

**REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Victims and Witnesses of Crime

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



House Document No. 8

**COMMONWEALTH OF VIRGINIA
RICHMOND
1989**



COMMONWEALTH of VIRGINIA

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IN RESPONSE TO
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ROBERT E. COLVIN
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VIRGINIA STATE CRIME COMMISSION

General Assembly Building

910 Capitol Street

October 18, 1988

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HOWARD P. ANDERSON
ELMO G. CROSS, JR.

FROM THE HOUSE OF DELEGATES:
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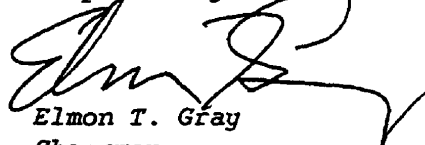
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**TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly.**

House Joint Resolution 48 and 184, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to continue the study authorized by HJR 225 (1987), which charged the Crime Commission "to evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia and make any recommendations the Commission finds appropriate." In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Victims and Witnesses of Crime.

Respectfully submitted,


Elmon T. Gray
Chairman

ETG kr

Enclosure

MEMBERS OF THE
VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

Elmon T. Gray, Chairman

Howard P. Anderson

Elmo G. Cross, Jr.

From the House of Delegates:

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Clifton A. Woodrum

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Subcommittee
Studying
Victims and Witnesses of Crime

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Delegate Warren G. Stambaugh, Chairman
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Delegate V. Thomas Forehand, Jr.
Delegate Raymond R. Guest, Jr.
Mr. H. Lane Kneedler
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Mandie M. Patterson, Manager, Victim Services Program
John F. Mahoney, Crime Victims Specialist

The members wish to express, again this year, particular gratitude to the victims and families of victims whose courage and sense of justice brought them to testify before the subcommittee. We continue to commend the many volunteers who give generously of their time to ease the burden of victims of crime.

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I. Authority of the Study

House Joint Resolution 48 (1988), patroned by Delegate Clifton A. Woodrum of Roanoke, authorized the continuation of the study on crime victims and witnesses originally called for by the 1987 House Joint Resolution 225, sponsored by Delegate V. Thomas Forehand, Jr., of Chesapeake and Delegate John G. Dicks, III of Chesterfield.

Specifically, House Joint Resolution 48 affirms that "protecting the rights of victims need not infringe upon the Constitutional rights of those accused and convicted of committing crimes" and directs the Crime Commission to focus on such unresolved issues as victim impact statements, victim input in the parole process, confidentiality of victim counseling and the right of victims' families to be present during trial (Appendix A).

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "The Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the Victims and Witnesses of Crime Study as directed by House Joint Resolution 225 and continued by House Joint Resolution 48.

II. Membership

Except for Senator William T. Parker, former chairman of the subcommittee, who returned to private business, and Mr. William N. Paxton, Jr., whose death on November 7, 1987, saddened the Commission, all members on the 1987 subcommittee were reappointed to this 1988 study. The subcommittee wishes to express its appreciation to Senator Parker for his strong, compassionate leadership on the study and to Mrs. Paxton for her husband's dedication to improving the justice system's treatment of crime victims and witnesses. Three recently appointed Commission members, Mr. Robert C. Bobb, city manager of Richmond, Delegate V. Thomas Forehand, Jr., and Senator Elmo G. Cross, were named to the subcommittee. Senator Gray selected Delegate Warren G. Stambaugh as chairman of the subcommittee.

The membership of the subcommittee is as follows:

Delegate Warren G. Stambaugh of Arlington, Chairman
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr., of Mechanicsville
Delegate V. Thomas Forehand, Jr., of Chesapeake
Delegate Raymond R. Guest, Jr., of Front Royal
Mr. H. Lane Kneedler (Attorney General's Office)
Reverend George F. Ricketts, Sr., of Richmond
Delegate Clifton A. Woodrum of Roanoke

III. Executive Summary

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. The subcommittee reviewed other studies of victim services, legislation enacted in 1988, 1988 study resolutions, as well as the results of a survey sent to each state requesting updates on legislation relating to its study areas -- victim impact statements, parole input, counselor privilege, open court disclosure of victims' and witnesses' addresses, and a victim's right to attend the trial.

