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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1985



# ENROLLED

HOUSE BILL No. 2125

(By # Del. Casey + Del. Carmichael.)



Passed April 13, 1985

In Effect From Passage

**ENROLLED**  
**H. B. 2125**

(By DELEGATE CASEY and DELEGATE CARMICHAEL)

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

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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.**

1 The act heretofore created by this article and known and  
2 cited as the "West Virginia Crime Reparation Act of 1981"  
3 shall henceforth be known and cited as the "West Virginia  
4 Crime Victims Compensation Act." Any and all funds existing  
5 under the West Virginia crime reparation act of 1981 shall  
6 continue for the purposes set forth in this article, notwith-  
7 standing the amendments to the name of the act or a  
8 redesignation of the special revenue fund in the state treasury  
9 as herein provided.

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

1 The Legislature finds and declares that a primary purpose  
2 of government is to provide for the safety of citizens and the  
3 inviolability of their property. To the extent that innocent  
4 citizens are victims of crime, particularly violent crime, and  
5 are without adequate redress for injury to their person or  
6 property, this primary purpose of government is defeated. The  
7 people of West Virginia are demonstrably peaceful, and, in  
8 comparison to the citizens of other states, suffer a lower crime  
9 rate. In establishing the West Virginia crime reparation act of  
10 1981, the Legislature stated its findings that the provision of  
11 governmental services to prevent crime is not wholly effective  
12 and expressed its intent to establish a system of compensation  
13 for the victims of crime which would provide a partial remedy  
14 for the failure of the state to fully achieve this primary purpose  
15 of government.

16 The Legislature now finds that the system of compensation  
17 established by the act as an experimental effort by the

18 Legislature of this state on behalf of its people, after having  
19 been reviewed and perfected in its initial stages, should be  
20 continued and retained in the legislative branch of government  
21 as an expression of a moral obligation of the state to provide  
22 partial compensation to the innocent victims of crime for  
23 injury suffered to their person or property.

**§14-2A-3. Definitions.**

1 As used in this article, the term:

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

5 (1) A victim;

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

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

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

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

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

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

28 (3) Social security, medicare and medicaid;

29 (4) State-required, temporary, nonoccupational disability

30 insurance;

31 (5) Workers' compensation;

32 (6) Wage continuation programs of any employer;

33 (7) Proceeds of a contract of insurance payable to the victim  
34 or claimant for loss that was sustained because of the  
35 criminally injurious conduct;

36 (8) A contract providing prepaid hospital and other health  
37 care services or benefits for disability;

38 (9) That portion of the proceeds of all contracts of  
39 insurance payable to the claimant on account of the death of  
40 the victim which exceeds twenty-five thousand dollars.

41 (c) "Criminally injurious conduct" means conduct that  
42 occurs or is attempted in this state which by its nature poses  
43 a substantial threat of personal injury or death, and is  
44 punishable by fine or imprisonment or death, or would be so  
45 punishable but for the fact that the person engaging in the  
46 conduct lacked capacity to commit the crime under the laws  
47 of this state. Criminally injurious conduct does not include  
48 conduct arising out of the ownership, maintenance or use of  
49 a motor vehicle, except when the person engaging in the  
50 conduct intended to cause personal injury or death, or except  
51 when the person engaging in the conduct committed negligent  
52 homicide, driving under the influence of alcohol, controlled  
53 substances or drugs, or reckless driving.

54 (d) "Dependent" means an individual who received over half  
55 of his support from the victim. For the purpose of determining  
56 whether an individual received over half of his support from  
57 the victim, there shall be taken into account the amount of  
58 support received from the victim as compared to the entire  
59 amount of support which the individual received from all  
60 sources, including support which the individual himself  
61 supplied. The term "support" includes, but is not limited to,  
62 food, shelter, clothing, medical and dental care and education.  
63 The term "dependent" includes a child of the victim born after  
64 his death.

65 (e) "Economic Loss" means economic detriment consisting  
66 only of allowable expense, work loss and replacement services  
67 loss. If criminally injurious conduct causes death, economic

68 loss includes a dependent's economic loss and a dependent's  
69 replacement services loss. Noneconomic detriment is not  
70 economic loss; however, economic loss may be caused by pain  
71 and suffering or physical impairment.

72 (f) "Allowable expense" means reasonable charges incurred  
73 or to be incurred for reasonably needed products, services and  
74 accommodations, including those for medical care, prosthetic  
75 devices, eye glasses, dentures, rehabilitation and other remedial  
76 treatment and care.

