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HOUSE BILL NO. 1995

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 19.2-11.01 and 19.2-305.4 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-374.1:3 and 19.2-305.1:1, relating to restitution; civil relief; victims of child pornography.*

 Patron—Janis

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.01 and 19.2-305.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-374.1:3 and 19.2-305.1:1 as follows:

§ 18.2-374.1:3. Civil relief for victims of child pornography; damages.

A. Any person who, while a minor, was a victim of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 may bring an action against the offender, regardless of whether the offender was convicted under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3. Any person awarded damages pursuant to this section shall be deemed to have sustained damages of at least \$150,000, regardless of whether such damages were sustained while the person was a minor or an adult, and shall also be awarded costs and reasonable attorney fees.

B. Notwithstanding the provisions of Chapter 4 (§ 8.01-228 et seq.) of Title 8.01, a person may bring an action pursuant to subsection A at any time regardless of when the conduct giving rise to the action occurred.

C. For purposes of this section, damages include damages for personal injury, emotional injury, and pain and suffering.

D. It is not a defense to an action brought pursuant to this section that the offender did not know the victim or commit the abuse depicted in the child pornography.

§ 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, 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

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59 of a crime, including information on their possible right to file a claim for compensation from the Crime
60 Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) ~~of this title~~ and on other
61 available assistance and services.

62 b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary
63 purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

64 c. Victims shall be advised that restitution is available for damages or loss resulting from an offense
65 and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, and 19.2-305.1:1,
66 Chapter 21.1 (§ 19.2-368.1 et seq.) ~~of this title~~, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title
67 58.1, and other applicable laws of the Commonwealth.

68 3. Notices.

69 a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to
70 ensure that employers of victims and witnesses will cooperate with the criminal justice process in order
71 to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii)
72 advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for
73 appearing in court pursuant to a summons or subpoena.

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

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

81 d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in
82 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to
83 the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have
84 provided their names, current addresses and telephone numbers in writing. Such notification may be
85 provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System
86 or other similar electronic or automated system.

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

91 4. Victim input.

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

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

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

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

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

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

116 5. Courtroom assistance.

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

120 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in

121 accordance with §§ 19.2-164 and 19.2-164.1.

122 c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed
123 preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on
124 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
125 of age or younger at the time of the trial, that two-way closed-circuit television may be used in the
126 taking of testimony in accordance with § 18.2-67.9.

127 6. Post trial assistance.

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

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

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

139 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological
140 or economic harm as a direct result of the commission of a felony or of assault and battery in violation
141 of § 18.2-57 or §—18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of
142 § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated in
143 violation of § 18.2-51.4 or §—18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal
144 guardian of such a person who is a minor, (iv) for the purposes of subdivision A 4 of this section only,
145 a current or former foster parent or other person who has or has had physical custody of such a person
146 who is a minor, for six months or more or for the majority of the minor's life, or (v) a spouse, parent,
147 sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim
148 of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who
149 commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

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

159 § 19.2-305.1:1. Restitution for victims of child pornography.

160 A. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be
161 ordered to pay restitution to the victim of the offense in the full amount of the damages or loss suffered
162 by the victim, including (i) medical services relating to physical, psychiatric, or psychological care; (ii)
163 physical or occupational therapy or rehabilitation; (iii) necessary transportation costs; (iv) temporary
164 housing costs; (v) child care expenses; (vi) lost income; (vii) attorney fees and other legal costs; and
165 (viii) any other losses suffered by the victim as a proximate result of the offense. For purposes of this
166 section, "victim" means a person who has been harmed as a result of the commission of an offense
167 under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

168 B. At the time of sentencing, the court shall determine the amount of restitution to be paid by the
169 defendant and the conditions thereof and shall receive and consider any plan for making restitution
170 submitted by the defendant. The court shall specify that sums paid under such order shall be paid to the
171 clerk, who shall disburse such sums as the court may direct. Any court desiring to participate in the
172 Setoff Debt Collection Act (§ 58.1-520 et seq.) for the purpose of providing restitution shall, at the time
173 of sentencing, obtain the social security number of the defendant.

174 C. The attorney for the Commonwealth shall make reasonable efforts to identify victims of offenses
175 under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 and notify them of their right to pursue a civil action
176 against the offenders.

177 D. If restitution is ordered to be paid by the defendant to the victim and the victim can no longer be
178 located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries
179 Compensation Fund for the benefit of crime victims. The administrator shall reserve a sum sufficient in
180 the Fund from which he shall make prompt payment to the victim for any proper claims. Before making
181 the deposit he shall record the name, last known address, and amount of restitution due each victim

182 *appearing from the clerk's report to be entitled to restitution.*

183 § 19.2-305.4. When interest to be paid on award of restitution.

184 The court, when ordering restitution pursuant to § 19.2-305 ~~or~~, 19.2-305.1, *or 19.2-305.1:1*, may
185 provide in the order for interest on the restitution. If the court orders the payment of interest, it shall
186 accrue from the date of the loss or damage unless the court specifies a different date in the order, at the
187 rate specified in § ~~6.1-330.54~~ 6.2-302.