

No: 1905

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

HOUSE BILL No. 1905

(By Mr. Hooton.....)



Passed March 12, 1983

In Effect From Passage



ENROLLED

H. B. 1905

(By MR. WOOTON)

[Passed March 12, 1983; in effect from passage.]

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fifteen,

AN ACT to amend and reenact sections six, nine, ten, twelve, thirteen, fourteen, ~~sixteen~~, seventeen, eighteen and twenty-five, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims reparations generally; providing for the appointment and compensation of commissioners and judges to hear claims for reparation; and eliminating the requirement that the court of claims appoint at least three such commissioners; establishing the position of reparations investigator and transferring to such officer the duties heretofore carried out by the attorney general; authorizing the court of claims to fix the compensation of the reparations investigator; providing that such compensation and other expenses shall be payable by appropriation by the Legislature; providing for the filing of applications for reparation awards; setting forth the required contents of applications; requiring a filing fee for such applications; establishing procedures for the investigation of reparation claims and subsequent recommendations to be made by the reparations investigator; providing for the discontinuance of an investigation where such investigation may interfere with or jeopardize a law-enforcement investigation; providing for notice of the reparations investigator's recommendation and the evaluation of the claim by a judge of the court of claims or a commissioner thereof; describing the grounds for denial or reduction of an award and providing for a hearing before a judge or commissioner in

the event of disagreement with the approval of an award or the denial of the claim; prescribing evidentiary rules to be applicable at hearings and describing procedures for the gathering of certain evidence; denying the contempt sanction to the court of claims in reparations cases; describing the effect of the prosecution or conviction of an offender upon a claim for reparation; and setting forth measures to be taken by the clerk of the court of claims and law-enforcement agencies to publicize the rights of claimants under the provisions governing crime victims reparations.

Be it enacted by the Legislature of West Virginia:

That sections six, nine, ten, twelve, thirteen, fourteen, ~~sixteen~~, seventeen, eighteen and twenty-five, 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:

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fifteen,

ARTICLE 2A. CLAIMS DUE AND AGAINST THE STATE.

§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

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

16 (c) The limitation period of one hundred days in section
17 eight, article two of this chapter pertaining to time served by
18 the judges of the court of claims shall not apply to the pro-
19 visions of this article.

§14-2A-9. Position of reparations investigator established; transfer of duties from attorney general; compensation and expenses.

1 There is hereby established within the office of the clerk of
2 the court of claims the position of reparations investigator,
3 who shall carry out the functions and duties set forth in sec-
4 tion twelve of this article. The duties of the attorney general
5 under the prior enactment of section twelve of this article are
6 hereby transferred to the reparations investigator. The repara-
7 tions investigator shall serve at the pleasure of the court of
8 claims and under the administrative supervision of the clerk
9 of the court of claims. The compensation of the reparations
10 investigator shall be fixed by the court, and such compensation,
11 together with travel, clerical and other expenses of the clerk of
12 the court of claims relating to the reparations investigator car-
13 rying out his duties under this article, shall be payable from
14 the crime victims reparation fund as appropriated for such
15 purpose by the legislature.

§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 de-
13 pendent 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 crimi-
29 nally injurious conduct, without regard to the financial limita-
30 tion set forth in subsection (g), section fourteen of this article.

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

36 (8) Whether the claimant is the spouse, parent, child, broth-
37 er or sister of the offender, or is similarly related to an accom-
38 plice of the offender who committed the criminally injurious
39 conduct;

40 (9) A release authorizing the court of claims, the court of
41 claims commissioners and the reparations investigator to ob-
42 tain any report, document or information that relates to the
43 determination of the claim for an award of reparations;

44 (10) Any additional relevant information that the court of
45 claims may require. The court of claims may require the claim-
46 ant to submit, with the application, materials to substantiate
47 the facts that are stated in the application.

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

51 (c) A person who knowingly and willfully presents or at-
52 tempts to present a false or fraudulent application, or a state

53 officer or employee who knowingly and willfully participates
54 or assists in the preparation or presentation of a false or fraud-
55 ulent application, shall be guilty of a misdemeanor. A person
56 convicted, in a court of competent jurisdiction, of violation
57 of this section shall be fined not more than one thousand dol-
58 lars or imprisoned for not more than one year, or both, in the
59 discretion of such court. If the convicted person is a state of-
60 ficer or employee, he shall, in addition, forfeit his office or
61 position of employment, as the case may be.

**§14-2A-12. Investigation and recommendations by reparations in-
vestigator.**

1 (a) The clerk of the court of claims shall transmit a copy
2 of the application to the reparations investigator within seven
3 days after the filing of the application.

