

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 204**

4 (By Senators Unger and Kessler (Mr. President))

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6 [Originating in the Committee on the Judiciary;  
7 reported February 20, 2014.]  
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9 **FISCAL**  
10 **NOTE**

11 A BILL to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-  
12 14 and §14-2A-18 of the Code of West Virginia, 1931, as  
13 amended, all relating to compensation awards to victims of  
14 crimes generally; redefining terms; increasing the amount of  
15 victim relocation costs; allowing student loans obtained by a  
16 victim to be treated as a lost scholarship in certain  
17 instances; modifying required time period in which a claimant  
18 should report offense to law enforcement; removing  
19 methamphetamine rehabilitation as a basis for receiving funds  
20 and exempting claims therefore if such are filed and pending  
21 before the court on the effective date of the amendment;  
22 clarifying that, absent the identity of a perpetrator being  
23 unknown, a criminal complaint being filed is a prerequisite to  
24 filing a claim; allowing victims of sexual offenses to undergo  
25 a forensic examination rather than reporting to law  
26 enforcement; permitting the Court of Claims to hire two

1 additional claim investigators; and permitting claim  
2 investigators to acquire autopsy reports, including toxicology  
3 results, from the State Medical Examiner.

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

5 That §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-14 and §14-2A-18 of  
6 the Code of West Virginia, 1931, as amended, be amended and  
7 reenacted, all to read as follows:

8 **ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

9 **§14-2A-3. Definitions.**

10 As used in this article, the term:

11 (a) "Claimant" means any of the following persons, whether  
12 residents or nonresidents of this state, who claim an award of  
13 compensation under this article:

14 (1) A victim, except the term "victim" does not include a  
15 nonresident of this state where the criminally injurious act did  
16 not occur in this state;

17 (2) A dependent, spouse or minor child of a deceased victim  
18 or, if the deceased victim is a minor, the parents, legal guardians  
19 and siblings of the victim;

20 (3) A third person, other than a collateral source, who  
21 legally assumes or voluntarily pays the obligations of a victim or  
22 a victim's dependent when the obligations are incurred as a result  
23 of the criminally injurious conduct that is the subject of the  
24 claim;

25 (4) A person who is authorized to act on behalf of a victim,  
26 dependent or a third person who is not a collateral source

1 including, but not limited to, assignees, persons holding power of  
2 attorney or others who hold authority to make or submit claims in  
3 place of or on behalf of a victim, a dependent or third person who  
4 is not a collateral source and if the victim, dependent or third  
5 person who is not a collateral source is a minor or other legally  
6 incompetent person, their duly qualified fiduciary;

7 (5) A person who is a secondary victim in need of mental  
8 health counseling due to the person's exposure to the crime  
9 committed whose award may not exceed \$1,000, ~~and~~ .

10 (6) A person who owns real property damaged by the operation  
11 of a methamphetamine laboratory without the knowledge or consent of  
12 the owner of the real property.

13 (b) "Collateral source" means a source of benefits or  
14 advantages for economic loss otherwise compensable that the victim  
15 or claimant has received or that is readily available to him or her  
16 from any of the following sources:

17 (1) The offender, including restitution received from the  
18 offender pursuant to an order by a court sentencing the offender or  
19 placing him or her on probation following a conviction in a  
20 criminal case arising from the criminally injurious act for which  
21 a claim for compensation is made;

22 (2) The government of the United States or its agencies, a  
23 state or its political subdivisions or an instrumentality of two or  
24 more states;

25 (3) Social Security, Medicare and Medicaid;

26 (4) State-required, temporary, nonoccupational disability

1 insurance or other disability insurance;  
2 (5) Workers' compensation;  
3 (6) Wage continuation programs of an employer;  
4 (7) Proceeds of a contract of insurance payable to the victim  
5 or claimant for loss that was sustained because of the criminally  
6 injurious conduct;  
7 (8) A contract providing prepaid hospital and other health  
8 care services or benefits for disability; and  
9 (9) That portion of the proceeds of all contracts of insurance  
10 payable to the claimant on account of the death of the victim which  
11 exceeds \$25,000.

