

APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

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ENROLLED

Com. Sub. for
HOUSE BILL No. 857

(By Mr. Farley + Mr. Norden)

— ● —

Passed April 10, 1981

In Effect July 1, 1981 ~~Passage~~



No. 857

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 857
(By MR. FARLEY and MR. WORDEN)

[Passed April 10, 1981; in effect July 1, 1981.]

AN ACT to amend chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a, relating to providing a system for the payment of reparations to victims of crimes; providing a short title for said article; the legislative purposes and intent with respect thereto; definitions of certain terms used with respect to said article; creating a crime victims reparation fund within the state; providing for the payment of additional costs in criminal cases to be paid into said fund and providing that said fund shall not be regarded as general revenues of the state; extending the jurisdiction of the court of claims to cases arising pursuant to said article; procedures for the appointment of commissioners by the court of claims for the purpose of hearing certain cases; the qualifications of said commissioners and their oath of office; requiring the attorney general to represent the interests of the state in such cases; providing for the filing of application for awards pursuant to said article; the contents of such application; requiring filing fees to be paid by the said applicant; the procedures for the filing of such applications; limitation of action; criminal penalties for filing false or fraudulent applications; procedures applicable to indigent applicants; providing that a copy of said application be furnished the attorney general; requiring certain investigation and recommendations to be made by the attorney general and for

the time of filing certain findings of fact and recommendations by the attorney general; the assignment of claims made pursuant to said article to a judge or commissioner and procedures relating thereto; the approval of said claim by such judge or commissioner; the grounds for the denial or reduction of claims or awards made pursuant to said article and certain procedures with respect thereto; hearings to be held pursuant to said article and the procedures for such hearings; restricting certain privileges as to the communications and records applicable to claimants making application pursuant to said article; limiting the contempt powers of the court of claims in certain instances; relating to the effect of the failure of prosecution or conviction of criminal offenders with respect to awards made pursuant to this article; providing for certain attorney and witness fees with respect to claims made pursuant to said article; the procedures for the certification and payment of claims made pursuant to said article; requiring annual reports of the activities of the court of claims with respect to said article; extending certain subrogation rights to the state with respect to payments made pursuant to said article; limiting the subrogation rights of persons making collateral payments to claimants; providing that payments and awards made pursuant to said article shall be exempt from execution or attachments and providing for certain exceptions with respect thereto; requiring the preparation and dissemination of information informing the public of the rights of claimants to the provisions of this article and the duty of law-enforcement agencies with respect thereto; empowering the court of claims to promulgate rules and regulations for the implementation of the provisions of said article limiting the application of said article; and providing for an expiration date of said article.

Be it enacted by the Legislature of West Virginia:

That chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a, to read as follows:

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-1. Short title.

- 1 This article shall be known and cited as the "West Virginia
- 2 Crime Reparation Act of 1981."

§14-2A-2. Purpose and intent.

1 The Legislature finds and declares that a primary purpose
2 of government is to provide for the safety of citizens and the
3 inviolability of their property. To the extent that innocent
4 citizens are victims of crime particularly violent crime, and
5 are without adequate redress for injury to their person or
6 property, this primary purpose of government is defeated. The
7 people of West Virginia are demonstrably peaceful, and, in
8 comparison to the citizens of other states, suffer a lower crime
9 rate. Despite this history, the government of this state has not
10 fully met the expectations of its citizens to be free of the
11 devastating effects of criminal conduct by a small percentage
12 of their fellow citizens; therefore, the Legislature desires to
13 develop and perfect a system of reparations for the victims of
14 crime to partially address the fact that the present and existing
15 tools of crime prevention and correction are not wholly effective. This act of the Legislature is designed as an experimental
16 effort of the Legislature of this state on behalf of its people, to
17 provide a partial remedy for the failure of the state to fully
18 achieve the primary purpose of government herein described.
19 The demonstration project envisioned by this article is constructed to provide a system of reparations which is within the
20 resources of our society. Being experimental, this project should
21 be fully within the control of the Legislature as the repository of the powers of the people and be subject to review
22 and perfection by the Legislature during its initial experimental stages. The system herein provided should be fully reviewed in a reasonable time and, if successful, made a permanent part of the system of government. Pending the full
23 development of a more complete system of reparations the
24 system should be retained in the legislative branch as an
25 expression of a moral obligation of the state, deferring to a
26 later date consideration of the question of whether such
27 remedy should be defined as an enforceable legal right of each
28 of the citizens of this state and the citizens of other states
29 entitled to the same privileges and immunities of our citizens.
30 Pending such full development, no privilege herein granted
31 shall be deemed to be a vested right of any citizen, but this
32 article shall rather be a means of defining and presenting, for
33 legislative consideration, the nature and extent of the moral
34

40 obligation of this state and its ability to afford reparations to
41 its lawabiding citizens who suffer from the effect of violent
42 criminal conduct.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons who
3 claim an award of reparations under this article:

4 (1) A victim;

5 (2) A dependent of a deceased victim;

6 (3) A third person other than a collateral source;

7 (4) A person who is authorized to act on behalf of a victim,
8 a dependent, or a third person who is not a collateral source.

