

LD3457112

HOUSE BILL NO. 2257

Offered January 23, 1995

A BILL to amend and reenact §§ 19.2-11.1, 19.2-265.01, 19.2-299, 19.2-299.1, 19.2-305.1, 53.1-155 and 53.1-160 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.01 and in Article 7 of Chapter 3 of Title 53.1 a section numbered 53.1-133.02, relating to the rights of crime victims and witnesses; penalty.

Patrons—Almand, Ball, Brickley, Cantor, Christian, Cohen, Connally, Cooper, Copeland, Crittenden, Cunningham, Darner, Davies, Diamonstein, Grayson, Hall, Howell, Hull, Johnson, Jones, J.C., Keating, Marshall, Mayer, McDonnell, Melvin, Mims, Moore, Plum, Puller, Reynolds, Robinson, Scott, Van Landingham and Woodrum; Senators: Calhoun, Colgan, Cross, Earley, Holland, C.A., Holland, E.M., Houck, Howell, Marsh, Reasor and Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-11.1, 19.2-265.01, 19.2-299, 19.2-299.1, 19.2-305.1, 53.1-155 and 53.1-160 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1.1 of Title 19.2 a section numbered 19.2-11.01 and in Article 7 of Chapter 3 of Title 53.1 a section numbered 53.1-133.02 as follows:

CHAPTER 1.1.

CRIME VICTIM AND WITNESS ASSISTANCE PROGRAMS RIGHTS ACT.

§ 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 Act 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 Act 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, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the assistance required by this Act.

1. Victim and witness protection.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, prosecution or defense 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.

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 Title 19.2 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 Title 19.2, § 58.1-520 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 from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified of any change in court dates in accordance with

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60 § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

61 c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent of
62 the escape, change of name, transfer, release or discharge of a prisoner pursuant to the provisions of
63 §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses and telephone
64 numbers.

65 d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all
66 agencies and persons having such duties must have current victim addresses and telephone numbers
67 given by the victims.

68 4. Victim input.

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

73 b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding
74 pursuant to the provisions of § 19.2-265.01 unless excluded by the court as a material witness.

75 5. Courtroom assistance.

76 a. Victims and witnesses shall be informed that their address and telephone number may not be
77 disclosed, pursuant to the provisions §§ 19.2-11.2 and 19.2-269.2, except when necessary for the
78 conduct of the criminal proceeding.

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

81 c. Victims of certain sexual offenses shall be advised that they may be entitled to closed preliminary
82 hearings in accordance with § 18.2-67.8 and, if a victim is twelve years of age or younger, to the use of
83 two-way closed-circuit television in the taking of testimony in accordance with § 18.2-67.9.

84 d. Juveniles alleged to be the victims of abuse or neglect or in need of services or supervision shall
85 be advised that they may be provided with the assistance of a court-appointed special advocate in
86 accordance with Article 1.4 (§ 9-173.6 et seq.) of Chapter 27 of Title 9.

87 B. For purposes of this Act, "victim" means (i) a person who has suffered physical, psychological or
88 economic harm as a direct result of the commission of a felony or of assault and battery in violation of
89 § 18.2-57, § 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of
90 § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation
91 of § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person
92 who is a minor, or (iv) a spouse, parent or legal guardian of such a person who is physically or
93 mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent,
94 child, spouse or legal guardian who commits a felony or other enumerated criminal offense against a
95 victim as defined in subdivision (i) of this subsection.

96 C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,
97 the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided
98 with copies of this Act. Each agency, officer or employee who has a responsibility or responsibilities to
99 victims under this Act or other applicable law shall make reasonable efforts to become informed about
100 these responsibilities and to ensure that victims and witnesses receive such information and services to
101 which they may be entitled under applicable law, provided that no liability or cause of action shall arise
102 from the failure to make such efforts or from the failure of such victims or witnesses to receive any such
103 information or services.

104 § 19.2-11.1. Establishment of crime victim-witness assistance programs; funding; minimum standards.

