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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

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ENROLLED

Committee Substitute for
SENATE BILL NO. 4

(By Mr. *Walter H. Boltman*)

—•—
PASSED March 5, 1984

In Effect sixty days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 4

(MR. WHITE AND MR. BOETTNER, *original sponsors*)

[Passed March 5, 1984; in effect ninety days from passage.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-a, relating to protection of victims generally; making certain findings and purposes; permitting statements of crime victims at sentencing hearings; providing for preparation of victim impact statements in criminal cases; when impact statements received; contents; use; right of defendants to review statement and present evidence; requiring restitution by defendant; when restitution required; how restitution made; providing a procedure for issuing restitution order; requiring the attorney general's office in conjunction with the department of public safety and the department of human services to develop and implement guidelines for law-enforcement agencies and prosecuting attorneys' offices consistent with the purposes of this act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-1. Legislative findings and purpose.

1 (a) The Legislature finds and declares that without the
2 cooperation of victims and witnesses, the criminal justice
3 system would cease to function, yet too often these
4 individuals are either ignored by the criminal justice system
5 or simply used as tools to identify and punish offenders.

6 The Legislature finds further that all too often the victim
7 of a serious crime is forced to suffer physical, psychological
8 or financial hardship first as a result of the criminal act and
9 then as a result of contact with a criminal justice system not
10 totally responsive to the needs of such victims.

11 The Legislature finds further that under the current law,
12 law-enforcement agencies must have cooperation from a
13 victim of crime and yet neither the agencies nor the legal
14 system can offer adequate protection or assistance when the
15 victim, as a result of such cooperation, is threatened or
16 intimidated.

17 The Legislature finds further that while the defendant is
18 provided with counsel who can explain both the criminal
19 justice process and the rights of the defendant, the victim or
20 witness has no counterpart and is usually not even notified
21 when the defendant is released on bail, the case is
22 dismissed, a plea to a lesser charge is accepted, or a court
23 date is changed.

24 The Legislature finds further that the victim or witness
25 who cooperates with the prosecutor often find that the
26 transportation, parking facilities and child care services at
27 the court are unsatisfactory and they must often share the
28 pretrial waiting room with the defendant or his family and
29 friends.

30 The Legislature finds further that the victim may lose
31 valuable property to a criminal only to lose it again for long
32 periods of time to law-enforcement officials, until the trial
33 and appeals are over; many times that property is damaged
34 or lost, which is particularly stressful for the elderly or
35 poor.

36 (b) The Legislature declares that the purposes of this
37 article are to enhance and protect the necessary role of
38 crime victims and witnesses in the criminal justice process
39 and to ensure that the state and local governments do all

40 that is possible within the limits of available resources to
41 assist victims and witnesses of crime without infringing on
42 the constitutional rights of the defendant.

§61-11A-2. Testimony of crime victim at sentencing hearing.

1 (a) For the purposes of this section, "victim" means a
2 person who is a victim of a felony, the fiduciary of a
3 deceased victim's estate or a member of a deceased victim's
4 immediate family.

5 (b) Prior to the imposition of sentence upon any
6 defendant who has been found guilty of a felony or has
7 pleaded guilty or nolo contendere to any felony, the court
8 shall permit the victim of the crime to appear before the
9 court for the purpose of making an oral statement for the
10 record if the victim notifies the court of his desire to make
11 such a statement after receiving notification provided in
12 subsection (c) of this section. If the victim fails to so notify
13 the court such failure shall constitute a waiver of the right
14 to make an oral statement. In lieu of such appearance and
15 oral statement, the victim may submit a written statement
16 to the court or to the probation officer in charge of the case.
17 Such probation officer shall forthwith file any such
18 statement delivered to his office with the sentencing court,
19 and the statement shall be made a part of the record at the
20 sentencing hearing. Any such statement, whether oral or
21 written, shall relate solely to the facts of the case and the
22 extent of any injuries, financial losses and loss of earnings
23 directly resulting from the crime for which the defendant is
24 being sentenced.