The subcommittee also heard testimony from criminal justice officials at an organizational meeting on June 9, as well as testimony at a public hearing on July 26, 1988. Testimony revealed widespread dissatisfaction and disillusionment with the criminal justice system. Attorneys, corrections and parole employees, victim advocates, private citizens and victims all urged the subcommittee to recommend legislation that, while not diminishing defendants' rights, would expand the rights of crime victims and witnesses and improve their treatment by the criminal justice system.

The following recommendations were made by the subcommittee at their August 31, 1988 meeting:

<u>Area</u>	<u>Recommendation</u>
A. Separate Waiting Areas	Resolution to be introduced to strongly encourage separate waiting rooms for prosecution and defense witnesses when court houses are built or substantially renovated.
B. Victim Impact Statements	Legislation to be introduced that, on motion of the Commonwealth's attorney and with the consent of the victim, a victim impact statement <u>shall</u> be included in all cases involving abduction, malicious assault, robbery, or criminal sexual assault, and may be included in all other cases except capital murder.
C. Parole Input and Notification of Release	1. Legislation: Require Probation and Parole officers to notify victims of personal offenses that they have right to submit written statement to the Parole Board.

2. **Legislation:** Require Department of Corrections to notify victims, upon their request, when inmate is released.
3. **Administration:** Request that the Department of Criminal Justice Services and the Parole Board develop a brochure regarding parole and opportunities for victims to request notification.

- | | |
|---|---|
| D. Nondisclosure of Address in Open Court | Legislation: During criminal trial or any hearing incident thereto, a judge may prohibit the release of the address or telephone number of the victim or witness if the judge determines that the information is not necessary or relevant. |
| E. Counselor Privilege | Action Deferred |
| F. Court Room Attendance | Action Deferred |
| G. Criminal Injuries Compensation Fund | The subcommittee agreed to defer action on this issue until JLARC completes its study. A separate report will be published by JLARC in 1988. |

The subcommittee also voted to ask the Commission to continue its work next year. Among areas to be studied are those items deferred this year.

IV. Background

This study derives from recommendations in House Document 10, presented to the 1988 legislature in response to House Joint Resolution 225 (1987), which charged the Crime Commission with conducting an extensive study of crime victim and witness issues. House Document 10 focuses on crime victims' compensation, funding for victim-witness services, victim input in sentencing and parole processes, confidentiality of designated victim counseling, a bill of rights for victims and witnesses, and address protection. The study also examined separate court waiting rooms for victims and their families, and the accused and their families, as well as courtroom exclusion of victims' families. Information from the National Association of Attorneys General (NAAG) and the National Organization for Victims Assistance (NOVA) tabulating victim-witness legislation across the nation, and information regarding Virginia studies, legislative proposals, resolutions, and law appear in detail in House Document 10.*

* Copies of House Document 10 (1988) may be obtained from the Virginia State Crime Commission.

V. Scope of the Study

As stated earlier, this study will address crime victims compensation, victim input in sentencing and parole processes, counselor confidentiality, address protection, victims and family members' rights to be present during the trial, and separate waiting areas. Except for the separate waiting areas, and the crime victims fund, the critical questions for each issue are constitutional or procedural ones: whether the rights to be accorded victims conflict with the constitutional rights accorded defendants.

VI. Work of the Subcommittee

A. Research

Studies (1987)

In addition to the Crime Commission's study called for by House Joint Resolution 225 (1987), two other victim/witness studies were conducted during that year. Pursuant to House Joint Resolution 319 (1987) a joint legislative committee examined the hearsay rule and video taping victims' testimony in child abuse cases. The Department of Planning and Budget, pursuant to item 17 in the 1987 Appropriations Act, published a comprehensive study on unpaid fines, court costs and restitution. All three studies produced extensive changes in Virginia's victim/witness laws. The sections affected or created by the studies are arranged numerically in Appendix F.

Legislation (1988)

Crime Victims' Compensation

House Bill 399, patroned by Delegate Clifton A. Woodrum, amends §§19.2-368.2, 19.2-368.11:1, and 19.2-368.18 of the Virginia Code to allow crash victims of drunk drivers to collect from the criminal injuries compensation fund, to remove the \$100 deductible requirement for compensable victims' compensation claims having a minimum value of \$100, to require drunk drivers to pay the misdemeanor court cost, and to raise court costs from \$15 for all offenses to \$30 for felonies and \$20 for misdemeanors.