105 Any local governmental body which establishes, operates and maintains a crime victim and witness
106 assistance program, whose funding is provided in whole or part by grants administered by the
107 Department of Criminal Justice Services pursuant to § 9-173.3, shall observe the following guidelines:
108 operate the program in accordance with regulations which shall be established by the Department to
109 implement the provisions of the Crime Victim and Witness Rights Act and other applicable laws
110 establishing victims' rights.

111 1. In order that victims and witnesses receive protection from harm and threats of harm arising out
112 of their cooperation with law-enforcement, prosecution or defense efforts, they shall be provided with
113 information as to the level of protection available and be assisted in obtaining this protection from the
114 appropriate authorities.

115 2. Victims shall be informed of financial assistance and social services available as a result of being
116 a victim of a crime, including information on how to apply for assistance and services.

117 3. Victims and witnesses shall be provided, where available, a separate waiting area during court
118 proceedings that affords them privacy and protection from intimidation.

119 4. Victims shall be assisted, to the extent possible, in having any stolen property held by
120 law-enforcement agencies for evidentiary purposes returned promptly.

121 5. Victims and witnesses shall be 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.

6. Victims and witnesses shall receive prompt advance notification, whenever possible, of judicial proceedings relating to their case.

7. Victims shall be assisted in seeking restitution in accordance with the laws of the Commonwealth where the offense results in damage, loss, or destruction of the property of the victim of the offense or in cases resulting in bodily injury or death to the victim.

8. Victims and witnesses shall be expeditiously notified by appropriate personnel of any changes in court dates.

9. Victims of crime shall be notified of alternatives available regarding the use of victim impact statements at sentencing and victim input in the parole process.

10. Minor victims shall, whenever possible, be entitled to have an adult who is not a material witness and who is chosen by the minor, present in the courtroom during any trial proceedings with the permission of the court.

§ 19.2-265.01. Victims, certain members of the family and support persons not to be excluded.

In During the trial of every criminal case and in all court proceedings attendant to trial, whether before, during or after trial, including any proceedings occurring after an appeal by the defendant or the Commonwealth, at which attendance by the defendant is permitted, whether in a circuit or district court, any minor victim as defined in § 19.2-11.01, his parents or guardians, and the parents and spouse of a homicide victim, may remain in the courtroom during the trial. In any case involving a minor victim, the court may permit an adult chosen by the minor to be present in the courtroom during any proceedings in addition to or in lieu of the minor's parent or guardian.

However, if either the attorney for the Commonwealth or any defendant represents to the court that he intends to call *as a material witness any such person as a material witness (i) minor victim, his parent or guardian or adult chosen by him to be present in the courtroom or (ii) the spouse, parent or legal guardian of a victim who is physically or mentally incapacitated or was the victim of a homicide,* the court shall exclude that person from the trial or proceedings.

The attorney for the Commonwealth shall give prior notice of such trial and attendant proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim, at the address or telephone number, or both, provided by such person.

§ 19.2-299. (Effective July 1, 1995) Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court upon a felony charge or upon a charge of assault and battery in violation of § 18.2-57, § 18.2-57.1 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, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted ~~involved was a crime against the person~~ *felony*, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia

183 Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement
184 in advance of any parole hearing describing the impact of the offense upon him and his opinion
185 regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the
186 defendant as the Board may provide.

187 C. As part of any presentence investigation conducted pursuant to subsection A when the offense for
188 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)
189 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant
190 with illicit drug operations or markets.

191 § 19.2-299.1. When Victim Impact Statement required; contents; uses.

