

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 264**

BY SENATORS TRUMP, HAMILTON, CLINE, AND TARR

[Originating in the Committee on the Judiciary;

Reported on January 22, 2019]



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 where it is economically  
3 practicable; providing for consideration of economic hardship within the order; and  
4 providing for the definition of any person compensating a victim for loss to include the  
5 West Virginia Crime Victims Compensation Fund for purposes of receiving restitution for  
6 funds paid to a crime victim.

*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 practicable 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 paragraph (A) of this subdivision is impossible,  
15 impractical, or inadequate, pay an amount equal to the greater of: (i) The value of the property on  
16 the date of sentencing; or (ii) the value of the property on the date of the damage, loss, or

17 destruction less the value (as of the date the property is returned) of any part of the property that  
18 is returned;

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

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

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

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

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

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

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

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

37 (e) The court shall not impose restitution with respect to a loss for which the victim has  
38 received or is to receive compensation from a third party: ~~except that the~~ Provided, That the court  
39 may, in the interest of justice, order restitution to any person who has compensated the victim for  
40 loss to the extent that the person paid the compensation. An order of restitution shall require that  
41 all restitution to victims under the order be made before any restitution to any other person under

42 the order is made. As used in this section, the term “any person who has compensated the victim  
43 for loss” shall include the West Virginia Crime Victims Compensation Fund.

44 (f) The court may require that such defendant make restitution under this section within a  
45 specified period or in specified installments. The end of the period or the last installment shall not  
46 be later than: ~~(i)~~ (1) The end of the period of probation, if probation is ordered; ~~(ii)~~ (2) five years  
47 after the end of the term of imprisonment imposed, if the court does not order probation; and ~~(iii)~~  
48 (3) five years after the date of sentencing in any other case.

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

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

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

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

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

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

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