

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 204**

7 (By Senators Unger and Kessler (Mr. President))

8 \_\_\_\_\_  
9 [Originating in the Committee on Finance;  
10 reported February 24, 2014.]

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13  
14 A BILL to amend and reenact §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-  
15 14 and §14-2A-18 of the Code of West Virginia, 1931, as  
16 amended, all relating to compensation awards to victims of  
17 crimes generally; redefining terms; increasing the amount of  
18 victim relocation costs; allowing student loans obtained by a  
19 victim to be treated as a lost scholarship in certain  
20 instances; modifying required time period in which a claimant  
21 should report offense to law enforcement; clarifying that,  
22 absent the identity of a perpetrator being unknown, a criminal  
23 complaint being filed is a prerequisite to filing a claim;  
24 allowing victims of sexual offenses to undergo a forensic  
25 examination rather than reporting to law enforcement;  
26 permitting the Court of Claims to hire two additional claim

1 investigators; and permitting claim investigators to acquire  
2 autopsy reports from the State Medical Examiner.

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

4 That §14-2A-3, §14-2A-9, §14-2A-12, §14-2A-14 and §14-2A-18 of  
5 the Code of West Virginia, 1931, as amended, be amended and  
6 reenacted, all to read as follows:

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

8 **§14-2A-3. Definitions.**

9 As used in this article, the term:

10 (a) "Claimant" means any of the following persons, whether  
11 residents or nonresidents of this state, who claim an award of  
12 compensation under this article:

13 (1) A victim, except the term "victim" does not include a  
14 nonresident of this state where the criminally injurious act did  
15 not occur in this state;

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

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

24 (4) A person who is authorized to act on behalf of a victim,  
25 dependent or a third person who is not a collateral source  
26 including, but not limited to, assignees, persons holding power of

1 attorney or others who hold authority to make or submit claims in  
2 place of or on behalf of a victim, a dependent or third person who  
3 is not a collateral source and if the victim, dependent or third  
4 person who is not a collateral source is a minor or other legally  
5 incompetent person, their duly qualified fiduciary; and

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

9 ~~(6) A person who owns real property damaged by the operation~~  
10 ~~of a methamphetamine laboratory without the knowledge or consent of~~  
11 ~~the owner of the real property.~~

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

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

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

24 (3) Social Security, Medicare and Medicaid;

25 (4) State-required, temporary, nonoccupational disability  
26 insurance or other disability insurance;

- 1 (5) Workers' compensation;
- 2 (6) Wage continuation programs of an employer;
- 3 (7) Proceeds of a contract of insurance payable to the victim  
4 or claimant for loss that was sustained because of the criminally  
5 injurious conduct;
- 6 (8) A contract providing prepaid hospital and other health  
7 care services or benefits for disability; and
- 8 (9) That portion of the proceeds of all contracts of insurance  
9 payable to the claimant on account of the death of the victim which  
10 exceeds \$25,000.

11 (c) "Criminally injurious conduct" means conduct that occurs  
12 or is attempted in this state, or in any state not having a victim  
13 compensation program, which poses a substantial threat of personal  
14 injury or death and is punishable by fine or imprisonment. ~~or death~~  
15 ~~or would be so punishable but for a finding by a court of competent~~  
16 ~~jurisdiction that the person committing the crime lacked capacity.~~  
17 "Criminally injurious conduct" also includes criminally injurious  
18 conduct committed outside of the United States against a resident  
19 of this state. "Criminally injurious conduct" does not include  
20 conduct arising out of the ownership, maintenance or use of a motor  
21 vehicle unless the person engaging in the conduct intended to cause  
22 personal injury or death or committed negligent homicide, driving  
23 under the influence of alcohol, controlled substances or drugs,  
24 leaving the scene of the accident or reckless driving.

25 (d) "Dependent" means an individual who received over half of  
26 his or her support from the victim. For the purpose of making this

1 determination there shall be taken into account the amount of  
2 support received from the victim as compared to the entire amount  
3 of support the individual received from all sources including  
4 self-support. The term "support" includes, but is not limited to,  
5 food, shelter, clothing, medical and dental care and education.  
6 The term "dependent" includes a child of the victim born after his  
7 or her death.

