

No. 2070

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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# ENROLLED

HOUSE BILL No. 2070

(By Mr. Del. Casey & Del. Whitlow)

— ● —

Passed March 10, 1984

In Effect From Passage



ENROLLED

**H. B. 2070**

(By DELEGATE CASEY and DELEGATE WHITLOW)

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

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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, designated section twenty-eight, all to read as follows:

**ARTICLE 2A. REPARATION AWARDS TO VICTIMS OF CRIMES.**

**§14-2A-3. Definitions.**

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.

28 (c) "Criminally injurious conduct" means conduct that  
29 occurs or is attempted in this state which by its nature poses a  
30 substantial threat of personal injury or death, and is punishable  
31 by fine or imprisonment or death, or would be so punishable  
32 but for the fact that the person engaging in the conduct lacked  
33 capacity to commit the crime under the laws of this state.  
34 Criminally injurious conduct does not include conduct arising  
35 out of the ownership, maintenance or use of a motor vehicle,  
36 except when the person engaging in the conduct intended to  
37 cause personal injury or death, or except when the person  
38 engaging in the conduct is shown under this article to have  
39 committed negligent homicide, driving under the influence of  
40 alcohol, controlled substances or drugs or reckless driving.

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

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

51 (f) "Allowable expense" means reasonable charges incurred  
52 or to be incurred for reasonably needed products, services and  
53 accommodations, including those for medical care, rehabilita-  
54 tion and other remedial treatment and care.

55 Allowable expense includes a total charge not in excess of  
56 one thousand two hundred fifty dollars for expenses in any  
57 way related to funeral, cremation and burial. It does not in-  
58 clude that portion of a charge for a room in a hospital, clinic,  
59 convalescent home, nursing home or any other institution en-  
60 gaged in providing nursing care and related services in excess  
61 of a reasonable and customary charge for semiprivate accom-  
62 modations, unless accommodations other than semiprivate  
63 accommodations are medically required.

64 (g) "Work loss" means loss of income from work that the  
65 injured person would have performed if he had not been in-

66 jured and expenses reasonably incurred or to be incurred by  
67 him to obtain services in lieu of those he would have performed  
68 for income, reduced by any income from substitute work  
69 actually performed or to be performed by him, or by income  
70 he would have earned in available appropriate substitute  
71 work that he was capable of performing but unreasonably  
72 failed to undertake.

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

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

84 (j) "Dependent's replacement service loss" means loss rea-  
85 sonably incurred or to be incurred by dependents after a  
86 victim's death in obtaining ordinary and necessary services  
87 in lieu of those the victim would have performed for their  
88 benefit if he had not suffered the fatal injury, less expenses  
89 of the dependents avoided by reason of the victim's death and  
90 not subtracted in calculating dependent's economic loss.

91 (k) "Noneconomic detriment" means pain, suffering, in-  
92 convenience, physical impairment or other nonpecuniary dam-  
93 age.

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

**§14-2A-9. Reparations investigators; compensation and expenses.**

1 The court of claims is hereby authorized to hire not more  
2 than two reparations investigators to be employed within the  
3 office of the clerk of the court of claims, who shall carry  
4 out the functions and duties set forth in section twelve of this  
5 article. Reparations investigators shall serve at the pleasure  
6 of the court of claims and under the administrative supervision

7 of the clerk of the court of claims. The compensation of  
8 reparations investigators shall be fixed by the court, and such  
9 compensation, together with travel, clerical and other expenses  
10 of the clerk of the court of claims relating to a reparations  
11 investigator carrying out his duties under this article, shall be  
12 payable from the crime victims reparation fund as appropri-  
13 ated for such purpose by the Legislature.

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

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

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

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

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

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

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

25 (6) The total amount of the economic loss that the victim,  
26 a dependent or the claimant sustained or will sustain as a re-  
27 sult of the criminally injurious conduct, without regard to the  
28 financial limitation set forth in subsection (g), section fourteen  
29 of this article;

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

35 (8) Whether the claimant is the spouse, parent, child,  
36 brother or sister of the offender, or is similarly related to an  
37 accomplice of the offender who committed the criminally in-  
38 jurious conduct;

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

43 (10) Any additional relevant information that the court of  
44 claims may require. The court of claims may require the  
45 claimant to submit, with the application, materials to sub-  
46 stantiate the facts that are stated in the application.

