WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

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ENROLLED

HOUSE BILL No. 2125

(By Del. Casey & Del. Carveth)

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Passed April 13, 1985

In Effect from Passage
ENROLLED

H. B. 2125

(By Delegate Casey and Delegate Carmichael)

[Passed April 13, 1985; in effect from passage.]

AN ACT to amend and reenact article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims compensation; changing the title of the act, the name of the fund and references to certain personnel; making new findings and providing for continuation of the program; modifying the definitions of claimant, collateral source, dependent, allowable expense, noneconomic detriment and victim, and defining contributory misconduct; providing that commissioners serve under the supervision of judges of the court; clarifying that expenses necessary in obtaining reports may be paid from the fund; modifying the application requirements; removing the limit to state officers and employees as those persons subject to penalty for knowingly and willfully participating or assisting in preparation of false or fraudulent applications; requiring the investigator to apply to court for leave to discontinue investigation when he believes it will interfere with or jeopardize prosecution of a case and requiring court to grant such leave when satisfied that an investigation will interfere with or jeopardize the investigation or prosecution of a case; providing for compensation for emotional distress and pain and suffering in certain cases and limiting the amount of such compensation; increasing the maximum award payable in cases of death to the victim and providing for compensation to certain persons for sorrow, mental anguish and solace; providing for the attorney general to represent the interests of the state in hearings on claims; clarifying authority of
investigator to petition court for order to take depositions; providing for payment from the fund of expenses of attorneys; eliminating the requirement for reporting the average amount of claims made; and providing for retroactive effect of amendments.

_Be it enacted by the Legislature of West Virginia:_

That article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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

**§14-2A-1. Short title.**

The act heretofore created by this article and known and cited as the “West Virginia Crime Reparation Act of 1981” shall henceforth be known and cited as the “West Virginia Crime Victims Compensation Act.” Any and all funds existing under the West Virginia crime reparation act of 1981 shall continue for the purposes set forth in this article, notwithstanding the amendments to the name of the act or a redesignation of the special revenue fund in the state treasury as herein provided.

**§14-2A-2. Legislative findings; purpose and intent.**

The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. In establishing the West Virginia crime reparation act of 1981, the Legislature stated its findings that the provision of governmental services to prevent crime is not wholly effective and expressed its intent to establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government.

The Legislature now finds that the system of compensation established by the act as an experimental effort by the
Legislature of this state on behalf of its people, after having been reviewed and perfected in its initial stages, should be continued and retained in the legislative branch of government as an expression of a moral obligation of the state to provide partial compensation to the innocent victims of crime for injury suffered to their person or property.


As used in this article, the term:

(a) “Claimant” means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source.

(b) “Collateral source” means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability
Enr. H. B. 2125] 4

(5) Workers’ compensation;
(6) Wage continuation programs of any employer;
(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;
(8) A contract providing prepaid hospital and other health care services or benefits for disability;
(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(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 committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) “Dependent” means an individual who received over half of his support from the victim. For the purpose of determining whether an individual received over half of his support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. The term “support” includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term “dependent” 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, prosthetic devices, eye glasses, dentures, 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 injured 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 sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice.

(l) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who such injured person has reasonable cause to believe has engaged in such criminally injurious conduct immediately prior to the attempted apprehension.

(m) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortuous and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.


Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, shall pay the sum of three dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund," which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the "Crime Victims Reparation Fund" are hereby trans-
ferred to the crime victims compensation fund, and the
treasurer shall so deposit such moneys in the state treasury.
All moneys collected and received under this article and paid
into the state treasury and credited to the crime victims
compensation fund in the manner prescribed in section two,
article two, chapter twelve of this code, shall be kept and
maintained for the specific purposes of this article, and shall
not be treated by the auditor and treasurer as part of the
general revenue of the state.

Moneys in the crime victims compensation fund shall be
available for the payment of the costs of administration of this
article in accordance with the budget of the court approved
therefor.