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

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

17 (1) Reasonable charges incurred or to be incurred for  
18 reasonably needed products, services and accommodations including  
19 those for medical care, mental health counseling, prosthetic  
20 devices, eye glasses, dentures, rehabilitation and other remedial  
21 treatment and care but does not include that portion of a charge  
22 for a room in a hospital, clinic, convalescent home, nursing home  
23 or other institution engaged in providing nursing care and related  
24 services which is in excess of a reasonable and customary charge  
25 for semiprivate accommodations unless accommodations other than  
26 semiprivate accommodations are medically required;

1 (2) A total charge not in excess of \$10,000 for expenses in  
2 any way related to funerals, cremations and burials;

3 ~~(3) A charge, not to exceed \$10,000, for cleanup of real~~  
4 ~~property damaged by a methamphetamine laboratory or a charge not to~~  
5 ~~exceed \$1,000 for any other crime scene cleanup;~~

6 ~~(4)~~ (3) Victim relocation costs not to exceed ~~\$2,000~~ \$2,500;

7 ~~(5)~~ (4) Reasonable travel expenses not to exceed \$1,000 for a  
8 claimant to attend court proceedings conducted for the prosecution  
9 of the offender;

10 ~~(6)~~ (5) Reasonable travel expenses for a claimant to return a  
11 person who is a minor or incapacitated adult who has been  
12 unlawfully removed from this state to another state or country if  
13 the removal constitutes a crime under the laws of this state which  
14 may not exceed \$2,000 for expenses to another state or \$3,000 to  
15 another country; and

16 ~~(7)~~ (6) Reasonable travel expenses for the transportation of  
17 a victim to and from a medical facility.

18 (g) "Work loss" means loss of income from work that the  
19 injured person would have performed if he or she had not been  
20 injured and expenses reasonably incurred or to be incurred by him  
21 or her to obtain services in lieu of those he or she would have  
22 performed for income. "Work loss" is reduced by income from  
23 substitute work actually performed or to be performed by him or her  
24 or by income he or she would have earned in available appropriate  
25 substitute work that he or she was capable of performing but  
26 unreasonably failed to undertake. "Work loss" also includes loss

1 of income from work by the parent or legal guardian of a minor  
2 victim who must miss work to take care of the minor victim.

3 (h) "Replacement services loss" means expenses reasonably  
4 incurred or to be incurred in obtaining ordinary and necessary  
5 services in lieu of those the injured person would have performed  
6 for the benefit of himself or herself or his or her family if he or  
7 she had not been injured. "Replacement services loss" does not  
8 include services an injured person would have performed to generate  
9 income.

10 (i) "Dependent's economic loss" means loss after a victim's  
11 death of contributions or things of economic value to his or her  
12 dependents but does not include services they would have received  
13 from the victim if he or she had not suffered the fatal injury.  
14 This amount is reduced by expenses avoided by the dependent due to  
15 the victim's death.

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

23 (k) "Victim" means the following:

24 ~~(1)~~ A person who suffers personal injury or death as a result  
25 of any one of the following:

26 (A) Criminally injurious conduct;

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

3 (C) The good faith effort of the person to apprehend a person  
4 that the injured person has observed engaging in criminally  
5 injurious conduct or who the injured person has reasonable cause to  
6 believe has engaged in criminally injurious conduct immediately  
7 prior to the attempted apprehension.

8 ~~(2) The owner of real property damaged by the operation of a~~  
9 ~~methamphetamine laboratory which operation was without his or her~~  
10 ~~knowledge or consent.~~

11 (1) "Contributory misconduct" means any conduct of the  
12 claimant or of the victim through whom the claimant claims an award  
13 that is unlawful or intentionally tortious and that, without regard  
14 to the conduct's proximity in time or space to the criminally  
15 injurious conduct, has a causal relationship to the criminally  
16 injurious conduct that is the basis of the claim and includes the  
17 voluntary intoxication of the claimant, either by the consumption  
18 of alcohol or the use of any controlled substance, when the  
19 intoxication has a causal connection or relationship to the injury  
20 sustained.

