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SENATE BILL NO. 457

Offered January 10, 2018

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A BILL to amend and reenact §§ 19.2-11.01, 19.2-11.2, and 19.2-269.2 of the Code of Virginia, relating to confidentiality of victim telephone numbers and email addresses in criminal cases.

Patron—Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.01, 19.2-11.2, and 19.2-269.2 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, 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 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

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59 Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of
60 any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current
61 addresses and telephone numbers.

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

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

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

75 f. Victims of sexual assault, as defined in § 19.2-11.5, shall be advised of their rights regarding
76 physical evidence recovery kits as provided in Chapter 1.2 (§ 19.2-11.5 et seq.).

77 4. Victim input.

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

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

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

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

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

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

102 5. Courtroom assistance.

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

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

108 c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed
109 preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on
110 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
111 of age or younger at the time of the trial, that two-way closed-circuit television may be used in the
112 taking of testimony in accordance with § 18.2-67.9.

113 6. Post trial assistance.

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

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

that the defendant has been released.

c. 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.

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) a felony, (b) assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, a violation of a protective order in violation of § 16.1-253.2 or 18.2-60.4, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or maiming or driving while intoxicated in violation of § 18.2-51.4 or 18.2-266, or (c) a delinquent act that would be a felony or a misdemeanor violation of any offense enumerated in clause (b) if committed by an adult; (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 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.

§ 19.2-11.2. Crime victim's right to nondisclosure of certain information; exceptions; testimonial privilege.

Upon request of any witness in a criminal prosecution under § 18.2-46.2, 18.2-46.3, or 18.2-248 or of any violent felony as defined by subsection C of § 17.1-805, or any crime victim, neither a law-enforcement agency, the attorney for the Commonwealth, the counsel for a defendant, a court nor the Department of Corrections, nor any employee of any of them, may disclose, except among themselves, the residential address, *any* telephone number, *email address*, or place of employment of the witness or victim or a member of the witness' or victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or Rules of the Supreme Court, (iii) necessary for law-enforcement purposes or preparation for court proceedings, or (iv) permitted by the court for good cause.

Except with the written consent of the victim of any crime involving any sexual assault, sexual abuse, or family abuse or the victim's next of kin if the victim is a minor and the victim's death results from any crime, a law-enforcement agency may not disclose to the public information that directly or indirectly identifies the victim of such crime except to the extent that disclosure is (a) of the site of the crime, (b) required by law, (c) necessary for law-enforcement purposes, or (d) permitted by the court for good cause. In addition, at the request of the victim to the Court of Appeals of Virginia or the Supreme Court of Virginia hearing, on or after July 1, 2007, the case of a crime involving any sexual assault or sexual abuse, no appellate decision shall contain the first or last name of the victim.

Nothing herein shall limit the right to examine witnesses in a court of law or otherwise affect the conduct of any criminal proceeding.

§ 19.2-269.2. Nondisclosure of addresses or telephone numbers of crime victims and witnesses.

During any criminal proceeding, upon motion of the defendant or the attorney for the Commonwealth, a judge may prohibit testimony as to the current residential or business address ~~or~~, *any* telephone number, *or email address* of a victim or witness if the judge determines that this information is not material under the circumstances of the case.