9 (b) "Collateral source" means a source of benefits or ad-
10 vantages for economic loss otherwise reparable that the victim
11 or claimant has received, or that is readily available to him,
12 from any of the following sources:

13 (1) The offender;

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

17 (3) Social security, medicare, and medicaid;

18 (4) State-required, temporary, nonoccupational disability
19 insurance;

20 (5) Workmen's compensation;

21 (6) Wage continuation programs of any employer;

22 (7) Proceeds of a contract of insurance payable to the
23 victim for loss that he sustained because of the criminally
24 injurious conduct;

25 (8) A contract providing prepaid hospital and other health
26 care services, or benefits for disability.

27 (c) "Criminally injurious conduct" means conduct that oc-
28 curs or is attempted in this state which by its nature poses a

29 substantial threat of personal injury or death, and is punish-
30 ishable by fine or imprisonment or death, or would be so pun-
31 ishable but for the fact that the person engaging in the conduct
32 lacked capacity to commit the crime under the laws of this
33 state. Criminally injurious conduct does not include conduct
34 arising out of the ownership, maintenance, or use of a motor
35 vehicle, except when the person engaging in the conduct in-
36 tended to cause personal injury or death, or except when the
37 person engaging in the conduct is shown under this article to
38 have committed negligent homicide, driving under the influence
39 of alcohol, controlled substances or drugs, or reckless driving.

40 (d) "Dependent" means an individual wholly or partially
41 dependent upon the victim for care and support, and includes
42 a child of the victim born after his death.

43 (e) "Economic loss" means economic detriment consisting
44 only of allowable expense, work loss, and replacement services
45 loss. If criminally injurious conduct causes death, economic
46 loss includes a dependent's economic loss and a dependent's
47 replacement services loss. Noneconomic detriment is not eco-
48 nomic loss, however, economic loss may be caused by paid
49 and suffering or physical impairment.

50 (f) "Allowable expense" means reasonable charges incurred
51 for reasonably needed products, services, and accommodations,
52 including those for medical care, rehabilitation, and other
53 remedial treatment and care.

54 Allowable expense includes a total charge not in excess of
55 five hundred dollars for expenses in any way related to funeral,
56 cremation and burial. It does not include that portion of a
57 charge for a room in a hospital, clinic, convalescent home,
58 nursing home, or any other institution engaged in providing
59 nursing care and related services in excess of a reasonable and
60 customary charge for semiprivate accommodations, unless ac-
61 commodation other than semiprivate accommodations are
62 medically required.

63 (g) "Work loss" means loss of income from work that the
64 injured person would have performed if he had not been injured
65 and expenses reasonably incurred by him to obtain services in
66 lieu of those he would have performed for income, reduced by

67 any income from substitute work actually performed by him,
68 or by income he would have earned in available appropriate
69 substitute work that he was capable of performing but un-
70 reasonably failed to undertake.

71 (h) "Replacement services loss" means expenses reasonably
72 incurred in obtaining ordinary and necessary services in lieu of
73 those the injured person would have performed, not for income
74 but for the benefit of himself or his family, if he had not been
75 injured.

76 (i) "Dependent's economic loss" means loss after a victim's
77 death of contributions of things of economic value to his
78 dependents, not including services they would have received
79 from the victim if he had not suffered the fatal injury, less
80 expenses of the dependents avoided by reason of the victim's
81 death.

82 (j) "Dependent's replacement service loss" means loss rea-
83 sonably incurred by dependents after a victim's death in ob-
84 taining ordinary and necessary services in lieu of those the
85 victim would have performed for their benefit if he had not
86 suffered the fatal injury, less expenses of the dependents avoid-
87 ed by reason of the victim's death and not subtracted in cal-
88 culating dependent's economic loss.

89 (k) "Noneconomic detriment" means pain, suffering, incon-
90 venience, physical impairment, or other nonpecuniary damage.

