

West Virginia

Key Statute Citations

- W.Va. Code §61-11A-6 (2004)

Organization/Administration

The attorney general is responsible for establishing rules, regulations and guidelines with respect to victims' rights. The prosecutor's advisory council provides advice, assistance, training and leadership to the offices of county prosecuting attorneys throughout the state in criminal and civil cases that involve child abuse or neglect or sexual assault or sexual abuse of children. The council may seek funds and programs to provide each prosecuting attorney's office with a staff person to assist children who are crime victims to obtain services and assistance from other agencies and programs in the community.

Who Is a Victim? (§14-2A-3(k))

A victim for purposes of victims' rights is a direct victim of crime or one member of a victim's immediate family.

Victims' Rights Constitutional Amendment/Statutory Victim Bill of Rights (§61-11A-6)

The West Virginia Code contains in §61-11A-6 an enacted state guidelines for fair treatment of crime victims and witnesses in the criminal justice system (see all sections below).

Victim Notice (§61-11A-6,(a), §61-11A-8)

Victims must be notified of:

- The arrest of the accused.
- Availability of a victims' compensation fund.
- Availability of emergency medical services and community-based victim treatment programs.
- The role of the victim in the criminal justice process, including what they can expect from the system and what the system expects from them.
- Information about steps that law enforcement agencies and prosecuting attorneys can take to protect victims and witnesses from intimidation.
- The date, time and place of the sentencing hearing; any changes in schedule; and the victim's right to submit a written or oral statement.
- The date of a parole hearing and the victim's right to submit a written statement to the Parole Board and to attend the hearing to be heard there.
- Release of the offender on parole.
- Written notice that the victim may be notified prior to and upon the release of the defendant from confinement. This notice also must include instructions about how to request such notification.
- Escape by the offender, with such notice provided via telephone.

West Virginia operates an automated victim notification system. Victims are able to call a toll-free number and receive basic information about their offender. The system also automatically contacts the victim if the offender is released or escapes.

Victim Participation (§61-11A-3; §61-11A-2)

The victim may be present in any court and seated at the counsel table with the prosecutor or other attorney who is prosecuting the case. In addition, victims must be provided the opportunity:

- To present oral or written testimony at the sentencing hearing.
- To consult with prosecutor about dismissal of charges, release of the accused, plea negotiations, and pre-trial diversion programs being considered.

All pre-sentence reports must incorporate a victim impact statement prepared by the probation officer that identifies the victim and all economic losses and physical or psychological damage suffered by victim.

Victim Protection and Confidentiality (§61-11A-6(2); §61-11A-6(6))

Victims have the right to information about steps that law enforcement agencies and prosecuting attorneys can take to protect them from intimidation.

Victims also have the right to a separate, secure waiting area during proceedings.

All state agencies must cooperate to plan and develop programs relating to the prevention of crime and the fear of crime against the elderly.

Employment Rights (§61-11A-6(8))

Upon request, a victim has the right to receive assistance from police and the prosecutor in informing employers that the need for victim cooperation in the case may require absence from work.

Victims also have the right to receive assistance from the appropriate agencies in dealing with creditors if, as a result of the crime, they are subjected serious financial strain.

Property Rights (§61-11A-6(7))

Law enforcement agencies should promptly return victim's property held for evidentiary purposes unless there is a compelling law enforcement reason for retaining it.

Victim Compensation

(Source: Crime Victim Compensation Program Directory prepared by the National Association of Crime Victims Compensation Boards.)

West Virginia's crime victim compensation program is administered by the West Virginia Court of Claims, with the court's judges making final determinations on awards. The state treasury is in charge of collecting and depositing all money into the Crime Victims' Compensation Fund. The maximum award is \$25,000 in personal injury cases and \$35,000 in homicides. Compensable costs, with limits noted, are:

- Medical expenses.
- Mental health counseling.
- Lost wages or support.
- Funerals (\$4,000).
- Replacement services.
- Travel to obtain medical assistance.

- Rehabilitation.
- Attorney fees (paid at same as hourly rate as for a public defender).

Web address: <http://www.nacvcb.org/progdir/westvirginia.html>

Restitution (§61-11A-4)

Victims in West Virginia have the right to collect court-ordered restitution from a defendant convicted of a felony or misdemeanor that cause physical, psychological or economic injury or loss to a victim.

The victim may enforce an order of restitution in the same manner as any judgment in a civil action.

Notoriety for Profit (§§14-2B-4 through -5)

Every person, firm or other legal entity that contracts with a defendant must submit a copy of such contract to the prosecutor and pay over to the prosecutor any money that otherwise, by the terms of such contract, would be owed the defendant. The prosecutor must deposit such money in an interest-bearing escrow account.

Every defendant who contracts to receive any crime profits from any person, firm or other legal entity must submit a copy of such contract to the prosecutor and pay over to the prosecutor any money that otherwise, by the terms of such contract, would be owed to him or her. The prosecutor shall deposit such money in an interest-bearing escrow account.

Recent Legislation Passed in West Virginia

SB 406 (2004) (§61-11A-8)

Requires that victims of crime be notified by telephone when the defendant is released from custody.

Above information provided by National Conference of State Legislatures in November 2006