25 (c) Within a reasonable time, prior to the imposition of
26 sentence upon such defendant, the prosecuting attorney or
27 assistant prosecuting attorney in charge of the case shall in
28 writing advise the person who was the victim of such crime
29 or in the case of a minor, the parent or guardian of such
30 minor, or the fiduciary of his estate, if he be then deceased,
31 of the date, time and place of the original sentencing
32 hearing, and of the victim's rights to submit a written or
33 oral statement to the sentencing court as hereinabove
34 provided.

35 (d) The oral or written statement given or submitted by
36 any victim in accordance with the provisions of this section
37 shall be in addition to and not in lieu of the victim impact

38 statement required by the provisions of section three of this
39 article.

**§61-11A-3. Victims impact statement; when required;
contents; use; right of defendant to review and
present evidence.**

1 (a) In every case in which a presentence report is
2 ordered by the court, such presentence report shall contain
3 a victim impact statement unless the court orders
4 otherwise, if the defendant, in committing a felony or
5 misdemeanor, caused physical, psychological or economic
6 injury or death of the victim.

7 (b) The victim impact statement shall be prepared by
8 the probation officer and shall include the identity of the
9 victim, an itemization of any economic loss suffered by the
10 victim as a result of the offense, a description of the nature
11 and extent of any physical or psychological injury suffered
12 by the victim as a result of the offense, the details of any
13 change in the victim's personal welfare, lifestyle or family
14 relationships as a result of the offense, whether there has
15 been any request for psychological or medical services
16 initiated by the victim or the victim's family as a result of
17 the offense, and such other information related to the
18 impact of the offense upon the victim as may be required by
19 the court.

20 (c) If the court does not order a presentence
21 investigation and report, the prosecuting attorney may
22 request that the probation officer prepare a victim impact
23 statement. The victim impact statement shall be considered
24 by the court as a factor in determining the appropriate
25 sentence. Additionally, the statement may be utilized for
26 the determination of claims by victims of crimes pursuant
27 to the provisions of article two-a, chapter fourteen of this
28 code.

29 (d) A victim impact statement prepared in accordance
30 with the provisions of this section, other than for claims by
31 victims of crimes pursuant to the provisions of article two-
32 a, chapter fourteen of this code, shall be made available to
33 the defendant, and his counsel if he is so represented, at
34 least ten days prior to the date set for pronouncement of his
35 sentence. The court shall, upon motion by or on behalf of the
36 defendant, grant the defendant a hearing, whereby he may

37 introduce testimony or other information related to any
38 alleged factual inaccuracies in the statement.

§61-11A-4. Restitution; when ordered.

1 (a) The court, when sentencing a defendant convicted of
2 a felony or misdemeanor causing physical, psychological or
3 economic injury or loss to a victim, shall order, in addition
4 to or in lieu of any other penalty authorized by law, that the
5 defendant make restitution to any victim of the offense,
6 unless the court finds restitution to be wholly or partially
7 impractical as set forth in this article.

8 If the court does not order restitution, or orders only
9 partial restitution, under this section, the court shall state
10 on the record the reasons therefor.

11 (b) The order shall require that such defendant:

12 (1) In the case of an offense resulting in damage to, loss
13 of, or destruction of property of a victim of the offense

14 (A) Return the property to the owner of the property or
15 someone designated by the owner; or

16 (B) If return of the property under subparagraph (A) is
17 impossible, impractical, or inadequate, pay an amount
18 equal to the greater of—(i) the value of the property on the
19 date of sentencing, or (ii) the value of the property on the
20 date of the damage, loss or destruction less the value (as of
21 the date the property is returned) of any part of the property
22 that is returned;

23 (2) In the case of an offense resulting in bodily injury to
24 a victim

25 (A) Pay an amount equal to the cost of necessary
26 medical and related professional services and devices
27 relating to physical, psychiatric, and psychological care,
28 including nonmedical care and treatment rendered in
29 accordance with a method of healing recognized by the law
30 of the place of treatment;