91 (l) "Victim" means a person who suffers personal injury or
92 death as a result of criminally injurious conduct.

**§14-2A-4. Creation of crime victim's reparation fund; additional
court costs in criminal cases; payment to state trea-
sury for specific purposes set forth in this article.**

1 Every person within the state who is convicted of or pleads
2 guilty to a misdemeanor or felony offense, other than a traffic
3 offense that is not a moving violation, shall pay the sum of
4 three dollars as costs in the case, in addition to any other court
5 costs that the court is required by law to impose upon such
6 convicted person. The clerk of the circuit court, magistrate
7 court, or municipal court wherein such additional costs are
8 imposed shall, on or before the last day of each month, trans-

9 mit all such costs received under this article to the state trea-
10 surer for deposit in the state treasury to the credit of a special
11 revenue fund to be known as the "crime victim's reparation
12 fund," which is hereby created. All moneys collected and re-
13 ceived under this article and paid into the state treasury and
14 credited to the "crime victims reparation fund" in the manner
15 prescribed in section two, article two, chapter twelve of this
16 code, shall be kept and maintained for appropriation by the
17 Legislature for the specific purposes of this article, and shall
18 not be treated by the auditor and treasurer as part of the gen-
19 eral revenue of the state.

§14-2A-5. Jurisdiction.

1 Any judge of the court of claims individually, or the court of
2 claims en banc, or any court of claims commissioner appointed
3 pursuant to section six of this article, shall have jurisdiction
4 to approve awards of reparations for economic loss arising
5 from criminally injurious conduct, in accordance with the pro-
6 visions of this article, if satisfied by a preponderance of the
7 evidence that the requirements for an award of reparations
8 have been met.

§14-2A-6. Appointment and compensation of commissioners.

1 (a) The court of claims, with the approval of the president
2 of the Senate and the speaker of the House of Delegates, shall
3 appoint at least three court of claims commissioners to hear
4 claims for an award of reparations and to approve awards of
5 reparations pursuant to the provisions of this article. Each
6 commissioner shall serve at the pleasure of the court of claims
7 and under the administrative supervision of the clerk of the
8 court of claims.

9 (b) The court of claims shall fix the compensation of the
10 court of claims commissioners in an amount not exceeding the
11 compensation for judges of the court of claims. Compensation
12 of judges and commissioners for services performed under this
13 article, and actual expenses incurred in the performance of
14 duties as judges and commissioners under this article shall be
15 paid out of the crime victim's reparation fund.

§14-2A-7. Qualifications of commissioners.

1 Each commissioner appointed by the court of claims shall be
2 an attorney at law, licensed to practice in this state, and shall
3 have been so licensed to practice law for a period of not less
4 than three years prior to his appointment as commissioner. A
5 commissioner shall not be an officer or an employee of any
6 branch of state government, except in his capacity as com-
7 missioner of the court. A commissioner shall not hear or par-
8 ticipate in the consideration of any claim in which he is in-
9 terested personally, either directly or indirectly. When practi-
10 cable, the commissioners should be selected from different
11 congressional districts and be geographically located, with re-
12 ference to their counties of residence, to facilitate the ap-
13 pearance of claimants and witnesses at hearings held pursuant
14 to this article.

§14-2A-8. Oath of office.

1 Each commissioner shall, before entering upon the duties of
2 his office, take and subscribe to the oath prescribed by section
3 five, article four of the constitution of the state. The oath
4 shall be filed with the clerk.

§14-2A-9. Attorney general to represent state.

1 The attorney general shall represent the interests of the state
2 in all claims coming before the court of claims or a com-
3 missioner.

§14-2A-10. Filing of application for reparation award; filing fee; contents.

1 (a) A claim for an award of reparations shall be commenced
2 by filing an application for an award of reparations with the
3 clerk of the court of claims. Each application shall be accom-
4 panied by a filing fee of ten dollars unless waived pursuant to
5 subsection (b), section eleven of this article. The application
6 shall be in a form prescribed by the clerk of the court of
7 claims, and shall contain the following information:

8 (1) The name and address of the victim of the criminally
9 injurious conduct, the name and address of the claimant, and
10 the relationship of the claimant to the victim;

11 (2) If the victim is deceased, the name and address of each
12 dependent of the victim and the extent to which each is depen-
13 dent upon the victim for care and support;

14 (3) The nature of the criminally injurious conduct that is
15 the basis for the claim and the date on which the conduct oc-
16 curred;

17 (4) The law-enforcement agency or officer to whom the
18 criminally injurious conduct was reported and the date on
19 which it was reported;

20 (5) The nature and extent of the injuries that the victim
21 sustained from the criminally injurious conduct for which
22 reparations are sought, the name and address of any person
23 who gave medical treatment to the victim for the injuries, the
24 name and address of any hospital or similar institution where
25 the victim received medical treatment for the injuries, and
26 whether the victim died as a result of the injuries;

27 (6) The total amount of the economic loss that the victim,
28 a dependent, or the claimant sustained as a result of the crim-
29 inally injurious conduct, without regard to the financial limi-
30 tation set forth in subsection (q), section fourteen of this
31 article.