4 (b) The reparations investigator, upon receipt of an appli-
5 cation for an award of reparations from the clerk of the court
6 of claims, shall investigate the claim. After completing the in-
7 vestigation, the reparations investigator shall make a written
8 finding of fact and recommendation concerning an award of
9 reparations. He shall file with the clerk the finding of fact
10 and recommendation and all information or documents that he
11 used in his investigation.

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

22 In any case wherein the reparations investigator has reason
23 to believe that his investigation may interfere with or jeopardize
24 an investigation of a crime by law-enforcement officers, he
25 may apply to the court of claims or a judge or commissioner
26 thereof for an order granting leave to discontinue his investi-

27 gation for a reasonable time in order to avoid such interference
28 or jeopardization.

29 (d) The finding of fact that is issued by the reparations in-
30 vestigator pursuant to subsection (b) of this section shall
31 contain the following:

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

35 (2) If the criminally injurious conduct was reported to a
36 law-enforcement officer or agency, the date on which the
37 conduct was reported and the name of the person who reported
38 the conduct; or, the reasons why the conduct was not reported
39 to a law-enforcement officer or agency; or, the reasons why
40 the conduct was not reported to a law-enforcement officer or
41 agency within seventy-two hours after the conduct occurred;

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

44 (4) A specific itemization of the economic loss that was
45 sustained by the victim, the claimant or a dependent as a
46 result of the criminally injurious conduct;

47 (5) A specific itemization of any benefits or advantages that
48 the victim, the claimant or a dependent has received or is
49 entitled to receive from any collateral source for economic
50 loss that resulted from the conduct;

51 (6) Whether the claimant is the spouse, parent, child, broth-
52 er or sister of the offender, or is similarly related to an ac-
53 complice of the offender who committed the criminally in-
54 jurious conduct;

55 (7) Any additional information that the reparations investi-
56 gator deems to be relevant to the evaluation of the claim.

57 (e) The recommendation that is issued by the reparations
58 investigator pursuant to subsection (b) of this section shall
59 contain the following:

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

62 (2) If the reparations investigator recommends that an award
63 not be made to the claimant, the reason for his decision.

64 (f) The reparations investigator shall file his finding of fact
65 and recommendation with the clerk within sixty days after the
66 filing of the application, or within such additional time period
67 as may be provided by order of any court of claims judge or
68 commissioner upon good cause shown, but in no event later
69 than six months after such filing.

§14-2A-13. Notice to claimant of reparations investigator's recommendation; evaluation of claim by judge or commissioner.

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

11 (b) The judge or commissioner to whom the claim is
12 assigned shall review the finding of fact and recommendation
13 and any response submitted by the claimant and, if deemed
14 appropriate, may request the reparations investigator to com-
15 ment in writing on the claimant's response. The judge or com-
16 missioner shall, within forty-five days after assignment by the
17 clerk, evaluate the claim without a hearing and either deny the
18 claim 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
3 for an award of reparations within two years after the date of
4 the occurrence of the criminally injurious conduct that caused
5 the injury or death for which he is seeking an award of repara-
6 tions.

7 (b) An award of reparations shall not be approved if the

8 criminally injurious conduct upon which the claim is based was
9 not reported to a law-enforcement officer or agency within
10 seventy-two hours after the occurrence of the conduct, unless
11 it is determined that good cause existed for the failure to report
12 the conduct within the seventy-two hour period.

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

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

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

31 (f) After reaching a decision to approve an award of repa-
32 rations, but prior to announcing such approval, the judge or
33 commissioner shall require the claimant to submit current in-
34 formation as to collateral sources on forms prescribed by the
35 clerk of the court of claims. The judge or commissioner shall
36 reduce an award of reparations or deny a claim for an award
37 of reparations that is otherwise payable to a claimant to the
38 extent that the economic loss upon which the claim is based is
39 or will be recouped from other persons, including collateral
40 sources, or if such reduction or denial is determined to be
41 reasonable because of the contributory misconduct of the claim-
42 ant or of a victim through whom he claims. If an award is re-
43 duced or a claim is denied because of the expected recoup-
44 ment of all or part of the economic loss of the claimant from a
45 collateral source, the amount of the award or the denial of the

46 claim shall be conditioned upon the claimant's economic loss
47 being recouped by the collateral source: *Provided*, That if it
48 is thereafter determined that the claimant will not receive all
49 or part of the expected recoupment, the claim shall be reopen-
50 ed and an award shall be approved in an amount equal to the
51 amount of expected recoupment that it is determined the
52 claimant will not receive from the collateral source, subject
53 to the limitation set forth in subsection (g) of this section.

