

ENROLLED
HB2352ER

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 19.2-11.01 of the Code of Virginia, relating to crime victim and witness rights.

[H 2352]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-11.01 of the Code of Virginia is 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.

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

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in

57 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to
 58 the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and
 59 telephone numbers in writing.

60 e. 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. *In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall*
 74 *consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed*
 75 *plea agreement and (ii) to obtain the victim's views concerning plea negotiations. However, nothing in*
 76 *this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on*
 77 *behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not*
 78 *accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has*
 79 *complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the*
 80 *unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when*
 81 *subpoenaed, or change of address without notice.*

82 *Upon the victim's written request, the victim shall be notified in accordance with subdivision A. 3. b.*
 83 *of any proceeding in which the plea agreement will be tendered to the court.*

84 *The responsibility to consult with the victim under this subdivision shall not confer upon the*
 85 *defendant any substantive or procedural rights and shall not affect the validity of any plea entered by*
 86 *the defendant.*

87 5. Courtroom assistance.

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

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

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

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

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