32 (7) The amount of benefits or advantages that the victim,
33 a dependent, or other claimant has received or is entitled to
34 receive from any collateral source for economic loss that re-
35 sulted from the criminally injurious conduct, and the name of
36 each collateral source;

37 (8) Whether the claimant is the spouse, parent, child, broth-
38 er or sister of the offender, or is similarly related to an ac-
39 complice of the offender who committed the criminally in-
40 jurious conduct;

41 (9) A release authorizing the court of claims, the court of
42 claims commissioners, and the staff of the attorney general to
43 obtain any report, document or information that relates to the
44 determination of the claim for an award of reparations;

45 (10) Any additional relevant information that the court of
46 claims may require. The court of claims may require the claim-

47 ant to submit, with the application, materials to substantiate
48 the facts that are stated in the application.

49 (b) All applications for an award of reparations shall be
50 filed within two years after the occurrence of the criminally
51 injurious conduct that is the basis of the application.

52 (c) A person who knowingly and willfully presents or
53 attempts to present a false or fraudulent application, or a
54 state officer or employee who knowingly and willfully par-
55 ticipates or assists in the preparation or presentation of a
56 false or fraudulent application, shall be guilty of a misde-
57 meanor. A person convicted, in a court of competent juris-
58 diction, of violation of this section shall be fined not more
59 than one thousand dollars or imprisoned for not more than
60 one year, or both, in the discretion of such court. If the
61 convicted person is a state officer or employee, he shall, in
62 addition, forfeit his office or position of employment, as
63 the case may be.

§14-2A-11. Procedure for filing of application; indigent applicants.

1 (a) The clerk of the court of claims shall establish a pro-
2 cedure for the filing, recording and processing of applications
3 for an award of reparations.

4 (b) If an applicant files an affidavit stating that he is an
5 indigent person and that payment of the filing fee would create
6 a financial hardship for him, the clerk, pursuant to rules es-
7 tablished by the court of claims, may accept the application for
8 filing without payment of the filing fee. If the application is
9 accepted without payment of the filing fee and an award is
10 made pursuant to the application, the amount of the award
11 shall be reduced by the amount of the filing fee.

§14-2A-12. Application sent to attorney general; investigation and recommendations by attorney general; time for filing finding of fact and recommendation.

1 (a) The clerk of the court of claims shall send a copy of the
2 application to the attorney general within seven days after the
3 filing of the application.

4 (b) The attorney general, upon receipt of an application for

5 an award of reparations from the clerk of the court of claims,
6 shall investigate the claim. After completing the investigation,
7 the attorney general shall make a written finding of fact and
8 recommendation concerning an award of reparations. He shall
9 file with the clerk the finding of fact and recommendation and
10 all information or documents that he used in his investigation.

11 (c) The attorney general while investigating the claim, may
12 require the claimant to supplement the application for an award
13 of reparations with any further information or documentary
14 materials, including any medical report readily available,
15 which may lead to any relevant facts aiding in the determina-
16 tion of whether, and the extent to which, a claimant qualifies
17 for an award of reparations. The attorney general may depose
18 any witness, including the claimant, in the same manner as
19 witnesses are deposed under the rules of civil procedure for
20 trial courts of record.

21 (d) The finding of fact that is issued by the attorney general
22 pursuant to subsection (a) of this section shall contain the
23 following:

24 (1) Whether the criminally injurious conduct that is the
25 basis for the application did occur, the date on which the
26 conduct occurred, and the exact nature of the conduct;

27 (2) If the criminally injurious conduct was reported to a
28 law-enforcement officer or agency, the date on which the
29 conduct was reported and the name of the person who reported
30 the conduct; or, the reasons why the conduct was not reported
31 to a law-enforcement officer or agency; or, the reasons why the
32 conduct was not reported to a law-enforcement officer or
33 agency within seventy-two hours after the conduct occurred;

