

COMMITTEE SUBSTITUTE

FOR

H. B. 2818

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

(Originating in the House Committee on the Judiciary)
[January 27, 2011]

A BILL 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; 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, ~~in the event that the~~ if the deceased victim is a
10 minor, the parents, legal 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 ~~of a dependent of a victim which~~ a victim’s
14 dependent when the obligations are incurred as a result of the
15 criminally injurious conduct that is 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 ~~other persons~~ others who hold
20 authority to make or submit claims in place of or on behalf of
21 a victim, a dependent or third person who is not a collateral
22 source and ~~in the event that~~ if the victim, dependent or third
23 person who is not a collateral source is a minor or other
24 legally incompetent person, ~~the~~ their duly qualified fiduciary;
25 ~~of the minor;~~

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

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

33 (b) "Collateral source" means a source of benefits or
34 advantages for economic loss otherwise compensable that the

35 victim or claimant has received or that is readily available to
36 him or her from any of the following sources:

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

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

45 (3) Social Security, Medicare and Medicaid;

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

48 (5) Workers' compensation;

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

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

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

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

58 (c) "Criminally injurious conduct" means conduct that
59 occurs or is attempted in this state, or in any state not having
60 a victim compensation program, which ~~by its nature~~ poses a
61 substantial threat of personal injury or death and is
62 punishable by fine, ~~or~~ imprisonment or death or would be so
63 punishable but for ~~the fact that the person engaging in the~~
64 ~~conduct lacked capacity~~ a finding by a court of competent
65 jurisdiction that the person committing the crime lacked
66 capacity. Criminally injurious conduct also includes
67 criminally injurious conduct committed outside of the United
68 States against a resident of this state. Criminally injurious
69 conduct does not include conduct arising out of the
70 ownership, maintenance or use of a motor vehicle ~~except~~
71 ~~when~~ unless the person engaging in the conduct intended to

72 cause personal injury or death or ~~when the person engaging~~
73 ~~in the conduct~~ committed negligent homicide, driving under
74 the influence of alcohol, controlled substances or drugs,
75 ~~reckless driving or when the person leaves~~ leaving the scene
76 of the accident or reckless driving.

77 (d) “Dependent” means an individual who received over
78 half of his or her support from the victim. For the purpose of
79 ~~determining whether an individual received over half of his~~
80 ~~or her support from the victim,~~ making this determination
81 there shall be taken into account the amount of support
82 received from the victim as compared to the entire amount of
83 support ~~which~~ the individual received from all sources
84 including ~~support which the individual himself or herself~~
85 ~~supplied.~~ self-support. The term “support” includes, but is
86 not limited to, food, shelter, clothing, medical and dental care
87 and education. The term “dependent” includes a child of the
88 victim born after his or her death.

89 (e) “Economic loss” means economic detriment
90 consisting only of allowable expense, work loss and

91 replacement services loss. If criminally injurious conduct
92 causes death, economic loss includes a dependent's
93 economic loss and a dependent's replacement services loss.
94 Noneconomic detriment is not economic loss, however,
95 economic loss may be caused by pain and suffering or
96 physical impairment. For purposes of this article, the term
97 "economic loss" includes a lost scholarship as defined in this
98 section.

99 ~~(f) (1) "Allowable expense" means reasonable charges~~
100 ~~incurred or to be incurred for reasonably needed products,~~
101 ~~services and accommodations, including those for medical~~
102 ~~care, mental health counseling, prosthetic devices, eye~~
103 ~~glasses, dentures, rehabilitation and other remedial treatment~~
104 ~~and care.~~

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

106 (1) Reasonable charges incurred or to be incurred for
107 reasonably needed products, services and accommodations
108 including those for medical care, mental health counseling,
109 prosthetic devices, eye glasses, dentures, rehabilitation and

110 other remedial treatment and care but does not include that
111 portion of a charge for a room in a hospital, clinic,
112 convalescent home, nursing home or other institution
113 engaged in providing nursing care and related services which
114 is in excess of a reasonable and customary charge for
115 semiprivate accommodations unless accommodations other
116 than semiprivate accommodations are medically required;