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

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

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

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

106 (j) "Dependent's replacement service loss" means loss

107 reasonably incurred or to be incurred by dependents after a  
108 victim's death in obtaining ordinary and necessary services in  
109 lieu of those the victim would have performed for their benefit  
110 if he had not suffered the fatal injury, less expenses of the  
111 dependents avoided by reason of the victim's death and not  
112 subtracted in calculating dependent's economic loss.

113 (k) "Noneconomic detriment" means sorrow, mental  
114 anguish, and solace which may include society, companion-  
115 ship, comfort, guidance, kindly offices and advice.

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

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

#### **§14-2A-4. Creation of crime victims compensation fund.**

1 Every person within the state who is convicted of or pleads  
2 guilty to a misdemeanor or felony offense, other than a traffic  
3 offense that is not a moving violation, shall pay the sum of  
4 three dollars as costs in the case, in addition to any other court  
5 costs that the court is required by law to impose upon such  
6 convicted person. The clerk of the circuit court, magistrate  
7 court or municipal court wherein such additional costs are  
8 imposed shall, on or before the last day of each month,  
9 transmit all such costs received under this article to the state  
10 treasurer for deposit in the state treasury to the credit of a  
11 special revenue fund to be known as the "Crime Victims  
12 Compensation Fund," which is hereby created. All moneys  
13 heretofore collected and received under the prior enactment or  
14 reenactments of this article and deposited or to be deposited  
15 in the "Crime Victims Reparation Fund" are hereby trans-

16 ferred to the crime victims compensation fund, and the  
17 treasurer shall so deposit such moneys in the state treasury.  
18 All moneys collected and received under this article and paid  
19 into the state treasury and credited to the crime victims  
20 compensation fund in the manner prescribed in section two,  
21 article two, chapter twleve of this code, shall be kept and  
22 maintained for the specific purposes of this article, and shall  
23 not be treated by the auditor and treasurer as part of the  
24 general revenue of the state.

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

**§14-2A-5. Jurisdiction.**

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

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

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

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

15 (c) The limitation period of one hundred days in section

16 eight, article two of this chapter pertaining to time served by  
17 the judges of the court of claims shall not apply to the  
18 provisions of this article.

**§14-2A-7. Qualifications of commissioners.**

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

**§14-2A-8. Commissioners' oath of office.**

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

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

1 The court of claims is hereby authorized to hire not more  
2 than two claim investigators to be employed within the office  
3 of the clerk of the court of claims, who shall carry out the  
4 functions and duties set forth in section twelve of this article.  
5 Claim investigators shall serve at the pleasure of the court of  
6 claims and under the administrative supervision of the clerk  
7 of the court of claims. The compensation of claim investigators  
8 shall be fixed by the court, and such compensation, together  
9 with travel, clerical and other expenses of the clerk of the court  
10 of claims relating to a claim investigator carrying out his duties  
11 under this article, including the cost of obtaining reports  
12 required by the investigator in investigating a claim, shall be  
13 payable from the crime victims compensation fund as  
14 appropriated for such purpose by the Legislature.

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

1 (a) A claim for an award of compensation shall be  
2 commenced by filing an application for an award of  
3 compensation with the clerk of the court of claims. The  
4 application shall be in a form prescribed by the clerk of the  
5 court of claims and shall contain the information specified in  
6 subdivisions (1) through (6) of this subsection and, to the  
7 extent possible, the information in subdivisions (7) through  
8 (10) of this subsection:

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

12 (2) 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 (3) 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 (4) Whether the claimant is the spouse, parent, child,  
19 brother or sister of the offender, or is similarly related to an  
20 accomplice of the offender who committed the criminally  
21 injurious conduct;

22 (5) A release authorizing the court of claims, the court of  
23 claims commissioners and the claim investigator to obtain any  
24 report, document or information that relates to the determi-  
25 nation of the claim for an award of compensation;

26 (6) If the victim is deceased, the name and address of each  
27 dependent of the victim and the extent to which each is  
28 dependent upon the victim for care and support;

29 (7) The nature and extent of the injuries that the victim  
30 sustained from the criminally injurious conduct for which  
31 compensation is sought, the name and address of any person  
32 who gave medical treatment to the victim for the injuries, the  
33 name and address of any hospital or similar institution where  
34 the victim received medical treatment for the injuries, and  
35 whether the victim died as a result of the injuries;

