WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1075

(By Mr. Del. Kidd)

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Passed March 10, 1984

In Effect Ninety Days From Passage
AN ACT to amend article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; and to amend article two, chapter sixty-one of said code, by adding thereto a new section, designated section ten-a, all relating to crimes against the elderly; directing the commission on aging and the department of public safety to prepare plans for the development, implementation, and operation of programs designed to prevent crimes against the elderly and to reduce the fear of crime in the elderly; providing that upon conviction and sentence for the offense of assault upon a person sixty-five years of age or older during the commission of or attempt to commit a felony, the offenses of malicious or unlawful wounding upon a person sixty-five years of age or older, the offense of assault upon a person sixty-five years of age or older, or the offense of battery upon a person sixty-five years of age or older, the sentences provided for, upon conviction, shall not be subject to suspension or probation; and exceptions.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine-a;
and that article two, chapter sixty-one of said code be amended by adding thereto a new section, designated section ten-a, all to read as follows:

CHAPTER 29.
MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 14. STATE COMMISSION ON AGING.

§29-14-9a. Prevention of crimes against the elderly.

(a) It is the express intent of the Legislature that all state agencies cooperate with the state commission on aging and the department of public safety in carrying out the provisions of this section.

(b) The commission on aging shall, within existing appropriations, prepare yearly plans for the years one thousand nine hundred eighty-five through one thousand nine hundred eighty-nine, and a comprehensive five-year plan for that period, for the development, implementation and operation of programs designed to prevent crime against the elderly and to reduce the fear of crime in the elderly. The commission shall identify, through research and through monitoring and evaluation of programs and projects conducted outside the commission, any social, economic or educational methods, techniques or procedures which have the potential effectively to prevent crime against the elderly and reduce fear of crime in the elderly. The commission shall determine the costs and benefits that would be associated with such prevention and reduction efforts and shall develop or recommend the implementation of, those methods, techniques and procedures which are found likely to be cost efficient. The commission shall identify funding needs for such programs.

(c) In planning and developing programs and recommendations relating to the prevention of crime against elderly persons and reduction of fear of crime in elderly persons, the commission shall, within existing appropriations, consider and evaluate the potential for new or improved programs in, but not limited to, the following areas:

(1) Public education and awareness;
(2) Community coordination in areas of social services and criminal justice;

(3) Use of the elderly as a resource in community crime prevention and the voluntary involvement of elderly persons and retired professionals in the criminal justice system itself in order to improve the responsiveness and effectiveness of the existing system;

(4) Victim and witness assistance;

(5) Reduction of the economic and physical consequences of crime against the elderly; and

(6) Reduction of isolation of the elderly in the community.

(d) Other agencies of state government shall cooperate with and assist the commission, within their available resources, in gathering statistical data and in implementing programs which have the potential to prevent crime against elderly persons and to reduce the fear of crime in elderly persons and shall consider the findings and recommendations of the commission in developing and implementing agency programs and formulating agency budget requests. The department of public safety shall participate in the preparation and implementation of the plans required by this section, and shall collect statistical data on the characteristics of elderly victims of crimes.

(e) The commission shall submit to the governor for transmittal to the president of the senate and the speaker of the house of delegates the first yearly plan to prevent crime against the elderly and to reduce the fear of crime in the elderly not later than the first day of January, one thousand nine hundred eighty-five, and such plan shall be updated and resubmitted not later than the first day of January of each calendar year thereafter through the year one thousand nine hundred eighty-nine. The plan shall outline commission proposals for the identification of appropriate prevention and reduction efforts and the development of prevention and reduction programs and the provisions for services under such programs. The yearly plan shall contain, but not be limited to, the following elements:
(1) A compilation of and analysis of statistical data on types of crimes committed against the elderly in this state and the incidence of such crime. Included in this shall be an identification of the areas of the state where crime against the elderly is of significant proportions. Such data should also reflect an assessment of the degree of unreported, as well as officially reported, criminal acts.

(2) An identification and projection of the potential population for which prevention programs should be considered.

(3) An inventory and evaluation of existing prevention and reduction programs, facilities and services in the state or nationally, including population served, cost of services provided, percentage of unmet needs and an identification of any needed program improvement or change.

(4) A listing of potential prevention efforts identified by the commission, the estimated annual cost of providing such prevention services for the anticipated target population, an identification of potential funding sources and the projected benefits of providing such services.

(f) The yearly plans shall be compiled and analyzed by the commission in the five-year comprehensive plan, which shall be submitted to the governor for transmittal to the president of the senate and speaker of the house of delegates with the last yearly plan on or before the first day of January, one thousand nine hundred eighty-nine.

(g) All funding sources, including reallocated LEAA funds, shall be considered by the commission for implementing programs and projects for crimes against the elderly.

CHAPTER 61.
CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10a. Violent crimes against the elderly; sentence not subject to suspension or probation.

(a) If any person be convicted and sentenced for an offense defined under the provisions of sections nine or ten of this article, and if the person shall have committed such offense
against a person who is sixty-five years of age or older, then
the sentence shall be mandatory and shall not be subject to
suspension or probation: Provided, That the court may, in its
discretion, suspend the sentence and order probation to any
person so convicted upon condition that such person perform
public service for a period of time deemed appropriate by the
court, which service shall be rendered in or about facilities or
programs providing care or services for the elderly: Provided,
however, That the court may apply the provisions of article
eleven-a, chapter sixty-two of this code to a person committed
to a term of one year or less.

(b) The existence of any fact which would make any per-
son ineligible for probation under subsection (a) of this sec-
tion because of the commission or attempted commission of a
felony against a victim sixty-five years of age or older shall not
be applicable unless such fact is (i) found by the court upon
a plea of guilty or nolo contendere, or (ii) found by the jury,
if the matter is tried before a jury or (iii) found by the court,
if the matter is tried by the court, without a jury.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Donald Amello
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Dee C. Mullins
Clerk of the Senate

Donald L. Bevan
Clerk of the House of Delegates

Wanda K. Botham
President of the Senate

Garth R. Peck
Speaker House of Delegates

The within _____________________ this the ___

day of _____________________, 1984.

John D. Tyler
Governor