34 (3) The exact nature of the injuries that the victim sustained
35 as a result of the criminally injurious conduct;

36 (4) A specific itemization of the economic loss that was
37 sustained by the victim, the claimant, or a dependent as a re-
38 sult of the criminally injurious conduct;

39 (5) A specific itemization of any benefits or advantages
40 that the victim, the claimant, or a dependent has received or is

41 entitled to receive from any collateral source for economic loss
42 that resulted from the conduct;

43 (6) Whether the claimant is the spouse, parent, child, broth-
44 er or sister of the offender, or is similarly related to an ac-
45 complice of the offender who committed the criminally injur-
46 ious conduct;

47 (7) Any additional information that the attorney general
48 deems to be relevant to the evaluation of the claim.

49 (e) The recommendation that is issued by the attorney gen-
50 eral pursuant to subsection (a) of this section shall contain the
51 following:

52 (1) Whether an award of reparations should be made to the
53 claimant and the amount of the award.

54 (2) If the attorney general recommends that an award not
55 be made to the claimant, the reason for his decision.

56 (f) The attorney general shall file his finding of fact and
57 recommendation with the clerk within sixty days after the filing
58 of the application, or within such additional time period as
59 may be provided by order of any court of claims judge or
60 commissioner upon good cause shown, but in no event later
61 than six months after such filing.

**§14-2A-13. Assignment of claim to judge or commissioner; pro-
cedure; approval of award.**

1 (a) The clerk of the court of claims, upon receipt of the
2 attorney general's finding of fact and recommendation, shall
3 forward a copy of the finding of fact and recommendation to
4 the claimant with a notice informing the claimant that any re-
5 sponse, in the form of objections or comments directed to the
6 finding of fact and recommendation, must be filed with the
7 clerk within thirty days of the date of the notice. After the
8 expiration of such thirty-day period, the clerk shall assign the
9 claim to a judge or commissioner of the court.

10 (b) The judge or commissioner to whom the claim is assign-
11 ed shall review the finding of fact and recommendation and
12 any response submitted by the claimant and, if deemed appro-
13 priate, may request the attorney general to comment in writ-

14 ing on the claimant's response. The judge or commissioner
15 shall, within forty-five days after assignment by the clerk,
16 evaluate the claim without a hearing and either deny the claim
17 or approve an award of reparations to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award.

1 (a) The judge or commissioner shall not approve an award
2 of reparations to a claimant who did not file his application for
3 an award of reparations within two years after the date of the
4 occurrence of the criminally injurious conduct that caused the
5 injury or death for which he is seeking an award of reparations.

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

12 (c) The judge or commissioner shall not approve an award
13 of reparations to a claimant who is the offender or an accom-
14 plice of the offender who committed the criminally injurious
15 conduct, nor to any claimant if the award would unjustly bene-
16 fit the offender or his accomplice. Unless a determination is
17 made that the interests of justice require that an award be
18 approved in a particular case, an award of reparations shall
19 not be made to the spouse of, or a person living in the same
20 household with, the offender or accomplice of the offender, or
21 to the parent, child, brother or sister of the offender or his
22 accomplice.

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

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

30 (f) After reaching a decision to approve an award of re-
31 paration, but prior to announcing such approval, the judge or
32 commissioner shall require the claimant to submit current in-

33 formation as to collateral sources on forms prescribed by the
34 clerk of the court of claims. The judge or commissioner shall
35 reduce an award of reparations or deny a claim for an award
36 of reparations that is otherwise payable to a claimant to the
37 extent that the economic loss upon which the claim is based is
38 or will be recouped from other persons including collateral
39 sources, or if such reduction or denial is determined to be
40 reasonable because of the contributory misconduct of the
41 claimant or of a victim through whom he claims. If an award
42 is reduced or a claim is denied because of the expected recoup-
43 ment of all or part of the economic loss of the claimant from
44 a collateral source, the amount of the award or the denial of
45 the claim shall be conditioned upon the claimant's economic
46 loss being recouped by the collateral source: *Provided*, That
47 if it is thereafter determined that the claimant will not receive
48 all or part of the expected recoupment, the claim shall be re-
49 opened and an award shall be approved in an amount equal to
50 the amount of expected recoupment that it is determined the
51 claimant will not receive from the collateral source, subject
52 to the limitations set forth in subsection (g) of this section.

53 (g) Reparations payable to a victim and to all other claim-
54 ants sustaining economic loss because of injury to or the death
55 of that victim shall not exceed twenty thousand dollars in the
56 aggregate.

§14-2A-15. Hearing; procedure.

