ENROLLED

H. B. 2070

(By Delegate Casey and Delegate Whitlow)

[Passed March 10, 1984; in effect from passage.]

AN ACT to amend and reenact sections three, nine, ten, eleven and twelve, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two-a by adding thereto a new section, designated section twenty-eight, relating to reparations awards to victims of crimes generally; redefining the term "claimant" to include nonresidents of this state; authorizing the payment of reparations for prospective expenses and losses; increasing the amount which may be paid for expenses related to funeral, cremation and burial; authorizing the employment of not more than two reparations investigators; eliminating the filing fee for filing an application for an award of reparations; requiring law-enforcement officers and prosecuting attorneys to furnish certain reports, information, witness statements and other data to the reparations investigator and granting to such persons immunity from civil liability; establishing a procedure for obtaining protective orders when the reparations investigator requests reports, information, witness statements and other data; describing the contents of a finding of fact prepared by the reparations investigator; fixing a time for the filing of the reparations investigator's finding of fact and recommendation; and providing for the retroactive effect of amendments to said article two-a.

Be it enacted by the Legislature of West Virginia:

That sections three, nine, ten, eleven and twelve, article two-a, chapter fourteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended; and that said article
two-a be further amended by adding thereto a new section, design-
nated section twenty-eight, all to read as follows:

ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.


1 As used in this article, the term:

1a (a) "Claimant" means any of the following persons, whether
2 residents or nonresidents of this state, who claim an award
3 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
8 victim, dependent, or a third person who is not a collateral
9 source.

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

14 (1) The offender;
15 (2) The government of the United States or any of its
16 agencies, a state or any of its political subdivisions, or an
17 instrumentality of two or more states;
18 (3) Social security, medicare and medicaid;
19 (4) State-required, temporary, nonoccupational disability
20 insurance;
21 (5) Workers' compensation;
22 (6) Wage continuation programs of any employer;
23 (7) Proceeds of a contract of insurance payable to the
24 victim or claimant for loss that was sustained because of the
25 criminally injurious conduct;
26 (8) A contract providing prepaid hospital and other health
27 care services or benefits for disability.
(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct is shown under this article to have committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs or reckless driving.

(d) "Dependent" means an individual wholly or partially dependent upon the victim for care and support, and includes a child of the victim born after his 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 dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of one thousand two hundred fifty dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he had not been in-
jured and expenses reasonably incurred or to be incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed or to be performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(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, not for income but for the benefit of himself or his family, if he had not been injured.

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

(j) "Dependent's 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 had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment or other nonpecuniary damage.

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


The court of claims is hereby authorized to hire not more than two reparations investigators to be employed within the office of the clerk of the court of claims, who shall carry out the functions and duties set forth in section twelve of this article. Reparations investigators shall serve at the pleasure of the court of claims and under the administrative supervision
of the clerk of the court of claims. The compensation of
reparations investigators shall be fixed by the court, and such
compensation, together with travel, clerical and other expenses
of the clerk of the court of claims relating to a reparations
investigator carrying out his duties under this article, shall be
payable from the crime victims reparation fund as appropri-
ated for such purpose by the Legislature.

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

(a) A claim for an award of reparations shall be com-
menced by filing an application for an award of reparations
with the clerk of the court of claims. The application shall
be in a form prescribed by the clerk of the court of claims
and shall contain the following information:

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

(2) If the victim is deceased, the name and address of each
dependent of the victim and the extent to which each is de-
pendent upon the victim for care and support;

(3) The nature of the criminally injurious conduct that is
the basis for the claim and the date on which the conduct
occurred;

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

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

(6) The total amount of the economic loss that the victim,
a dependent or the claimant sustained or will sustain as a re-
sult of the criminally injurious conduct, without regard to the
financial limitation set forth in subsection (g), section fourteen
of this article;
(7) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(8) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(9) A release authorizing the court of claims, the court of claims commissioners and the reparations investigator to obtain any report, document or information that relates to the determination of the claim for an award of reparations;

(10) Any additional relevant information that the court of claims may require. The court of claims may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

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

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or a state officer or employee who knowingly and willfully participates or assists in the preparation or presentation of a false or fraudulent application, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be.


The clerk of the court of claims shall establish a procedure for the filing, recording and processing of applications for an award of reparations.
§14-2A-12. Investigation and recommendations by reparations investigator.

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

(b) The reparations investigator, upon receipt of an application for an award of reparations from the clerk of the court of claims, shall investigate the claim. After completing the investigation, the reparations investigator shall make a written finding of fact and recommendation concerning an award of reparations. He shall file with the clerk the finding of fact and recommendation and all information or documents that he used in his investigation: Provided, That the reparations investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

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

The reparations investigator while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him with reports, information, witness statements, or other data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable him to determine whether, and the extent to which, a claimant qualifies for an award of reparations. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness state-
ments or other data relating to the criminally injurious conduct to the reparations investigator.

Upon motion of any party from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data be made available only by a different method than that selected by the reparations investigator; (4) that certain matters not be inquired into, or that the scope of the reparations investigator’s request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; (7) that confidential information, or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the reparations investigator has reason to believe that his investigation may interfere with or jeopardize an investigation of a crime by law-enforcement officers, he shall apply to the court of claims or a judge or commissioner thereof for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the reparations investigator pursuant to subsection (b) of this section shall contain the following:

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

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

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

(4) If the reparations investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

(5) If the reparations investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

(6) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(7) Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;

(8) Any additional information that the reparations investigator deems to be relevant to the evaluation of the claim.

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

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

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

(f) The reparations investigator shall file his finding of
fact and recommendation with the clerk within six months after the filing of the application: Provided, That where there is active criminal prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant's claim, the reparations investigator shall file his finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any court of claims judge or commissioner upon good cause shown.


Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the court of claims on the effective date of the act of the Legislature which effects such amendment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James E. Davis  
Chairman Senate Committee

Donald Anello  
Chairman House Committee

Originating in the House.

Takes effect from passage.

Joseph C. Wells  
Clerk of the Senate

Donald L. Hooper  
Clerk of the House of Delegates

Wayne E. McBroom  
President of the Senate

Joseph H. Seitz  
Speaker House of Delegates

The within _______ improved _______ this the 30______

day of ___________ ___________ 1984.

John D. Blythe  
Governor