House Bill 227, patroned by Delegate V. Thomas Forehand, Jr., amends §19.2-368.4 to include within the victims' compensation statutes spouses who are victims of criminal sexual assault.

Victim-Witness Programs

Although Virginia has not enacted a crime victims' bill of rights, numerous laws and practices benefitting victims and witnesses do exist. Because these are scattered throughout the Code and various pamphlets, however, they may be unknown not only to victims and witnesses, but to other participants in the criminal justice system. To remedy this deficiency and to standardize the improved treatment of victims and witnesses across the state, House Bill 410, sponsored by Warren G. Stambaugh, adds §19.2-11.1, which sets

up statutory criteria for victim-witness programs that receive any funds administered by the Department of Criminal Justice Services, and helps to ensure that victims are informed of the services and rights available to them. The legislature also enacted Senate Joint Resolution 25, patroned by Senator Elmon T. Gray, which encourages localities to establish victim-witness programs.

Employer Intercession

In order to further encourage participation by citizens and to ease the burden of victims, House Bill 412, patroned by Delegate Stambaugh, amends §18.2-465.1 to prohibit employers from penalizing employees for required court appearances. Violation of the section is a Class 4 misdemeanor.

Videotaped Statements, Hearsay Evidence

Hearings conducted pursuant to House Joint Resolution 319 brought about the enactment of House Bill 788, patroned by Delegate William P. Robinson, Jr., and Senate Bill 248, sponsored by Senator Joseph V. Gartlan, Jr.

House Bill 788 amends §18.2-67.9 to permit a child victim of kidnapping, criminal sexual assault or those family offenses described in §18.2-362 et seq. to testify via two-way closed circuit television.

Senate Bill 248 adds §63.1-248.13:1 to allow, in civil proceedings involving alleged abuse or neglect of a child, out of court statements made by the child to be admitted as evidence under specific conditions.

Protection

Two other measures benefit victims of child abuse or neglect. Senate Bill 222, also patroned by Senator Gartlan, amends §16.1-279 to allow courts, in emergency cases, to require local boards of welfare or social services to accept temporary placement of children without a hearing or prior notice.

Senate Bill 293, sponsored by Senator Richard L. Saslaw, amends §19.2-271.2 to allow courts to compel spouses to testify against each other in child abuse cases (§§18.2-370 through 18.2-371). Senate Bill 293 also offers additional protection by allowing the court to compel spousal testimony in criminal sexual assault cases.

Senate Bill 270, patroned by Senator Daniel W. Bird, Jr., amends §16.1-253.1 to allow orders of protection to impose conditions that prevent contact between the alleged abusing spouse and his or her spouse or children.

House Bill 916, patroned by Delegate William S. Moore, Jr., amends §58.1-322 to permit taxpayers to deduct from their income tax up to \$1,000 in crime solver awards. To assure the protection of the taxpayer, a companion bill, House Bill 1056, patroned by Delegate John Watkins, amends §58.1-441 to prohibit the Department of Taxation from requiring crime solver agencies to report the names of individuals who supplied them with crime solver information or the amount of the awards paid to these people.

House Bill 404, patroned by Delegate William Roscoe Reynolds, amends §16.1-309.1 to allow the release of identifying information when a juvenile charged with a delinquent offense that would be a Class 1, 2 or 3 felony, forcible rape, or robbery if committed by an adult, becomes a fugitive from justice prior to final disposition of the charge. Senate Bill 158, patroned by Senator Gartlan, amends §16.1-249 to allow children 15 years of age or older who are placed in foster homes, facilities operated by licensed child welfare agencies, detention homes, group homes or other places approved by the Department of Corrections to be transferred under specific conditions to other appropriate facilities, including jails or other adult facilities, if the custodian determines that the child creates a security or safety threat.

Collection of Fines, Costs and Restitution

The Department of Planning and Budget's study, Unpaid Fines, Court Costs and Restitution in District and Circuit Courts of the Commonwealth, resulted in legislation to improve collection of these charges and thereby to improve the treatment of victims. Since the criminal injuries compensation fund receives money from court assessments, more money in the fund should expedite and expand payments.