1 (a) If either the attorney general or the claimant disagrees
2 with the approval of an award or the denial of a claim in the
3 summary manner set forth on the preceding sections of this
4 article, the attorney general or the claimant, or both, shall file
5 with the clerk a request for hearing. Such request shall be
6 filed within twenty-one days after notification by the judge or
7 commissioner of his decision.

8 (b) Upon receipt of a request for hearing, the clerk shall
9 place the claim upon the regular docket of the court for hear-
10 ing, shall advise the attorney general and the claimant of the
11 receipt of the request and docketing of the claim, and shall re-
12 quest the attorney general to commence negotiations with the
13 claimant.

14 (c) During the period of negotiations and pending hearing,
15 the attorney general, shall, if possible, reach an agreement with
16 the claimant regarding the facts upon which the claim is based
17 so as to avoid the necessity for the introduction of evidence
18 at the hearing. If the parties are unable to agree upon the facts
19 an attempt shall be made to stipulate the questions of fact in
20 issue.

21 (d) The hearing held in accordance with this section shall
22 be before the court of claims, en banc, or, if the claim was
23 previously assigned to and decided by a judge of the court,
24 such hearing shall be held before the two remaining judges and
25 a commissioner: *Provided*, That if the amount of the economic
26 loss alleged in the application is less than ten thousand dollars,
27 the hearing may be held before a single judge or commissioner
28 to whom the claim has not been previously assigned. Hearings
29 before a single judge or commissioner may, in the discretion
30 of such hearing officer, be held at such locations throughout
31 the state as will facilitate the appearance of the claimant and
32 witnesses.

33 (e) The hearing shall be conducted so as to disclose all
34 material facts and issues. Judges and commissioners may exam-
35 ine or cross-examine witnesses. The judges and commissioners
36 may call witnesses or require evidence not produced by the
37 parties; may stipulate the questions to be argued by the parties;
38 and may continue the hearing until some subsequent time to
39 permit a more complete presentation of the claim.

40 (f) After the close of the hearing the court, judge or com-
41 missioner, as the case may be, shall consider the claim and shall
42 conclude its determination, if possible, within thirty days.

43 (g) The court shall adopt and may from time to time amend
44 rules of procedure, in accordance with the provisions of this
45 article, governing proceedings before the court. Rules shall be
46 designed to assure a simple, expeditious and inexpensive con-
47 sideration of claims. Rules shall permit a claimant to appear
48 in his own behalf or be represented by counsel.

49 Under its rules, the court shall not be bound by the usual
50 common law or statutory rules of evidence. The court may ac-
51 cept and weigh, in accordance with its evidential value, any

52 information that will assist the court in determining the factual
53 basis of a claim.

**§14-2A-16. Records or communications not privileged; mental or
physical examination of claimant.**

1 (a) There is no privilege, except the privileges arising from
2 the attorney-client relationship, as to communications or re-
3 cords that are relevant to the physical, mental or emotional
4 condition of the claimant or victim in a proceeding under this
5 article in which that condition is an element.

6 (b) If the mental, physical or emotional condition of a
7 victim or claimant is material to a claim for an award of re-
8 parations, the court, judge or commissioner may order the
9 victim or claimant to submit to a mental or physical exami-
10 nation by a physician or psychologist, and may order an au-
11 topsy of a deceased victim. The order may be made for good
12 cause shown and upon notice to the person to be examined and
13 to the claimant and the attorney general. The order shall speci-
14 fy the time, place, manner, conditions and scope of the exami-
15 nation or autopsy and the person by whom it is to be made,
16 and shall require the person who performs the examination or
17 autopsy to file with the clerk of the court of claims a detailed
18 written report of the examination or autopsy. The report shall
19 set out the findings, including the results of all tests made,
20 diagnosis, prognosis, and other conclusions and reports of
21 earlier examinations of the same conditions. On request of
22 the person examined, the clerk of the court of claims shall
23 furnish him a copy of the report. If the victim is deceased, the
24 clerk of the court of claims, on request, shall furnish the
25 claimant a copy of the report.

26 (c) The court, or a judge or commissioner thereof, may
27 order law-enforcement officers employed by the state or any
28 political subdivision thereof to provide it or the attorney gen-
29 eral with copies of any information or data gathered in the
30 investigation of the criminally injurious conduct that is the
31 basis of any claim to enable it to determine whether, and the
32 extent to which, a claimant qualifies for an award of repara-
33 tions.

