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SENATE BILL NO. 1003

Offered January 8, 2003

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A BILL to amend and reenact §§ 2.2-511 and 19.2-11.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 53.1-21.1, relating to victims' rights.

 Patron—Mims

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511 and 19.2-11.01 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 53.1-21.1 as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (ix) of this subsection, (xi) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, and (xii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, *of the date, time and place* and *of the* disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

§ 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

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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, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

~~Following~~ As soon as practicable but within 72 hours after identifying a victim of a crime, the investigating law-enforcement ~~personnel~~ agency 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 *and law-enforcement contacts.*

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, *and whenever practical, the attorney for the Commonwealth shall provide a secure waiting area during court proceedings that does not place the victim in close proximity to the defendant or the defendant's family.*

c. *Victims shall be provided the address and telephone number of the office of the attorney for the Commonwealth that will be responsible for prosecuting the victim's case.*

d. *Victims shall be provided with the name and telephone number of an investigating law-enforcement agency employee whom the victim may contact if the victim has not been notified of an arrest in the victim's case within 6 months after the crime was reported to the law-enforcement agency.*

e. *Victims shall be provided with information about an accused's opportunity for pretrial release.*

f. *Victims shall be provided with the name and telephone number of an investigating law-enforcement agency employee whom the victim may contact to find out whether the accused has been released from custody.*

2. Financial and medical 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 *and shall be given the address and telephone number of the agencies that administer these provisions.*

d. *Victims shall be given information on the availability of medical services.*

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. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

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. *A victim also has the right to offer admissible evidence of the impact of the crime, which shall be considered by the court or jury in sentencing the defendant. The evidence may include the following: (i) a description of the nature and extent of any physical, psychological, or emotional injury suffered by the victim as a result of the offense committed by the defendant, (ii) an explanation of any economic or property loss suffered by the victim as a result of the offense committed by the defendant, and (iii) a request for restitution and an indication of whether the victim has applied for or received compensation under the Criminal Injuries Compensation Fund. No victim shall be required to offer evidence of the impact of the crime. No inference or conclusion shall be drawn from a victim's decision not to offer evidence of the impact of the crime. At the victim's request and with the consent of the defendant, a representative of the attorney for the Commonwealth may proffer evidence of the impact of the crime to the court.*

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 offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of 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 about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations, sentencing and any pretrial diversion programs.~~ 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) the provisions of this subdivision.~~ 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.

6. Posttrial assistance.

a. *Within 30 days after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the final disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if any, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.*

b. *Upon a defendant's giving notice of appeal to the Court of Appeals or the Supreme Court, the attorney for the Commonwealth shall forward to the Attorney General's office the victim's name, address and telephone number and the defendant's name. Upon receipt of this information, and thereafter as circumstances require, the Attorney General's office shall provide the victim with the following: (i) a clear and concise explanation of how the appellate process works, including information about possible*

actions that may be taken by the appellate court, (ii) notice of the filing and of the date, time and place of any appellate or habeas corpus proceedings, and (iii) the final disposition of an appeal or habeas corpus action.

c. If the defendant has been released on bail pending the outcome of the appeal, the agency that has custody of the defendant shall notify the investigating law-enforcement agency as soon as practicable and within 72 hours of receipt of the notification the investigating law-enforcement agency shall notify the victim that the defendant has been released.

d. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

7. Responsibility of agency with custody of defendant.

a. When the victim has otherwise filed a written request with the custodial agency, the custodial agency, whether a state, local or regional correctional facility or other custodial agency, shall notify the victim of (i) the projected date by which the defendant can be released from custody, calculated as accurately as possible, including good time credits if the sentence of incarceration exceeds 90 days; (ii) an inmate's assignment to a minimum custody unit and the address of the unit, including notice that the inmate's minimum custody status may lead to the inmate's participation in 1 or more community-based programs such as work release or supervised leaves in the community; (iii) the victim's right to submit any concerns to the agency with custody and the procedure for submitting such concerns; (iv) the defendant's escape from custody, within 72 hours, except that if a victim has notified the agency in writing that the defendant has issued a specific threat against the victim, the agency shall notify the victim as soon as possible and within 24 hours at the latest; (v) if the defendant escapes, the defendant's capture within 24 hours; (vi) the date the defendant is scheduled to be released from the facility 60 days prior to release, if practical, but in no event less than 7 days before release; and (vii) the defendant's death.

b. Notifications required by this subdivision shall be provided within 60 days of the date the custodial agency takes custody of the defendant or within 60 days of the event requiring notification, or as otherwise specified in subdivision A 7 a.

8. Responsibilities of adult probation and parole.

a. Adult probation and parole shall notify the victim of: (i) the defendant's regular conditions of probation or post-release supervision, special or added conditions, supervision requirements, and any subsequent changes; (ii) the date and location of any hearing to determine whether the defendant's supervision should be revoked, continued, modified or terminated and the final disposition of any such hearing; (iii) any restitution modification; (iv) the defendant's movement into or out of any intermediate sanction; (v) the defendant's absconding supervision, within 72 hours; (vi) the capture of an absconded defendant, within 72 hours; (vii) the date when the defendant is discharged or terminated; and (viii) the defendant's death.

b. Notifications required in this subdivision shall be provided within 30 days of the event requiring notification or as otherwise specified in subdivision A 7 a.

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 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.

§ 53.1-21.1. Confining prisoners away from victims.

If a victim, as defined in § 19.2-11.01, or an immediate family member of a victim requests that, for the safety of the victim or family member, a prisoner be confined outside the jurisdiction where the victim or family member resides or is employed, the Director shall make a reasonable effort to house the prisoner in a facility in another jurisdiction. If the prisoner is not so housed in another jurisdiction,

244 *the Director shall notify the victim or family member who made the request in writing.*

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