

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 204**

7 (SENATORS UNGER AND KESSLER (MR. PRESIDENT), *original sponsors*)

8 _____
9 [Passed March 8, 2014; in effect from passage.]
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12
13 AN ACT to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-
14 14 and §14-2A-18 of the Code of West Virginia, 1931, as
15 amended, all relating to compensation awards to victims of
16 crimes generally; redefining terms; increasing the amount of
17 victim relocation costs; allowing student loans obtained by a
18 victim to be treated as a lost scholarship in certain
19 instances; eliminating the authority to make awards of
20 compensation for damage caused by operation of a
21 methamphetamine laboratory under certain circumstances;
22 modifying required time period in which a claimant should
23 report offense to law enforcement under certain circumstances;
24 requiring that a criminal complaint being filed is a
25 prerequisite to receipt of compensation in certain
26 circumstances; providing circumstances in which a criminal

1 complaint need not be filed as a prerequisite to receipt of
2 compensation; allowing victims of sexual offenses to undergo
3 a forensic examination rather than reporting to law
4 enforcement; permitting the Court of Claims to hire two
5 additional claim investigators; and permitting claim
6 investigators to acquire autopsy reports from the State
7 Medical Examiner.

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

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

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

13 **§14-2A-3. Definitions.**

14 As used in this article, the term:

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

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

21 (2) A dependent, spouse or minor child of a deceased victim
22 or, if the deceased victim is a minor, the parents, legal guardians
23 and siblings of the victim;

24 (3) A third person, other than a collateral source, who
25 legally assumes or voluntarily pays the obligations of a victim or
26 a victim's dependent when the obligations are incurred as a result

1 of the criminally injurious conduct that is the subject of the
2 claim;

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

11 (5) A person who is a secondary victim in need of mental
12 health counseling due to the person's exposure to the crime
13 committed whose award may not exceed \$1,000;

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

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

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

26 (3) Social Security, Medicare and Medicaid;

1 (4) State-required, temporary, nonoccupational disability
2 insurance or other disability insurance;

3 (5) Workers' compensation;

4 (6) Wage continuation programs of an employer;

5 (7) Proceeds of a contract of insurance payable to the victim
6 or claimant for loss that was sustained because of the criminally
7 injurious conduct;

8 (8) A contract providing prepaid hospital and other health
9 care services or benefits for disability; and

10 (9) That portion of the proceeds of all contracts of insurance
11 payable to the claimant on account of the death of the victim which
12 exceeds \$25,000.

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

25 (d) "Dependent" means an individual who received over half of
26 his or her support from the victim. For the purpose of making this

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

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

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

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

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

3 (3) Victim relocation costs not to exceed \$2,500;

4 (4) Reasonable travel expenses not to exceed \$1,000 for a
5 claimant to attend court proceedings conducted for the prosecution
6 of the offender;

7 (5) Reasonable travel expenses for a claimant to return a
8 person who is a minor or incapacitated adult who has been
9 unlawfully removed from this state to another state or country if
10 the removal constitutes a crime under the laws of this state which
11 may not exceed \$2,000 for expenses to another state or \$3,000 to
12 another country; and

13 (6) Reasonable travel expenses for the transportation of a
14 victim to and from a medical facility.

15 (g) "Work loss" means loss of income from work that the
16 injured person would have performed if he or she had not been
17 injured and expenses reasonably incurred or to be incurred by him
18 or her to obtain services in lieu of those he or she would have
19 performed for income. "Work loss" is reduced by income from
20 substitute work actually performed or to be performed by him or her
21 or by income he or she would have earned in available appropriate
22 substitute work that he or she was capable of performing but
23 unreasonably failed to undertake. "Work loss" also includes loss
24 of income from work by the parent or legal guardian of a minor
25 victim who must miss work to take care of the minor victim.

26 (h) "Replacement services loss" means expenses reasonably

1 incurred or to be incurred in obtaining ordinary and necessary
2 services in lieu of those the injured person would have performed
3 for the benefit of himself or herself or his or her family if he or
4 she had not been injured. "Replacement services loss" does not
5 include services an injured person would have performed to generate
6 income.

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

13 (j) "Dependent's replacement service loss" means loss
14 reasonably incurred or to be incurred by dependents after a
15 victim's death in obtaining ordinary and necessary services in lieu
16 of those the victim would have performed for their benefit if he or
17 she had not suffered the fatal injury. This amount is reduced by
18 expenses avoided due to the victim's death but which are not
19 already subtracted in calculating a dependent's economic loss.

20 (k) "Victim" means the following:

21 A person who suffers personal injury or death as a result of
22 any one of the following:

23 (A) Criminally injurious conduct;

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

26 (C) The good faith effort of the person to apprehend a person

1 that the injured person has observed engaging in criminally
2 injurious conduct or who the injured person has reasonable cause to
3 believe has engaged in criminally injurious conduct immediately
4 prior to the attempted apprehension.