House Bill 629, patroned by Delegate Marian Van Landingham, amends §19.2-349 to permit Commonwealth's attorneys to contract with attorneys or private collection agencies to assist in the collection of unpaid fines, costs or forfeitures. House Bill 864, also patroned by Delegate Van Landingham, amends §§19.2-349, 19.2-353.3, 19.2-354, 19.2-358, 46.1-413 and 46.1-423.3 and repeals §§19.2-353.2 and 19.2-353.4 to effect a number of collection changes. The court clerk's report to the judge on unsatisfied assessments must now include court-ordered restitution arrearages. The bill also requires the Commonwealth's attorney to investigate the reasons for the failure to pay and stipulates that the record include the offender's driver's license or social security number. The bill allows debts for these assessments to be paid by credit card, and allows fining or jailing those who fail to pay court-authorized deferred payment or installment payments. These debtors may also have their driver's licenses suspended.

House Bill 954, patroned by Delegate C. Hardaway Marks, amends §19.2-353.5 to establish an interest payment of \$4 for every \$50 per year on unpaid fines and costs of \$200 or less. House Bill 959, also patroned by Delegate Marks, amends §19.2-353.4 to allow credit card payment of fines for misdemeanor violations of ordinances. Senate Bill 291, patroned by Senator Saslaw, amends §14.1-116 to raise clerks' fees for using electronic devices to record testimony from no more than \$10 to no more than \$40 in felony cases and from no more than \$1 to no more than \$10 in misdemeanor cases. Although these fees are used specifically to maintain the equipment, their increases can free additional sums for the victims' compensation program.

House Bill 810, patroned by Delegate Clinton Miller, adds §19.2-305.2 to allow the court to order return of the property or reimbursement for the value of the property, payment for medical, psychiatric and therapeutic costs, reimbursement for lost income and, in case of death, payment for funerals and related services. These orders are enforceable as the judgments in civil actions. House Joint Resolution 26, patroned by Delegate Alan E. Mayer, directs the Department of Corrections, the Department of Criminal Justice Services, and the Parole Board to implement recommendations to improve collection of payments for assessments and restitution.

Studies (1988)

The 1988 General Assembly authorized four victim-related studies. House Joint Resolution 184, patroned by Delegate Howard E. Copeland, requests the Joint Legislative Audit and Review Commission and the Crime Commission to conduct a study of the current system of compensating crime victims and the treatment of victims (Appendix B). Senate Joint Resolution 52, patroned by Senator Emilie F. Miller, requests the Department of Mental Health, Mental Retardation and Substance Abuse Services to study the criminal prosecution of individuals who abuse patients or residents of state facilities for the mentally handicapped (Appendix C).

Other study resolutions concentrate on preventing victimization. House Joint Resolution 171 (Delegate Franklin P. Hall) and Senate Joint Resolution 42 (Senator Joseph V. Gartlan, Jr.) establish a subcommittee to assess the adequacy of the provisions for guardianship and the effectiveness of protective services programs for Virginians (Appendix D).

House Joint Resolution 127 (Delegate Joseph P. Crouch) and House Joint Resolution 166 (Delegate S. Vance Wilkins, Jr.) create a joint subcommittee to assess the due process problems in child abuse investigations and to determine methods to alleviate the injustices inflicted upon those falsely accused of child abuse (Appendix E).

Survey

A survey was mailed to each state requesting updates for 1988 legislation on victim impact statements, parole input, counselor privilege, open court disclosure of victims' and witnesses' addresses, and a victim's right to attend the trial. Of the 35 states that responded, few had made changes to the laws affecting issues specified in the survey, many were still trying to broaden their victim laws, two (Florida and Michigan) were submitting victim legislation to the voters for state constitutional inclusion, most of the changes required that the criminal pay some restitution to the victim, six states (Connecticut, Florida, Hawaii, Michigan, South Dakota, and Wisconsin) now require that, if the victim so wishes and follows procedures, he be notified of the prisoners' release, and one (Oklahoma) has enacted a court attendance law.

B. Meetings and Public Hearings

On June 9, 1988, the subcommittee held an organizational meeting at which experts in the areas of the study presented facts and opinions for the subcommittee's consideration. The subcommittee held one public hearing in Richmond on July 26, and a meeting on August 31 to determine legislative recommendations to be presented to the 1989 General Assembly. This year, as last year, public testimony revealed widespread dissatisfaction and disillusionment with the criminal justice system. Attorneys, corrections and parole employees, private citizens, and victims all urged the subcommittee to recommend legislation that, while not diminishing defendants' rights, would expand the rights of crime victims and witnesses and improve their treatment by the criminal justice system.