36 (8) The total amount of the economic loss that the victim,  
37 a dependent or the claimant sustained or will sustain as a result  
38 of the criminally injurious conduct, without regard to the

39 financial limitation set forth in subsection (g), section fourteen  
40 of this article;

41 (9) The amount of benefits or advantages that the victim,  
42 a dependent or other claimant has received or is entitled to  
43 receive from any collateral source for economic loss that  
44 resulted from the criminally injurious conduct, and the name  
45 of each collateral source;

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

50 (b) All applications for an award of compensation shall be  
51 filed within two years after the occurrence of the criminally  
52 injurious conduct that is the basis of the application. Any  
53 application so filed which contains the information specified  
54 in subdivisions (1) through (6), subsection (a) of this section  
55 may not be excluded from consideration on the basis of  
56 incomplete information specified in subdivisions (7) through  
57 (10) of said subsection if such information is completed after  
58 reasonable assistance in the completion thereof is provided  
59 under procedures established by the court of claims.

60 (c) A person who knowingly and willfully presents or  
61 attempts to present a false or fraudulent application, or who  
62 knowingly and willfully participate, or assists in the prepara-  
63 tion or presentation of a false or fraudulent application, shall  
64 be guilty of a misdemeanor. A person convicted, in a court  
65 of competent jurisdiction, of a violation of this section shall  
66 be fined not more than one thousand dollars or imprisoned  
67 for not more than one year, or both, in the discretion of such  
68 court. If the convicted person is a state officer or employee,  
69 he shall, in addition, forfeit his office or position of  
70 employment, as the case may be.

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

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

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

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

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

15 (c) The claim investigator, while investigating the claim,  
16 may require the claimant to supplement the application for an  
17 award of compensation 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 compensation.

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

36 Upon motion of any party, court or agency from whom such  
37 reports, information, witness statements or other data is  
38 sought, and for good cause shown, the court may make any  
39 order which justice requires to protect a witness or other  
40 person, including, but not limited to, the following: (1) That

41 the reports, information, witness statements or other data not  
42 be made available; (2) that the reports, information, witness  
43 statements or other data may be made available only on  
44 specified terms and conditions, including a designation of time  
45 and place; (3) that the reports, information, witness statements  
46 or other data be made available only by a different method  
47 than that selected by the claim investigator; (4) that certain  
48 matters not be inquired into, or that the scope of the claim  
49 investigator's request be limited to certain matters; (5) that the  
50 reports, information, witness statements or other data be  
51 examined only by certain persons designated by the court; (6)  
52 that the reports, information, witness statements or other data,  
53 after being sealed, be opened only by order of the court; (7)  
54 that confidential information or the identity of confidential  
55 witnesses or informers not be disclosed, or disclosed only in  
56 a designated manner.

57 However, in any case wherein the claim investigator has  
58 reason to believe that his investigation may interfere with or  
59 jeopardize the investigation of a crime by law-enforcement  
60 officers, or the prosecution of a case by prosecuting attorneys,  
61 he shall apply to the court of claims, or a judge thereof, for  
62 an order granting leave to discontinue his investigation for a  
63 reasonable time in order to avoid such interference or  
64 jeopardization. When it appears to the satisfaction of the  
65 court, or judge, upon application by the claim investigator or  
66 in its own discretion, that the investigation of a case by the  
67 claim investigator will interfere with or jeopardize the  
68 investigation or prosecution of a crime, the court, or judge,  
69 shall issue an order granting the claim investigator leave to  
70 discontinue his investigation for such time as the court, or  
71 judge, deems reasonable to avoid such interference or  
72 jeopardization.

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

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

79 (2) If the criminally injurious conduct was reported to a  
80 law-enforcement officer or agency, the date on which the

81 conduct was reported and the name of the person who  
82 reported the conduct; or, the reasons why the conduct was not  
83 reported to a law-enforcement officer or agency; or, the  
84 reasons why the conduct was not reported to a law-  
85 enforcement officer or agency within seventy-two hours after  
86 the conduct occurred;

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

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

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

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

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

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

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

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

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

115 (f) The claim investigator shall file his finding of fact and  
116 recommendation with the clerk within six months after the  
117 filing of the application: *Provided*, That where there is active

118 criminal investigation or prosecution of the person or persons  
119 alleged to have committed the criminally injurious conduct  
120 which is the basis for the claimant's claim, the claim  
121 investigator shall file his finding of fact and recommendation  
122 within six months after the first of any final convictions or  
123 other final determinations as to innocence or guilt, or any  
124 other final disposition of criminal proceedings. In any case,  
125 an additional time period may be provided by order of any  
126 court of claims judge or commissioner upon good cause  
127 shown.