31 (B) Pay an amount equal to the cost of necessary
32 physical and occupational therapy and rehabilitation; and

33 (C) Reimburse the victim for income lost by such victim
34 as a result of such offense;

35 (3) In the case of an offense resulting in bodily injury
36 that also results in the death of a victim, pay an amount
37 equal to the cost of necessary funeral and related services;
38 and

39 (4) In any case, if the victim (or if the victim is deceased,
40 the victim's estate) consents, or if payment is impossible or
41 impractical, make restitution in services in lieu of money, or
42 make restitution to a person or organization designated by
43 the victim or the estate.

44 (c) If the court decides to order restitution under this
45 section, the court shall, if the victim is deceased, order that
46 the restitution be made to the victim's estate.

47 (d) The court shall impose an order of restitution to the
48 extent that such order is as fair as possible to the victim and
49 the imposition of such order will not unduly complicate or
50 prolong the sentencing process.

51 (e) The court shall not impose restitution with respect to
52 a loss for which the victim has received or is to receive
53 compensation, except that the court may, in the interest of
54 justice, order restitution to any person who has
55 compensated the victim for such loss to the extent that such
56 person paid the compensation. An order of restitution shall
57 require that all restitution to victims under such order be
58 made before any restitution to any other person under such
59 order is made.

60 (f) The court may require that such defendant make
61 restitution under this section within a specified period or in
62 specified installments. The end of such period or the last
63 such installment shall not be later than: (i) The end of the
64 period of probation, if probation is ordered; (ii) five years
65 after the end of the term of imprisonment imposed, if the
66 court does not order probation; and (iii) five years after the
67 date of sentencing in any other case.

68 If not otherwise provided by the court under this
69 subsection, restitution shall be made immediately.

70 (g) If such defendant is placed on probation or paroled
71 under this article, any restitution ordered under this section
72 shall be a condition of such probation or parole unless the
73 court or parole board finds restitution to be wholly or
74 partially impractical as set forth in this article.

75 The court may revoke probation and the parole board
76 may revoke parole if the defendant fails to comply with
77 such order. In determining whether to revoke probation or
78 parole, the court or parole board shall consider the
79 defendant's employment status, earning ability, financial
80 resources, the willfulness of the defendant's failure to pay,

81 and any other special circumstances that may have a
82 bearing on the defendant's ability to pay.

83 (h) An order of restitution may be enforced by the state
84 or a victim named in the order to receive the restitution in
85 the same manner as a judgment in a civil action.

§61-11A-5. Restitution; procedure for issuing order.

1 (a) The court, in determining whether to order
2 restitution under this article, and in determining the
3 amount of such restitution, shall consider the amount of the
4 loss sustained by any victim as a result of the offense, the
5 financial resources of the defendant, the financial needs
6 and earning ability of the defendant and the defendant's
7 dependents, and such other factors as the court deems
8 appropriate.

9 (b) The court may order the probation officer of the
10 court to obtain information pertaining to the factors set
11 forth in subsection (a) of this section. The probation officer
12 of the court shall include the information collected in the
13 report of presentence investigation or in a separate report,
14 as the court directs.

15 (c) The court shall disclose to both the defendant and
16 the prosecuting attorney all portions of the presentence or
17 other report pertaining to the matters described in
18 subsection (a) of this section.

19 (d) Any dispute as to the proper amount or type of
20 restitution shall be resolved by the court by the
21 preponderance of the evidence. The burden of
22 demonstrating the amount of the loss sustained by a victim
23 as a result of the offense shall be on the prosecuting
24 attorney. The burden of demonstrating the financial
25 resources of the defendant and the financial needs of the
26 defendant and such defendant's dependents shall be on the
27 defendant. The burden of demonstrating such other matters
28 as the court deems appropriate shall be upon the party
29 designated by the court as justice requires.