VII. Issues and Recommendations

A. Separate Waiting Areas

1. Discussion

Although no statutes require separate witness rooms for victims and defendants, three documents encourage localities to provide them whenever possible. House Joint Resolution 105 (1984) stipulates "That victims and witnesses be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation." In support of this resolution, the Judicial Council of Virginia and the Judicial Conference of Virginia published a brochure, "Principles and Recommended Practices," which states that "Judges should encourage and foster. . . whenever possible, and when circumstances require it, provision for separate waiting rooms for defense and prosecution witnesses." Finally, §19.2-11.1 (Establishment of crime victim-witness assistance programs; funding; minimum standards) was added to the Code in 1988 as a result of recommendations contained in HJR 10. Locally operated victim-witness programs that receive funding administered by the Department of Criminal Justice Services must observe guidelines assuring that "Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation."

In continuing this topic for study in 1988, the subcommittee felt that perhaps stronger legislation should be enacted, but other considerations should be weighed before the law was changed. Of primary concern was that the legislature, in requiring localities to furnish separate witness rooms, would be imposing a difficult, and in some cases, a nearly impossible financial burden on localities whose budgets are already stretched to provide minimum, necessary services. Subcommittee members also pointed out that the judiciary committees governing courtroom standards already support separate waiting areas and try to provide for them, that local governments try to conform to the recommendation, and that requiring separate waiting areas in the courthouse itself might be unnecessary, inefficient, and costly when victims and witnesses may already wait in prosecutors' or victim-witness assistance workers' offices.

2. Recommendations

To emphasize the importance of separate witness rooms in creating a less threatening, more comfortable environment for victims and their families and witnesses, however, the subcommittee recommends that the 1989 Session of the General Assembly adopt a resolution reminding local governing bodies "to make all reasonable efforts to furnish a separate waiting area for victims of crime and their families and witnesses." The resolution will also recommend that all courthouses planned and built after July 1, 1989, and all substantial renovations of courthouses after that date, shall provide for separate witness rooms.

B. Victim Impact Statements

1. Discussion

Section 19.2-299.1, Virginia's victim impact statement provision, has been a part of Virginia law since 1983, and in its current form has never been subject to court challenge nor, according to research and testimony, been the source of an unjust sentence.

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

- The presentence report prepared pursuant to §19.2-299 may, in the discretion of the court, include a Victim Impact Statement, in any case 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.

A Victim Impact Statement, which shall be kept confidential and shall be sealed upon entry of the sentencing order, 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 Commonwealth's attorney may prepare a 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 Industrial Commission in its determinations on claims by victims of crimes pursuant to Chapter 21.1 (§19.2-368.1 et seq.) of this title.

Essential to the provision's success, its supporters allege, is its discretionary character. Only if the judge orders the statement, as judges have in 20 percent of personal felony cases according to DCJS statistics, must he consider it, although if he does not order it, the Commonwealth's attorney may prepare one for the judge's voluntary perusal. The discretionary nature alone restricts the number of statements to a manageable number for probation and parole officers, who submit them with their presentence reports. The statements have been subject neither to constitutional appeal nor further court action. Moreover, according to testimony, judges usually consider the statement when the prosecutor submits it.

The subcommittee also wrestled with a number of apparent inequities that might result from a mandatory law. Some victims might be illiterate or inarticulate, and thereby either be too ashamed to submit a written statement or too inexpressive to convince a judge of the statement's validity, thereby denying themselves a measure of justice and perhaps allowing the defendant to receive an unduly light sentence. In other instances, a victim could be so persuasive that a defendant might receive an unduly harsh sentence.

A related problem surfaced when members recalled that some victim impact statements contain allegations of crimes with which defendants have not been charged. Although the second paragraph of §19.2-299.1 itemizes the contents of impact statements, supporters of the current law felt that mandatory statements would open the dam to floods of hearsay, extraneous information, invective, and emotion.

On the other hand, public hearings over the past two years indicate intense, widespread dissatisfaction among victims, victim-witness coordinators, and criminal justice officials with the current discretionary law. In addition, federal courts have required impact statements in personal injury cases since the enactment of the Omnibus Victim and Witness Protection Act of 1982, and 40 states have adopted mandatory victim impact statement laws. Only when a death penalty may be imposed, as in the 1987 and 1988 Supreme Court cases John Booth, petitioner, vs. Maryland and Harris vs. Maryland, has a victim impact statement been ruled unconstitutional.