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

§14-2A-15. Hearings.

1 (a) If either the reparations investigator or the claimant
2 disagrees with the approval of an award or the denial of a
3 claim in the summary manner set forth in the preceding
4 sections of this article, the reparations investigator or the
5 claimant, or both, shall file with the clerk a request for hearing.
6 Such request shall be filed within twenty-one days after noti-
7 fication by the judge or 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 reparations investigator and the claimant
11 of the receipt of the request and docketing of the claim, and
12 shall request the attorney general to commence negotiations
13 with the claimant.

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

21 (d) The hearing held in accordance with this section shall
22 be before a single judge or commissioner to whom the claim
23 has not been previously assigned. Hearings before a judge or
24 commissioner may, in the discretion of such hearing officer, be

25 held at such locations throughout the state as will facilitate
26 the appearance of the claimant and witnesses.

27 (e) The hearing shall be conducted so as to disclose all
28 material facts and issues. Judges and commissioners may
29 examine or cross-examine witnesses. The judges and com-
30 missioners may call witnesses or require evidence not produced
31 by the parties; may stipulate the questions to be argued by the
32 parties; and may continue the hearing until some subsequent
33 time to permit a more complete presentation of the claim.

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

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

43 Under its rules, the court shall not be bound by the usual
44 common law or statutory rules of evidence. The court may ac-
45 cept and weigh, in accordance with its evidential value, any
46 information that will assist the court in determining the factual
47 basis of a claim.

§14-2A-16. Evidence.

1 (a) There is no privilege, except the privileges arising
2 from the attorney-client relationship, as to communications
3 or records that are relevant to the physical, mental or
4 emotional condition of the claimant or victim in a proceeding
5 under this 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 repa-
8 rations, the court, judge or commissioner may order the victim
9 or claimant to submit to a mental or physical examination by
10 a physician or psychologist, and may order an autopsy of a
11 deceased victim. The order may be made for good cause shown
12 and upon notice to the person to be examined and to the claim-

13 ant and the reparations investigator. The order shall specify
14 the time, place, manner, conditions and scope of the examina-
15 tion or autopsy and the person by whom it is to be made, and
16 shall require the person who performs the examination or au-
17 topsy 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 fur-
23 nish him a copy of the report. If the victim is deceased, the
24 clerk of the court of claims, on request, shall furnish the claim-
25 ant 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 reparations
29 investigator with copies of any information or data gathered in
30 the investigation of the criminally injurious conduct that is
31 the basis of any claim to enable it to determine whether, and
32 the extent to which, a claimant qualifies for an award of
33 reparations.

34 (d) The court, or a judge or commissioner thereof, may re-
35 quire the claimant to supplement the application for an award
36 of reparations with any reasonably available medical or psy-
37 chological reports relating to the injury for which the award
38 of reparations is claimed.

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

49 (f) Notwithstanding any provision of this code to the con-
50 trary relating to the confidentiality of juvenile records, the

51 court of claims, a judge or commissioner thereof or the repara-
52 tions investigator shall have access to the records of juvenile
53 proceedings which bear upon an application for reparations
54 under this article. The court of claims, the judges and commis-
55 sioners thereof and the reparations investigator, shall, to the
56 extent possible, 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, in-
6 cluding denial of the claim, but shall not find the person in
7 contempt. If necessary to carry out any of his powers and
8 duties, the reparations investigator may petition the court of
9 claims for an appropriate order, but the court of claims shall
10 not find a person in contempt for refusal to submit to a mental
11 or physical 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 basis
4 of the award. Proof of conviction of a person whose conduct
5 gave rise to a claim is conclusive evidence that the crime was
6 committed, unless an application for rehearing, an appeal of the
7 conviction, or certiorari is pending, or a rehearing or new
8 trial has been ordered.

9 The court, or a judge or commissioner thereof, shall sus-
10 pend, upon a request of the reparations investigator, the pro-
11 ceedings in any claim for an award of reparations pending
12 disposition of a criminal prosecution that has been commenced
13 or is imminent.

§14-2A-25. Publicity.

1 (a) The clerk of the court of claims shall prepare an infor-
2 mation brochure for the benefit of the general public, outlining
3 the rights of claimants and procedures to be followed under

4 this article. Copies of such brochure shall be distributed to
5 law-enforcement agencies in the state, and be made available
6 to other interested persons.

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

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within *is approved* this the *29*
day of *March*, 1983.

[Signature]
Governor

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