

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 310

An Act to amend and reenact §§ 19.2-11.01, 19.2-29, 19.2-30, 19.2-32, 19.2-35, 19.2-71 and 19.2-82 of the Code of Virginia, relating to obsolete references.

[H 51]

Approved April 1, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.01, 19.2-29, 19.2-30, 19.2-32, 19.2-35, 19.2-71 and 19.2-82 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.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, 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 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.

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

4. Victim input.

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

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

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

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

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

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

5. Courtroom assistance.

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

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

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

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

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

§ 19.2-29. References to former sections, articles and chapters in Title 39.1.

Whenever in ~~Chapters~~ Chapter 3 (§ 19.2-26 et seq.) and 4 (~~§ 19.2-49 et seq.~~) of this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 39.1, as such title existed prior to January 1, 1974, are transferred in the same or modified form to a new section, article or chapter, and whenever any such former section, article or chapter is given a new number in ~~Chapters~~ Chapter 3 and 4 of this title all references to any such former section, article or chapter of

Title 39.1 appearing elsewhere in this Code than in ~~Chapters~~ *Chapter 3* and 4 of this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

§ 19.2-30. Abolition of justice of the peace system.

The office of justice of the peace having been abolished effective as of January 1, 1974, nevertheless, any justice of the peace in office December 31, 1973, may continue in office as a magistrate under the provisions of ~~Chapters~~ *Chapter 3* (§ 19.2-26 et seq.) and 4 (~~§ 19.2-49 et seq.~~) of this title for the remainder of the term for which he had been elected or appointed and shall be eligible for future appointment to serve as a magistrate notwithstanding § 19.2-37.

§ 19.2-32. References to justices of the peace.

References in law to justices of the peace shall be deemed to apply to magistrates unless the provisions of ~~Chapters~~ *Chapter 3* (§ 19.2-26 et seq.) and 4 (~~§ 19.2-49 et seq.~~) of this title shall render such reference inapplicable.

§ 19.2-35. Appointment; supervision generally.

Magistrates and any other personnel in the office of the magistrate shall be appointed by the chief judge of the circuit court having jurisdiction within the district. Each magistrate shall be appointed to serve the entire judicial district for which the appointment is made. The chief circuit judge shall have full supervisory authority over the magistrates so appointed, but may delegate this authority to the chief general district judge. Notwithstanding any other provision of law, the only methods for the selection of magistrates and ~~special magistrates~~ shall be as set out in this section and ~~Chapter 4~~ (~~§ 19.2-49 et seq.~~) of this title, respectively.

The chief judge may also appoint so many substitute magistrates as may be authorized by the Committee on District Courts. The order of appointment of such substitute magistrate shall specify the period such substitute magistrate shall serve and during this period such substitute magistrate shall exercise all the powers enumerated in § 19.2-45 in the judicial district for which the appointment is made.

If a magistrate of any district is absent or unable through sickness or other disability to perform his duties, the chief magistrate of that district may call upon any off-duty magistrate of an adjoining district to serve in a replacement capacity. When so designated, the replacement magistrate shall have all the authority and power of a magistrate of that district.

§ 19.2-71. Who may issue process of arrest.

A. Process for the arrest of a person charged with a criminal offense may be issued by the judge, or clerk of any circuit court, any general district court, any juvenile and domestic relations district court, or any magistrate as provided for in ~~Chapters~~ *Chapter 3* (§ 19.2-26 et seq.) and 4 (~~§ 19.2-49 et seq.~~) of this title.

B. No law-enforcement officer shall seek issuance of process by any judicial officer, for the arrest of a person for the offense of capital murder as defined in § 18.2-31, without prior authorization by the attorney for the Commonwealth. Failure to comply with the provisions of this subsection shall not be (i) a basis upon which a warrant may be quashed or deemed invalid, (ii) deemed error upon which a conviction or sentence may be reversed or vacated, or (iii) a basis upon which a court may prevent or delay execution of sentence.

§ 19.2-82. Procedure upon arrest without warrant.

A person arrested without a warrant shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If the magistrate or other issuing authority having jurisdiction has lawful probable cause upon which to believe that a criminal offense has been committed, and that the person arrested has committed such offense, he shall issue either a warrant under the provisions of § 19.2-72 or a summons under the provisions of § 19.2-73.

As used in this section the term "brought before a magistrate or other issuing authority having jurisdiction" shall include a personal appearance before such authority or any two-way electronic video and audio communication meeting the requirements of § 19.2-3.1, in order that the accused and the arresting officer may simultaneously see and speak to such magistrate or authority. If electronic means are used, any documents filed may be transmitted in accordance with § 19.2-3.1.

If a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183 through 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 through 19.2-134, if the issuing officer is a magistrate or other issuing officer having jurisdiction. If such warrant or summons is not issued, the person so arrested shall be released; ~~however, this section shall not bar a judge of a district court from proceeding in accord with the provisions of § 16.1-129.1.~~