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Senate Bill No. 454

(By Senator Foster)

[Introduced January 30, 2012; 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 person
2 who is a victim of a felony, or, where a death occurs during the
3 commission of a felony or a misdemeanor, the fiduciary of a
4 deceased victim's estate or a member of a deceased victim's
5 immediate family, if known to the prosecutor, or a nonrelated
6 person who resided with the victim at the time of the crime for at
7 least twelve months preceding the crime.

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

1 written, ~~must~~ shall relate solely to the facts of the case and the
2 extent of any injuries, financial losses and loss of earnings
3 directly resulting from the crime for which the defendant is being
4 sentenced.

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

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

21 **§61-11A-6. State guidelines for fair treatment of crime victims**
22 **and witnesses in the criminal justice system.**

23 (a) No later than July 1, 1984, the Attorney General shall
24 promulgate rules and regulations in accordance with the provisions

1 of chapter twenty-nine-a of this code, establishing guidelines for
2 law-enforcement agencies and prosecuting attorneys' offices
3 consistent with the purposes of this article. The Attorney General
4 shall seek the advice of the ~~department of public safety and~~
5 ~~department of human services~~ West Virginia State Police and
6 Department of Health and Human Resources in preparing such rules
7 and regulations. In preparing such rules and regulations, the
8 following objectives shall be considered:

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

12 (A) Availability of crime victim compensation, where
13 applicable;

14 (B) Community-based victim treatment programs;

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

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

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

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

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

12 (A) The arrest of an accused;

13 (B) The initial appearance of an accused before a judicial
14 officer;

15 (C) The release of the accused pending judicial proceedings;
16 and

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

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

1 as a result of such crime, including the views of the victim or
2 family about:

3 (A) Dismissal;

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

5 (C) Plea negotiations; and

6 (D) Pretrial diversion program.

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

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

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

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

1 political subdivisions.

2 **CHAPTER 62. CRIMINAL PROCEDURE.**

3 **ARTICLE 12. PROBATION AND PAROLE.**

4 **§62-12-23. Notification of parole hearing; victim's right to be**
5 **heard; notification of release on parole.**

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

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

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

17 (3) The name of the prosecuting attorney or assistant
18 prosecuting attorney who prosecuted the offender;

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

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

1 (6) The names, addresses and telephone numbers of the victims
2 of the crime for which the offender was sentenced or the names,
3 addresses and telephone numbers of the immediate family members of
4 each victim of the crime, including, but not limited to, each
5 victim's spouse, father, mother, brothers, ~~and~~ sisters and any
6 nonrelated person who resided with an adult victim at the time of
7 the crime and for at least twelve months preceding the crime.

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

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

1 incapacitated.

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

7 (e) If the panel grants parole, it shall immediately set a
8 date on which the prisoner will be released. Such date shall be no
9 earlier than thirty days after the date on which parole is granted.
10 On the date on which parole is granted, the Parole Board shall
11 notify all persons listed on the Parole Hearing Notification Form
12 that parole has been granted and ~~that the prisoner will be released~~
13 ~~on a particular date~~ the date of release. A written statement of
14 reasons for releasing the prisoner, prepared pursuant to
15 subdivision (4), subsection (b), section thirteen of this article,
16 shall be provided upon request to all persons listed on the Parole
17 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.