

1 **ENROLLED**

2 **Senate Bill No. 331**

3 (BY SENATORS WILLS AND MILLER)

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5 [Passed March 9, 2012; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §61-11A-2 and §61-11A-6 of the Code of
11 West Virginia, 1931, as amended; and to amend and reenact §62-
12 12-23 of said code, all relating to adding persons who reside
13 with crime victims to those who are provided notice of matters
14 in the prosecutorial process; and the right to be heard at
15 sentencing and parole proceedings.

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

17 That §61-11A-2 and §61-11A-6 of the Code of West Virginia,
18 1931, as amended, be amended and reenacted; and that §62-12-23 of
19 said code be amended and reenacted, all to read as follows:

20 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

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

22 **§61-11A-2. Testimony of crime victim at sentencing hearing.**

23 (a) For the purposes of this section, "victim" means a person

1 who is a victim of a felony, or, where a death occurs during the
2 commission of a felony or a misdemeanor, the following persons
3 shall be notified if known by the prosecutor: A member of the
4 deceased victim's immediate family, the fiduciary of the deceased
5 victim's estate or an adult household member residing with the
6 victim.

7 (b) Prior to the imposition of sentence upon a defendant who
8 has been found guilty of a felony, or of a misdemeanor if death
9 occurs during the commission of a crime, or has pleaded guilty or
10 nolo contendere to a felony, or to a misdemeanor if death occurs
11 during the commission of a crime, the court shall permit the victim
12 of the crime to appear before the court to make an oral statement
13 for the record if the victim notifies the court of his or her
14 desire to make such a statement after receiving notification
15 provided in subsection (c) of this section. If the victim fails to
16 notify the court, the failure is a waiver of the right to make an
17 oral statement. In lieu of the appearance and oral statement, the
18 victim may submit a written statement to the court or to the
19 probation officer in charge of the case. The probation officer
20 shall forthwith file the statement delivered to his or her office
21 with the sentencing court and the statement must be made a part of
22 the record at the sentencing hearing. The statement, whether oral
23 or written, must relate solely to the facts of the case and the
24 extent of injuries, financial losses and loss of earnings directly

1 resulting from the crime for which the defendant is being
2 sentenced.

3 (c) Within a reasonable time prior to the imposition of
4 sentence upon the defendant, the prosecuting attorney or assistant
5 prosecuting attorney in charge of the case shall make reasonable
6 efforts, in writing, to advise the person who was the victim of the
7 crime, the parent or guardian of a minor who was the victim of a
8 crime, the fiduciary of the victim's estate if the victim is
9 deceased and the immediate family members of the victim if the
10 victim is deceased and if their whereabouts are known to the
11 prosecutor or assistant prosecutor. The writing will provide the
12 date, time and place of the original sentencing hearing and of the
13 victim's right to submit a written or oral statement to the
14 sentencing court.

15 (d) The oral or written statement given or submitted by a
16 victim in accordance with the provisions of this section is in
17 addition to and not in lieu of the victim impact statement required
18 by the provisions of section three of this article.

19 **§61-11A-6. State guidelines for fair treatment of crime victims**
20 **and witnesses in the criminal justice system.**

21 (a) No later than July 1, 1984, the Attorney General shall
22 promulgate rules and regulations in accordance with the provisions
23 of chapter twenty-nine-a of this code, establishing guidelines for
24 law-enforcement agencies and prosecuting attorneys' offices

1 consistent with the purposes of this article. The Attorney General
2 shall seek the advice of the West Virginia State Police and
3 Department of Health and Human Resources in preparing such rules
4 and regulations. In preparing such rules and regulations, the
5 following objectives shall be considered:

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

9 (A) Availability of crime victim compensation (where
10 applicable);

11 (B) Community-based victim treatment programs;

12 (C) The role of the victim in the criminal justice process,
13 including what they can expect from the system as well as what the
14 system expects from them; and

15 (D) Stages in the criminal justice process of significance to
16 a crime victim, and the manner in which information about such
17 stages can be obtained.

18 (2) The prosecuting attorney or his or her assistant should
19 ensure that victims and witnesses receive information on steps that
20 law-enforcement officers and prosecuting attorneys can take to
21 protect victims and witnesses from intimidation.

22 (3) All victims and witnesses who have been scheduled to
23 attend criminal justice proceedings should be notified by the
24 prosecuting attorneys' offices as soon as possible of any

1 scheduling changes which will affect their appearances.