5 (l) "Contributory misconduct" means any conduct of the
6 claimant or of the victim through whom the claimant claims an award
7 that is unlawful or intentionally tortious and that, without regard
8 to the conduct's proximity in time or space to the criminally
9 injurious conduct, has a causal relationship to the criminally
10 injurious conduct that is the basis of the claim and includes the
11 voluntary intoxication of the claimant, either by the consumption
12 of alcohol or the use of any controlled substance, when the
13 intoxication has a causal connection or relationship to the injury
14 sustained.

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

21 **§14-2A-9. Claim investigators; compensation and expenses;**
22 **paralegals and support staff.**

23 The Court of Claims is hereby authorized to hire not more than
24 four claim investigators to be employed within the Office of the
25 clerk of the Court of Claims, who shall carry out the functions and
26 duties set forth in section twelve of this article. Claim

1 investigators shall serve at the pleasure of the Court of Claims
2 and under the administrative supervision of the Clerk of the Court
3 of Claims. The compensation of claim investigators shall be fixed
4 by the court, and such compensation, together with travel, clerical
5 and other expenses of the Clerk of the Court of Claims relating to
6 a claim investigator carrying out his or her duties under this
7 article, including the cost of obtaining reports required by the
8 investigator in investigating a claim, shall be payable from the
9 crime victims compensation fund as appropriated for such purpose by
10 the Legislature.

11 The Court of Claims is hereby authorized to hire as support
12 staff such paralegal or paralegals and secretary or secretaries to
13 be employed within the Office of the Clerk of the Court of Claims,
14 necessary to carry out the functions and duties of this article.
15 Such support staff shall serve at the will and pleasure of the
16 Court of Claims and under the administrative supervision of the
17 Clerk of the Court of Claims.

18 **§14-2A-12. Investigation and recommendations by claim**
19 **investigator.**

20 (a) The clerk of the Court of Claims shall transmit a copy of
21 the application to the claim investigator within seven days after
22 the filing of the application.

23 (b) The claim investigator, upon receipt of an application for
24 an award of compensation from the Clerk of the Court of Claims,
25 shall investigate the claim. After completing the investigation,
26 the claim investigator shall make a written finding of fact and

1 recommendation concerning an award of compensation. He or she
2 shall file with the clerk the finding of fact and recommendation
3 and all information or documents that he or she used in his or her
4 investigation: *Provided*, That the claim investigator shall not file
5 information or documents which have been the subject of a
6 protective order entered under the provisions of subsection (c) of
7 this section.

8 (c) The claim investigator, while investigating the claim, may
9 require the claimant to supplement the application for an award of
10 compensation with any further information or documentary materials,
11 including any medical report readily available, which may lead to
12 any relevant facts aiding in the determination of whether, and the
13 extent to which, a claimant qualifies for an award of compensation.

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

1 The claim investigator, while investigating the claim, may
2 obtain autopsy reports including results from the Office of the
3 State Medical Examiner to be used solely for determining
4 eligibility for compensation awards.

5 Upon motion of any party, court or agency from whom such
6 reports, information, witness statements or other data is sought,
7 and for good cause shown, the court may make any order which
8 justice requires to protect a witness or other person, including,
9 but not limited to, the following: (1) That the reports,
10 information, witness statements or other data not be made
11 available; (2) that the reports, information, witness statements or
12 other data may be made available only on specified terms and
13 conditions, including a designation of time and place; (3) that the
14 reports, information, witness statements or other data be made
15 available only by a different method than that selected by the
16 claim investigator; (4) that certain matters not be inquired into,
17 or that the scope of the claim investigator's request be limited to
18 certain matters; (5) that the reports, information, witness
19 statements or other data be examined only by certain persons
20 designated by the court; (6) that the reports, information, witness
21 statements or other data, after being sealed, be opened only by
22 order of the court; and (7) that confidential information or the
23 identity of confidential witnesses or informers not be disclosed,
24 or disclosed only in a designated manner.

25 However, in any case wherein the claim investigator has reason
26 to believe that his or her investigation may interfere with or

1 jeopardize the investigation of a crime by law-enforcement
2 officers, or the prosecution of a case by prosecuting attorneys, he
3 or she shall apply to the Court of Claims, or a judge thereof, for
4 an order granting leave to discontinue his or her investigation for
5 a reasonable time in order to avoid such interference or
6 jeopardization. When it appears to the satisfaction of the court,
7 or judge, upon application by the claim investigator or in its own
8 discretion, that the investigation of a case by the claim
9 investigator will interfere with or jeopardize the investigation or
10 prosecution of a crime, the court, or judge, shall issue an order
11 granting the claim investigator leave to discontinue his or her
12 investigation for such time as the court, or judge, deems
13 reasonable to avoid such interference or jeopardization.