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

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

10 (b) The judge or commissioner to whom the claim is  
11 assigned shall review the finding of fact and recommendation  
12 and any response submitted by the claimant and, if deemed  
13 appropriate, may request the claim investigator to comment  
14 in writing on the claimant's response. The judge or commis-  
15 sioner shall, within forty-five days after assignment by the  
16 clerk, evaluate the claim without a hearing and either deny the  
17 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.**

1 (a) Except as provided in subsection (b), section ten of this  
2 article, the judge or commissioner shall not approve an award  
3 of compensation to a claimant who did not file his application  
4 for an award of compensation within two years after the date  
5 of the occurrence of the criminally injurious conduct that  
6 caused the injury or death for which he is seeking an award  
7 of compensation.

8 (b) An award of compensation shall not be approved if the  
9 criminally injurious conduct upon which the claim is based was  
10 not reported to a law-enforcement officer or agency within  
11 seventy-two hours after the occurrence of the conduct, unless  
12 it is determined that good cause existed for the failure to  
13 report the conduct within the seventy-two hour period.

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

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

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

33 (f) After reaching a decision to approve an award of  
34 compensation, but prior to announcing such approval, the  
35 judge or commissioner shall require the claimant to submit  
36 current information as to collateral sources on forms  
37 prescribed by the clerk of the court of claims. The judge or  
38 commissioner shall reduce an award of compensation or deny  
39 a claim for an award of compensation that is otherwise  
40 payable to a claimant to the extent that the economic loss  
41 upon which the claim is based is or will be recouped from  
42 other persons, including collateral sources, or if such reduction  
43 or denial is determined to be reasonable because of the  
44 contributory misconduct of the claimant or of a victim through  
45 whom he claims. If an award is reduced or a claim is denied  
46 because of the expected recoupment of all or part of the  
47 economic loss of the claimant from a collateral source, the

48 amount of the award or the denial of the claim shall be  
49 conditioned upon the claimant's economic loss being recouped  
50 by the collateral source: *Provided*, That if it is thereafter  
51 determined that the claimant will not receive all or part of the  
52 expected recoupment, the claim shall be reopened and an  
53 award shall be approved in an amount equal to the amount  
54 of expected recoupment that it is determined the claimant will  
55 not receive from the collateral source, subject to the limitation  
56 set forth in subsection (g) of this section.

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

#### §14-2A-15. Hearings.

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

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

14 (c) During the period of negotiations and pending hearing,  
15 the attorney general, shall, if possible, reach an agreement with

16 the claimant regarding the facts upon which the claim is based  
17 so as to avoid the necessity for the introduction of evidence  
18 at the hearing. If the parties are unable to agree upon the facts,  
19 an attempt shall be made to stipulate the questions of fact in  
20 issue.

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

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

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

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

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

#### §14-2A-16. Evidence.

1 (a) There is no privilege, except the privilege arising from  
2 the attorney-client relationship, as to communications or  
3 records that are relevant to the physical, mental or emotional

4 condition of the claimant or victim in a proceeding under this  
5 article in which that condition is an element.

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

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

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

39 (e) The court, a judge or commissioner thereof, or the claim  
40 investigator, in a claim arising out of a violation of article  
41 eight-b, chapter sixty-one of this code, shall not request the  
42 victim or the claimant to supply any evidence of specific  
43 instances of the victim's activity, or reputation evidence of the

44 victim's sexual activity, unless it involves evidence of the  
45 victim's past sexual activity with the offender, and then only  
46 to the extent that the court, the judge, the commissioner or  
47 the claim investigator finds that the evidence is relevant to a  
48 fact at issue in the claim.

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

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

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

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

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

9 The court, or a judge or commissioner thereof, shall  
10 suspend, upon a request of the claim investigator, the  
11 proceedings in any claim for an award of compensation

12 pending disposition of a criminal prosecution that has been  
13 commenced or is imminent.