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

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

#### **§14-2A-11. Procedure for filing of application.**

1 The clerk of the court of claims shall establish a procedure  
2 for the filing, recording and processing of applications for an  
3 award of reparations.



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

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 ap-  
5 plication for an award of reparations from the clerk of the  
6 court of claims, shall investigate the claim. After completing  
7 the investigation, the reparations investigator shall make a  
8 written finding of fact and recommendation concerning an  
9 award of reparations. He shall file with the clerk the finding  
10 of fact and recommendation and all information or documents  
11 that he used in his investigation: *Provided*, That the repara-  
12 tions investigator shall not file information or documents  
13 which have been the subject of a protective order entered  
14 under the provisions of subsection (c) of this section.

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

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



37 ments or other data relating to the criminally injurious con-  
38 duct to the reparations investigator.

39       Upon motion of any party from whom such reports, informa-  
40 tion, witness statements or other data is sought, and for good  
41 cause shown, the court may make any order which justice re-  
42 quires to protect a witness or other person, including, but not  
43 limited to, the following: (1) That the reports, information, wit-  
44 ness statements or other data not be made available; (2) that  
45 the reports, information, witness statements or other data may  
46 be made available only on specified terms and conditions,  
47 including a designation of time and place; (3) that the reports,  
48 information, witness statements or other data be made avail-  
49 able only by a different method than that selected by the  
50 reparations investigator; (4) that certain matters not be  
51 inquired into, or that the scope of the reparations investiga-  
52 tor's request be limited to certain matters; (5) that the reports,  
53 information, witness statements or other data be examined  
54 only by certain persons designated by the court; (6) that the  
55 reports, information, witness statements or other data, after  
56 being sealed, be opened only by order of the court; (7) that  
57 confidential information, or the identity of confidential wit-  
58 nesses or informers not be disclosed, or disclosed only in a  
59 designated manner.

60       However, in any case wherein the reparations investigator  
61 has reason to believe that his investigation may interfere  
62 with or jeopardize an investigation of a crime by law-  
63 enforcement officers, he shall apply to the court of claims  
64 or a judge or commissioner thereof for an order grant-  
65 ing leave to discontinue his investigation for a reason-  
66 able time in order to avoid such interference or jeopardi-  
67 zation.

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

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

74       (2) If the criminally injurious conduct was reported to a

75 law-enforcement officer or agency, the date on which the con-  
76 duct was reported and the name of the person who reported  
77 the conduct; or, the reasons why the conduct was not re-  
78 ported to a law-enforcement officer or agency; or, the rea-  
79 sons why the conduct was not reported to a law-enforcement  
80 officer or agency within seventy-two hours after the conduct  
81 occurred;

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

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

88 (5) If the reparations investigator is recommending that an  
89 award be made, a specific itemization of any benefits or advan-  
90 tages that the victim, the claimant or a dependent has received  
91 or is entitled to receive from any collateral source for eco-  
92 nomic loss that resulted from the conduct;

93 (6) Whether the claimant is the spouse, parent, child,  
94 brother or sister of the offender, or is similarly related to an  
95 accomplice of the offender who committed the criminally in-  
96 jurious conduct;

97 (7) Any information which might be a basis for a reason-  
98 able reduction or denial of a claim because of contributory  
99 misconduct of the claimant or of a victim through whom he  
100 or she claims;

101 (8) Any additional information that the reparations in-  
102 vestigator deems to be relevant to the evaluation of the claim.

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

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

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

110 (f) The reparations investigator shall file his finding of

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

**§14-2A-28. Retroactive effect of amendments.**

1 Amendments made to the provisions of this article during the  
2 regular session of the Legislature in the year one thousand  
3 nine hundred eighty-four, shall be of retroactive effect to the  
4 extent that such amended provisions shall apply to all cases  
5 pending before the court of claims on the effective date of  
6 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 L. Davis*  
 Chairman Senate Committee

*Donald Anello*  
 Chairman House Committee

Originating in the House.

Takes effect from passage.

*Isid C. Miller*  
 Clerk of the Senate

*Donald L. Kopp*  
 Clerk of the House of Delegates

*Walter F. McHenry*  
 President of the Senate

*William H. Lee, Jr.*  
 Speaker House of Delegates

The within *incurred* this the *30*  
 day of *March*, 1984.

*John T. Dwyer*  
 Governor



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SECY. OF STATE