

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2818**

4 (By Delegates Manchin, Caputo, Fleischauer,

5 Fragale, Guthrie, Poore, Skaff,

6 Doyle and Stowers)

7 (Originating in the House Committee on the Judiciary)

8 [January 27, 2011]

9
10 A BILL to amend and reenact §14-2A-3 of the Code of West Virginia,
11 1931, as amended, relating to increasing the allowable expense
12 under the Crime Victims Award Program; increasing the amount
13 that may be paid for the clean-up of real property damage by
14 a methamphetamine laboratory; and making technical revisions.

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

16 That §14-2A-3 of the Code of West Virginia, 1931, as amended,
17 be amended to read as follows:

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

19 **§14-2A-3. Definitions.**

20 As used in this article, the term:

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

24 (1) A victim, except the term "victim" does not include a

1 nonresident of this state where the criminally injurious act did
2 not occur in this state;

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

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

11 (4) A person who is authorized to act on behalf of a victim,
12 dependent or a third person who is not a collateral source
13 including, but not limited to, assignees, persons holding power of
14 attorney or ~~other persons~~ others who hold authority to make or
15 submit claims in place of or on behalf of a victim, a dependent or
16 third person who is not a collateral source and ~~in the event that~~
17 if the victim, dependent or third person who is not a collateral
18 source is a minor or other legally incompetent person, ~~the~~ their
19 duly qualified fiduciary; ~~of the minor;~~

20 (5) A person who is a secondary victim in need of mental
21 health counseling due to the person's exposure to the crime
22 committed ~~An award to a secondary victim~~ whose award may not exceed
23 \$1,000; and

24 (6) A person who owns real property damaged by the operation
25 of a methamphetamine laboratory without the knowledge or consent of

1 the owner of the real property.

2 (b) "Collateral source" means a source of benefits or
3 advantages for economic loss otherwise compensable that the victim
4 or claimant has received or that is readily available to him or her
5 from any of the following sources:

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

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

14 (3) Social Security, Medicare and Medicaid;

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

17 (5) Workers' compensation;

18 (6) Wage continuation programs of ~~any~~ an employer;

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

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

24 (9) That portion of the proceeds of all contracts of insurance
25 payable to the claimant on account of the death of the victim which

1 exceeds \$25,000.

2 (c) "Criminally injurious conduct" means conduct that occurs
3 or is attempted in this state, or in any state not having a victim
4 compensation program, which ~~by its nature~~ poses a substantial
5 threat of personal injury or death and is punishable by fine, ~~or~~
6 imprisonment or death or would be so punishable but for ~~the fact~~
7 ~~that the person engaging in the conduct lacked capacity~~ a finding
8 by a court of competent jurisdiction that the person committing the
9 crime lacked capacity. Criminally injurious conduct also includes
10 criminally injurious conduct committed outside of the United States
11 against a resident of this state. Criminally injurious conduct
12 does not include conduct arising out of the ownership, maintenance
13 or use of a motor vehicle ~~except when~~ unless the person engaging in
14 the conduct intended to cause personal injury or death or ~~when the~~
15 ~~person engaging in the conduct~~ committed negligent homicide,
16 driving under the influence of alcohol, controlled substances or
17 drugs, ~~reckless driving or when the person leaves~~ leaving the scene
18 of the accident or reckless driving.

19 (d) "Dependent" means an individual who received over half of
20 his or her support from the victim. For the purpose of ~~determining~~
21 ~~whether an individual received over half of his or her support from~~
22 ~~the victim,~~ making this determination there shall be taken into
23 account the amount of support received from the victim as compared
24 to the entire amount of support ~~which~~ the individual received from
25 all sources including ~~support which the individual himself or~~

1 ~~herself supplied.~~ self-support. The term "support" includes, but
2 is not limited to, food, shelter, clothing, medical and dental care
3 and education. The term "dependent" includes a child of the victim
4 born after his or her death.

5 (e) "Economic loss" means economic detriment consisting only
6 of allowable expense, work loss and replacement services loss. If
7 criminally injurious conduct causes death, economic loss includes
8 a dependent's economic loss and a dependent's replacement services
9 loss. Noneconomic detriment is not economic loss, however,
10 economic loss may be caused by pain and suffering or physical
11 impairment. For purposes of this article, the term "economic loss"
12 includes a lost scholarship as defined in this section.

