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HOUSE BILL NO. 3132

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Obenshain
on February 20, 2007)

(Patron Prior to Substitute—Delegate Moran)

A BILL 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.

Be it enacted by the General Assembly of Virginia:

1. 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:

§ 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 sentencing proceeding;

5. Any proceeding in which postconviction release from confinement is 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 difficulty or expense to a business and includes the consideration of the size of the employer's business and the employer's 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 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 discharge an employee who is a victim of a crime solely 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. An employer shall not discharge from employment nor take adverse personnel action against an employee solely because the individual leaves work to attend a criminal proceeding pursuant to this section.

F. An employee who is discharged in violation of this section may bring an action in the general district court or circuit court having jurisdiction over the employer. Any such action shall be brought within 90 days from the alleged violation. The court may award up to three months back pay with interest at the judgment rate as provided in § 6.1-330.54. In any case where the employee prevails, the court shall award attorneys' fees from the amount recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

G. Nothing in § 19.2-11.01 or this section creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions. Causes of action based upon the public policies reflected herein and in § 19.2-11.01 shall be exclusively limited to subsection F.