

No. 2070

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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ENROLLED

HOUSE BILL No. 2070

(By *Del. Casey + Del. Whitlow*)

— ● —

Passed *March 10,* 1984

In Effect *From* Passage



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, 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 injured 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. Weller

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Waverly McNew

President of the Senate

William H. Lee, Jr.

Speaker House of Delegates

The within ingored this the 30
day of March, 1984.

John T. Rhyne

Governor

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