2 (4) Victims, witnesses, one member of the immediate family and
3 any adult household member residing with the victim should, if such
4 persons provide the appropriate official with a current address and
5 telephone number, receive prompt advance notification, if possible,
6 of judicial proceedings relating to their case, from the
7 prosecuting attorney's office, including:

8 (A) The arrest of an accused;

9 (B) The initial appearance of an accused before a judicial
10 officer;

11 (C) The release of the accused pending judicial proceedings;
12 and

13 (D) Proceedings in the prosecution of the accused including,
14 but not limited to, the entry of a plea of guilty, trial,
15 sentencing and, where a term of imprisonment is imposed, the
16 release of the accused from such imprisonment.

17 (5) The victim of a serious crime, or in the case of a minor
18 child or a homicide the family of the victim, shall be consulted by
19 the prosecuting attorney in order to obtain the views of the victim
20 or family about the disposition of any criminal case brought as a
21 result of such crime, including the views of the victim or family
22 about:

23 (A) Dismissal;

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

1 (C) Plea negotiations; and

2 (D) Pretrial diversion program.

3 (6) Victims and other prosecution witnesses should be provided
4 a waiting area that is separate from all other witnesses prior to
5 court appearances, if feasible.

6 (7) Law-enforcement agencies should promptly return victims'
7 property held for evidentiary purposes unless there is a compelling
8 law-enforcement reason for retaining it.

9 (8) A victim or witness who so requests should be assisted by
10 law-enforcement agencies and prosecuting attorneys in informing
11 employers that the need for victim and witness cooperation in the
12 prosecution of the case may necessitate absence of that victim or
13 witness from work. A victim or witness who, as a direct result of
14 a crime or of cooperation with law-enforcement agencies or
15 attorneys for the government, is subjected to serious financial
16 strain should be assisted by the appropriate state agencies in
17 dealing with creditors.

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

21 **CHAPTER 62. CRIMINAL PROCEDURE.**

22 **ARTICLE 12. PROBATION AND PAROLE.**

23 **§62-12-23. Notification of parole hearing; victim's right to be**
24 **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 the
3 first or second degree, kidnapping, child abuse resulting in
4 injury, child neglect resulting in injury, arson or a sexual
5 offense against a minor, the prosecuting attorney who prosecuted
6 the offender shall prepare a Parole Hearing Notification Form.
7 This form shall contain the following information:

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

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

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

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

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

19 (6) The names, addresses and telephone numbers of the victims
20 of the crime for which the offender was sentenced or the names,
21 addresses and telephone numbers of the immediate family members of
22 each victim of the crime, including, but not limited to, each
23 victim's spouse, father, mother, brothers, sisters and any adult
24 household member residing with the victim.

1 (b) The prosecuting attorney shall retain the original of the
2 Parole Hearing Notification Form and shall provide copies of it to
3 the circuit court which sentenced the offender, the parole board,
4 the Commissioner of Corrections and to all persons whose names and
5 addresses are listed on the form.

6 (c) At least forty-five days prior to the date of a parole
7 hearing, the parole board shall notify all persons who are listed
8 on the Parole Hearing Notification Form of the date, time and place
9 of the hearing. Such notice shall be sent by certified mail,
10 return receipt requested. The notice shall state that the victims
11 of the crime have the right to submit a written statement to the
12 parole board and to attend the parole hearing to be heard regarding
13 the propriety of granting parole to the prisoner. The notice shall
14 also state that only the victims may submit written statements and
15 speak at the parole hearing unless a victim is deceased, is a minor
16 or is otherwise incapacitated.

17 (d) The panel considering the parole shall inquire during the
18 parole hearing as to whether the victims of the crime or their
19 representatives, as provided in this section, are present. If so,
20 the panel shall permit those persons to speak at the hearing
21 regarding the propriety of granting parole for the prisoner.

22 (e) If the panel grants parole, it shall immediately set a
23 date on which the prisoner will be released. Such date shall be no
24 earlier than thirty days after the date on which parole is granted.

1 On the date on which parole is granted, the parole board shall
2 notify all persons listed on the Parole Hearing Notification Form
3 that parole has been granted and the date of release. A written
4 statement of reasons for releasing the prisoner, prepared pursuant
5 to subdivision (4), subsection (b), section thirteen of this
6 article, shall be provided upon request to all persons listed on
7 the Parole Hearing Notification Form.