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



1 **§14-2A-9. Claim investigators; compensation and expenses;**  
2 **paralegals and support staff.**

3 The Court of Claims is hereby authorized to hire not more than  
4 ~~two~~ four claim investigators to be employed within the Office of  
5 the clerk of the Court of Claims, who shall carry out the functions  
6 and duties set forth in section twelve of this article. Claim  
7 investigators shall serve at the pleasure of the Court of Claims  
8 and under the administrative supervision of the Clerk of the Court  
9 of Claims. The compensation of claim investigators shall be fixed  
10 by the court, and such compensation, together with travel, clerical  
11 and other expenses of the Clerk of the Court of Claims relating to  
12 a claim investigator carrying out his or her duties under this  
13 article, including the cost of obtaining reports required by the  
14 investigator in investigating a claim, shall be payable from the  
15 crime victims compensation fund as appropriated for such purpose by  
16 the Legislature.

17 The Court of Claims is hereby authorized to hire as support  
18 staff such paralegal or paralegals and secretary or secretaries to  
19 be employed within the Office of the Clerk of the Court of Claims,  
20 necessary to carry out the functions and duties of this article.  
21 Such support staff shall serve at the will and pleasure of the  
22 Court of Claims and under the administrative supervision of the  
23 Clerk of the Court of Claims.

24 **§14-2A-12. Investigation and recommendations by claim**  
25 **investigator.**

26 (a) The clerk of the Court of Claims shall transmit a copy of

1 the application to the claim investigator within seven days after  
2 the filing of the application.

3 (b) The claim investigator, upon receipt of an application for  
4 an award of compensation from the Clerk of the Court of Claims,  
5 shall investigate the claim. After completing the investigation,  
6 the claim investigator shall make a written finding of fact and  
7 recommendation concerning an award of compensation. He or she  
8 shall file with the clerk the finding of fact and recommendation  
9 and all information or documents that he or she used in his or her  
10 investigation: *Provided*, That the claim investigator shall not  
11 file information or documents which have been the subject of a  
12 protective order entered under the provisions of subsection (c) of  
13 this section.

14 (c) The claim investigator, while investigating the claim, may  
15 require the claimant to supplement the application for an award of  
16 compensation with any further information or documentary materials,  
17 including any medical report readily available, which may lead to  
18 any relevant facts aiding in the determination of whether, and the  
19 extent to which, a claimant qualifies for an award of compensation.

20 The claim investigator, while investigating the claim, may  
21 also require law-enforcement officers and prosecuting attorneys  
22 employed by the state or any political subdivision thereof, to  
23 provide him or her with reports, information, witness statements or  
24 other data gathered in the investigation of the criminally  
25 injurious conduct that is the basis of any claim to enable him or  
26 her to determine whether, and the extent to which, a claimant

1 qualifies for an award of compensation. The prosecuting attorney  
2 and any officer or employee of the prosecuting attorney or of the  
3 law-enforcement agency shall be immune from any civil liability  
4 that might otherwise be incurred as the result of providing such  
5 reports, information, witness statements or other data relating to  
6 the criminally injurious conduct to the claim investigator.

7 The claim investigator, while investigating the claim, may  
8 obtain autopsy reports including results from the Office of the  
9 State Medical Examiner to be used solely for determining  
10 eligibility for compensation awards.

