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HOUSE BILL NO. 3132

Offered January 18, 2007

A BILL to amend and reenact § 19.2-11.01 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:2, relating to employee leave for victims of crime.

 Patron—Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-11.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:2 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, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

As soon as practicable after identifying a victim of a crime, the investigating law-enforcement 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, the name, address and telephone number of the office of the attorney for the Commonwealth, and the name, address and telephone number of the investigating law-enforcement agency, and a summary of the victim's rights under § 40.1-28.7:2.

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 that does not place the victim in close proximity to the defendant or the defendant's family.

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.

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

63 c. Victims shall receive notification, if requested, subject to such reasonable procedures as the
64 Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and
65 disposition of any appeal or habeas corpus proceeding involving their case.

66 d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in
67 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to
68 the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have
69 provided their names, current addresses and telephone numbers in writing.

70 e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all
71 agencies and persons having such duties must have current victim addresses and telephone numbers
72 given by the victims. Victims shall also be advised that any such information given shall be confidential
73 as provided by § 19.2-11.2.

74 4. Victim input.

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

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

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

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

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

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

99 5. Courtroom assistance.

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

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

105 c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed
106 preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on
107 the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years
108 of age or younger at the time of the trial, that two-way closed-circuit television may be used in the
109 taking of testimony in accordance with § 18.2-67.9.

110 6. Post trial assistance.

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

116 b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had
117 custody of the defendant immediately prior to his release shall notify the victim as soon as practicable
118 that the defendant has been released.

119 c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to
120 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.

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, (iv) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or (v) 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.

§ 40.1-28.7:2. *Employers to allow crime victims leave to attend criminal proceedings.*

A. *As used in this section:*

"Criminal proceedings" means a proceeding at which the victim has the right or opportunity to appear involving a crime against the victim, including:

1. *The initial appearance of the person suspected of committing the criminal offense against the victim;*

2. *Any proceeding in which the court considers the post-arrest release of the person accused of committing a criminal offense against the victim or the conditions of that release;*

3. *Any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court;*

4. *Any presentencing or sentencing proceeding;*

5. *Any proceeding in which postconviction release from confinement will be considered;*

6. *Any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation of a person who is convicted of committing a criminal offense against the victim; or*

7. *Any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.*

"Undue hardship" means a significant difficulty and expense to a business and includes the consideration of the size of the employer's business and the employer's critical need of the employee.

"Victim" has the same meaning ascribed to the term in § 19.2-11.01.

B. Every employer shall allow an employee who is a victim of a crime to leave work to exercise the employee's right to be present at all criminal proceedings relating to a crime against the employee, as long as the employee has provided the employer with a copy of the form provided to the employee by the law-enforcement agency pursuant to subsection A of § 19.2-11.01 and, if applicable, provided the employer a copy of the notice of each scheduled criminal proceeding that is provided to the employee as victim. However, an employer may limit the leave provided under this section if the employee's leave creates an undue hardship to the employer's business.

C. An employer shall not dismiss an employee who is a victim of a crime because the employee exercises the right to leave work pursuant to subsection B.

D. An employer is not required to compensate an employee who is a victim of a crime when the employee leaves work pursuant to subsection B.

E. If an employee leaves work pursuant to subsection B, the employee may elect to use the employee's accrued paid vacation, personal leave, or sick leave.

F. An employer shall not refuse to hire or employ, to bar or to discharge from employment, or to discriminate against, an individual in compensation or other terms, conditions, or privileges of employment because the individual leaves work to attend a criminal proceeding pursuant to this section.

G. An employee may bring an action in a court of competent jurisdiction over the employer who took adverse action against the employee in violation of this section. The court may, in its discretion, award actual or punitive damages, including back pay with interest at the judgment rate as provided in

182 § 6.1-330.54, or injunctive relief.