

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 2451**

5
6 (By Delegate Smith)

7
8 [Passed March 12, 2011; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §61-11A-2 of the Code of West Virginia,
11 1931, as amended, relating to victim impact statements;
12 including in the definition of "victim" the immediate family
13 members or estate representative of a person killed during the
14 commission of a misdemeanor; and providing that a prosecuting
15 attorney make reasonable efforts to contact certain persons
16 who are known to the prosecuting attorney.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §61-11A-2 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

21 **§61-11A-2. Testimony of crime victim at sentencing hearing.**

22 (a) For the purposes of this section, "victim" means a person
23 who is a victim of a felony, or, where a death occurs during the
24 commission of a felony or a misdemeanor, the fiduciary of a
25 deceased victim's estate or a member of a deceased victim's
26 immediate family, if known to the prosecutor.

27 (b) Prior to the imposition of sentence upon any defendant who
28 has been found guilty of a felony, or of a misdemeanor if death

1 occurs during the commission of a crime, or has pleaded guilty or
2 nolo contendere to any felony, or to a misdemeanor if death occurs
3 during the commission of a crime, the court shall permit the victim
4 of the crime to appear before the court to make an oral statement
5 for the record if the victim notifies the court of his or her
6 desire to make such a statement after receiving notification
7 provided in subsection (c) of this section. If the victim fails to
8 notify the court, the failure is a waiver of the right to make an
9 oral statement. In lieu of the appearance and oral statement, the
10 victim may submit a written statement to the court or to the
11 probation officer in charge of the case. The probation officer
12 shall forthwith file the statement delivered to his or her office
13 with the sentencing court and the statement must be made a part of
14 the record at the sentencing hearing. The statement, whether oral
15 or written, must relate solely to the facts of the case and the
16 extent of injuries, financial losses and loss of earnings directly
17 resulting from the crime for which the defendant is being
18 sentenced.

19 (c) Within a reasonable time prior to the imposition of
20 sentence upon the defendant, the prosecuting attorney or assistant
21 prosecuting attorney in charge of the case shall make reasonable
22 efforts, in writing, to advise the person who was the victim of the
23 crime, the parent or guardian of a minor who was the victim of a
24 crime, the fiduciary of the victim's estate if the victim is
25 deceased and the immediate family members of the victim if the
26 victim is deceased and if their whereabouts are known to the
27 prosecutor or assistant prosecutor. The writing will provide the
28 date, time and place of the original sentencing hearing and of the

1 victim's right to submit a written or oral statement to the
2 sentencing court.

3 (d) The oral or written statement given or submitted by a
4 victim in accordance with the provisions of this section is in
5 addition to and not in lieu of the victim impact statement required
6 by the provisions of section three of this article.