

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2895**

BY DELEGATES MILEY AND QUEEN

[Introduced February 7, 2019; Referred to the  
Committee on the Judiciary.]



1 A BILL to amend and reenact §61-11A-8 of the Code of West Virginia, 1931, as amended, relating  
2 to allowing victims of certain crimes to get a restraining order prohibiting convicted persons  
3 from contacting or living in proximity to the victim, upon a finding that this has caused or  
4 will cause the victim emotional distress.

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

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

**§61-11A-8. Notification to victim of offender's release, placement, or escape from custody;  
providing for a victim protective order.**

1 (a) At the time a criminal prosecution is commenced by the filing of a complaint, if the  
2 complaint charges a person with committing an offense described in subsection (e) of this section,  
3 then the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim  
4 or a family member that he or she may request that they be notified prior to or at the time of any  
5 release of the accused from custody pending judicial proceedings.

6 (b) If a person is convicted of an offense described in subsection (e) of this section, the  
7 prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a  
8 family member that he or she may request that they be notified prior to or at the time of sentencing  
9 if the convicted person will be placed on work release, home confinement or probation.

10 (c) If a person is convicted of an offense described in subsection (e) of this section and is  
11 imprisoned in a state correctional facility or confined in a county or regional jail, the Commissioner  
12 of Corrections, the regional jail supervisor or the sheriff, as the case may be, is required to provide  
13 notice, in writing or by telephone, to the victim or a family member that he or she may request that  
14 they be notified prior to or at the time of:

15 (1) Releasing the convicted person from imprisonment in any correctional facility;

16 (2) Releasing the convicted person from confinement in any jail;

17 (3) Placing the convicted person in a halfway house or other nonsecure facility to complete  
18 his or her sentence; or

19 (4) Any escape by the convicted person from a state correctional facility or a jail.

20 (d) The notice shall include instructions for the victim or the victim's family member on how  
21 to request the notification.

22 (e) Offenses which are subject to the provisions of this section are as follows:

23 (1) Murder;

24 (2) Aggravated robbery;

25 (3) Sexual assault in the first degree;

26 (4) Kidnapping;

27 (5) Arson;

28 (6) Any sexual offense against a minor; or

29 (7) Any violent crime against a person.

30 (f) The Commissioner of Corrections, a regional jail supervisor, a sheriff or a prosecuting  
31 attorney who receives a written request for notification shall provide notice, in writing or by  
32 telephone, to the last known address or addresses or telephone number or numbers provided by  
33 the victim or a member of the victim's family, or in the case of a minor child, to the custodial parent,  
34 guardian or custodian of the child, in accordance with the provisions of this section. In case of  
35 escape, notification shall be by telephone, if possible.

36 (g) If one or more family members of a victim request notification and if the victim is an  
37 adult and is alive and competent, notification shall be sent to the victim, if possible,  
38 notwithstanding that he or she did not request the notification. If the victim is deceased or an adult  
39 who is alive but not competent, the notice shall be sent to the first family member requesting  
40 notice in conformity with this section.

41 (h) If notification by telephone to a victim is attempted, notification is not complete unless  
42 it is given directly to the person requesting notification and after that person's identity has been  
43 verified. An attempted notification made to a voice mail or another recording device or to another  
44 member of the household is insufficient.

45 (i) For the purposes of this section, the following words or phrases defined in this  
46 subsection have the meanings ascribed to them. These definitions are applicable unless a  
47 different meaning clearly appears from the context.

48 (1) "Filing of a complaint" means the filing of a complaint in accordance with the West  
49 Virginia Rules of Criminal Procedure promulgated by the Supreme Court of Appeals or the  
50 provisions of this code.

51 (2) "Victim" means a victim of a crime listed in subsection (e) of this section who is alive  
52 and competent.

53 (3) "Victim's family member" means a member of the family of a victim of a crime listed in  
54 subsection (e) of this section who is not alive and competent.

55 (j) In addition to those persons required to be notified under this section, a victim may  
56 designate an additional adult individual to receive notice provided for by this section: *Provided,*  
57 That the obligation to notify the additional individuals under this section only arises if the additional  
58 adult individual's contact information is provided in writing by the victim to the appropriate notifying  
59 entity.

60 (k) A court of competent jurisdiction may issue a restraining order upon a finding that the  
61 convicted person, subsequent to his or her conviction, (i) established or intends to establish  
62 residence in proximity of the victim, or (ii) knowingly initiated contact with the victim. Prior to  
63 issuing any restraining order under this subsection, the court shall further find that the convicted  
64 person's proximity or contact with the victim has or will subject the victim to emotional distress.

NOTE: The purpose of this bill is to allow crime victims to petition a court to obtain restraining orders to prevent persons who committed specified crimes against the victim from living in proximity or knowingly coming into contact the victim, if the victim proves to the court that this will cause or has caused the victim emotional distress.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.