Proponents of mandatory statements agree that the primary advantage of such a requirement gives the victim, if he chooses, an opportunity to express, in his words or with the help of a probation and parole officer or victim-witness assistance coordinator, the effects the crime has had upon him. Although he might have told the court of these effects, he has done so within a formal framework not of his choosing and within a courtroom environment that perhaps remains intimidating and silencing to many. The limits specified in §19.2-299.1 provide for control of contents, and if the preparer of the statement overlooks them, judges can usually cull the irrelevant information and produce a fair sentence made on the basis of more information than may have emerged at trial or with only the defendant's story in the presentence report. Further, in cases that do not come to trial, the impact statement affords the only opportunity for the victim to describe his side of the crime.

Proponents asserted that rather than adding inequities to a criminal justice system that, like every other human institution, contains inherent inequities, a mandatory law would reduce inequities in that it would assure victims that they were told of the opportunity to make the statements, that more information would be available to a judge, that professionals would be available to aid those who did not wish to reveal their illiteracy or to calm those who sought vengeance rather than justice, and that victim-witness workers were eager to help probation and parole officers write the reports.

2. Recommendations

Balancing these demands, the subcommittee settled upon the following recommendation;

§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 Commonwealth's Attorney with the consent of the victim, in all cases involving abduction, 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 non-capital cases.

While impact statements would not be required for noncapital murder cases, they would remain discretionary and, in conformance to the Supreme Court ruling, would be prohibited in capital murder cases.

C. Parole Input and Notification of Release

1. Discussion

Section 19.2-299 requires probation and parole officers to compile presentence reports that include victim information. And §53.1-155 requires a prerelease investigation that includes a review of the prisoner's file. Although §53.1-160 requires the Department of Corrections to notify certain officials of a prisoner's release, and Parole Board practices allow victims, if they so request, to submit a statement detailing the effects of the crime on them, information that may be relevant to a parole decision and their opinion of the inmate's release, no provisions exist to inform the victim of the opportunity for parole input to be notified of the prisoner's release.

Before deciding these issues, the subcommittee heard extensive testimony from the Parole Board, the Department of Corrections, and victims. The subcommittee determined that the Parole Board has an adequate procedure for victim input, solicits victim input, seeks an image of responsibility to the community, is studying its own procedures to improve them, and would like to hire a victim input specialist to oversee more than 4,000 input forms per year that the Board receives.

During testimony, several legal issues arose regarding victim input. Board employees were questioned on the dilemma of confidentiality of parole files: the conflict of protecting a victim when he has supplied information that would result in denial of parole and denying an otherwise eligible inmate parole on the basis of information he does not know is in his file. It was determined that victim input is only one of the many elements affecting the Board's parole decision, that input which might result in parole denial is thoroughly investigated by the Board, and that inmate files are confidential, all of which assure the inmate a fair hearing and the victim of protection.

Once these issues had been settled, only the question of notification responsibility remained. From testimony from the Parole Board and Department of Corrections, the subcommittee found that as part of the presentence report, the probation and parole officer could inform the victim of the opportunity and procedures for input, and that the Parole Release Unit of the Department of Corrections could notify victims of a prisoner's impending release. In both cases, the victim must keep the Parole Board apprised of his current address.

2. Recommendations

In addition to the following legislative proposals, the subcommittee also recommended that DCJS in conjunction with the Parole Board, develop a brochure, to be distributed to law enforcement agencies, Commonwealth's attorney's offices, and victim-witness assistance offices to explain to victims the parole process and options available to them.

Amend §19.2-299 (presentence investigations) - to require probation and parole officers, as part of the presentence investigation, to notify victims of crimes against the person that they have the right, at their request, to be informed of parole hearings and decisions at the final release, and of the opportunity to submit a written statement to the Parole Board of the impact of the crime on them and of their opinion regarding the prisoner's release.

Amend §53.1-160 (Notice to be given prior to release of prisoners) - to require the Department of Corrections to send notice of a prisoner's release to the last known address of victims who have provided appropriate information to the Parole Board that they wish to be notified of the prisoner's release.

