

H. B. 2451

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(By Delegate Smith)
[Introduced January 13, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §61-11A-2 of the Code of West Virginia,
11 1931, as amended, relating to victim impact statements by
12 members of a deceased victim's immediate family in matters
13 involving misdemeanors when death results during the
14 commission of a crime.

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

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

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

19 **§61-11A-2. Testimony of crime victim at sentencing hearing.**

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

25 (b) Prior to the imposition of sentence upon any defendant who
26 has been found guilty of a felony, ~~or~~ has pleaded guilty or nolo

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

19 (c) Within a reasonable time prior to the imposition of
20 sentence upon ~~such~~ the defendant, the prosecuting attorney or
21 assistant prosecuting attorney in charge of the case shall make
22 reasonable efforts, in writing, to advise the person who was the
23 victim of ~~such~~ the crime, ~~or in the case of a minor,~~ the parent or
24 guardian of ~~such~~ a minor who was the victim of a crime, ~~or~~ the
25 fiduciary of ~~his~~ the victim's estate if ~~he be then~~ the victim is
26 deceased and the immediate family members of the victim if the

1 victim is deceased and if their whereabouts are known to the
2 prosecutor or assistant prosecutor. The writing will provide of
3 the date, time and place of the original sentencing hearing and of
4 the victim's right to submit a written or oral statement to the
5 sentencing court. ~~as hereinabove provided.~~

6 (d) The oral or written statement given or submitted by ~~any~~ a
7 victim in accordance with the provisions of this section ~~shall be~~
8 is in addition to and not in lieu of the victim impact statement
9 required by the provisions of section three of this article.

NOTE: The purpose of this bill is to preserve to members of a deceased victim's immediate family the opportunity to present an impact statement to a court in misdemeanor matters when death occurs during the commission of a crime.

Strike throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.