WEST VIRGINIA CODE: §14-2A-3

§14-2A-3. Definitions.

As used in this article, the term:

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

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

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

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

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

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

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

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

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

(3) Social Security, Medicare, and Medicaid;

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

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(5) Workers' compensation;

(6) Wage continuation programs of an employer;

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

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

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

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed any offense contained within §17C-5-1 of this code, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless driving.

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

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

(f) "Allowable expense" includes the following:

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

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accommodations unless accommodations other than semiprivate accommodations are medically required;

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

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

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

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

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

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

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

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

(j) "Dependents' replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the

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fatal injury. This amount is reduced by expenses avoided due to the victim's death, but which are not already subtracted in calculating a dependent's economic loss.

(k) "Victim" means the following:

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

(A) Criminally injurious conduct;

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

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

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

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

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