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HOUSE BILL NO. 1397

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 5, 2000)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §§ 19.2-11.01 and 19.2-368.11:1 of the Code of Virginia, relating to crime victims' rights to participate in plea agreement and to receive compensation.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-11.01 and 19.2-368.11:1 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter.

Following a crime, law-enforcement personnel shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2 and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone numbers in writing.

60 d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all
61 agencies and persons having such duties must have current victim addresses and telephone numbers
62 given by the victims.

63 4. Victim input.

64 a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim
65 impact statement prior to sentencing of a defendant and may provide information to any individual or
66 agency charged with investigating the social history of a person or preparing a victim impact statement
67 under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

68 b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding
69 pursuant to the provisions of § 19.2-265.01.

70 c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant
71 to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the
72 offense.

73 *d. Upon the request of the victim, the attorney for the Commonwealth shall keep the victim informed*
74 *and confer with the victim throughout the plea negotiation process and obtain the victim's views. If a*
75 *plea agreement recommends a specific sentence and a victim impact statement has been submitted by*
76 *the victim, the statement shall be presented to the court along with the proposed plea agreement. Prior*
77 *to offering or entering into a plea agreement involving a criminal offense wherein the defendant was*
78 *originally charged with a violent felony offense as defined in § 17.1-805, the attorney for the*
79 *Commonwealth shall: (i) inform the victim of the contents of the proposed plea agreement before it is*
80 *agreed upon and; (ii) discuss the case with the victim and obtain the victim's views regarding the*
81 *proposed plea agreement. The victim shall have the right to be present and, if the plea agreement*
82 *recommends a specific sentence, present a written impact statement at any proceeding in which a plea*
83 *agreement for the person accused of committing the criminal offense against the victim will be presented*
84 *to the court*

85 *The duty to confer under this subdivision d shall (i) not limit the ability of the attorney for the*
86 *Commonwealth to exercise his discretion concerning the handling of any criminal charge against the*
87 *defendant; (ii) shall not confer upon the defendant any substantive or procedural rights; and (iii) shall*
88 *not affect the validity of any plea entered by the defendant.*

89 5. Courtroom assistance.

90 a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be
91 disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the
92 conduct of the criminal proceeding.

93 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in
94 accordance with §§ 19.2-164 and 19.2-164.1.

95 c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing
96 in accordance with § 18.2-67.8 and, if a victim was fourteen years of age or younger on the date of the
97 offense and is sixteen or under at the time of the trial, two-way closed-circuit television may be used in
98 the taking of testimony in accordance with § 18.2-67.9.

99 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological
100 or economic harm as a direct result of the commission of a felony or of assault and battery in violation
101 of §§ 18.2-57, 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation
102 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated
103 in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal
104 guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person
105 who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not
106 mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal
107 offense against a victim as defined in clause (i) of this subsection.

108 C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,
109 the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided
110 with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness
111 assistance program. Each agency, officer or employee who has a responsibility or responsibilities to
112 victims under this chapter or other applicable law shall make reasonable efforts to become informed
113 about these responsibilities and to ensure that victims and witnesses receive such information and
114 services to which they may be entitled under applicable law, provided that no liability or cause of action
115 shall arise from the failure to make such efforts or from the failure of such victims or witnesses to
116 receive any such information or services.

117 § 19.2-368.11:1. Amount of award.

118 A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss
119 of earnings which results directly from incapacity incurred by a crime victim shall be payable during
120 total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to
121 sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly

122 compensation shall not exceed \$200. The victim's average weekly wages shall be determined as
123 provided in § 65.2-101.

124 B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial
125 loss of earnings which results directly from incapacity incurred by a crime victim shall be payable
126 during incapacity at a weekly rate equal to sixty-six and two-thirds percent of the difference between the
127 victim's average weekly wages before the injury and the weekly wages which the victim is able to earn
128 thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings
129 shall not exceed \$200 per week.

130 C. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime
131 entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the
132 provisions of §§ 65.2-512 and 65.2-515 in an amount not to exceed the maximum aggregate payment or
133 the maximum weekly compensation which would have been payable to the deceased victim under this
134 section.

135 D. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may
136 also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are
137 determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness
138 reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and
139 necessary services in lieu of those the victim would have performed, for the benefit of himself and his
140 family, if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not
141 to exceed \$3,500; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) mental health
142 counseling for survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4, not to exceed
143 \$1,000 2,500 per claim; (vi) reasonable and necessary moving expenses, not to exceed \$500, incurred
144 by a victim or survivors as defined under subdivisions A 2 and A 4 of § 19.2-368.4; and (vii) any other
145 reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death
146 upon which such claim is based, not otherwise specifically provided for.

147 E. Any claim made pursuant to this chapter shall be reduced by the amount of any payments
148 received or to be received as a result of the injury from or on behalf of the person who committed the
149 crime or from any other public or private source, including an emergency award by the Commission
150 pursuant to § 19.2-368.9.

151 F. To qualify for an award under this chapter, a claim must have a minimum value of \$100, and
152 payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to
153 payment for covered expenses, after being reduced as provided in subsection E, shall not exceed
154 \$15,000 in the aggregate.