12 (c) "Criminally injurious conduct" means conduct that occurs  
13 or is attempted in this state, or in any state not having a victim  
14 compensation program, which poses a substantial threat of personal  
15 injury or death and is punishable by fine, or imprisonment. ~~or~~  
16 ~~death or would be so punishable but for a finding by a court of~~  
17 ~~competent jurisdiction that the person committing the crime lacked~~  
18 ~~capacity.~~ Criminally injurious conduct also includes criminally  
19 injurious conduct committed outside of the United States against a  
20 resident of this state. Criminally injurious conduct does not  
21 include conduct arising out of the ownership, maintenance or use of  
22 a motor vehicle unless the person engaging in the conduct intended  
23 to cause personal injury or death or committed negligent homicide,  
24 driving under the influence of alcohol, controlled substances or  
25 drugs, leaving the scene of the accident or reckless driving.

26 (d) "Dependent" means an individual who received over half of

1 his or her support from the victim. For the purpose of making this  
2 determination there shall be taken into account the amount of  
3 support received from the victim as compared to the entire amount  
4 of support the individual received from all sources including  
5 self-support. The term "support" includes, but is not limited to,  
6 food, shelter, clothing, medical and dental care and education.  
7 The term "dependent" includes a child of the victim born after his  
8 or her death.

9 (e) "Economic loss" means economic detriment consisting only  
10 of allowable expense, work loss and replacement services loss. If  
11 criminally injurious conduct causes death, economic loss includes  
12 a dependent's economic loss and a dependent's replacement services  
13 loss. Noneconomic detriment is not economic loss, however, economic  
14 loss may be caused by pain and suffering or physical impairment.  
15 For purposes of this article, the term "economic loss" includes a  
16 lost scholarship as defined in this section.

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

18 (1) Reasonable charges incurred or to be incurred for  
19 reasonably needed products, services and accommodations including  
20 those for medical care, mental health counseling, prosthetic  
21 devices, eye glasses, dentures, rehabilitation and other remedial  
22 treatment and care but does not include that portion of a charge  
23 for a room in a hospital, clinic, convalescent home, nursing home  
24 or other institution engaged in providing nursing care and related  
25 services which is in excess of a reasonable and customary charge  
26 for semiprivate accommodations unless accommodations other than

1 semiprivate accommodations are medically required;

2 (2) A total charge not in excess of \$10,000 for expenses in  
3 any way related to funerals, cremations and burials;

4 (3) A charge, not to exceed \$10,000, for cleanup of real  
5 property damaged by a methamphetamine laboratory or a charge not to  
6 exceed \$1,000 for any other crime scene cleanup; Provided, That,  
7 other provisions of this article notwithstanding, as of the  
8 effective date of the amendments to this article enacted during the  
9 2014 Regular Session of the Legislature, methamphetamine laboratory  
10 cleanup will no longer constitute a basis for filing a claim nor  
11 may fund money be expended for that purpose: Provided, however,  
12 That the fund may consider and pay any claims for methamphetamine  
13 laboratory cleanup which are filed with and pending before the  
14 Court of Claims as of the effective date of the amendments to this  
15 article enacted during the 2014 regular session of the Legislature.

16 (4) Victim relocation costs not to exceed ~~\$2,000~~ \$2,500;

17 (5) Reasonable travel expenses not to exceed \$1,000 for a  
18 claimant to attend court proceedings conducted for the prosecution  
19 of the offender ~~and~~;

20 (6) Reasonable travel expenses for a claimant to return a  
21 person who is a minor or incapacitated adult who has been  
22 unlawfully removed from this state to another state or country if  
23 the removal constitutes a crime under the laws of this state which  
24 may not exceed \$2,000 for expenses to another state or \$3,000 to  
25 another country; and

26 (7) Reasonable travel expenses for the transportation of a

1 victim to and from a medical facility.