Any judge of the court of claims individually, or the court
of claims en blanc, or any court of claims commissioner
appointed pursuant to section six of this article, shall have
jurisdiction to approve awards of compensation arising from
criminally injurious conduct, in accordance with the provisions
of this article, if satisfied by a preponderance of the evidence
that the requirements for an award of compensation have been
met.

§14-2A-6. Appointment and compensation of commissioners and
judges serving under this article.

(a) The court of claims, with the approval of the president
of the Senate and the speaker of the House of Delegates, may
appoint court of claims commissioners to hear claims for
awards of compensation and to approve awards of compen-
sation pursuant to the provisions of this article. Each
commissioner shall serve at the pleasure of the court of claims
and under the supervision of the judges of the court of claims.

(b) The court of claims shall fix the compensation of the
court of claims commissioners in an amount not exceeding the
compensation for judges of the court of claims. Compensation
of judges and commissioners for services performed under this
article, and actual expenses incurred in the performance of
duties as judges and commissioners under this article shall be
paid out of the crime victims compensation fund.

(c) The limitation period of one hundred days in section
eight, article two of this chapter pertaining to time served by
the judges of the court of claims shall not apply to the provisions of this article.


Each commissioner appointed by the court of claims shall be an attorney-at-law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than three years prior to his appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his capacity as commissioner of the court. A commissioner shall not hear or participate in the consideration of any claim in which he is interested personally, either directly or indirectly. When practicable, the commissioners should be selected from different congressional districts and be geographically located, with reference to their counties of residence, to facilitate the appearance of claimants and witnesses at hearings held pursuant to this article.


Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by section five, article four of the constitution of the state. The oath shall be filed with the clerk.


The court of claims is hereby authorized to hire not more than two claim 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. Claim 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 claim 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 claim investigator carrying out his duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

§14-2A-10. Filing of application for compensation award; contents.
(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation 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 information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

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. The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;
3. The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;
4. 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;
5. A release authorizing the court of claims, the court of claims commissioners and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;
6. If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;
7. The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is 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;
8. The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the
financial limitation set forth in subsection (g), section fourteen
of this article;

(9) 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;

(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 compensation shall be
filed within two years after the occurrence of the criminally
injurious conduct that is the basis of the application. Any
application so filed which contains the information specified
in subdivisions (1) through (6), subsection (a) of this section
may not be excluded from consideration on the basis of
incomplete information specified in subdivisions (7) through
(10) of said subsection if such information is completed after
reasonable assistance in the completion thereof is provided
under procedures established by the court of claims.

(c) A person who knowingly and willfully presents or
attempts to present a false or fraudulent application, or who
knowingly and willfully participate, or assists in the prepara-
tion 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.


(a) The clerk of the court of claims shall establish a
procedure for the filing, recording and processing of
applications for an award of compensation.

§14-2A-12. Investigation and recommendations by claim
investigator.
(a) The clerk of the court of claims shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the court of claims, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. 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 claim 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 claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation 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 compensation.

The claim 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 compensation. 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 statements or other data relating to the criminally injurious conduct to the claim investigator.

Upon motion of any party, court or agency 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 claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim 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 claim investigator has reason to believe that his investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he shall apply to the court of claims, or a judge thereof, for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the court, or judge, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the investigation or prosecution of a crime, the court, or judge, shall issue an order granting the claim investigator leave to discontinue his investigation for such time as the court, or judge, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim 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 claim 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 claim 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 claim investigator
deems to be relevant to the evaluation of the claim.

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

(1) Whether an award of compensation should be made to
the claimant and the amount of the award;

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

(f) The claim 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 investigation or prosecution of the person or persons
alleged to have committed the criminally injurious conduct
which is the basis for the claimant's claim, the claim
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.

§14-2A-13. Notice to claimant of claim investigator's recommenda-
tion; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the
claim investigator's finding of fact and recommendation, shall
forward a copy of the finding of fact and recommendation to
the claimant with a notice informing the claimant that any
response, in the form of objections or comments directed to
the finding of fact and recommendation, must be filed with
the clerk within thirty days of the date of the notice. After
the expiration of such thirty-day period, the clerk shall assign
the claim to a judge or commissioner of the court.