**§61-11A-6. State guidelines for fair treatment of crime victims
and witnesses in the criminal justice system.**

1 (a) No later than the first day of July, one thousand nine
2 hundred eighty-four, the attorney general shall promulgate
3 rules and regulations in accordance with the provisions of

4 chapter twenty-nine-a of this code, establishing guidelines
5 for law-enforcement agencies and prosecuting attorneys'
6 offices consistent with the purposes of this article. The
7 attorney general shall seek the advice of the department of
8 public safety and department of human services in
9 preparing such rules and regulations. In preparing such
10 rules and regulations, the following objectives shall be
11 considered:

12 (1) The arresting law-enforcement agency should
13 ensure that victims routinely receive emergency social and
14 medical services as soon as possible and are given
15 information on the following

16 (A) Availability of crime victim compensation (where
17 applicable);

18 (B) Community-based victim treatment programs;

19 (C) The role of the victim in the criminal justice process,
20 including what they can expect from the system as well as
21 what the system expects from them; and

22 (D) Stages in the criminal justice process of significance
23 to a crime victim, and the manner in which information
24 about such stages can be obtained.

25 (2) The prosecuting attorney or his assistant should
26 ensure that victims and witnesses receive information on
27 steps that law-enforcement officers and prosecuting
28 attorneys can take to protect victims and witnesses from
29 intimidation.

30 (3) All victims and witnesses who have been scheduled
31 to attend criminal justice proceedings should be notified by
32 the prosecuting attorneys' offices as soon as possible of any
33 scheduling changes which will affect their appearances.

34 (4) Victims, witnesses, and one member of the
35 immediate family of those victims and witnesses should, if
36 such persons provide the appropriate official with a current
37 address and telephone number, receive prompt advance
38 notification, if possible, of judicial proceedings relating to
39 their case, from the prosecuting attorney's office, including:

40 (A) The arrest of an accused;

41 (B) The initial appearance of an accused before a
42 judicial officer;

43 (C) The release of the accused pending judicial
44 proceedings; and

45 (D) Proceedings in the prosecution of the accused

46 (including the entry of a plea of guilty, trial, sentencing,
47 and, where a term of imprisonment is imposed, the release
48 of the accused from such imprisonment).

49 (5) The victim of a serious crime, or in the case of a minor
50 child or a homicide, the family of the victim, shall be
51 consulted by the prosecuting attorney in order to obtain the
52 views of the victim or family about the disposition of any
53 criminal case brought as a result of such crime, including
54 the views of the victim or family about:

55 (A) Dismissal;

56 (B) Release of the accused pending judicial proceedings;

57 (C) Plea negotiations; and

58 (D) Pretrial diversion program.

59 (6) Victims and other prosecution witnesses should, if
60 practical, be provided prior to court appearance, a waiting
61 area that is separate from all other witnesses.

62 (7) Law-enforcement agencies should promptly return
63 victim's property held for evidentiary purposes unless there
64 is a compelling law-enforcement reason for retaining it.

65 (8) A victim or witness who so requests should be
66 assisted by law-enforcement agencies and prosecuting
67 attorneys in informing employers that the need for victim
68 and witness cooperation in the prosecution of the case may
69 necessitate absence of that victim or witness from work. A
70 victim or witness who, as a direct result of a crime or of
71 cooperation with law-enforcement agencies or attorneys
72 for the government, is subjected to serious financial strain,
73 should be assisted by the appropriate state agencies in
74 dealing with creditors.

75 (b) Nothing in this section shall be construed as creating
76 a cause of action against the state of West Virginia or any of
77 its political subdivisions.

§61-11A-7. Severability.

1 The provision of subsection (cc), section ten, article two,
2 chapter two of this code shall apply to the provisions of this
3 article to the same extent as if the provision of said
4 subsection were set forth in extenso herein.

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

Harold E. Johnson
.....
Chairman Senate Committee

Ronald Cinello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd C. Wells
.....
Clerk of the Senate

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

Walter R. White
.....
President of the Senate

John M. See, Jr.
.....
Speaker House of Delegates

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

John R. Rhyne
.....
Governor

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