2 (g) "Work loss" means loss of income from work that the  
3 injured person would have performed if he or she had not been  
4 injured and expenses reasonably incurred or to be incurred by him  
5 or her to obtain services in lieu of those he or she would have  
6 performed for income. "Work loss" is reduced by income from  
7 substitute work actually performed or to be performed by him or her  
8 or by income he or she would have earned in available appropriate  
9 substitute work that he or she was capable of performing but  
10 unreasonably failed to undertake. "Work loss" also includes loss  
11 of income from work by the parent or legal guardian of a minor  
12 victim who must miss work to take care of the minor victim.

13 (h) "Replacement services loss" means expenses reasonably  
14 incurred or to be incurred in obtaining ordinary and necessary  
15 services in lieu of those the injured person would have performed  
16 for the benefit of himself or herself or his or her family if he or  
17 she had not been injured. "Replacement services loss" does not  
18 include services an injured person would have performed to generate  
19 income.

20 (i) "Dependent's economic loss" means loss after a victim's  
21 death of contributions or things of economic value to his or her  
22 dependents but does not include services they would have received  
23 from the victim if he or she had not suffered the fatal injury.  
24 This amount is reduced by expenses avoided by the dependent due to  
25 the victim's death.

26 (j) "Dependent's replacement service loss" means loss

1 reasonably incurred or to be incurred by dependents after a  
2 victim's death in obtaining ordinary and necessary services in lieu  
3 of those the victim would have performed for their benefit if he or  
4 she had not suffered the fatal injury. This amount is reduced by  
5 expenses avoided due to the victim's death but which are not  
6 already subtracted in calculating a dependent's economic loss.

7 (k) "Victim" means the following:

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

10 (A) Criminally injurious conduct;

11 (B) The good faith effort of the person to prevent criminally  
12 injurious conduct; or

13 (C) The good faith effort of the person to apprehend a person  
14 that the injured person has observed engaging in criminally  
15 injurious conduct or who the injured person has reasonable cause to  
16 believe has engaged in criminally injurious conduct immediately  
17 prior to the attempted apprehension.

18 (2) The owner of real property damaged by the operation of a  
19 methamphetamine laboratory which operation was without his or her  
20 knowledge or consent.

21 (1) "Contributory misconduct" means any conduct of the  
22 claimant or of the victim through whom the claimant claims an award  
23 that is unlawful or intentionally tortious and that, without regard  
24 to the conduct's proximity in time or space to the criminally  
25 injurious conduct, has a causal relationship to the criminally  
26 injurious conduct that is the basis of the claim and includes the



1 voluntary intoxication of the claimant, either by the consumption  
2 of alcohol or the use of any controlled substance, when the  
3 intoxication has a causal connection or relationship to the injury  
4 sustained.

5 (m) "Lost scholarship" means a scholarship, academic award,  
6 stipend, student loan or other monetary scholastic assistance which  
7 had been awarded, ~~or~~ conferred upon or obtained by a victim in  
8 conjunction with a post-secondary school educational program and  
9 which the victim is unable to receive or use, in whole or in part,  
10 due to injuries received from criminally injurious conduct.

11 **§14-2A-9. Claim investigators; compensation and expenses;**  
12 **paralegals and support staff.**

13 The Court of Claims is hereby authorized to hire not more than  
14 ~~two~~ four claim investigators to be employed within the office of  
15 the clerk of the Court of Claims, who shall carry out the functions  
16 and duties set forth in section twelve of this article. Claim  
17 investigators shall serve at the pleasure of the Court of Claims  
18 and under the administrative supervision of the clerk of the Court  
19 of Claims. The compensation of claim investigators shall be fixed  
20 by the court, and such compensation, together with travel, clerical  
21 and other expenses of the clerk of the Court of Claims relating to  
22 a claim investigator carrying out his or her duties under this  
23 article, including the cost of obtaining reports required by the  
24 investigator in investigating a claim, shall be payable from the  
25 crime victims compensation fund as appropriated for such purpose by  
26 the Legislature.

