

# NATIONAL CRIME VICTIM LAW INSTITUTE

at Lewis & Clark Law School

PROTECTING, ENFORCING, and ADVANCING VICTIMS' RIGHTS

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## VIRGINIA VICTIMS' RIGHTS LAWS<sup>1</sup>

### Constitution

#### Article I, § 8-A – Rights of Victims of Crime

That in criminal prosecutions, the victim shall be accorded fairness, dignity and a respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts and, as the General Assembly may define and provide by law, may be accorded rights to reasonable and appropriate notice, information, restitution, protection, and access to a meaningful role in the criminal justice process. These rights may include, but not be limited to, the following:

1. The right to protection from further harm or reprisal through the imposition of appropriate bail and conditions of release;
2. The right to be treated with respect, dignity and fairness at all stages of the criminal justice system;
3. The right to address the circuit court at the time sentence is imposed;
4. The right to receive timely notification of judicial proceedings;
5. The right to restitution;
6. The right to be advised of release from custody or escape of the offender, whether before or after disposition; and
7. The right to confer with the prosecution.

This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this Constitution, and does not create any cause of action for compensation or damages against the Commonwealth or any of its political subdivisions, any officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

### STATUTES

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<sup>1</sup> Not intended to be exhaustive.

**Title 16.1, Courts not of record; Chapter 11, Juvenile and Domestic Relations Court; Article 12, Confidentiality and expungement**

**§ 16.1-302.1. Right of victim or representative to attend certain proceedings; notice of hearings**

During proceedings involving petitions or warrants alleging that a juvenile is delinquent, including proceedings on appeal, a victim may remain in the courtroom and shall not be excluded unless the court determines in its discretion, that the presence of the victim would impair the conduct of a fair trial. In any such case involving a minor victim, the court may permit an adult chosen by the minor victim to be present in the courtroom during the proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice of any such 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 persons.

**Title 19.2, Criminal Procedure; Chapter 1.1, Crime Victim and Witness 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 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, and the name, address and telephone number of the investigating law-enforcement agency.

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 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 receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.
- d. 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.
- e. 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 given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

#### 4. Victim input.

- a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.
- b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.
- c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.
- d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

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

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

5. Courtroom assistance.

- a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.
- b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.
- c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on 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 of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

6. Post trial assistance.

- a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.
  - b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had 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 felony or of assault and battery in violation of § 18.2-57 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, maiming or driving while intoxicated 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 guardian of such a person who is a minor, (iv) for the purposes of subdivision A 4 of this section 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 or 18.2-46.3, 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, telephone number, 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, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault, sexual abuse or family abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

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

**§ 19.2-11.3 – Virginia Crime Victim-Witness Fund**

There is hereby established the Virginia Crime Victim-Witness Fund as a special nonreverting fund to be administered by the Department of Criminal Justice Services to support victim and witness services that meet the minimum standards prescribed for such programs under § 19.2-11.1. A portion of the sum collected pursuant to §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-

275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, and 17.1-275.9, as specified in these sections, shall be deposited into the state treasury to the credit of this Fund. The Fund shall be distributed according to grant procedures adopted pursuant to § 9.1-104 and shall be established on the books of the Comptroller. Any funds remaining in such Fund at the end of the biennium shall not revert to the general fund, but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

**§ 19.2-11.4 – Establishment of victim-offender reconciliation program**

- A. Any Crime Victim and Witness Assistance Program may establish a victim-offender reconciliation program to provide an opportunity after conviction for a victim, at his request and upon the subsequent agreement of the offender, to:
  - 1. Meet with the offender in a safe, controlled environment;
  - 2. Give to the offender, either orally or in writing, a summary of the financial, emotional, and physical effects of the offense on the victim or the victim's family; and
  - 3. Discuss a proposed restitution agreement which may be submitted for consideration by the sentencing court for damages incurred by the victim as a result of the offense.
  
- B. If the victim chooses to participate in a victim-offender reconciliation program under this section, the victim shall execute a waiver releasing the Crime Victim and Witness Assistance Program, attorney for the offender and the attorney for the Commonwealth from civil and criminal liability for actions taken by the victim or offender as a result of participation by the victim or the offender in a victim-offender reconciliation program.
  
- C. A victim shall not be required to participate in a victim-offender reconciliation program under this section.
  
- D. The failure of any person to participate in a reconciliation program pursuant to this section shall not be used directly or indirectly at sentencing.