11 Upon motion of any party, court or agency from whom such  
12 reports, information, witness statements or other data is sought,  
13 and for good cause shown, the court may make any order which  
14 justice requires to protect a witness or other person, including,  
15 but not limited to, the following: (1) That the reports,  
16 information, witness statements or other data not be made  
17 available; (2) that the reports, information, witness statements or  
18 other data may be made available only on specified terms and  
19 conditions, including a designation of time and place; (3) that the  
20 reports, information, witness statements or other data be made  
21 available only by a different method than that selected by the  
22 claim investigator; (4) that certain matters not be inquired into,  
23 or that the scope of the claim investigator's request be limited to  
24 certain matters; (5) that the reports, information, witness  
25 statements or other data be examined only by certain persons  
26 designated by the court; (6) that the reports, information, witness

1 statements or other data, after being sealed, be opened only by  
2 order of the court; and (7) that confidential information or the  
3 identity of confidential witnesses or informers not be disclosed,  
4 or disclosed only in a designated manner.

5         However, in any case wherein the claim investigator has reason  
6 to believe that his or her investigation may interfere with or  
7 jeopardize the investigation of a crime by law-enforcement  
8 officers, or the prosecution of a case by prosecuting attorneys, he  
9 or she shall apply to the Court of Claims, or a judge thereof, for  
10 an order granting leave to discontinue his or her investigation for  
11 a reasonable time in order to avoid such interference or  
12 jeopardization. When it appears to the satisfaction of the court,  
13 or judge, upon application by the claim investigator or in its own  
14 discretion, that the investigation of a case by the claim  
15 investigator will interfere with or jeopardize the investigation or  
16 prosecution of a crime, the court, or judge, shall issue an order  
17 granting the claim investigator leave to discontinue his or her  
18 investigation for such time as the court, or judge, deems  
19 reasonable to avoid such interference or jeopardization.

20         (d) The finding of fact that is issued by the claim  
21 investigator pursuant to subsection (b) of this section shall  
22 contain the following:

23         (1) Whether the criminally injurious conduct that is the basis  
24 for the application did occur, the date on which the conduct  
25 occurred and the exact nature of the conduct;

26         (2) If the criminally injurious conduct was reported to a

1 law-enforcement officer or agency, the date on which the conduct  
2 was reported and the name of the person who reported the conduct;  
3 or the reasons why the conduct was not reported to a  
4 law-enforcement officer or agency; or the reasons why the conduct  
5 was not reported to a law-enforcement officer or agency within  
6 seventy-two hours after the conduct occurred;

7 (3) The exact nature of the injuries that the victim sustained  
8 as a result of the criminally injurious conduct;

9 (4) If the claim investigator is recommending that an award be  
10 made, a specific itemization of the economic loss that was  
11 sustained by the victim, the claimant or a dependent as a result of  
12 the criminally injurious conduct;

13 (5) If the claim investigator is recommending that an award be  
14 made, a specific itemization of any benefits or advantages that the  
15 victim, the claimant or a dependent has received or is entitled to  
16 receive from any collateral source for economic loss that resulted  
17 from the conduct;

18 (6) Whether the claimant is the spouse, parent, child, brother  
19 or sister of the offender, or is similarly related to an accomplice  
20 of the offender who committed the criminally injurious conduct;

21 (7) Any information which might be a basis for a reasonable  
22 reduction or denial of a claim because of contributory misconduct  
23 of the claimant or of a victim through whom he or she claims;

24 (8) Any additional information that the claim investigator  
25 deems to be relevant to the evaluation of the claim.

26 (e) The recommendation that is issued by the claim

1 investigator pursuant to subsection (b) of this section shall  
2 contain the following:

3 (1) Whether an award of compensation should be made to the  
4 claimant and the amount of the award;

5 (2) If the claim investigator recommends that an award not be  
6 made to the claimant, the reason for his or her decision.

7 (f) The claim investigator shall file his or her finding of  
8 fact and recommendation with the clerk within six months after the  
9 filing of the application: *Provided*, That where there is active  
10 criminal investigation or prosecution of the person or persons  
11 alleged to have committed the criminally injurious conduct which is  
12 the basis for the claimant's claim, the claim investigator shall  
13 file his or her finding of fact and recommendation within six  
14 months after the first of any final convictions or other final  
15 determinations as to innocence or guilt, or any other final  
16 disposition of criminal proceedings. In any case, an additional  
17 time period may be provided by order of any Court of Claims judge  
18 or commissioner upon good cause shown.