192 The presentence report prepared pursuant to § 19.2-299 shall, ~~on motion of the attorney for the~~
193 ~~Commonwealth~~ with the consent of the victim, ~~as defined in § 19.2-11.01, of a felony or of assault and~~
194 ~~battery in violation of § 18.2-57, § 18.2-57.1 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual~~
195 ~~battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while~~
196 ~~intoxicated in violation of § 18.2-266, in all cases involving noncapital murder, manslaughter, abduction,~~
197 ~~death or injury resulting from driving under the influence in violation of § 18.2-266, malicious~~
198 ~~wounding, robbery or criminal sexual assault, include a Victim Impact Statement and may, in the~~
199 ~~discretion of the court, include a Victim Impact Statement, in any other case except capital murder in~~
200 ~~which the court determines that the defendant, in committing the felony for which he has been~~
201 ~~convicted, may have caused significant physical, psychological or economic injury to the victim. For~~
202 ~~purposes of this section, a victim is (i) an individual who has suffered physical, psychological or~~
203 ~~economic harm as a direct result of the commission of a felony, (ii) a spouse, child, parent or legal~~
204 ~~guardian of a minor victim, or (iii) a spouse, child, parent or legal guardian of a victim of a homicide in~~
205 ~~noncapital cases. Victim Impact Statements in all cases involving capital murder shall be prepared and~~
206 ~~submitted in accordance with the provisions of § 19.2-264.5.~~

207 A Victim Impact Statement, ~~which~~ shall be kept confidential and shall be sealed upon entry of the
208 sentencing order. ~~If prepared by someone other than the victim, it~~ shall (i) identify the victim, (ii)
209 itemize any economic loss suffered by the victim as a result of the offense, (iii) identify the nature and
210 extent of any physical or psychological injury suffered by the victim as a result of the offense, (iv)
211 detail any change in the victim's personal welfare, lifestyle or familial relationships as a result of the
212 offense, (v) identify any request for psychological or medical services initiated by the victim or the
213 victim's family as a result of the offense, and (vi) provide such other information as the court may
214 require related to the impact of the offense upon the victim.

215 If the court does not order a presentence investigation and report, the attorney for the Commonwealth
216 ~~may~~ shall, ~~with the consent of the victim,~~ prepare a Victim Impact Statement. ~~In any event, a victim~~
217 ~~shall be advised by the court that he may submit in his own words a written Victim Impact Statement.~~

218 The Victim Impact Statement may be considered by the court in determining the appropriate
219 sentence. A copy of the statement prepared pursuant to this section shall be made available to the
220 defendant or counsel for the defendant without court order at least five days prior to the sentencing
221 hearing. The statement shall not be admissible in any civil proceeding for damages arising out of the
222 acts upon which the conviction was based. The statement, however, may be utilized by the Virginia
223 Workers' Compensation Commission in its determinations on claims by victims of crimes pursuant to
224 Chapter 21.1 (§ 19.2-368.1 et seq.) of this title.

225 § 19.2-305.1. Restitution for property damage or loss; community services.

226 A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any
227 provision in Title 18.2, except the provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2,
228 on or after July 1, 1977, which resulted in property damage or loss, shall be placed on probation or
229 have his sentence suspended unless such person shall make at least partial restitution for such property
230 damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan
231 for doing that which appears to the court to be feasible under the circumstances.

232 *A1. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits,*
233 *and is convicted of, a crime in violation of any provision in Title 18.2 except the provisions of Article 2*
234 *(§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall make at least partial restitution for any property*
235 *damage or loss caused by the crime, may be compelled to perform community services and, if the court*
236 *so orders, shall submit a plan for doing that which appears to be feasible to the court under the*
237 *circumstances.*

238 B. At or before the time of sentencing, the court shall receive and consider any plan for making
239 restitution submitted by the defendant. If the court finds such plan to be reasonable and practical under
240 the circumstances, it may consider probation or suspension of whatever portion of the sentence that it
241 deems appropriate. ~~If the court suspends a portion of any sentence imposed, it may order that restitution~~
242 ~~By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by~~
243 ~~the court, the defendant shall commence upon the make restitution while he is free on probation or~~
244 ~~work release or following his release of such person from confinement. Additionally, the court may order~~

that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

C. At the time of sentencing, the court, in its discretion, shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in the judgment order. The order may specify that sums paid under such order shall be paid to the clerk, who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

D. Unreasonable failure to execute the plan by the defendant shall result in revocation of the probation or imposition of the suspended sentence. A hearing shall be held in accordance with the provisions of this Code relating to revocation of probation or imposition of a suspended sentence before either such action is taken. *A willful or grossly negligent failure to execute the plan by the defendant shall constitute a Class 1 misdemeanor.*

§ 53.1-133.02. Notice to be given upon prisoner release, escape, etc.