1 The Court of Claims is hereby authorized to hire as support  
2 staff such paralegal or paralegals and secretary or secretaries to  
3 be employed within the office of the clerk of the Court of Claims,  
4 necessary to carry out the functions and duties of this article.  
5 Such support staff shall serve at the will and pleasure of the  
6 Court of Claims and under the administrative supervision of the  
7 clerk of the Court of Claims.

8 **§14-2A-12. Investigation and recommendations by claim**  
9 **investigator.**

10 (a) The clerk of the Court of Claims shall transmit a copy of  
11 the application to the claim investigator within seven days after  
12 the filing of the application.

13 (b) The claim investigator, upon receipt of an application for  
14 an award of compensation from the clerk of the Court of Claims,  
15 shall investigate the claim. After completing the investigation,  
16 the claim investigator shall make a written finding of fact and  
17 recommendation concerning an award of compensation. He or she  
18 shall file with the clerk the finding of fact and recommendation  
19 and all information or documents that he or she used in his or her  
20 investigation: *Provided*, That the claim investigator shall not  
21 file information or documents which have been the subject of a  
22 protective order entered under the provisions of subsection (c) of  
23 this section.

24 (c) The claim investigator, while investigating the claim, may  
25 require the claimant to supplement the application for an award of  
26 compensation with any further information or documentary materials,

1 including any medical report readily available, which may lead to  
2 any relevant facts aiding in the determination of whether, and the  
3 extent to which, a claimant qualifies for an award of compensation.

4       The claim investigator, while investigating the claim, may  
5 also require law-enforcement officers and prosecuting attorneys  
6 employed by the state or any political subdivision thereof, to  
7 provide him or her with reports, information, witness statements or  
8 other data gathered in the investigation of the criminally  
9 injurious conduct that is the basis of any claim to enable him or  
10 her to determine whether, and the extent to which, a claimant  
11 qualifies for an award of compensation. The prosecuting attorney  
12 and any officer or employee of the prosecuting attorney or of the  
13 law-enforcement agency shall be immune from any civil liability  
14 that might otherwise be incurred as the result of providing such  
15 reports, information, witness statements or other data relating to  
16 the criminally injurious conduct to the claim investigator.

17       The claim investigator, while investigating the claim, may  
18 obtain autopsy reports including results from the office of the  
19 State Medical Examiner to be used solely for determining  
20 eligibility for compensation awards.

21       Upon motion of any party, court or agency from whom such  
22 reports, information, witness statements or other data is sought,  
23 and for good cause shown, the court may make any order which  
24 justice requires to protect a witness or other person, including,  
25 but not limited to, the following:   (1) That the reports,  
26 information, witness statements or other data not be made

1 available; (2) that the reports, information, witness statements or  
2 other data may be made available only on specified terms and  
3 conditions, including a designation of time and place; (3) that the  
4 reports, information, witness statements or other data be made  
5 available only by a different method than that selected by the  
6 claim investigator; (4) that certain matters not be inquired into,  
7 or that the scope of the claim investigator's request be limited to  
8 certain matters; (5) that the reports, information, witness  
9 statements or other data be examined only by certain persons  
10 designated by the court; (6) that the reports, information, witness  
11 statements or other data, after being sealed, be opened only by  
12 order of the court; and (7) that confidential information or the  
13 identity of confidential witnesses or informers not be disclosed,  
14 or disclosed only in a designated manner.

