

LD6378112

HOUSE BILL NO. 2257

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 15, 1995)

(Patron Prior to Substitute—Delegate Almand)

A BILL to amend and reenact §§ 16.1-309.1, 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 by adding 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-309.1, 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 by adding in Article 7 of Chapter 3 of Title 53.1 a section numbered 53.1-133.02 as follows:

§ 16.1-309.1. Exception as to confidentiality.

Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2 or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

Whenever a juvenile, charged with a delinquent act which would be forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 or a Class 1, 2, or 3 felony if committed by an adult, becomes a fugitive from justice any time prior to or after final disposition of the charge, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Youth and Family Services or a locally operated court services unit may petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public.

Upon the request of a victim of a delinquent act which would be a felony if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § ~~19.2-299.1~~ 19.2-11.01.

Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

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 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 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, 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

60 *proceedings that affords them privacy and protection from intimidation.*

61 *2. Financial assistance.*

62 *a. Victims shall be informed of financial assistance and social services available to them as victims*
63 *of a crime, including information on their possible right to file a claim for compensation from the Crime*
64 *Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of Title 19.2 and on other*
65 *available assistance and services.*

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

68 *c. Victims shall be advised that restitution is available for damages or loss resulting from an offense*
69 *and shall be assisted in seeking restitution in accordance with § 19.2-305, § 19.2-305.1, Chapter 21.1*
70 *(§ 19.2-368.1 et seq.) of Title 19.2, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other*
71 *applicable laws of the Commonwealth.*

72 *3. Notices.*

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

78 *b. Victims shall receive advance notification from the attorney for the Commonwealth of judicial*
79 *proceedings relating to their case and shall be notified of any change in court dates in accordance with*
80 *§ 19.2-265.01 if they have provided their names, current addresses and telephone numbers.*

81 *c. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent in*
82 *whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant*
83 *to the provisions of §§ 53.1-133.02 and 53.1-160 if they have provided their names, current addresses*
84 *and telephone numbers in writing.*

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

88 *4. Victim input.*

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

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

95 *5. Courtroom assistance.*

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

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

101 *c. Victims of certain sexual offenses shall be advised that there may be a closed preliminary hearing*
102 *in accordance with § 18.2-67.8 and, if a victim is twelve years of age or younger, two-way closed-circuit*
103 *television may be used in the taking of testimony in accordance with § 18.2-67.9.*

104 *B. For purposes of this Act, "victim" means (i) a person who has suffered physical, psychological or*
105 *economic harm as a direct result of the commission of a felony or of assault and battery in violation of*
106 *§ 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*
107 *§ 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation*
108 *of § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person*
109 *who is a minor, or (iv) a spouse, parent or legal guardian of such a person who is physically or*
110 *mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent,*
111 *child, spouse or legal guardian who commits a felony or other enumerated criminal offense against a*
112 *victim as defined in subdivision (i) of this subsection.*

113 *C. Officials and employees of the judiciary, including court services units, law-enforcement agencies,*
114 *the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided*
115 *with copies of this Act by the Department of Criminal Justice Services or a crime victim and witness*
116 *assistance program. Each agency, officer or employee who has a responsibility or responsibilities to*
117 *victims under this Act or other applicable law shall make reasonable efforts to become informed about*
118 *these responsibilities and to ensure that victims and witnesses receive such information and services to*
119 *which they may be entitled under applicable law, provided that no liability or cause of action shall arise*
120 *from the failure to make such efforts or from the failure of such victims or witnesses to receive any such*
121 *information or services.*

§ 19.2-11.1. Establishment of crime victim-witness assistance programs; funding; minimum standards. Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program, whose funding is provided in whole or part by grants administered by the Department of Criminal Justice Services pursuant to § 9-173.3, shall observe the following guidelines: *operate the program in accordance with regulations which shall be established by the Department to implement the provisions of this Act and other applicable laws establishing victims' rights.*

1. 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 available and be assisted in obtaining this protection from the appropriate authorities.

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

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

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

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, his parents or guardians, and the parents and spouse of a homicide victim, as defined in § 19.2-11.01 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 victim as defined in § 19.2-11.01, 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 in writing 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 Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide.

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

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

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

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

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

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

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

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, except the provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2, on or after July 1, 1977, which resulted in property damage or loss, shall be placed on probation or

have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

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

B. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. If the court suspends a portion of any sentence imposed, it may order that restitution By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall commence upon the make restitution while he is free on probation or 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

§ 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 who has custody of the prisoner shall give notice of any such occurrence, delivered by first-class mail or by telephone or both, to any victim of the offense as defined in § 19.2-11.01 who, in writing, requests notice or to any person designated in writing by the victim. The notice shall be given at least fifteen days prior to release or transfer, or as soon as practicable following an escape or change of name. Notice shall be given using the address and telephone number provided in writing by the victim. For the purposes of this section, "prisoner" means a person sentenced to serve more than thirty days of incarceration or detention.

No civil liability shall attach for a failure to give notice as provided in this section.

§ 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,

306 and to the sheriff, chief of police and attorney for the Commonwealth (i) of the jurisdiction in which the
307 offense occurred, (ii) of the jurisdiction in which the person resided prior to conviction and (iii) if
308 different from (i) and (ii), of the jurisdiction in which the person intends to reside subsequent to being
309 released or discharged. Such notice shall include, but not be limited to, identification of the specific
310 offense or offenses for which the prisoner had been sentenced, the term or terms of imprisonment
311 imposed, and the date the prisoner was committed to the Department of Corrections.

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

321 B. Fifteen days prior to the release of any prisoner to an authorized work release program or release
322 to attend a business, educational or other related community program, the Department shall give notice
323 to (i) the attorney for the Commonwealth ~~and~~ , (ii) the chief law-enforcement officer of the jurisdiction
324 in which the work on release will be performed or attendance at an authorized program will be
325 permitted and (iii) to any victim, as defined in § 19.2-11.01, of the offense for which the prisoner was
326 incarcerated or any person designated in writing by the victim at the address or phone number provided
327 by the victim.

328 Every notice to the attorney for the Commonwealth or to the chief law-enforcement officer shall
329 include the name, address and criminal history of the participating prisoner, and other information upon
330 request. The transmission of information shall be confidential and not subject to the Virginia Freedom of
331 Information Act (§ 2.1-340 et seq.).

332 *No civil liability shall attach for the failure to give notice as provided in this section.*