(b) The judge or commissioner to whom the claim is
assigned shall review the finding of fact and recommendation
and any response submitted by the claimant and, if deemed
appropriate, may request the claim investigator to comment
in writing on the claimant's response. The judge or commis-
sioner shall, within forty-five days after assignment by the
clerk, evaluate the claim without a hearing and either deny the
claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award;
maximum awards; awards for emotional distress;
mental anguish, etc.

(a) Except as provided in subsection (b), section ten of this
article, the judge or commissioner shall not approve an award
of compensation to a claimant who did not file his application
for an award of compensation within two years after the date
of the occurrence of the criminally injurious conduct that
caused the injury or death for which he is seeking an award
of compensation.
(b) An award of compensation shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or the parent, child, brother or sister of the offender or his accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation, and may reconsider a claim already approved.

(e) An award of compensation shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing such approval, the judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the
amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed twenty thousand dollars in the aggregate. Compensation payable to a victim of criminally injurious conduct which would constitute an offense under the provisions of article 8-b, chapter sixty-one of this code which causes serious permanent injury may include, in addition to economic loss, an amount up to five thousand dollars for emotional distress and pain and suffering. Compensation payable to all claimants because of the death of the victim shall not exceed fifty thousand dollars in the aggregate, but may include, in addition to economic loss, compensation to the claimants specified in paragraph (2), subdivision (a), section three of this article, for sorrow, mental anguish and solace.


(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this article, the claim investigator or the claimant, or both, shall file with the clerk a request for hearing. Such request shall be filed within twenty-one days after notification by the judge or commissioner of his decision.

(b) Upon receipt of a request for hearing, the clerk shall place the claim upon the regular docket of the court for hearing, shall advise the attorney general and the claimant of the receipt of the request and docketing of the claim, and shall request the attorney general to commence negotiations with the claimant.

(c) During the period of negotiations and pending hearing, the attorney general, shall, if possible, reach an agreement with
the claimant regarding the facts upon which the claim is based
so as to avoid the necessity for the introduction of evidence
at the hearing. If the parties are unable to agree upon the facts,
an attempt shall be made to stipulate the questions of fact in
issue.

(d) The hearing held in accordance with this section shall
be before a single judge or commissioner to whom the claim
has not been previously assigned. Hearings before a judge or
commissioner may, in the discretion of such hearing officer,
be held at such locations throughout the state as will facilitate
the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all
material facts and issues. The judge or commissioner may
examine or cross-examine witnesses. The judge or commis-
sioner may call witnesses or require evidence not produced by
the parties; may stipulate the questions to be argued by the
parties; and may continue the hearing until some subsequent
time to permit a more complete presentation of the claim.

(f) After the close of the hearing the judge or commissioner
shall consider the claim and shall conclude his determination,
if possible, within thirty days.

(g) The court shall adopt and may from time to time amend
rules of procedure to govern proceedings before the court in
accordance with the provisions of this article. The rules shall
be designed to assure a simple, expeditious and inexpensive
consideration of claims. The rules shall permit a claimant to
appear in his own behalf or be represented by counsel and
provide for interests of the state to be represented by the
attorney general in any hearing under this section at no
additional cost to the fund or the state.

Under its rules, the court shall not be bound by the usual
common law or statutory rules of evidence. The court may
accept and weigh, in accordance with its evidential value, any
information that will assist the court in determining the factual
basis of a claim.


(a) There is no privilege, except the privilege arising from
the attorney-client relationship, as to communications or
records that are relevant to the physical, mental or emotional
condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the court, judge or commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the court of claims shall furnish him a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(c) The court, or a judge or commissioner thereof, may order law-enforcement officers employed by the state or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of compensation.

(d) The court, or a judge or commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The court, a judge or commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the
victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the court, the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the court of claims, a judge or commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The court of claims, a judge or commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the court, judge or commissioner may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his powers and duties, the claim investigator may petition the court of claims for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination.

