, 1991

In Effect 90 days from Passage

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**Senate Bill No. 620**

(BY SENATOR FELTON)

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[Passed March 8, 1991; in effect ninety days from passage.]

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AN ACT to amend and reenact sections fourteen, nineteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of guardian when a minor has received an award; attorneys' fees to be the same as those allowed attorneys in indigent criminal cases; and rules and regulations of court of claims.

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

That sections fourteen, nineteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

**§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc.**

1 (a) Except as provided in subsection (b), section ten  
2 of this article, the judge or commissioner shall not  
3 approve an award of compensation to a claimant who  
4 did not file his application for an award of compensa-

5 tion within two years after the date of the occurrence  
6 of the criminally injurious conduct that caused the  
7 injury or death for which he is seeking an award of  
8 compensation.

9 (b) An award of compensation shall not be approved  
10 if the criminally injurious conduct upon which the  
11 claim is based was not reported to a law-enforcement  
12 officer or agency within seventy-two hours after the  
13 occurrence of the conduct, unless it is determined that  
14 good cause existed for the failure to report the conduct  
15 within the seventy-two hour period.

16 (c) The judge or commissioner shall not approve an  
17 award of compensation to a claimant who is the  
18 offender or an accomplice of the offender who com-  
19 mitted the criminally injurious conduct, nor to any  
20 claimant if the award would unjustly benefit the  
21 offender or his accomplice.

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

28 (e) An award of compensation shall not be approved  
29 if the injury occurred while the victim was confined  
30 in any state, county or city jail, prison, private prison  
31 or correctional facility.

32 (f) After reaching a decision to approve an award of  
33 compensation, but prior to announcing such approval,  
34 the judge or commissioner shall require the claimant  
35 to submit current information as to collateral sources  
36 on forms prescribed by the clerk of the court of claims.  
37 The judge or commissioner shall reduce an award of  
38 compensation or deny a claim for an award of com-  
39 pensation that is otherwise payable to a claimant to  
40 the extent that the economic loss upon which the  
41 claim is based is or will be recouped from other  
42 persons, including collateral sources, or if such reduc-  
43 tion or denial is determined to be reasonable because  
44 of the contributory misconduct of the claimant or of a

45 victim through whom he claims. If an award is  
46 reduced or a claim is denied because of the expected  
47 recoupment of all or part of the economic loss of the  
48 claimant from a collateral source, the amount of the  
49 award or the denial of the claim shall be conditioned  
50 upon the claimant's economic loss being recouped by  
51 the collateral source: *Provided*, That if it is thereafter  
52 determined that the claimant will not receive all or  
53 part of the expected recoupment, the claim shall be  
54 reopened and an award shall be approved in an  
55 amount equal to the amount of expected recoupment  
56 that it is determined the claimant will not receive  
57 from the collateral source, subject to the limitation set  
58 forth in subsection (g) of this section.

59 (g) Except in the case of death, compensation pay-  
60 able to a victim and to all other claimants sustaining  
61 economic loss because of injury to that victim shall not  
62 exceed thirty-five thousand dollars in the aggregate.  
63 Compensation payable to a victim of criminally inju-  
64 rious conduct which causes permanent injury may  
65 include, in addition to economic loss, an amount up to  
66 fifteen thousand dollars for emotional distress and  
67 pain and suffering which are proximately caused by  
68 such conduct. Compensation payable to all claimants  
69 because of the death of the victim shall not exceed  
70 fifty thousand dollars in the aggregate, but may  
71 include, in addition to economic loss, compensation to  
72 the claimants specified in paragraph (2), subdivision  
73 (a), section three of this article, for sorrow, mental  
74 anguish and solace.

75 (h) If an award of compensation of five thousand  
76 dollars or more is made to a minor, a guardian shall  
77 be appointed pursuant to the provisions of article ten,  
78 chapter forty-four of this code to manage the minor's  
79 estate.

**§14-2A-19. Attorney and witness fees.**

1 (a) By separate order, the court, or a judge or  
2 commissioner thereof, shall determine and award  
3 reasonable attorney's fees, commensurate with servi-  
4 ces rendered and reimbursement for reasonable and

5 necessary expenses actually incurred shall be paid  
6 from the crime victims compensation fund to the  
7 attorney representing a claimant in a proceeding  
8 under this article at the same rates as set forth in  
9 section thirteen-a, article twenty-one, chapter twenty-  
10 nine of this code. Attorney's fees and reimbursement  
11 may be denied upon a finding that the claim or appeal  
12 is frivolous. Awards of attorney's fees and reimburse-  
13 ment shall be in addition to awards of compensation,  
14 and attorney's fees and reimbursement may be  
15 awarded whether or not an award of compensation is  
16 approved. An attorney shall not contract for or receive  
17 any larger sum than the amount allowed under this  
18 section. In no event may a prosecuting attorney or  
19 assistant prosecuting attorney represent any victim  
20 seeking compensation under this article.

21 (b) Each witness called by the court to appear in a  
22 hearing on a claim for an award of compensation shall  
23 receive compensation and expenses in an amount  
24 equal to that received by witnesses in civil cases as  
25 provided in section sixteen, article one, chapter fifty-  
26 nine of this code to be paid from the crime victims  
27 compensation fund.

**§14-2A-26. Rules and regulations.**

1 (a) The court of claims may promulgate rules and  
2 regulations to implement the provisions of this article.

3 (b) The court of claims shall promulgate rules and  
4 regulations to govern the award of compensation to  
5 the spouse of, person living in the same household  
6 with, parent, child, brother or sister of the offender or  
7 his accomplice in order to avoid an unjust benefit to  
8 or the unjust enrichment of the offender or his  
9 accomplice.

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

*Homer Heck*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

*Harold E. Holmes*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Walter Burdette*  
.....  
President of the Senate

*Bob C. Cole*  
.....  
Speaker House of Delegates

The within is approved this the *27<sup>th</sup>* day of *March*, 1991.

*Yaston Caperton*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/91

Time 3:00 pm