

1 who is a victim of a felony, or, where a death occurs during the
2 commission of a felony or a misdemeanor, the fiduciary of a
3 deceased victim's estate or a member of a deceased victim's
4 immediate family, if known to the prosecutor, or a nonrelated
5 person who resided with the victim at the time of the crime for at
6 least twelve months preceding the crime.

7 (b) Prior to the imposition of sentence upon ~~any~~ a defendant
8 who 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 ~~any~~ a felony, or to a misdemeanor if death
11 occurs during the commission of a crime, the court shall permit the
12 victim of the crime to appear before the court to make an oral
13 statement for the record if the victim notifies the court of his or
14 her 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 ~~department of public safety and~~
3 ~~department of human services~~ West Virginia State Police and
4 Department of Health and Human Resources in preparing such rules
5 and regulations. In preparing such rules and regulations, the
6 following objectives shall be considered:

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

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

12 (B) Community-based victim treatment programs;

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

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

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

23 (3) All victims and witnesses who have been scheduled to
24 attend criminal justice proceedings should be notified by the

1 prosecuting attorneys' offices as soon as possible of any
2 scheduling changes which will affect their appearances.

3 (4) Victims, witnesses, ~~and~~ one member of the immediate family
4 ~~of those victims and witnesses~~ and any nonrelated person who
5 resides with the victim for at least twelve months preceding the
6 crime should, if such persons provide the appropriate official with
7 a current address and telephone number, receive prompt advance
8 notification, if possible, of judicial proceedings relating to
9 their case, from the prosecuting attorney's office, including:

10 (A) The arrest of an accused;

11 (B) The initial appearance of an accused before a judicial
12 officer;

13 (C) The release of the accused pending judicial proceedings;
14 and

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

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

1 (A) Dismissal;

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

3 (C) Plea negotiations; and

4 (D) Pretrial diversion program.

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

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

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

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

24 **CHAPTER 62. CRIMINAL PROCEDURE.**

1 **ARTICLE 12. PROBATION AND PAROLE.**

2 **§62-12-23. Notification of parole hearing; victim's right to be**
3 **heard; notification of release on parole.**

4 (a) Following the sentencing of a person who has been
5 convicted of murder, aggravated robbery, sexual assault in the
6 first or second degree, kidnapping, child abuse resulting in
7 injury, child neglect resulting in injury, arson or a sexual
8 offense against a minor, the prosecuting attorney who prosecuted
9 the offender shall prepare a Parole Hearing Notification Form.
10 This form shall contain the following information:

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

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

15 (3) The name of the prosecuting attorney or assistant
16 prosecuting attorney who prosecuted the offender;

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

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

22 (6) The names, addresses and telephone numbers of the victims
23 of the crime for which the offender was sentenced or the names,
24 addresses and telephone numbers of the immediate family members of

1 each victim of the crime, including, but not limited to, each
2 victim's spouse, father, mother, brothers, ~~and~~ sisters and any
3 nonrelated person who resided with an adult victim at the time of
4 the crime and for at least twelve months preceding the crime.

5 (b) The prosecuting attorney shall retain the original of the
6 Parole Hearing Notification Form and shall provide copies of it to
7 the circuit court which sentenced the offender, the parole board,
8 the Commissioner of Corrections and to all persons whose names and
9 addresses are listed on the ~~"Parole Hearing Notification Form"~~
10 form.

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

23 (d) The panel considering the parole shall inquire during the
24 parole hearing as to whether the victims of the crime or their

1 representatives, as provided in this section, are present. If so,
2 the panel shall permit those persons to speak at the hearing
3 regarding the propriety of granting parole for the prisoner.

4 (e) If the panel grants parole, it shall immediately set a
5 date on which the prisoner will be released. Such date shall be no
6 earlier than thirty days after the date on which parole is granted.
7 On the date on which parole is granted, the parole board shall
8 notify all persons listed on the Parole Hearing Notification Form
9 that parole has been granted and ~~that the prisoner will be released~~
10 ~~on a particular date~~ the date of release. A written statement of
11 reasons for releasing the prisoner, prepared pursuant to
12 subdivision (4), subsection (b), section thirteen of this article,
13 shall be provided upon request to all persons listed on the Parole
14 Hearing Notification Form.

(NOTE: The purpose of this bill is to provide notice and the ability to be heard during certain criminal and parole hearings to persons 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.)