19 **§14-2A-14. Grounds for denial of claim or reduction of awards;**  
20 **maximum awards.**

21 (a) Except as provided in subsection (b), section ten of this  
22 article, the judge or commissioner may not approve an award of  
23 compensation to a claimant who did not file his or her application  
24 for an award of compensation within two years after the date of the  
25 occurrence of the criminally injurious conduct that caused the  
26 injury or death for which he or she is seeking an award of

1 compensation.

2 (b) The judge or commissioner may not approve an award of  
3 compensation if the criminally injurious conduct upon which the  
4 claim is based was not reported to a law-enforcement officer or  
5 agency or, in the case of sexual offense, the claimant did not  
6 undergo a forensic medical examination, within ~~seventy-two~~ ninety-  
7 six hours after the occurrence of the conduct, unless it is  
8 determined that good cause existed for the failure to report the  
9 conduct or undergo a forensic medical examination within the ~~72-~~  
10 ~~hour~~ 96-hour period.

11 (c) The judge or commissioner may not approve an award of  
12 compensation to a claimant who is the offender or an accomplice of  
13 the offender who committed the criminally injurious conduct, nor to  
14 any claimant if the award would unjustly benefit the offender or  
15 his or her accomplice.

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

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

24 (f) After reaching a decision to approve an award of  
25 compensation, but prior to announcing the approval, the judge or  
26 commissioner shall require the claimant to submit current

1 information as to collateral sources on forms prescribed by the  
2 Clerk of the Court of Claims. The judge or commissioner shall  
3 reduce an award of compensation or deny a claim for an award of  
4 compensation that is otherwise payable to a claimant to the extent  
5 that the economic loss upon which the claim is based is or will be  
6 recouped from other persons, including collateral sources, or if  
7 the reduction or denial is determined to be reasonable because of  
8 the contributory misconduct of the claimant or of a victim through  
9 whom he or she claims. If an award is reduced or a claim is denied  
10 because of the expected recoupment of all or part of the economic  
11 loss of the claimant from a collateral source, the amount of the  
12 award or the denial of the claim shall be conditioned upon the  
13 claimant's economic loss being recouped by the collateral source:  
14 *Provided*, That if it is thereafter determined that the claimant  
15 will not receive all or part of the expected recoupment, the claim  
16 shall be reopened and an award shall be approved in an amount equal  
17 to the amount of expected recoupment that it is determined the  
18 claimant will not receive from the collateral source, subject to  
19 the limitation set forth in subsection (g) of this section.

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

26 (2) In the event the victim's personal injuries are so severe



1 as to leave the victim with a disability, as defined in Section 223  
2 of the Social Security Act, as amended, as codified in 42 U. S. C.  
3 §423, the court may award an additional amount, not to exceed  
4 \$100,000, for special needs attributable to the injury.

5 (h) If an award of compensation of \$5,000 or more is made to  
6 a minor, a guardian shall be appointed pursuant to the provisions  
7 of article ten, chapter forty-four of this code to manage the  
8 minor's estate.

9 **§14-2A-18. Effect of no criminal charges being filed or**  
10 **conviction of offender.**

11 The court, or a judge or commissioner thereof, may approve an  
12 award of compensation whether or not any person is ~~prosecuted or~~  
13 convicted for committing the conduct that is the basis of the  
14 award. The filing of a criminal charge shall be a prerequisite for  
15 receipt of compensation unless it is determined that no charges  
16 were filed due to the identity of the perpetrator being unknown.  
17 Proof of conviction of a person whose conduct gave rise to a claim  
18 is conclusive evidence that the crime was committed, unless an  
19 application for rehearing, an appeal of the conviction or  
20 certiorari is pending, or a rehearing or new trial has been  
21 ordered.

22 The court, or a judge or commissioner thereof, shall suspend,  
23 upon a request of the claim investigator, the proceedings in any  
24 claim for an award of compensation pending disposition of a  
25 criminal prosecution that has been commenced or is imminent.