Prior to the release, including work release, or discharge of any prisoner, or his transfer to a prison, a different jail facility or any other correctional or detention facility, or upon his escape or the change of his name, the sheriff or superintendent shall give reasonable notice of any such occurrence, delivered by first-class mail or by telephone or both, to any known victim, as defined in § 19.2-11.01, of the offense for which the prisoner was incarcerated. Notice shall be given using the address and telephone number provided by the victim. For the purposes of this section, "prisoner" means a person, either adult or juvenile, sentenced to serve more than thirty days of incarceration or detention.

§ 53.1-155. Investigation prior to release.

A. No person shall be released on parole by the Board until a thorough investigation has been made into the prisoner's history, physical and mental condition and character and his conduct, employment and attitude while in prison. The Board shall also determine that his release on parole will not be incompatible with the interests of society or of the prisoner. The provisions of this section shall not be applicable to persons released on parole pursuant to § 53.1-159.

B. An investigation conducted pursuant to this section shall include notification to *the last known address of, and as provided by,* any victim of a crime for which the prisoner was incarcerated ~~who has requested notice of the prisoner's pending release or discharge pursuant to § 53.1-160,~~ so that such victim may submit to the Parole Board evidence concerning the impact that the release of the prisoner will have on the victim.

C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a prisoner eligible for parole has been conducted within the last twelve months, and the prisoner has not required medical or psychiatric treatment within a like period while incarcerated, the prisoner may be released on parole by the Parole Board directly from a local correctional facility.

§ 53.1-160. Notice to be given upon prisoner release, escape, etc.

A. Prior to the release or discharge of any prisoner, the Department shall have notice of the release or discharge delivered by first class mail to the court which committed the person to the Department of Corrections; ~~to the last known address of any victim of the offense for which the prisoner was incarcerated if such victim has submitted a written request for notification to the Virginia Parole Board,~~ and to the sheriff, chief of police and attorney for the Commonwealth (i) of the jurisdiction in which the offense occurred, (ii) of the jurisdiction in which the person resided prior to conviction and (iii) if different from (i) and (ii), of the jurisdiction in which the person intends to reside subsequent to being released or discharged. Such notice shall include, but not be limited to, identification of the specific offense or offenses for which the prisoner had been sentenced, the term or terms of imprisonment imposed, and the date the prisoner was committed to the Department of Corrections.

The Department shall (i) have notice of the release or discharge of any prisoner, or of his transfer to a jail facility, a different prison facility or any other correctional or detention facility, delivered by first-class mail fifteen days prior to any such occurrence, or by telephone if notice by first-class mail cannot be delivered fifteen days prior to the occurrence; (ii) give notice immediately by telephone upon the escape of a prisoner; and (iii) give notice by first-class mail upon the change of a prisoner's name, to any known victim, as defined in § 19.2-11.01, of the offense for which the prisoner was incarcerated. Notice shall be given using the address and telephone number provided by the victim. For the purposes of this section, "prisoner" means a person, either adult or juvenile, sentenced to serve more than thirty days of incarceration or detention.

B. Fifteen days prior to the release of any prisoner to an authorized work release program or release to attend a business, educational or other related community program, the Department shall give notice to (i) the attorney for the Commonwealth ~~and~~ , (ii) the chief law-enforcement officer of the jurisdiction

306 in which the work on release will be performed or attendance at an authorized program will be
307 permitted *and (iii) to any victim, as defined in § 19.2-11.01, of the offense for which the prisoner was*
308 *incarcerated.*

309 Every notice shall include the name, address and criminal history of the participating prisoner, and
310 other information upon request. The transmission of information shall be confidential and not subject to
311 the Virginia Freedom of Information Act (§ 2.1-340 et seq.).