WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 204

(SENATORS UNGER AND KESSLER (MR. PRESIDENT),
ORIGINAL SPONSORS)

[PASSED MARCH 8, 2014; IN EFFECT FROM PASSAGE.]
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(SENATORS UNGER AND KESSLER (MR. PRESIDENT),
original sponsors)

[Passed March 8, 2014; in effect from passage.]

AN ACT to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12,
§14-2A-14 and §14-2A-18 of the Code of West Virginia, 1931,
as amended, all relating to compensation awards to victims of
crimes generally; redefining terms; increasing the amount of
victim relocation costs; allowing student loans obtained by a
victim to be treated as a lost scholarship in certain instances;
eliminating the authority to make awards of compensation for
damage caused by operation of a methamphetamine laboratory
under certain circumstances; modifying required time period in
which a claimant should report offense to law enforcement
under certain circumstances; requiring that a criminal complaint
being filed is a prerequisite to receipt of compensation in
certain circumstances; providing circumstances in which a
criminal complaint need not be filed as a prerequisite to receipt
of compensation; allowing victims of sexual offenses to
undergo a forensic examination rather than reporting to law
enforcement; permitting the Court of Claims to hire two additional claim investigators; and permitting claim investigators to acquire autopsy reports from the State Medical Examiner.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-14 and §14-2A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


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, except the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim or, if 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 a victim's dependent when the 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 including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source and if the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed whose award may not exceed $1,000;

(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 or her from any of the following sources:

(1) The offender, including restitution received from the offender pursuant to an order by a court sentencing the offender or placing him or her 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 its agencies, a state or its political subdivisions or an instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance or other disability insurance;

(5) Workers' compensation;
(6) Wage continuation programs of an 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; and

(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 $25,000.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. “Criminally injurious conduct” does not include conduct arising out of the ownership, maintenance or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident or reckless driving.

(d) “Dependent” means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. 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 or her 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. For purposes of this article, the term "economic loss" includes a lost scholarship as defined in this section.

(f) "Allowable expense" includes the following:

1. Reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care but does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or other institution engaged in providing nursing care and related services which is in excess of a reasonable and customary charge for semiprivate accommodations unless accommodations other than semiprivate accommodations are medically required;

2. A total charge not in excess of $10,000 for expenses in any way related to funerals, cremations and burials;

3. Victim relocation costs not to exceed $2,500;

4. Reasonable travel expenses not to exceed $1,000 for a claimant to attend court proceedings conducted for the prosecution of the offender;

5. Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been
unlawfully removed from this state to another state or country if the removal constitutes a crime under the laws of this state which may not exceed $2,000 for expenses to another state or $3,000 to another country; and

(6) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income. "Work loss" is reduced by income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(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 for the benefit of himself or herself or his or her family if he or she had not been injured. "Replacement services loss" does not include services an injured person would have performed to generate income.

(i) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents but does not include services they would have received from the victim if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided by the dependent due to 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 or she had not suffered the fatal injury. This amount is reduced by expenses avoided due to the victim’s death but which are not already subtracted in calculating a dependent’s economic loss.

(k) “Victim” means the following:

A person who suffers personal injury or death as a result of any one of the following:

(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) “Contributory misconduct” means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious 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 and includes the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance, when the intoxication has a causal connection or relationship to the injury sustained.
166 (m) "Lost scholarship" means a scholarship, academic
167 award, stipend, student loan or other monetary scholastic
168 assistance which had been awarded, conferred upon or
169 obtained by a victim in conjunction with a post-secondary
170 school educational program and which the victim is unable to
171 receive or use, in whole or in part, due to injuries received
172 from criminally injurious conduct.

§14-2A-9. Claim investigators; compensation and expenses;
paralegals and support staff.

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

16 The Court of Claims is hereby authorized to hire as
17 support staff such paralegal or paralegals and secretary or
18 secretaries to be employed within the Office of the Clerk of
19 the Court of Claims, necessary to carry out the functions and
20 duties of this article. Such support staff shall serve at the will
21 and pleasure of the Court of Claims and under the
22 administrative supervision of the Clerk of the Court of
23 Claims.
§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 or she shall file with the clerk the finding of fact and recommendation and all information or documents that he or she used in his or her 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 or her 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 or her 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.

The claim investigator, while investigating the claim, may obtain autopsy reports including results from the Office of the State Medical Examiner to be used solely for determining eligibility for compensation awards.

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; and (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 or her 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 or she shall apply to the Court of Claims, or a judge thereof, for an order granting leave to discontinue his or her 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 or her 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.

(e) 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 or her decision.
The claim investigator shall file his or her 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 or her 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-14. Grounds for denial of claim or reduction of awards; maximum awards.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner may not approve an award of compensation to a claimant who did not file his or her 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 or she is seeking an award of compensation.

(b) The judge or commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the claimant did not undergo a forensic medical examination, within ninety-six hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: Provided, That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the claimant is
(c) The judge or commissioner may 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 or her 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 or reconsider a claim already approved.

(e) A judge or commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county or regional jail, prison, private prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the 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 the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she 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) (1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed $35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed $50,000 in the aggregate.

(2) In the event the victim’s personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. §423, the court may award an additional amount, not to exceed $100,000, for special needs attributable to the injury.

(h) If an award of compensation of $5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of article ten, chapter forty-four of this code to manage the minor’s estate.

§14-2A-18. Effect of no criminal charges being filed or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of compensation whether or not any person is convicted for committing the conduct that is the basis of the award. The filing of a criminal charge shall be a
prerequisite for receipt of compensation: Provided, That no
criminal charges need be filed if: (1) The claimant is an adult
at the time the conduct giving rise to the claim occurred and
no criminal charges were filed for reasons other than the
desire of the claimant and a law-enforcement agency
confirms that the available evidence supports a finding that
a crime occurred; or (2) the claimant was a juvenile at the
time the conduct giving rise to the claim occurred. 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 is approved the 24th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 11:00 am