§14-2A-18. Effect of prosecution or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of compensation whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The court, or a judge or commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation
pending disposition of a criminal prosecution that has been commenced or is imminent.


(a) As part of an order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered, and reimbursement for reasonable and necessary expenses actually incurred, to be paid from the crime victims compensation fund to the attorney representing a claimant in a proceeding under this article. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the court to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the crime victims compensation fund.


(a) The clerk shall certify to the department of finance and administration, on or before the twentieth day of November of each year, a list of all claims pursuant to this article for which the court has made a final determination and approved an award since the last such certificate.

(b) The governor shall include in his proposed budget bill and revenue estimates:

(1) An estimate of the balance and receipts anticipated in the crime victims compensation fund,

(2) An itemized report of the approved awards recommended by the court to the Legislature,

(3) Such recommendations to the Legislature for appropriations from the crime victims compensation fund as he may deem appropriate for the payment of fees, costs and expenses
incurred, due or payable at any time from such fund, and

(4) Such recommendations to the Legislature for appropriations for the payment of claims arising under this article, whether accrued and determined by the court and included in the itemization of awards mentioned in this section or arising during the ensuing fiscal year.

(c) The Legislature shall, by general law, provide for the authorization to pay the itemized awards arising under this article or so much thereof as may be deemed appropriate or for awards arising during the ensuing fiscal year and provide by appropriation from the crime victims compensation fund for the payment of such awards authorized and for the payment of fees, costs and expenses as from time to time may be appropriate. The clerk shall certify each authorized award and the amount thereof and make requisition upon the crime victims compensation fund relating thereto to the auditor. The auditor shall issue his warrant to the treasurer without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.


The court of claims shall prepare and transmit annually to the governor and the Legislature a report of the activities of the court of claims under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the crime victims compensation fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the court of claims, compensation of judges, commissioners and court personnel, the amount awarded as attorneys' fees.


If an award of compensation is made under the provisions of this article and is not reduced on account of the availability of payment by a collateral source, the state, upon the payment of the award or a part of the award, shall be subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of
compensation was made from such source if it were a collateral
source or would be a collateral source if it were readily
available to the victim or claimant. The claimant may sue the
offender for any damages or injuries caused by the offender’s
criminally injurious conduct and not compensated for by an
award of compensation. The claimant may join with the
attorney general as co-plaintiff in any action against the
offender. All moneys that are collected by the state pursuant
to its rights of subrogation as provided in this section shall
be deposited in the crime victims compensation fund.


Subrogation rights which a collateral source may have shall
not extend to a recovery from a claimant of all or any part
of an award made under this article. A collateral source may
not apply, in the name of a claimant or otherwise, for an
award of compensation based upon injury to a claimant to
whose rights the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; exceptions.

An award is not subject to execution, attachment, garnish-
ment, or other process, except that, upon receipt of an award
by a claimant, the part of the award that is for allowable
expense is not exempt from such action by a creditor to the
extent that he provides products, services or accommodations
the costs of which are included in the award and the part of
the award that is for work loss shall not be exempt from such
action to secure payment of alimony, maintenance or child
support.


(a) The clerk of the court of claims shall prepare an
information brochure for the benefit of the general public,
outlining the rights of claimants and procedures to be followed
under this article. Copies of such brochure shall be distributed
to law-enforcement agencies in the state, and be made
available to other interested persons.

(b) Any law-enforcement agency that investigates an offense
committed in this state involving personal injury shall make
reasonable efforts to provide information to the victim of the
offense and his dependents concerning the availability of an
award of compensation and advise such persons that an
application for an award of compensation may be obtained
from the clerk of the court of claims.

1 The court of claims may promulgate rules and regulations
to implement the provisions of this article.

1 The provisions of this article shall not apply to any injury
or death resulting from criminally injurious conduct which
occurred on or before the thirty-first day of December, one
thousand nine hundred eighty-one.

1 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.
Enr. H. B. 2125

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

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within bill was approved this the 2nd day of May, 1985.

Governor