

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



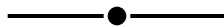
ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2818

(By Delegates Manchin, Caputo, Fleischauer, Fragale,
Guthrie, Poore, Skaff, Doyle and Stowers)



Passed March 10, 2011

In Effect Ninety Days From Passage

E N R O L L E D

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H. B. 2818

(BY DELEGATES MANCHIN, CAPUTO, FLEISCHAUER, FRAGALE,
GUTHRIE, POORE, SKAFF, DOYLE AND STOWERS)

[Passed March 10, 2011; in effect ninety days from passage.]

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

Be it enacted by the Legislature of West Virginia:

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

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

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) “Claimant” means any of the following persons,
3 whether residents or nonresidents of this state, who claim an
4 award of compensation under this article:

5 (1) A victim, except the term “victim” does not include
6 a nonresident of this state where the criminally injurious act
7 did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased
9 victim or, if the deceased victim is a minor, the parents, legal
10 guardians and siblings of the victim;

11 (3) A third person, other than a collateral source, who
12 legally assumes or voluntarily pays the obligations of a
13 victim or a victim’s dependent when the obligations are
14 incurred as a result of the criminally injurious conduct that is
15 the subject of the claim;

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

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

28 (6) A person who owns real property damaged by the
29 operation of a methamphetamine laboratory without the
30 knowledge or consent of the owner of the real property.

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

35 (1) The offender, including restitution received from the
36 offender pursuant to an order by a court sentencing the
37 offender or placing him or her on probation following a
38 conviction in a criminal case arising from the criminally
39 injurious act for which a claim for compensation is made;

40 (2) The government of the United States or its agencies,
41 a state or its political subdivisions or an instrumentality of
42 two or more states;

43 (3) Social Security, Medicare and Medicaid;

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

46 (5) Workers' compensation;

47 (6) Wage continuation programs of an employer;

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

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

53 (9) That portion of the proceeds of all contracts of
54 insurance payable to the claimant on account of the death of
55 the victim which exceeds \$25,000.

56 (c) “Criminally injurious conduct” means conduct that
57 occurs or is attempted in this state, or in any state not having
58 a victim compensation program, which poses a substantial
59 threat of personal injury or death and is punishable by fine,
60 imprisonment or death or would be so punishable but for a
61 finding by a court of competent jurisdiction that the person
62 committing the crime lacked capacity. Criminally injurious
63 conduct also includes criminally injurious conduct committed
64 outside of the United States against a resident of this state.
65 Criminally injurious conduct does not include conduct arising
66 out of the ownership, maintenance or use of a motor vehicle
67 unless the person engaging in the conduct intended to cause
68 personal injury or death or committed negligent homicide,
69 driving under the influence of alcohol, controlled substances
70 or drugs, leaving the scene of the accident or reckless driving.

71 (d) “Dependent” means an individual who received over
72 half of his or her support from the victim. For the purpose of
73 making this determination there shall be taken into account
74 the amount of support received from the victim as compared
75 to the entire amount of support the individual received from
76 all sources including self-support. The term “support”
77 includes, but is not limited to, food, shelter, clothing, medical
78 and dental care and education. The term “dependent”
79 includes a child of the victim born after his or her death.

80 (e) “Economic loss” means economic detriment
81 consisting only of allowable expense, work loss and
82 replacement services loss. If criminally injurious conduct

83 causes death, economic loss includes a dependent's economic
84 loss and a dependent's replacement services loss.
85 Noneconomic detriment is not economic loss, however,
86 economic loss may be caused by pain and suffering or
87 physical impairment. For purposes of this article, the term
88 "economic loss" includes a lost scholarship as defined in this
89 section.

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

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

102 (2) A total charge not in excess of \$10,000 for expenses
103 in any way related to funerals, cremations and burials;

104 (3) A charge, not to exceed \$10,000, for cleanup of real
105 property damaged by a methamphetamine laboratory or a
106 charge not to exceed \$1,000 for any other crime scene
107 cleanup;

108 (4) Victim relocation costs not to exceed \$2,000;

109 (5) Reasonable travel expenses not to exceed \$1,000 for
110 a claimant to attend court proceedings conducted for the
111 prosecution of the offender;

112 (6) Reasonable travel expenses for a claimant to return a
113 person who is a minor or incapacitated adult who has been
114 unlawfully removed from this state to another state or
115 country if the removal constitutes a crime under the laws of
116 this state which may not exceed \$2,000 for expenses to
117 another state or \$3,000 to another country; and

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

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

132 (h) "Replacement services loss" means expenses
133 reasonably incurred or to be incurred in obtaining ordinary
134 and necessary services in lieu of those the injured person
135 would have performed for the benefit of himself or herself or
136 his or her family if he or she had not been injured.
137 "Replacement services loss" does not include services an
138 injured person would have performed to generate income.

139 (i) "Dependent's economic loss" means loss after a
140 victim's death of contributions or things of economic value to
141 his or her dependents but does not include services they
142 would have received from the victim if he or she had not
143 suffered the fatal injury. This amount is reduced by expenses
144 avoided by the dependent due to the victim's death.

145 (j) “Dependent’s replacement service loss” means loss
146 reasonably incurred or to be incurred by dependents after a
147 victim's death in obtaining ordinary and necessary services in
148 lieu of those the victim would have performed for their
149 benefit if he or she had not suffered the fatal injury. This
150 amount is reduced by expenses avoided due to the victim’s
151 death but which are not already subtracted in calculating a
152 dependent's economic loss.

153 (k) “Victim” means the following:

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

156 (A) Criminally injurious conduct;

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

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

165 (2) The owner of real property damaged by the operation
166 of a methamphetamine laboratory which operation was
167 without his or her knowledge or consent.

168 (l) “Contributory misconduct” means any conduct of the
169 claimant or of the victim through whom the claimant claims
170 an award that is unlawful or intentionally tortious and that,
171 without regard to the conduct’s proximity in time or space to
172 the criminally injurious conduct, has a causal relationship to
173 the criminally injurious conduct that is the basis of the claim

174 and includes the voluntary intoxication of the claimant, either
175 by the consumption of alcohol or the use of any controlled
176 substance, when the intoxication has a causal connection or
177 relationship to the injury sustained.

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

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor