

Senate Bill No. 565

(By Senators Palumbo, Wills, Foster and
Kessler (Acting President))

[Introduced February 21, 2011; referred to
the Committee on the Judiciary.]

A BILL to amend and reenact §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §62-12-23 of said code, all relating to adding persons who resided with crime victims to those who are provided notice of matters in the prosecutorial process and the right to be heard at sentencing and parole proceedings.

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 and §61-11A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §62-12-23 of said code be amended and reenacted, all to read as follows:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

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

1 (a) For the purposes of this section, “victim” means a
2 person who is a victim of a felony, the fiduciary of a deceased
3 victim’s estate or a member of a deceased victim’s immediate
4 family or a nonrelated person who resided with the victim at
5 the time of the crime for at least twelve months preceding
6 the crime.

7 (b) Prior to the imposition of sentence upon ~~any~~ a defen-
8 dant who has been found guilty of a felony or has pleaded
9 guilty or nolo contendere to ~~any~~ a felony, the court shall
10 permit the victim of the crime to appear before the court for
11 the purpose of making an oral statement for the record if the
12 victim notifies the court of his or her desire to make such a
13 statement after receiving notification provided in subsection
14 (c) of this section. If the victim fails to ~~so~~ notify the court,

15 such failure ~~shall constitute~~ constitutes a waiver of the right
16 to make an oral statement. In lieu of ~~such~~ appearance and
17 oral statement, the victim may submit a written statement to
18 the court or to the probation officer in charge of the case.
19 Such probation officer shall forthwith file ~~any such~~ the
20 statement delivered to his or her office with the sentencing
21 court and the statement shall be made a part of the record at

22 the sentencing hearing. Any such statement, whether oral or
23 written, shall relate solely to the facts of the case and the
24 extent of any injuries, financial losses and loss of earnings
25 directly resulting from the crime for which the defendant is
26 being sentenced.

27 (c) Within a reasonable time prior to the imposition of
28 sentence upon such defendant, the prosecuting attorney or
29 assistant prosecuting attorney in charge of the case shall, in
30 writing, advise the person who was the victim of such crime
31 or, in the case of a minor, the parent or guardian of such
32 minor or the fiduciary of his or her estate if he or she be then
33 deceased, of the date, time and place of the original sentenc-
34 ing hearing and of the victim's rights to submit a written or
35 oral statement to the sentencing court. ~~as hereinabove~~
36 ~~provided.~~

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

**§61-11A-6. State guidelines for fair treatment of crime victims
and witnesses in the criminal justice system.**

1 (a) No later than July 1, 1984, the Attorney General shall
2 promulgate rules and regulations in accordance with the
3 provisions of chapter twenty-nine-a of this code, establishing
4 guidelines for law-enforcement agencies and prosecuting
5 attorneys' offices consistent with the purposes of this article.

6 The Attorney General shall seek the advice of the ~~depart-~~
7 ~~ment of public safety and department of human services~~
8 West Virginia State Police and Department of Health and
9 Human Resources in preparing such rules and regulations. In

10 preparing such rules and regulations, the following objec-
11 tives shall be considered:

12 (1) The arresting law-enforcement agency should ensure
13 that victims routinely receive emergency social and medical
14 services as soon as possible and are given information on the
15 following:

16 (A) Availability of crime victim compensation, where
17 applicable;

18 (B) Community-based victim treatment programs;

19 (C) The role of the victim in the criminal justice process
20 including what they can expect from the system as well as
21 what the system expects from them; and

22 (D) Stages in the criminal justice process of significance to
23 a crime victim and the manner in which information about
24 such stages can be obtained.

25 (2) The prosecuting attorney or his or her assistant should
26 ensure that victims and witnesses receive information on
27 steps that law-enforcement officers and prosecuting attor-
28 neys can take to protect victims and witnesses from intimi-
29 dation.

30 (3) All victims and witnesses who have been scheduled to
31 attend criminal justice proceedings should be notified by the
32 prosecuting attorneys' offices as soon as possible of any
33 scheduling changes which will affect their appearances.

34 (4) Victims, witnesses, ~~and~~ one member of the immediate
35 family ~~of those victims and witnesses~~ and any nonrelated
36 person who resided with the victim for at least twelve
37 months preceding the crime should, if such persons provide
38 the appropriate official with a current address and telephone
39 number, receive prompt advance notification, if possible, of
40 judicial proceedings relating to their case, from the prosecut-
41 ing attorney's office, including:

42 (A) The arrest of an accused;

43 (B) The initial appearance of an accused before a judicial
44 officer;

45 (C) The release of the accused pending judicial proceed-
46 ings; and

47 (D) Proceedings in the prosecution of the accused includ-
48 ing, but not limited to, the entry of a plea of guilty, trial,
49 sentencing, and, where a term of imprisonment is imposed,
50 the release of the accused from such imprisonment.

51 (5) The victim of a serious crime, or in the case of a minor
52 child or a homicide, the family of the victim, shall be
53 consulted by the prosecuting attorney in order to obtain the
54 views of the victim or family about the disposition of any
55 criminal case brought as a result of such crime including the
56 views of the victim or family about:

57 (A) Dismissal;

58 (B) Release of the accused pending judicial proceedings;

59 (C) Plea negotiations; and

60 (D) Pretrial diversion program.

61 (6) Victims and other prosecution witnesses should if
62 ~~practical, be provided prior to court appearance,~~ be provided
63 a waiting area that is separate from all other witnesses prior
64 to court appearances, if feasible.

65 (7) Law-enforcement agencies should promptly return
66 ~~victim's~~ victims' property held for evidentiary purposes
67 unless there is a compelling law-enforcement reason for
68 retaining it.

69 (8) A victim or witness who so requests should be assisted
70 by law-enforcement agencies and prosecuting attorneys in
71 informing employers that the need for victim and witness
72 cooperation in the prosecution of the case may necessitate
73 absence of that victim or witness from work. A victim or
74 witness who, as a direct result of a crime or of cooperation
75 with law-enforcement agencies or attorneys for the govern-
76 ment, is subjected to serious financial strain, should be
77 assisted by the appropriate state agencies in dealing with
78 creditors.

79 (b) Nothing in this section shall be construed as creating a
80 cause of action against the State of West Virginia or any of
81 its political subdivisions.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in

3 the first or second degree, kidnapping, child abuse resulting
4 in injury, child neglect resulting in injury, arson or a sexual
5 offense against a minor, the prosecuting attorney who
6 prosecuted the offender shall prepare a “Parole Hearing
7 Notification Form”. This form shall contain the following
8 information:

9 (1) The name of the county in which the offender was
10 prosecuted and sentenced;

11 (2) The name of the court in which the offender was
12 prosecuted and sentenced;

13 (3) The name of the prosecuting attorney or assistant
14 prosecuting attorney who prosecuted the offender;

15 (4) The name of the judge who presided over the criminal
16 case and who sentenced the offender;

17 (5) The names of the law-enforcement agencies and officers
18 who were primarily involved with the investigation of the
19 crime for which the offender was sentenced; and

20 (6) The names, addresses and telephone numbers of the
21 victims of the crime for which the offender was sentenced or
22 the names, addresses and telephone numbers of the immedi-
23 ate family members of each victim of the crime including,
24 but not limited to, each victim’s spouse, father, mother,

25 brothers, ~~and~~ sisters and any nonrelated person who resided
26 with an adult victim at the time of the crime and for at least
27 twelve months preceding the crime.

28 (b) The prosecuting attorney shall retain the original of the
29 Parole Hearing Notification Form and shall provide copies
30 of it to the circuit court which sentenced the offender, the
31 Parole Board, the Commissioner of Corrections and to all
32 persons whose names and addresses are listed on the "~~Parole~~
33 ~~Hearing Notification Form~~". form.

34 (c) At least forty-five days prior to the date of a parole
35 hearing, the Parole Board shall notify all persons who are
36 listed on the Parole Hearing Notification Form of the date,
37 time and place ~~at which a parole hearing will be held.~~ of the
38 hearing. Such notice shall be sent by certified mail, return
39 receipt requested. The notice shall state that the victims of
40 the crime have the right to submit a written statement to the
41 Parole Board and to attend the parole hearing to be heard
42 regarding the propriety of granting parole to the prisoner.
43 The notice shall also state that only the victims may submit
44 written statements and speak at the parole hearing unless a
45 victim is deceased, is a minor or is otherwise incapacitated.

46 (d) The panel considering the parole shall inquire during
47 the parole hearing as to whether the victims of the crime or
48 their representatives, as provided in this section, are present.
49 If so, the panel shall permit those persons to speak at the
50 hearing regarding the propriety of granting parole for the
51 prisoner.

52 (e) If the panel grants parole, it shall immediately set a
53 date on which the prisoner will be released. Such date shall
54 be no earlier than thirty days after the date on which parole
55 is granted. On the date on which parole is granted, the Parole
56 Board shall notify all persons listed on the Parole Hearing
57 Notification Form that parole has been granted and ~~that the~~
58 ~~prisoner will be released on a particular date.~~ the date of
59 release. A written statement of reasons for releasing the
60 prisoner, prepared pursuant to subdivision (4), subsection
61 (b), section thirteen of this article, shall be provided upon
62 request to all persons listed on the Parole Hearing Notifica-
63 tion Form.

(NOTE: The purpose of this bill is to provide notice and the ability to be heard during certain criminal and parole hearings to person who have resided with a victim for at least one year prior to the crime.

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