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HB 2329
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 2329

(By Delegates Ennis, Swartzmiller and G. White)



Passed March 10, 2006

In Effect Ninety Days from Passage

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SECRETARY OF STATE

E N R O L L E D

H. B. 2329

(BY DELEGATES ENNIS, SWARTZMILLER AND G. WHITE)

[Passed March 10, 2006: in effect ninety days from passage.]

AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating to authorizing a court to order a defendant to contribute monetarily or through hours of service to a local crime victim's assistance program or juvenile mediation program which meets certain requirements.

Be it enacted by the Legislature of West Virginia:

That §61-11A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-4. Restitution; when ordered.

- 1 (a) The court, when sentencing a defendant convicted of a
- 2 felony or misdemeanor causing physical, psychological or
- 3 economic injury or loss to a victim, shall order, in addition to
- 4 or in lieu of any other penalty authorized by law, that the
- 5 defendant make restitution to any victim of the offense, unless

6 the court finds restitution to be wholly or partially impractical
7 as set forth in this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 If not otherwise provided by the court under this subsec-
66 tion, restitution shall be made immediately.

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

72 The court may revoke probation and the Parole Board may
73 revoke parole if the defendant fails to comply with the order. In
74 determining whether to revoke probation or parole, the court or
75 parole board shall consider the defendant's employment status,
76 earning ability, financial resources, the willfulness of the
77 defendant's failure to pay, and any other special circumstances
78 that may have a bearing on the defendant's ability to pay.

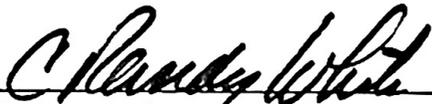
79 (h) An order of restitution may be enforced by the state or
80 a victim named in the order to receive the restitution in the
81 same manner as a judgment in a civil action.

82 (i) Notwithstanding any provision of this section to the
83 contrary, the court may order, in addition to or in lieu of,
84 restitution, that a defendant be required to contribute
85 monetarily, or through hours of service, to a local crime
86 victim's assistance program or juvenile mediation program
87 which meets the following requirements:

88 (1) The program is approved by a circuit judge presiding in
89 the judicial circuit; and

90 (2) The program is a nonprofit organization certified as a
91 corporation in this state, and is governed by a board of direc-
92 tors.

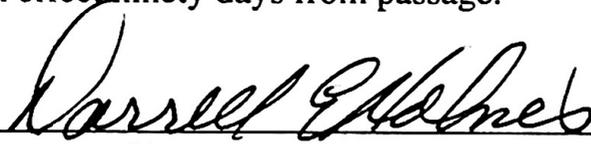
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

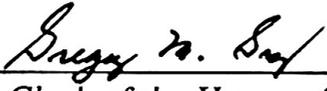

Chairman Senate Committee

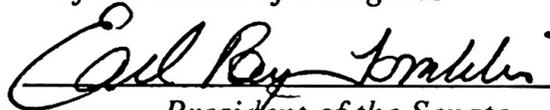

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

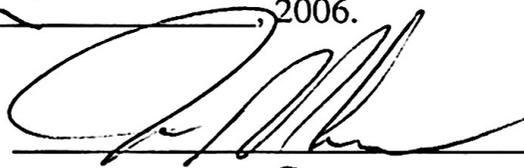

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 28th
day of March, 2006.


Governor

PRESENTED TO THE
GOVERNOR

MAR 23 2006

Time 3:15 pm