WEST VIRGINIA CODE: §61-11A-5

§61-11A-5. Restitution; procedure for issuing order.

(a) The court, in determining whether to order restitution under this article, and in determining the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such factors as the court deems appropriate.

(b) The court may order the probation officer of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation officer of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

(c) The court shall disclose to both the defendant and the prosecuting attorney all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

WV Legislature