D. Nondisclosure of Address in Open Court

1. Discussion

Defendants are constitutionally guaranteed the right to confront witnesses against them, and testimony revealed that defense attorneys in Virginia are routinely furnished addresses of victims and witnesses by the prosecutor's office. Although victims and witnesses are protected by §18.2-460, which punishes obstruction of justice by threats, force, or intimidation as a class 1 misdemeanor and, in drug cases, as a Class 5 felony, and §19.2-120, which allows judges discretion to deny bail when an accused represents a danger to society, testimony from victims, subcommittee members, and both prosecutors and defense attorneys revealed that victims and witnesses are severely frightened by having to reveal their addresses in open court.

A number of objections arose to this type of address protection. Some attorneys asserted that the declaration of name and address is basic to the trial and establishing the "truthfulness" of the witness. Others pointed out that people may tell the truth about the obvious and lie about less easily discovered facts. More substantial objections arose over the need to establish jurisdiction for the case to be tried in a particular court, a requirement that should be met before the trial begins, and procedure for defendants who represent themselves. In the latter instance, since a defendant must be able to question his accuser, some provision might be made through the prosecutor's office that the two could meet at a location other than the victim's residence. In addition, the court would have the discretion to allow disclosure of the address in court.

2. Recommendations

Recognizing that forcing victims and witnesses to reveal their addresses at trial provides an often unnecessary threat and that a law reducing victim fear could be managed in such a way that defendants' rights would not be compromised, the subcommittee recommends the following new section:

§19.2-269.2 - Nondisclosure of addresses or telephone numbers of crime victims and witnesses. -- During any criminal proceeding upon motion of the defendant or the attorney for the Commonwealth, a judge may prohibit testimony as to the current address or telephone number of a victim or witness if the judge determines that this information is not material under the circumstances of the case.

E. Counselor Privilege

1. Discussion

Although §8.01-400.2 establishes a counselor privilege in civil cases, §54-932 defines "professional counselor," §54-936 defines "clinical psychologist," §54-941 defines "social worker" and "clinical social worker" and those Title 54 sections define the respective professional activities, and item 23 of §2.1-342 (Freedom of Information Act) exempts "confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses," counselors seem unable to define themselves in a way that would benefit victims without damaging defendants and have requested that the subcommittee delay a decision on this issue until the profession can settle upon a definition. The greatest problem, to victims advocates, lies in trying to include volunteers, who staff many of the crisis centers, within a definition acceptable to the legal community. The availability and effectiveness of victim services, without the generous and invaluable efforts of volunteers, would be dangerously reduced. No one disagreed that defendants should have access to all information that could influence the outcome of their trial and that limiting a defense attorney's access to information, especially in cases with tenuous evidence and extreme emotion, could hardly serve the ends of justice. On the other hand, neither does discrediting, intimidating, or embarrassing a victim with irrelevant information.

Some 16 other states have enacted laws that either establish a counselor-client privilege or refuse to admit evidence gleaned from the files of sexual assault or domestic violence crisis centers. Once a definition of "counselor" is formulated, the subcommittee may, in its continuation of the crime victim study, wish to examine the laws of other states and consider a limited privilege in accordance with the 1987 Supreme Court decision, *Pennsylvania v. Ritchie* which allows the privilege but requires in camera review when the defense so moves.

F. Courtroom Attendance

1. Discussion

At this time, Virginia does not statutorily assert the right of victims to remain in court during the trial; however, "Principles and Recommended Practices" supports the presence of victims or their survivors at the trial when their presence does not interfere with a fair trial. Of the 16 states that have enacted court attendance laws for victims, all stipulate that the victim behave appropriately, as expected of the defendant and his family, that the victim may be removed from the courtroom for cause, and that the court may rule on the victim's exclusion.

Opponents of courtroom attendance point out that court rules allow victims to remain in court, but they fear that a law expanding this practice would create abuses and prejudice the jury against the accused; however, no testimony was presented by opponents, nor any case decision uncovered, that in states which permit victim trial attendance miscarriages of justice had occurred as a result of the law.

Extensive testimony from advocates of this law focused on the practice, frequently personally experienced, of deeming a survivor a witness solely to exclude him from the trial, a practice that cannot adequately be handled through the legal ethics committee. Advocates did not push this issue when the survivor was indeed a witness to the crime, but only in instances when the survivor had not witnessed the crime and could only be used to affirm his relationship to the victim.

2. Recommendations

In view of the anguish unnecessary exclusion causes innocent people and to remedy a possible abuse of the judicial system, the subcommittee recommended that other states' laws be studied and the issue carried over.

