

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 264

FISCAL
NOTE

BY SENATORS TRUMP, HAMILTON, CLINE, AND TARR

[Introduced January 11, 2019; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating
 2 to requiring courts to order restitution to victims of crime; providing for consideration of
 3 economic hardship within the order; and providing for the definition of any person
 4 compensating a victim for loss to include the West Virginia Crime Victims Compensation
 5 Fund for restitution purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.

§61-11A-4. Restitution; when ordered.

1 (a) The court, when sentencing a defendant convicted of a felony or misdemeanor causing
 2 physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu
 3 of any other penalty authorized by law, that the defendant make restitution to any victim of the
 4 offense, ~~unless the court finds restitution to be wholly or partially impractical as set forth in this~~
 5 ~~article~~ to the greatest extent economically practical when considering the defendant's financial
 6 circumstances.

7 If the court does not order restitution, or orders only partial restitution, under this section,
 8 the court shall state on the record the reasons therefor.

9 (b) The order shall require that the defendant:

10 (1) In the case of an offense resulting in damage to, loss of, or destruction of property of
 11 a victim of the offense:

12 (A) Return the property to the owner of the property or someone designated by the owner;
 13 or

14 (B) If return of the property under subparagraph (A) is impossible, impractical or
 15 inadequate, pay an amount equal to the greater of: (i) The value of the property on the date of
 16 sentencing; or (ii) the value of the property on the date of the damage, loss or destruction less the
 17 value (as of the date the property is returned) of any part of the property that is returned;

18 (2) In the case of an offense resulting in bodily injury to a victim:

19 (A) Pay an amount equal to the cost of necessary medical and related professional
20 services and devices relating to physical, psychiatric and psychological care, including
21 nonmedical care and treatment rendered in accordance with a method of healing recognized by
22 the law of the place of treatment;

23 (B) Pay an amount equal to the cost of necessary physical and occupational therapy and
24 rehabilitation; and

25 (C) Reimburse the victim for income lost by the victim as a result of the offense;

26 (3) In the case of an offense resulting in bodily injury that also results in the death of a
27 victim, pay an amount equal to the cost of necessary funeral and related services; and

28 (4) In any case, if the victim (or if the victim is deceased, the victim's estate) consents, or
29 if payment is impossible or impractical, make restitution in services in lieu of money, or make
30 restitution to a person or organization designated by the victim or the estate.

31 (c) If the court decides to order restitution under this section, the court shall, if the victim
32 is deceased, order that the restitution be made to the victim's estate.

33 (d) The court shall impose an order of restitution to the extent that the order is as fair as
34 possible to the victim and the imposition of the order will not unduly complicate or prolong the
35 sentencing process.

36 ~~(e) The court shall not impose restitution with respect to a loss for which the victim has~~
37 ~~received or is to receive compensation, except that the~~ The court may shall, in the interest of
38 justice, order restitution to any person who has compensated the victim for loss to the extent that
39 the person paid the compensation. An order of restitution shall require that all restitution to victims
40 under the order be made before any restitution to any other person under the order is made. In
41 this section the term "any person who has compensated the victim for loss," shall include the West
42 Virginia Crime Victims Compensation Fund in addition to natural persons.

43 (f) The court may require that such defendant make restitution under this section within a
44 specified period or in specified installments. The end of the period or the last installment shall not

45 be later than: (i) The end of the period of probation, if probation is ordered; (ii) five years after the
46 end of the term of imprisonment imposed, if the court does not order probation; and (iii) five years
47 after the date of sentencing in any other case.

48 If not otherwise provided by the court under this subsection, restitution shall be made
49 immediately.

50 (g) If the defendant is placed on probation or paroled under this article, any restitution
51 ordered under this section shall be a condition of the probation or parole unless the court or Parole
52 Board finds restitution to be wholly or partially impractical as set forth in this article.

53 The court may revoke probation and the Parole Board may revoke parole if the defendant
54 fails to comply with the order. In determining whether to revoke probation or parole, the court or
55 Parole Board shall consider the defendant's employment status, earning ability, financial
56 resources, the willfulness of the defendant's failure to pay, and any other special circumstances
57 that may have a bearing on the defendant's ability to pay.

58 (h) An order of restitution may be enforced by the state or a victim named in the order to
59 receive the restitution in the same manner as a judgment in a civil action.

60 (i) Notwithstanding any provision of this section to the contrary, the court may order, in
61 addition to or in lieu of, restitution, that a defendant be required to contribute monetarily, or through
62 hours of service, to a local crime victim's assistance program or juvenile mediation program which
63 meets the following requirements:

64 (1) The program is approved by a circuit judge presiding in the judicial circuit; and

65 (2) The program is a nonprofit organization certified as a corporation in this state, and is
66 governed by a board of directors.

NOTE: The purpose of this bill is to require courts to order restitution to victims of crime;
providing for consideration of economic hardship within the order; and, providing for the
definition of any person compensating a victim for loss to include the West Virginia Crime
Victims Compensation Fund for restitution purposes.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.