34 (d) The court, or a judge or commissioner thereof, may

35 require the claimant to supplement the application for an
 36 award of reparations with any reasonably available medical
 37 or psychological reports relating to the injury for which the
 38 award of reparations is claimed.

39 (e) The court, a judge, a commissioner, or the attorney
 40 general, in a claim arising out of a violation of article eight-b,
 41 chapter sixty-one of this code, shall not request the victim or
 42 the claimant to supply any evidence of specific instances of the
 43 victim's sexual activity, or reputation evidence of the victim's
 44 sexual activity unless it involves evidence of the victim's past
 45 sexual activity with the offender and then only to the extent
 46 that the court, the commissioner, or the attorney general finds
 47 that the evidence is relevant to a fact at issue in the claim.

48 (f) Notwithstanding any provision of this code to the con-
 49 trary relating to the confidentiality of juvenile records, the
 50 court of claims, a judge or commissioner thereof, or the at-
 51 torney general shall have access to the records of juvenile pro-
 52 ceedings which bear upon an application for reparations under
 53 this article. The court of claims, the judges and commissioners
 54 thereof, and the attorney general, shall, to the extent possible,
 55 maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

1 If a person refuses to comply with an order under this
 2 article, or asserts a privilege, except privileges arising from
 3 the attorney-client relationship, so as to withhold or suppress
 4 evidence relevant to a claim for an award of reparations, the
 5 court, judge or commissioner may make any just order, includ-
 6 ing denial of the claim, but shall not find the person in con-
 7 tempt. If necessary to carry out any of his powers and duties,
 8 the attorney general may petition the court of claims for an
 9 appropriate order, but the court of claims shall not find a
 10 person in contempt for refusal to submit to a mental or physical
 11 examination.

§14-2A-18. Effect of prosecution or conviction of offender.

1 The court, or a judge or commissioner thereof, may approve
 2 an award of reparations whether or not any person is prose-
 3 cuted or convicted for committing the conduct that is the

4 basis of the award. Proof of conviction of a person whose
5 conduct gave rise to a claim is conclusive evidence that the
6 crime was committed, unless an application for rehearing, an
7 appeal of the conviction, or certiorari is pending, or a rehearing
8 or new trial has been ordered.

9 The court, or a judge or commissioner thereof, shall suspend,
10 upon a request of the attorney general, the proceedings in any
11 claim for an award of reparations pending disposition of a
12 criminal prosecution that has been commenced or is imminent.

§14-2A-19. Attorney and witness fees.

1 (a) As part of an order, the court, or a judge or commis-
2 sioner thereof, shall determine and award reasonable attorney's
3 fees, commensurate with services rendered, to be paid from
4 the crime victim's reparation fund to the attorney representing
5 a claimant in a proceeding under this article. Attorney's fees
6 may be denied upon a finding that the claim or appeal is friv-
7 olous. Awards of attorney's fees shall be in addition to awards
8 of reparations and attorney's fees may be awarded whether or
9 not an award of reparations is approved. An attorney shall not
10 contract for or receive any larger sum than the amount al-
11 lowed under this section.

12 (b) Each witness called by the court to appear in a hearing
13 on a claim for an award of reparations shall receive compen-
14 sation and expenses in an amount equal to that received by
15 witnesses in civil cases as provided in section sixteen, article
16 one, chapter fifty-nine of this code, to be paid from the crime's
17 victim's reparation fund.

§14-2A-20. Procedure for certification and payment of claims.

1 (a) The clerk shall certify to the department of finance and
2 administration, on or before the twentieth day of November or
3 each year, a list of all claims pursuant to this article for which
4 the court has made a final determination and approved an
5 award since the last such certificate.

6 (b) The governor shall include in his proposed budget bill
7 and revenue estimates:

8 (1) an estimate of the balance and receipts anticipated in
9 the crime victim's reparation fund,

10 (2) an itemized report of the approved awards recommended
11 by the court to the Legislature,

12 (3) such recommendations to the Legislature for appropri-
13 ations from the crime victim's reparation fund as he may deem
14 appropriate for the payment of fees, costs and expenses in-
15 curred, due or payable at any time from such fund, and

16 (4) such recommendations to the Legislature for appropri-
17 ations for the payment of claims arising under this article,
18 whether accrued and determined by the court and included in
19 the itemization of awards mentioned in this section or arising
20 during the ensuing fiscal year.

