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**HOUSE BILL NO. 600****FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Senator Mims  
on March 11, 1998)

(Patron Prior to Substitute—Delegate Barlow)

*A BILL to amend and reenact §§ 19.2-11.01, 19.2-264.4 and 19.2-265.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-295.3, relating to victim impact testimony.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-11.01, 19.2-264.4 and 19.2-265.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-295.3 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 agencies and persons having such duties must have current victim addresses and telephone numbers

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60 given by the victims.

61 4. Victim input.

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

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

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

71 5. Courtroom assistance.

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

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

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

80 B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological  
81 or economic harm as a direct result of the commission of a felony or of assault and battery in violation  
82 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  
83 of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated  
84 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  
85 guardian of such a person who is a minor, or (iv) a spouse, parent or legal guardian of such a person  
86 who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not  
87 mean a parent, child, spouse or legal guardian who commits a felony or other enumerated criminal  
88 offense against a victim as defined in subdivision (i) of this subsection.

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

98 § 19.2-264.4. Sentence proceeding.

99 A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a  
100 proceeding shall be held which shall be limited to a determination as to whether the defendant shall be  
101 sentenced to death or life imprisonment. In case of trial by jury, where a sentence of death is not  
102 recommended, the defendant shall be sentenced to imprisonment for life.

103 *A1. In any proceeding conducted pursuant to this section, the court shall permit the victim, as*  
104 *defined in § 19.2-11.01, upon the motion of the attorney for the Commonwealth, to testify in the*  
105 *presence of the accused regarding the impact of the offense upon the victim. The court shall limit the*  
106 *victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1.*

107 B. In cases of trial by jury, evidence may be presented as to any matter which the court deems  
108 relevant to sentence, except that reports under the provisions of § 19.2-299, or under any rule of court,  
109 shall not be admitted into evidence.

110 Evidence which may be admissible, subject to the rules of evidence governing admissibility, may  
111 include the circumstances surrounding the offense, the history and background of the defendant, and any  
112 other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the  
113 following: (i) The defendant has no significant history of prior criminal activity, (ii) the capital felony  
114 was committed while the defendant was under the influence of extreme mental or emotional disturbance,  
115 (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of  
116 the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his  
117 conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of  
118 the defendant at the time of the commission of the capital offense or (vi) mental retardation of the  
119 defendant.

120 C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a  
121 reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or

of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. The verdict of the jury shall be in writing, and in one of the following forms:

(1) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and that (after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society) or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture) (depravity of mind) (aggravated battery to the victim), and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

Signed ....., foreman"

or

(2) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at imprisonment for life.

Signed ....., foreman"

E. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.

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

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 victim as defined in § 19.2-11.01 may remain in the courtroom. 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~~ *If at a trial in a circuit court either the attorney for the Commonwealth or any defendant represents to the court that he intends to call as a material witness moves to exclude any victim as defined in § 19.2-11.01, the court shall exclude that person from the trial or proceedings whom he intends to call as a material witness, and if the victim objects to being excluded, the attorney for the Commonwealth or the defendant shall proffer to the court the nature of the victim's expected testimony. Upon finding that the victim's expected testimony would be material, the court shall grant a motion to exclude.*

The attorney for the Commonwealth shall give prior notice when practicable 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.

§ 19.2-295.3. Admission of victim impact testimony.

*In cases of trial by jury or by the court, upon a finding that the defendant is guilty of a felony, the court shall permit the victim, as defined in § 19.2-11.01, upon motion of the attorney for the Commonwealth, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1. In the case of trial by jury, the court shall permit the victim to testify at the sentencing hearing conducted pursuant to § 19.2-295.1 or in the case of trial by the court, the court shall permit the victim to testify before the court prior to the imposition of a sentence. Victim impact testimony in all capital murder cases shall be admitted in accordance with § 19.2-264.4.*