13 ~~(f) (1) "Allowable expense" means reasonable charges incurred~~
14 ~~or to be incurred for reasonably needed products, services and~~
15 ~~accommodations, including those for medical care, mental health~~
16 ~~counseling, prosthetic devices, eye glasses, dentures,~~
17 ~~rehabilitation and other remedial treatment and care.~~

18 (f) "Allowable expense" includes the following:

19 (1) Reasonable charges incurred or to be incurred for
20 reasonably needed products, services and accommodations including
21 those for medical care, mental health counseling, prosthetic
22 devices, eye glasses, dentures, rehabilitation and other remedial
23 treatment and care but does not include that portion of a charge
24 for a room in a hospital, clinic, convalescent home, nursing home
25 or other institution engaged in providing nursing care and related

1 services which is in excess of a reasonable and customary charge
2 for semiprivate accommodations unless accommodations other than
3 semiprivate accommodations are medically required;

4 ~~(2) Allowable expense includes~~ A total charge not in excess of
5 \$7,000 for expenses in any way related to funerals, cremations and
6 burials; ~~It does not include that portion of a charge for a room~~
7 ~~in a hospital, clinic, convalescent home, nursing home or any other~~
8 ~~institution engaged in providing nursing care and related services~~
9 ~~in excess of a reasonable and customary charge for semiprivate~~
10 ~~accommodations unless accommodations other than semiprivate~~
11 ~~accommodations are medically required.~~

12 ~~(3) Allowable expense also includes:~~

13 ~~(A) (3)~~ A charge, not to exceed ~~five thousand dollars~~
14 \$10,000, for cleanup of real property damaged by a methamphetamine
15 laboratory or a charge not to exceed \$1,000 for any other crime
16 scene cleanup;

17 ~~(B) (4)~~ Victim relocation costs not to exceed \$2,000;

18 ~~(C) (5)~~ Reasonable travel expenses not to exceed \$1,000 for
19 a claimant to attend court proceedings ~~that are~~ conducted for the
20 prosecution of the offender;

21 ~~(D) (6)~~ Reasonable travel expenses for a claimant to return
22 a person who is a minor or incapacitated adult who has been
23 unlawfully removed from this state to another state or country if
24 the removal constitutes a crime under the laws of this state
25 ~~Reasonable travel expenses to another state for that purpose may~~

1 ~~not exceed \$2,000 and reasonable travel expenses for that purpose~~
2 ~~to another county may not exceed \$3,000; and which may not exceed~~
3 ~~\$2,000 for expenses to another state or \$3,000 to another country;~~
4 and

5 ~~(E)~~ (7) Reasonable travel expenses for the transportation of
6 a victim to and from a medical facility.

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

18 (h) "Replacement services loss" means expenses reasonably
19 incurred or to be incurred in obtaining ordinary and necessary
20 services in lieu of those the injured person would have performed
21 ~~not for income but~~ for the benefit of himself or herself or his or
22 her family if he or she had not been injured. "Replacement
23 services loss" does not include services an injured person would
24 have performed to generate income.

25 (i) "Dependent's economic loss" means loss after a victim's

1 death of contributions or things of economic value to his or her
2 dependents ~~not including~~ but does not include services they would
3 have received from the victim if he or she had not suffered the
4 fatal injury. ~~less expenses of the dependents avoided by reason of~~
5 ~~the victim's death.~~ This amount is reduced by expenses avoided by
6 the dependent due to the victim's death.

7 (j) "Dependent's replacement service loss" means loss
8 reasonably incurred or to be incurred by dependents after a
9 victim's death in obtaining ordinary and necessary services in lieu
10 of those the victim would have performed for their benefit if he or
11 she had not suffered the fatal injury. ~~less expenses of the~~
12 ~~dependents avoided by reason of the victim's death and not~~ This
13 amount is reduced by expenses avoided due to the victim's death but
14 which are not already subtracted in calculating a dependent's
15 economic loss.

16 (k) "Victim" means the following:

17 (1) A person who suffers personal injury or death as a result
18 of any one of the following:

19 ~~(1)~~ (A) Criminally injurious conduct;

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

22 ~~(3)~~ (C) The good faith effort of the person to apprehend a
23 person that the injured person has observed engaging in criminally
24 injurious conduct or who the injured person has reasonable cause to
25 believe has engaged in criminally injurious conduct immediately

1 prior to the attempted apprehension. ~~“Victim” includes the owner~~
2 ~~of real property damaged by the operation of a methamphetamine~~
3 ~~laboratory.~~

4 (2) The owner of real property damaged by the operation of a
5 methamphetamine laboratory.

6 (1) “Contributory misconduct” means any conduct of the
7 claimant or of the victim through whom the claimant claims an award
8 that is unlawful or intentionally tortious and that, without regard
9 to the conduct's proximity in time or space to the criminally
10 injurious conduct, has a causal relationship to the criminally
11 injurious conduct that is the basis of the claim and ~~shall also~~
12 ~~include~~ includes the voluntary intoxication of the claimant, either
13 by the consumption of alcohol or the use of any controlled
14 substance, when the intoxication has a causal connection or
15 relationship to the injury sustained.

16 (m) “Lost scholarship” means a scholarship, academic award,
17 stipend or other monetary scholastic assistance which had been
18 awarded or conferred upon a victim in conjunction with a post-
19 secondary school educational program and which the victim is unable
20 to receive or use, in whole or in part, due to injuries received
21 from criminally injurious conduct.