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**HOUSE BILL NO. 573**

Offered January 21, 1998

*A BILL to amend and reenact § 19.2-11.01 of the Code of Virginia, relating to crime victim's right to participate in plea agreement.*

Patrons—McEachin, Almand, Barlow, Baskerville, Christian, Hamilton, Hull, Keating, McClure, McQuigg, Moran, Puller, Scott and Watts; Senators: Edwards, Gartlan, Howell, Lucas, Maxwell, Reasor, Ticer, Whipple and Williams

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-11.01 of the Code of Virginia is 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.

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

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

d. Victims shall be advised that, in order to protect their right to receive notices and offer input, all

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60 agencies and persons having such duties must have current victim addresses and telephone numbers  
61 given by the victims.

62 4. Victim input.

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

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

69 c. *Victims known to the attorney for the Commonwealth shall be given notice by the attorney for the*  
70 *Commonwealth when a plea agreement is contemplated in a case in which they are involved. When*  
71 *practicable, a victim shall be given the opportunity by the attorney for the Commonwealth to confer*  
72 *with him on the subject of contemplated plea agreements. A victim may prepare a written statement of*  
73 *his position on the agreement, to be provided to the sentencing court. Before sentencing upon any plea*  
74 *of guilty resulting from a plea agreement, the attorney for the Commonwealth shall (i) certify to the*  
75 *court that he gave known victims notice of a pending plea agreement and conferred with or made a*  
76 *reasonable effort to confer with any known victims of the crime which is the subject of the plea and (ii)*  
77 *provide the court with the victims' written statements, if any.*

78 5. Courtroom assistance.

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

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

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

87 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological  
88 or economic harm as a direct result of the commission of a felony or of assault and battery in violation  
89 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  
90 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated  
91 in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal  
92 guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person  
93 who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not  
94 mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal  
95 offense against a 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 chapter by the Department of Criminal Justice Services or a crime victim and witness  
99 assistance program. Each agency, officer or employee who has a responsibility or responsibilities to  
100 victims under this chapter or other applicable law shall make reasonable efforts to become informed  
101 about these responsibilities and to ensure that victims and witnesses receive such information and  
102 services to which they may be entitled under applicable law, provided that no liability or cause of action  
103 shall arise from the failure to make such efforts or from the failure of such victims or witnesses to  
104 receive any such information or services.