15       However, in any case wherein the claim investigator has reason  
16 to believe that his or her investigation may interfere with or  
17 jeopardize the investigation of a crime by law-enforcement  
18 officers, or the prosecution of a case by prosecuting attorneys, he  
19 or she shall apply to the Court of Claims, or a judge thereof, for  
20 an order granting leave to discontinue his or her investigation for  
21 a reasonable time in order to avoid such interference or  
22 jeopardization. When it appears to the satisfaction of the court,  
23 or judge, upon application by the claim investigator or in its own  
24 discretion, that the investigation of a case by the claim  
25 investigator will interfere with or jeopardize the investigation or  
26 prosecution of a crime, the court, or judge, shall issue an order

1 granting the claim investigator leave to discontinue his or her  
2 investigation for such time as the court, or judge, deems  
3 reasonable to avoid such interference or jeopardization.

4 (d) The finding of fact that is issued by the claim  
5 investigator pursuant to subsection (b) of this section shall  
6 contain the following:

7 (1) Whether the criminally injurious conduct that is the basis  
8 for the application did occur, the date on which the conduct  
9 occurred and the exact nature of the conduct;

10 (2) If the criminally injurious conduct was reported to a  
11 law-enforcement officer or agency, the date on which the conduct  
12 was reported and the name of the person who reported the conduct;  
13 or, the reasons why the conduct was not reported to a  
14 law-enforcement officer or agency; or, the reasons why the conduct  
15 was not reported to a law-enforcement officer or agency within  
16 seventy-two hours after the conduct occurred;

17 (3) The exact nature of the injuries that the victim sustained  
18 as a result of the criminally injurious conduct;

19 (4) If the claim investigator is recommending that an award be  
20 made, a specific itemization of the economic loss that was  
21 sustained by the victim, the claimant or a dependent as a result of  
22 the criminally injurious conduct;

23 (5) If the claim investigator is recommending that an award be  
24 made, a specific itemization of any benefits or advantages that the  
25 victim, the claimant or a dependent has received or is entitled to  
26 receive from any collateral source for economic loss that resulted

1 from the conduct;

2 (6) Whether the claimant is the spouse, parent, child, brother  
3 or sister of the offender, or is similarly related to an accomplice  
4 of the offender who committed the criminally injurious conduct;

5 (7) Any information which might be a basis for a reasonable  
6 reduction or denial of a claim because of contributory misconduct  
7 of the claimant or of a victim through whom he or she claims;

8 (8) Any additional information that the claim investigator  
9 deems to be relevant to the evaluation of the claim.

10 (e) The recommendation that is issued by the claim  
11 investigator pursuant to subsection (b) of this section shall  
12 contain the following:

13 (1) Whether an award of compensation should be made to the  
14 claimant and the amount of the award;

15 (2) If the claim investigator recommends that an award not be  
16 made to the claimant, the reason for his or her decision.

17 (f) The claim investigator shall file his or her finding of  
18 fact and recommendation with the clerk within six months after the  
19 filing of the application: *Provided*, That where there is active  
20 criminal investigation or prosecution of the person or persons  
21 alleged to have committed the criminally injurious conduct which is  
22 the basis for the claimant's claim, the claim investigator shall  
23 file his or her finding of fact and recommendation within six  
24 months after the first of any final convictions or other final  
25 determinations as to innocence or guilt, or any other final  
26 disposition of criminal proceedings. In any case, an additional

1 time period may be provided by order of any Court of Claims judge  
2 or commissioner upon good cause shown.

3 **§14-2A-14. Grounds for denial of claim or reduction of awards;**  
4 **maximum awards.**

5 (a) Except as provided in subsection (b), section ten of this  
6 article, the judge or commissioner may not approve an award of  
7 compensation to a claimant who did not file his or her application  
8 for an award of compensation within two years after the date of the  
9 occurrence of the criminally injurious conduct that caused the  
10 injury or death for which he or she is seeking an award of  
11 compensation.

12 (b) The judge or commissioner may not approve an award of  
13 compensation if the criminally injurious conduct upon which the  
14 claim is based was not reported to a law-enforcement officer or  
15 agency or, in the case of sexual offense the claimant underwent a  
16 forensic medical examination, within ~~seventy-two~~ ninety-six hours  
17 after the occurrence of the conduct, unless it is determined that  
18 good cause existed for the failure to report the conduct or undergo  
19 a forensic medical examination within the ~~72-~~ ninety-six hour  
20 period.

