

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **Senate Bill 522**

BY SENATORS TRUMP, WELD, AND RUCKER

[Introduced January 16, 2020; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as  
 2 amended, all relating to compensation awards to victims of crimes; providing for an altered  
 3 definition of an “allowable expense”; establishing conditions to satisfy reporting  
 4 requirements for juvenile abuse and neglect cases; providing for expanded benefits for  
 5 juvenile victims of abuse and neglect cases; and establishing agency authority to file an  
 6 application on behalf of a minor child for expanded benefits for juvenile victims of abuse  
 7 and neglect cases.

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

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

**§14-2A-3. Definitions.**

1 As used in this article, the term:

2 ~~(a)~~ “Claimant” means any of the following persons, whether residents or nonresidents of  
 3 this state, who claim an award of compensation under this article:

4 (1) A victim, except the term “victim” does not include a nonresident of this state where  
 5 the criminally injurious act did not occur in this state;

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

8 (3) A third person, other than a collateral source, who legally assumes or voluntarily pays  
 9 the obligations of a victim or a victim's dependent when the obligations are incurred as a result of  
 10 the criminally injurious conduct that is the subject of the claim;

11 (4) A person who is authorized to act on behalf of a victim, dependent or a third person  
 12 who is not a collateral source including, but not limited to, assignees, persons holding power of  
 13 attorney or others who hold authority to make or submit claims in place of or on behalf of a victim,  
 14 a dependent or third person who is not a collateral source and if the victim, dependent or third  
 15 person who is not a collateral source is a minor or other legally incompetent person, their duly  
 16 qualified fiduciary; and

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

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

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

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

27 (3) Social Security, Medicare and Medicaid;

28 (4) State-required, temporary, nonoccupational disability insurance or other disability  
29 insurance;

30 (5) Workers' compensation;

31 (6) Wage continuation programs of an employer;

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

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

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

38 (c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state,  
39 or in any state not having a victim compensation program, which poses a substantial threat of  
40 personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct"  
41 also includes criminally injurious conduct committed outside of the United States against a  
42 resident of this state. "Criminally injurious conduct" does not include conduct arising out of the

43 ownership, maintenance or use of a motor vehicle unless the person engaging in the conduct  
44 intended to cause personal injury or death or committed negligent homicide, driving under the  
45 influence of alcohol, controlled substances or drugs, leaving the scene of the accident or reckless  
46 driving.

47 (d) "Dependent" means an individual who received over half of his or her support from the  
48 victim. For the purpose of making this determination there shall be taken into account the amount  
49 of support received from the victim as compared to the entire amount of support the individual  
50 received from all sources including self-support. The term "support" includes, but is not limited to,  
51 food, shelter, clothing, medical and dental care and education. The term "dependent" includes a  
52 child of the victim born after his or her death.

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

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

60 (1) Reasonable charges incurred or to be incurred for reasonably needed medical care,  
61 including products, services and accommodations related to ~~including those for~~ medical and  
62 psychological care, ~~mental health counseling~~ prosthetic devices, eye glasses, dentures,  
63 rehabilitation and other remedial treatment and care but does not include that portion of a charge  
64 for a room in a hospital, clinic, convalescent home, nursing home or other institution engaged in  
65 providing nursing care and related services which is in excess of a reasonable and customary  
66 charge for semiprivate accommodations unless accommodations other than semiprivate  
67 accommodations are medically required;

68 (2) A total charge not in excess of \$10,000 for expenses in any way related to funerals,

69 cremations and burials;

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

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

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

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

79 ~~(g)~~ "Work loss" means loss of income from work that the injured person would have  
80 performed if he or she had not been injured and expenses reasonably incurred or to be incurred  
81 by him or her to obtain services in lieu of those he or she would have performed for income. "Work  
82 loss" is reduced by income from substitute work actually performed or to be performed by him or  
83 her or by income he or she would have earned in available appropriate substitute work that he or  
84 she was capable of performing but unreasonably failed to undertake. "Work loss" also includes  
85 loss of income from work by the parent or legal guardian of a minor victim who must miss work to  
86 take care of the minor victim.