117 (2) ~~Allowable expense includes~~ A total charge not in
118 excess of \$7,000 for expenses in any way related to funerals,
119 cremations and burials; ~~It does not include that portion of a~~
120 ~~charge for a room in a hospital, clinic, convalescent home,~~
121 ~~nursing home or any other institution engaged in providing~~
122 ~~nursing care and related services in excess of a reasonable~~
123 ~~and customary charge for semiprivate accommodations~~
124 ~~unless accommodations other than semiprivate~~
125 ~~accommodations are medically required.~~

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

127 ~~(A) (3) A charge, not to exceed five thousand dollars~~
128 \$10,000, for cleanup of real property damaged by a

129 methamphetamine laboratory or a charge not to exceed
130 \$1,000 for any other crime scene cleanup;

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

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

135 ~~(D)~~ (6) Reasonable travel expenses for a claimant to
136 return a person who is a minor or incapacitated adult who has
137 been unlawfully removed from this state to another state or
138 country if the removal constitutes a crime under the laws of
139 this state ~~Reasonable travel expenses to another state for~~
140 ~~that purpose may not exceed \$2,000 and reasonable travel~~
141 ~~expenses for that purpose to another county may not exceed~~
142 ~~\$3,000, and~~ which may not exceed \$2,000 for expenses to
143 another state or \$3,000 to another country; and

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

146 (g) “Work loss” means loss of income from work that the
147 injured person would have performed if he or she had not

148 been injured and expenses reasonably incurred or to be
149 incurred by him or her to obtain services in lieu of those he
150 or she would have performed for income. “Work loss” is
151 reduced by ~~any~~ income from substitute work actually
152 performed or to be performed by him or her or by income he
153 or she would have earned in available appropriate substitute
154 work that he or she was capable of performing but
155 unreasonably failed to undertake. “Work loss” also includes
156 loss of income from work by the parent or legal guardian of
157 a minor victim who must miss work to take care of the minor
158 victim.

159 (h) “Replacement services loss” means expenses
160 reasonably incurred or to be incurred in obtaining ordinary
161 and necessary services in lieu of those the injured person
162 would have performed ~~not for income~~ but for the benefit of
163 himself or herself or his or her family if he or she had not
164 been injured. “Replacement services loss” does not include
165 services an injured person would have performed to generate
166 income.

167 (i) “Dependent’s economic loss” means loss after a
168 victim’s death of contributions or things of economic value
169 to his or her dependents ~~not including~~ but does not include
170 services they would have received from the victim if he or
171 she had not suffered the fatal injury. ~~less expenses of the~~
172 ~~dependents avoided by reason of the victim’s death.~~ This
173 amount is reduced by expenses avoided by the dependent due
174 to the victim’s death.

175 (j) “Dependent’s replacement service loss” means loss
176 reasonably incurred or to be incurred by dependents after a
177 victim’s death in obtaining ordinary and necessary services
178 in lieu of those the victim would have performed for their
179 benefit if he or she had not suffered the fatal injury. ~~less~~
180 ~~expenses of the dependents avoided by reason of the victim’s~~
181 ~~death and not~~ This amount is reduced by expenses avoided
182 due to the victim’s death but which are not already subtracted
183 in calculating a dependent’s economic loss.

184 (k) “Victim” means the following:

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

187 (1) (A) Criminally injurious conduct;

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

190 (3) (C) The good faith effort of the person to apprehend
191 a person that the injured person has observed engaging in
192 criminally injurious conduct or who the injured person has
193 reasonable cause to believe has engaged in criminally
194 injurious conduct immediately prior to the attempted
195 apprehension. ~~“Victim” includes the owner of real property
196 damaged by the operation of a methamphetamine laboratory.~~

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

199 (1) “Contributory misconduct” means any conduct of the
200 claimant or of the victim through whom the claimant claims
201 an award that is unlawful or intentionally tortious and that,
202 without regard to the conduct’s proximity in time or space to
203 the criminally injurious conduct, has a causal relationship to
204 the criminally injurious conduct that is the basis of the claim
205 and ~~shall also include~~ includes the voluntary intoxication of

206 the claimant, either by the consumption of alcohol or the use
207 of any controlled substance, when the intoxication has a
208 causal connection or relationship to the injury sustained.

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