21 (c) The Legislature shall, by general law, provide for the
22 authorization to pay the itemized awards arising under this
23 article or so much thereof as may be deemed appropriate or for
24 awards arising during the ensuing fiscal year and provide by
25 appropriation from the crime victim's reparation fund for the
26 payment of such awards authorized and for the payment of
27 fees, costs and expenses as from time to time may be appro-
28 priate. The clerk shall certify each authorized award and the
29 amount thereof and make requisition upon the crime victim's
30 reparation fund relating thereto, to the auditor. The auditor
31 shall issue his warrant to the treasurer without further exami-
32 nation or review of the claim except for the question of a suffi-
33 cient unexpended balance in the appropriation.

§14-2A-21. Annual report of court of claims.

1 The court of claims shall prepare and transmit annually to
2 the governor and the Legislature a report of the activities of
3 the court of claims under this article. The report shall include
4 the number of claims filed, the number of awards made and
5 the amount of each award, and a statistical summary of claims
6 and awards made and denied including the average size of
7 claims and awards; the balance in the crime victim's repara-
8 tion fund with a listing by source and amount of the moneys
9 that have been deposited in the fund; the amount that has
10 been withdrawn from the fund, including separate listings of
11 the administrative costs incurred by the court of claims, com-
12 pensation of judges, commissioners and court personnel, the
13 amount awarded as attorneys' fees, and the amount with-

14 drawn by the attorney general after certification of his costs
15 of investigation and recommendation. The attorney general
16 and auditor of the state shall assist the court of claims in the
17 preparation of the report required by this section.

§14-2A-22. State's subrogation to claimant's rights.

1 If an award of reparations is made under the provisions of
2 this article and is not reduced on account of the availability of
3 payment by a collateral source, the state, upon the payment of
4 the award or a part of the award, shall be subrogated to all
5 of the claimant's rights to receive or recover benefits or
6 advantages for economic loss for which an award of reparations
7 was made from such source if it were a collateral source
8 or would be a collateral source if it were readily available to
9 the victim or claimant. The claimant may sue the offender for
10 any damages or injuries caused by the offender's criminally
11 injurious conduct and not compensated for by an award of
12 reparations. The claimant may join with the attorney general
13 as co-plaintiff in any action against the offender. All moneys
14 that are collected by the state pursuant to its rights of
15 subrogation as provided in this section shall be deposited in
16 the crime victim's reparation fund.

§14-2A-23. Subrogation rights of collateral source.

1 Subrogation rights which a collateral source may have shall
2 not extend to a recovery from a claimant of all or any part of
3 an award made under this article. A collateral source may not
4 apply, in the name of a claimant or otherwise, for an award
5 of reparations based upon injury to a claimant to whose rights
6 the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; exceptions.

1 An award is not subject to execution, attachment, garnish-
2 ment, or other process, except that, upon receipt of an award
3 by a claimant, the part of the award that is for allowable
4 expense is not exempt from such action by a creditor to the
5 extent that he provides products, services or accommodations
6 the costs of which are included in the award and the part of
7 the award that is for work loss shall not be exempt from such

8 action to secure payment of alimony, maintenance, or child
9 support.

**§14-2A-25. Information brochure; dissemination of information by
law-enforcement agencies.**

1 (a) The clerk of the court of claims, with the assistance of
2 the attorney general, shall prepare an information brochure
3 for the benefit of the general public, outlining the rights of
4 claimants and procedures to be followed under this article.
5 Copies of such brochure shall be distributed to law-enforce-
6 ment agencies in the state, and be made available to other
7 interested persons.

8 (b) Any law-enforcement agency that investigates an offense
9 committed in this state involving personal injury, shall make
10 reasonable efforts to provide information to the victim of the
11 offense and his dependents concerning the availability of an
12 award of reparations and advise such persons that an appli-
13 cation for an award of reparations may be obtained from
14 the clerk of the court of claims.

§14-2A-26. Rules and regulations.

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

§14-2A-27. Application of article; expiration.

1 (a) The provisions of this article shall not apply to any
2 injury or death resulting from criminally injurious conduct
3 which occurred on or before the thirty-first day of December,
4 one thousand nine hundred eighty-one, or on or after the
5 first day of January, one thousand nine hundred eighty-six.

6 (b) Any and all funds remaining in the crime victim's
7 reparation fund after the payment of claims under this article
8 shall on the first day of July, one thousand nine hundred
9 eighty-seven revert to the general revenue fund.

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

R. P. Baylor
Chairman Senate Committee

Gonz E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect July 1, 1981.

Paul C. Nichols
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Mont. P. Rosen
President of the Senate

Wade H. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *1*
day of *May*, 1981.

John S. Dyer
Governor

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SECY. OF STATE