87 ~~(h)~~ "Replacement services loss" means expenses reasonably incurred or to be incurred in  
88 obtaining ordinary and necessary services in lieu of those the injured person would have  
89 performed for the benefit of himself or herself or his or her family if he or she had not been injured.  
90 "Replacement services loss" does not include services an injured person would have performed  
91 to generate income.

92 ~~(i)~~ "Dependent's economic loss" means loss after a victim's death of contributions or things  
93 of economic value to his or her dependents but does not include services they would have  
94 received from the victim if he or she had not suffered the fatal injury. This amount is reduced by

95 expenses avoided by the dependent due to the victim's death.

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

101       ~~(k)~~ "Victim" means the following:

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

103       (A) Criminally injurious conduct;

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

105       (C) The good faith effort of the person to apprehend a person that the injured person has  
106 observed engaging in criminally injurious conduct or who the injured person has reasonable cause  
107 to believe has engaged in criminally injurious conduct immediately prior to the attempted  
108 apprehension.

109       ~~(l)~~ "Contributory misconduct" means any conduct of the claimant or of the victim through  
110 whom the claimant claims an award that is unlawful or intentionally tortious and that, without  
111 regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal  
112 relationship to the criminally injurious conduct that is the basis of the claim and includes the  
113 voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any  
114 controlled substance, when the intoxication has a causal connection or relationship to the injury  
115 sustained.

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

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

1 (a) Except as provided in subsection (b), section 10 of this article, the commissioner may  
2 not approve an award of compensation to a claimant who did not file his or her application for an  
3 award of compensation within two years after the date of the occurrence of the criminally injurious  
4 conduct that caused the injury or death for which he or she is seeking an award of compensation.

5 (b) The commissioner may not approve an award of compensation if the criminally  
6 injurious conduct upon which the claim is based was not reported to a law-enforcement officer or  
7 agency or, in the case of sexual offense, the ~~claimant~~ victim did not undergo a forensic medical  
8 examination, within 96 hours after the occurrence of the conduct, unless it is determined that good  
9 cause existed for the failure to report the conduct or undergo a forensic medical examination  
10 within the 96-hour period: *Provided*, That no reporting to a law-enforcement officer or agency or  
11 a forensic medical examination is required if the ~~claimant~~ victim is a juvenile in order for a  
12 commissioner to approve an award of compensation: *Provided, however, That the filing of a civil*  
13 *abuse and neglect petition in a circuit court shall satisfy the reporting requirement, thereby*  
14 *allowing the minor child who is the subject of the petition to file an application for benefits, with*  
15 *the claims process to proceed in accordance with this code. The agency filing the civil abuse and*  
16 *neglect petition shall be authorized to file an application for benefits on behalf of the minor child.*

17 (c) The commissioner may not approve an award of compensation to a claimant who is  
18 the offender or an accomplice of the offender who committed the criminally injurious conduct, nor  
19 to any claimant if the award would unjustly benefit the offender or his or her accomplice.

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

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

26 (f) After reaching a decision to approve an award of compensation, but prior to announcing  
27 the approval, the commissioner shall require the claimant to submit current information as to  
28 collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims  
29 Commission. The commissioner shall reduce an award of compensation or deny a claim for an  
30 award of compensation that is otherwise payable to a claimant to the extent that the economic  
31 loss upon which the claim is based is or will be recouped from other persons, including collateral  
32 sources, or if the reduction or denial is determined to be reasonable because of the contributory  
33 misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced  
34 or a claim is denied because of the expected recoupment of all or part of the economic loss of the  
35 claimant from a collateral source, the amount of the award or the denial of the claim shall be  
36 conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided,*  
37 That if it is thereafter determined that the claimant will not receive all or part of the expected  
38 recoupment, the claim shall be reopened and an award shall be approved in an amount equal to  
39 the amount of expected recoupment that it is determined the claimant will not receive from the  
40 collateral source, subject to the limitation set forth in subsection (g) of this section.

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

45 (2) In the event the victim's personal injuries are so severe as to leave the victim with a  
46 disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U.  
47 S. C. §423, the commission may award an additional amount, not to exceed \$100,000, for special  
48 needs attributable to the injury.

49 (h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be  
50 appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.



NOTE: The purpose of this bill is to provide additional benefits to juvenile victims of abuse and neglect cases for services not covered by Medicaid or other resources.

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