

# WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

**Senate Bill 264**

SENATORS TRUMP, HAMILTON, CLINE, AND TARR, *original*

*sponsors*

[Passed March 8, 2019; in effect 90 days from  
passage]



1 AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended,  
2 relating 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 to the greatest extent economically practicable when considering the defendant's financial  
5 circumstances.

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

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

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

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

12 or

13 (B) If return of the property under paragraph (A) of this subdivision is impossible,  
14 impractical, or inadequate, pay an amount equal to the greater of: (i) The value of the property on  
15 the date of sentencing; or (ii) the value of the property on the date of the damage, loss, or  
16 destruction less the value (as of the date the property is returned) of any part of the property that  
17 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 from a third party: *Provided*, That the court may, in the  
38 interest of justice, order restitution to any person who has compensated the victim for loss to the  
39 extent that the person paid the compensation. An order of restitution shall require that all  
40 restitution to victims under the order be made before any restitution to any other person under the  
41 order is made. As used in this section, the term "any person who has compensated the victim for  
42 loss" shall include the West Virginia Crime Victims Compensation Fund.

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: (1) The end of the period of probation, if probation is ordered; (2) five years after  
46 the end of the term of imprisonment imposed, if the court does not order probation; and (3) five  
47 years 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.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2019.

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*Governor*