**§14-2A-19. Attorney and witness fees.**

1 (a) As part of an order, the court, or a judge or commis-  
2 sioner thereof, shall determine and award reasonable attorney's  
3 fees, commensurate with services rendered, and reimbursement  
4 for reasonable and necessary expenses actually incurred, to be  
5 paid from the crime victims compensation fund to the attorney  
6 representing a claimant in a proceeding under this article.  
7 Attorney's fees and reimbursement may be denied upon a  
8 finding that the claim or appeal is frivolous. Awards of  
9 attorney's fees and reimbursement shall be in addition to  
10 awards of compensation, and attorney's fees and reimburse-  
11 ment may be awarded whether or not an award of compen-  
12 sation is approved. An attorney shall not contract for or  
13 receive any larger sum than the amount allowed under this  
14 section.

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

**§14-2A-20. Procedure for certification and payment of claims.**

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

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

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

10 (2) An itemized report of the approved awards recom-  
11 mended by the court to the Legislature,

12 (3) Such recommendations to the Legislature for appropri-  
13 ations from the crime victims compensation fund as he may  
14 deem appropriate for the payment of fees, costs and expenses

15 incurred, due or payable at any time from such fund, and

16 (4) Such recommendations to the Legislature for appropri-  
17 ations for the payment of claims arising under this article,  
18 whether accrued and determined by the court and included in  
19 the itemization of awards mentioned in this section or arising  
20 during the ensuing fiscal year.

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

**§14-2A-21. Annual report of court of claims.**

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

**§14-2A-22. State's subrogation to claimant's rights.**

1 If an award of compensation is made under the provisions  
2 of this article and is not reduced on account of the availability  
3 of payment by a collateral source, the state, upon the payment  
4 of the award or a part of the award, shall be subrogated to  
5 all of the claimant's rights to receive or recover benefits or  
6 advantages for economic loss for which an award of

7 compensation was made from such source if it were a collateral  
8 source or would be a collateral source if it were readily  
9 available to the victim or claimant. The claimant may sue the  
10 offender for any damages or injuries caused by the offender's  
11 criminally injurious conduct and not compensated for by an  
12 award of compensation. The claimant may join with the  
13 attorney general as co-plaintiff in any action against the  
14 offender. All moneys that are collected by the state pursuant  
15 to its rights of subrogation as provided in this section shall  
16 be deposited in the crime victims compensation fund.

**§14-2A-23. Subrogation rights of collateral source.**

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

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

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

**§14-2A-25. Publicity.**

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

7 (b) Any law-enforcement agency that investigates an offense  
8 committed in this state involving personal injury shall make  
9 reasonable efforts to provide information to the victim of the  
10 offense and his dependents concerning the availability of an

11 award of compensation and advise such persons that an  
12 application for an award of compensation may be obtained  
13 from the clerk of the court of claims.

**§14-2A-26. Rules and regulations.**

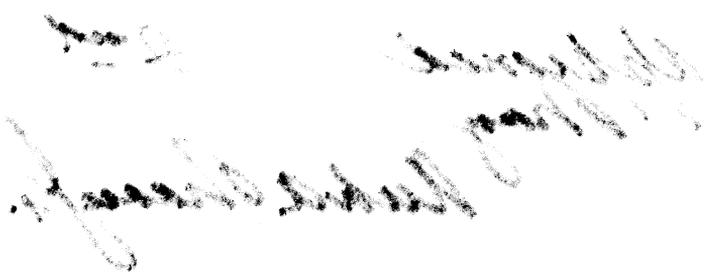
1 The court of claims may promulgate rules and regulations  
2 to implement the provisions of this article.

**§14-2A-27. Application of article.**

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

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

1 Amendments made to the provisions of this article during  
2 the 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 the  
6 act of the Legislature which effects such amendment.

The bottom of the page contains several handwritten signatures and scribbles in dark ink, which are mostly illegible due to their cursive and overlapping nature.

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

*Harold E. Edgema*  
-----  
Chairman Senate Committee

*Floyd Fullen*  
-----  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Jedd C. Miller*  
-----  
Clerk of the Senate

*Donald L. Koff*  
-----  
Clerk of the House of Delegates

*Don Toussaint*  
-----  
President of the Senate

*Joseph P. Allright*  
-----  
Speaker of the House of Delegates

The within *approved* this the *2<sup>nd</sup>*  
*day*  
day of \_\_\_\_\_, 1985.

*Arthur Ruffin*  
-----  
Governor



PRESENTED TO THE  
GOVERNOR

Date 4/30/85

Time 6:54 p.m.