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HOUSE BILL NO. 2261

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 19.2-11.01, 53.1-183 and 53.1-185 of the Code of Virginia, relating to crime victim and witness rights.

Patrons—Watts, Albo, Almand, Baskerville, Brink, Clement, Diamonstein, Hamilton, Jones, J.C., McDonnell, McEachin, Rust, Scott, Van Landingham and Woodrum; Senator: Mims

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.01, 53.1-183 and 53.1-185 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 this title 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 this title, 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.

58 c. Victims shall receive notification, if requested, subject to such reasonable procedures as the
59 Attorney General may require pursuant to § 2.1-124, from the Attorney General of the filing and
60 disposition of any appeal or habeas corpus proceeding involving their case.

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

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

68 f. *Victims and witnesses shall have the right to report to and request review by the Department of*
69 *Criminal Justice Services alleged violations of their rights and concerns regarding their treatment by*
70 *each agency, officer or employee who has a responsibility or responsibilities to victims or witnesses*
71 *under this chapter or other applicable law.*

72 4. Victim input.

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

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

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

82 5. Courtroom assistance.

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

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

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

92 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological
93 or economic harm as a direct result of the commission of a felony or of assault and battery in violation
94 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
95 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated
96 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
97 guardian of such a person who is a minor, or (iv) a spouse, parent, sibling or legal guardian of such a
98 person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim"
99 does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other
100 enumerated criminal offense against a victim as defined in clause (i) of this subsection.

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

110 D. *In order to promote the protection of victim and witness rights and the provision of information*
111 *and assistance authorized by this chapter or other applicable victims' rights laws, the Department of*
112 *Criminal Justice Services is authorized to receive and review reports made pursuant to subdivision 3. f.*
113 *of subsection A by victims and witnesses, alleging violations of their rights and concerns regarding their*
114 *treatment by each agency, officer or employee who has a responsibility or responsibilities to victims or*
115 *witnesses under this chapter or other applicable victims' rights laws.*

116 1. Availability of information and assistance.

117 a. *The Department shall maintain toll-free telephone access to provide crime victims and witnesses*
118 *with services including: information on victim and witness rights and referrals to available assistance*
119 *and services; crisis counseling and support; and assistance in protecting rights and securing services*

and making reports, pursuant to subdivision 3. f. of subsection A.

b. The Department shall provide an informational program to inform crime victims and witnesses, the general public, criminal justice officials, and related professionals about crime victim and witness rights and services.

c. The Department shall maintain data on calls received, established pursuant to subdivision a., and reports received pursuant to subdivision 3. f. of subsection A. Data maintained shall include the types of reports made, assistance requested, any actions taken, and the disposition of such reports.

d. The Department shall issue an annual report and recommendations based on a summary of (i) reports received pursuant to subdivision 3. f. of subsection A, and (ii) data maintained pursuant to subdivision c.

2. Investigation and resolution of reports.

The Department is authorized to investigate and seek to resolve reports made pursuant to subdivision 3. f. of subsection A. The Department shall determine the methods by which reports authorized by subsection 3. f. of subsection A are made, received, and acted upon and determine the scope and manner of investigations. The Department shall inform any agency, officer or employee of alleged violations and may act as a liaison between crime victims or witnesses and others when seeking to resolve reports. The Department may request and shall be given access to documents, records, and information and assistance that the Department considers necessary for the discharge of its responsibilities under this chapter and for the protection of victim and witness rights or the provision of services.

3. Confidentiality of records and information.

a. Department staff shall not disclose (i) the content of any document or record of which they become aware that is required by law to be kept confidential except upon order of a court of competent jurisdiction or (ii) the names of victims or witnesses who request anonymity.

b. All documentary and other evidence, information, and records received, maintained or developed in connection with specific reports or investigations is confidential and not subject to disclosure pursuant to the Virginia Freedom of Information Act, except that such evidence, information, and records may be shared among those individuals and agencies involved in the investigation or resolution to the extent necessary to facilitate the investigation, protect rights, or facilitate service delivery as authorized by this chapter. The Department shall inform victims and witnesses who requested review of alleged violations of their rights pursuant to subdivision 3. f. of subsection A of action taken by the Department.

c. The Department may report the results of an investigation to responsible disciplinary, investigative, or enforcement agencies if an investigation reveals information warranting possible sanctions or corrective action.

4. Immunity from civil liability.

Any designated representative of the Department who, in good faith with reasonable cause and without malice, performs duties authorized by this chapter, including acting to report, investigate or cause any investigation to be made regarding victim and witness rights and services, shall be immune from any civil liability that might otherwise be incurred or imposed as the result of the making of such report or investigation.

§ 53.1-183. Community criminal justice boards.

Each county or city or combination thereof developing and establishing a local pretrial services or a community-based probation program pursuant to the provisions of this article shall establish a community criminal justice board. Each county and city participating in a local pretrial or community-based probation program shall be represented on the community criminal justice board. In the event that one county or city appropriates funds to the program as part of a multijurisdictional effort, any other participating county or city shall be considered to be participating in a program if such locality appropriates funds to the program. Appointments to the board shall be made by each local governing body. In cases of multijurisdictional participation, unless otherwise agreed upon, each participating city or county shall have an equal number of appointments. Boards shall be composed of the number of members established by resolution or ordinance of each participating jurisdiction. Each board shall include, at a minimum, the following mandatory members: a member from each governing body or a city or county manager, county administrator or executive, or assistant or deputy appointed by the governing body; a judge of the general district court; a circuit court judge; a juvenile and domestic relations district court judge; a chief magistrate; one chief of police or the sheriff in a jurisdiction not served by a police department to represent law enforcement; an attorney for the Commonwealth; a public defender, and/or an attorney who is experienced in the defense of criminal matters; a sheriff or the regional jail administrator responsible for jails serving those jurisdictions involved in the local pretrial services and community-based probation program; a local educator; ~~and~~ a community services board administrator; and a local victim/witness program director or, if unavailable, a local victim

181 *advocate chosen by the Board.*

182 § 53.1-185. Responsibilities of community criminal justice boards.

183 On behalf of the counties, cities, or combinations thereof which they represent, the community
184 criminal justice boards shall have the responsibility to:

185 1. Advise on the development and operation of local pretrial services and community-based probation
186 programs and services pursuant to § 19.2-152.2 and § 53.1-182.1 for use by the courts in diverting
187 offenders from local correctional facility placements;

188 2. Assist community agencies and organizations in establishing and modifying programs and services
189 for offenders on the basis of an objective assessment of the community's needs and resources;

190 3. Evaluate and monitor community programs, services and facilities to determine their impact on
191 offenders;

192 4. Develop and amend the criminal justice plan in accordance with guidelines and standards set forth
193 by the Department of Criminal Justice Services and oversee the development and amendment of the
194 community-based corrections plan as required by § 53.1-82.1 for approval by participating local
195 governing bodies;

196 5. Review the submission of all criminal justice grants regardless of the source of funding;

197 6. Facilitate local involvement and flexibility in responding to the problem of crime in their
198 communities *and to ensuring the rights of crime victims and witnesses under § 19.2-11.01*; and

199 7. Do all things necessary or convenient to carry out the responsibilities expressly given in this
200 article.