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

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

20 (2) If the criminally injurious conduct was reported to a
21 law-enforcement officer or agency, the date on which the conduct
22 was reported and the name of the person who reported the conduct;
23 or the reasons why the conduct was not reported to a
24 law-enforcement officer or agency; or the reasons why the conduct
25 was not reported to a law-enforcement officer or agency within
26 seventy-two hours after the conduct occurred;

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

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

7 (5) If the claim investigator is recommending that an award be
8 made, a specific itemization of any benefits or advantages that the
9 victim, the claimant or a dependent has received or is entitled to
10 receive from any collateral source for economic loss that resulted
11 from the conduct;

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

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

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

20 (e) The recommendation that is issued by the claim
21 investigator pursuant to subsection (b) of this section shall
22 contain the following:

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

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

1 (f) The claim investigator shall file his or her finding of
2 fact and recommendation with the clerk within six months after the
3 filing of the application: *Provided*, That where there is active
4 criminal investigation or prosecution of the person or persons
5 alleged to have committed the criminally injurious conduct which is
6 the basis for the claimant's claim, the claim investigator shall
7 file his or her finding of fact and recommendation within six
8 months after the first of any final convictions or other final
9 determinations as to innocence or guilt, or any other final
10 disposition of criminal proceedings. In any case, an additional
11 time period may be provided by order of any Court of Claims judge
12 or commissioner upon good cause shown.

13 **§14-2A-14. Grounds for denial of claim or reduction of awards;**
14 **maximum awards.**

15 (a) Except as provided in subsection (b), section ten of this
16 article, the judge or commissioner may not approve an award of
17 compensation to a claimant who did not file his or her application
18 for an award of compensation within two years after the date of the
19 occurrence of the criminally injurious conduct that caused the
20 injury or death for which he or she is seeking an award of
21 compensation.

22 (b) The judge or commissioner may not approve an award of
23 compensation if the criminally injurious conduct upon which the
24 claim is based was not reported to a law-enforcement officer or
25 agency or, in the case of sexual offense, the claimant did not
26 undergo a forensic medical examination, within ninety-six hours

1 after the occurrence of the conduct, unless it is determined that
2 good cause existed for the failure to report the conduct or undergo
3 a forensic medical examination within the 96-hour period: *Provided,*
4 That no reporting to a law-enforcement officer or agency or a
5 forensic medical examination is required if the claimant is a
6 juvenile in order for a judge or commissioner to approve an award
7 of compensation.

8 (c) The judge or commissioner may not approve an award of
9 compensation to a claimant who is the offender or an accomplice of
10 the offender who committed the criminally injurious conduct, nor to
11 any claimant if the award would unjustly benefit the offender or
12 his or her accomplice.

13 (d) A judge or commissioner, upon a finding that the claimant
14 or victim has not fully cooperated with appropriate law-enforcement
15 agencies or the claim investigator, may deny a claim, reduce an
16 award of compensation or reconsider a claim already approved.

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

21 (f) After reaching a decision to approve an award of
22 compensation, but prior to announcing the approval, the judge or
23 commissioner shall require the claimant to submit current
24 information as to collateral sources on forms prescribed by the
25 Clerk of the Court of Claims. The judge or commissioner shall
26 reduce an award of compensation or deny a claim for an award of

1 compensation that is otherwise payable to a claimant to the extent
2 that the economic loss upon which the claim is based is or will be
3 recouped from other persons, including collateral sources, or if
4 the reduction or denial is determined to be reasonable because of
5 the contributory misconduct of the claimant or of a victim through
6 whom he or she claims. If an award is reduced or a claim is denied
7 because of the expected recoupment of all or part of the economic
8 loss of the claimant from a collateral source, the amount of the
9 award or the denial of the claim shall be conditioned upon the
10 claimant's economic loss being recouped by the collateral source:
11 *Provided*, That if it is thereafter determined that the claimant
12 will not receive all or part of the expected recoupment, the claim
13 shall be reopened and an award shall be approved in an amount equal
14 to the amount of expected recoupment that it is determined the
15 claimant will not receive from the collateral source, subject to
16 the limitation set forth in subsection (g) of this section.

17 (g) (1) Except in the case of death, or as provided in
18 subdivision (2) of this subsection, compensation payable to a
19 victim and to all other claimants sustaining economic loss because
20 of injury to that victim may not exceed \$35,000 in the aggregate.
21 Compensation payable to all claimants because of the death of the
22 victim may not exceed \$50,000 in the aggregate.

23 (2) In the event the victim's personal injuries are so severe
24 as to leave the victim with a disability, as defined in Section 223
25 of the Social Security Act, as amended, as codified in 42 U. S.
26 C.§423, the court may award an additional amount, not to exceed

1 \$100,000, for special needs attributable to the injury.

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

6 **§14-2A-18. Effect of no criminal charges being filed or**
7 **conviction of offender.**

8 The court, or a judge or commissioner thereof, may approve an
9 award of compensation whether or not any person is convicted for
10 committing the conduct that is the basis of the award. The filing
11 of a criminal charge shall be a prerequisite for receipt of
12 compensation: *Provided*, That no criminal charges need be filed if:
13 (1) The claimant is an adult at the time the conduct giving rise to
14 the claim occurred and no criminal charges were filed for reasons
15 other than the desire of the claimant and a law-enforcement agency
16 confirms that the available evidence supports a finding that a
17 crime occurred; or (2) the claimant was a juvenile at the time the
18 conduct giving rise to the claim occurred. Proof of conviction of
19 a person whose conduct gave rise to a claim is conclusive evidence
20 that the crime was committed, unless an application for rehearing,
21 an appeal of the conviction or certiorari is pending, or a
22 rehearing or new trial has been ordered.

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