21 (c) The judge or commissioner may not approve an award of  
22 compensation to a claimant who is the offender or an accomplice of  
23 the offender who committed the criminally injurious conduct, nor to  
24 any claimant if the award would unjustly benefit the offender or  
25 his or her accomplice.

26 (d) A judge or commissioner, upon a finding that the claimant

1 or victim has not fully cooperated with appropriate law-enforcement  
2 agencies or the claim investigator, may deny a claim, reduce an  
3 award of compensation or reconsider a claim already approved.

4 (e) A judge or commissioner may not approve an award of  
5 compensation if the injury occurred while the victim was confined  
6 in any state, county or regional jail, prison, private prison or  
7 correctional facility.

8 (f) After reaching a decision to approve an award of  
9 compensation, but prior to announcing the approval, the judge or  
10 commissioner shall require the claimant to submit current  
11 information as to collateral sources on forms prescribed by the  
12 Clerk of the Court of Claims. The judge or commissioner shall  
13 reduce an award of compensation or deny a claim for an award of  
14 compensation that is otherwise payable to a claimant to the extent  
15 that the economic loss upon which the claim is based is or will be  
16 recouped from other persons, including collateral sources, or if  
17 the reduction or denial is determined to be reasonable because of  
18 the contributory misconduct of the claimant or of a victim through  
19 whom he or she claims. If an award is reduced or a claim is denied  
20 because of the expected recoupment of all or part of the economic  
21 loss of the claimant from a collateral source, the amount of the  
22 award or the denial of the claim shall be conditioned upon the  
23 claimant's economic loss being recouped by the collateral source:  
24 *Provided*, That if it is thereafter determined that the claimant  
25 will not receive all or part of the expected recoupment, the claim  
26 shall be reopened and an award shall be approved in an amount equal



1 to the amount of expected recoupment that it is determined the  
2 claimant will not receive from the collateral source, subject to  
3 the limitation set forth in subsection (g) of this section.

4 (g) (1) Except in the case of death, or as provided in  
5 subdivision (2) of this subsection, compensation payable to a  
6 victim and to all other claimants sustaining economic loss because  
7 of injury to that victim may not exceed \$35,000 in the aggregate.  
8 Compensation payable to all claimants because of the death of the  
9 victim may not exceed \$50,000 in the aggregate.

10 (2) In the event the victim's personal injuries are so severe  
11 as to leave the victim with a disability, as defined in Section 223  
12 of the Social Security Act, as amended, as codified in 42 U.S.C.  
13 §423, the court may award an additional amount, not to exceed  
14 \$100,000, for special needs attributable to the injury.

15 (h) If an award of compensation of \$5,000 or more is made to  
16 a minor, a guardian shall be appointed pursuant to the provisions  
17 of article ten, chapter forty-four of this code to manage the  
18 minor's estate.

19 **§14-2A-18. Effect of no criminal charges being filed or**  
20 **conviction of offender.**

21 The court, or a judge or commissioner thereof, may approve an  
22 award of compensation whether or not any person is ~~prosecuted or~~  
23 convicted for committing the conduct that is the basis of the  
24 award. The filing of a criminal charge shall be a prerequisite for  
25 receipt of compensation unless it is determined that no charges  
26 were filed due to the identity of the perpetrator being unknown.

1 Proof of conviction of a person whose conduct gave rise to a claim  
2 is conclusive evidence that the crime was committed, unless an  
3 application for rehearing, an appeal of the conviction or  
4 certiorari is pending, or a rehearing or new trial has been  
5 ordered.

6       The court, or a judge or commissioner thereof, shall suspend,  
7 upon a request of the claim investigator, the proceedings in any  
8 claim for an award of compensation pending disposition of a  
9 criminal prosecution that has been commenced or is imminent.