G. Criminal Injuries Compensation Fund

The Crime Commission, pursuant to HJR 184, has assisted JLARC in its study of the Crime Victims' Compensation Division. A separate report will be published early in 1989.

/kr

Appendices

Appendix A

HJR 48

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 48

Directing the Virginia State Crime Commission to study crime victim-witness services.

Agreed to by the House of Delegates, February 16, 1988

Agreed to by the Senate, March 9, 1988

WHEREAS, public respect and support for the criminal justice system require that it be perceived as balanced and fair, not only to those accused and convicted of committing crimes but also to those who are victims and witnesses of crimes; and

WHEREAS, protecting the rights of victims and witnesses of crime need not infringe upon the constitutional rights of those accused and convicted of committing crimes; and

WHEREAS, this Assembly, by way of prior enactments and resolutions, has previously affirmed its support for the rights of crime victims and witnesses; and

WHEREAS, the 1987 General Assembly directed the Virginia State Crime Commission to evaluate services to victims and witnesses of crime and make its recommendations; and

WHEREAS, the Commission conducted a thorough study and made legislative and administrative recommendations, but due to time constraints was unable to complete its examination of several specific complex issues related to victims of crime; now, therefore be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is directed to continue its examination of victim impact statements, victim input in the parole process, confidentiality of designated victim counseling, the right of victims' families to be present during the trial, and other issues as the Commission deems appropriate. The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1988. The Commission may employ such means, including public hearings and the hiring of additional, temporary staff, as it deems necessary to complete the study. The Department of Criminal Justice Services through its Victim-Witness Program Section, shall assist the Commission in completing the study.

The costs of this study are estimated to be \$4,920 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Appendix B

HJR 184

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 184

Requesting the Joint Legislative Audit and Review Commission and the Virginia State Crime Commission to study various aspects of the current system for compensating victims of crime.

Agreed to by the House of Delegates, March 11, 1988

Agreed to by the Senate, March 9, 1988

WHEREAS, the Department of Criminal Justice Services currently administers thirty-two locally operated victim/witness programs; and

WHEREAS, in addition to financial and technical assistance, the Department also provides training for these local programs; and

WHEREAS, under the present system of compensation for victims of crimes, many recipients complain of extended delays in receiving compensation; and

WHEREAS, in its recent study, *Victims and Witnesses of Crime* (HD 10, 1988), the Virginia State Crime Commission reported that "both victims and victim assistance personnel find application and appeal procedures cumbersome and confusing"; and

WHEREAS, the Department of Criminal Justice Services may be a more appropriate agency for dealing with the disbursement of funds to individual recipients due to its history of advocacy in this area; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission is requested to study the transfer of the Division of Crime Victims Compensation to the Department of Criminal Justice Services and methods to expedite and improve the process by which claims are reviewed; and, be it

RESOLVED FURTHER, That the Virginia State Crime Commission is requested to study the treatment of crime victims and witnesses in the criminal justice system.

The reports and recommendations, if any, of the Commissions shall be submitted no later than December 1, 1988.

Appendix C

SJR 52

SENATE JOINT RESOLUTION NO. 52

Requesting that the Department of Mental Health, Mental Retardation and Substance Abuse Services study the criminal prosecution of individuals who abuse patients or residents of state facilities for the mentally handicapped.

Agreed to by the Senate, February 2, 1988

Agreed to by the House of Delegates, March 9, 1988

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services is extremely concerned about the well-being of patients and residents of state mental health facilities and training centers; and

WHEREAS, the mentally handicapped, by virtue of their unique disabilities, are vulnerable to instances of physical and emotional abuse; and

WHEREAS, at present, no statutory authority exists to define patient and resident abuse in the Commonwealth; and

WHEREAS, the state employees' grievance procedure requires that the final decision in cases of patient and resident abuse be determined by the circuit court; and

WHEREAS, the definition of abuse may differ between administrative policies promulgated by the Department, and the definitions utilized by the court in adjudicating cases of patient and resident abuse; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Department of Mental Health, Mental Retardation and Substance Abuse Services is requested to study the need for additional authority to facilitate the criminal prosecution of individuals accused of the abuse of patients and residents in facilities for the mentally ill and mentally retarded.

The Department is requested to conduct the study in cooperation with the Office of the Attorney General of Virginia, the Department for the Rights of the Disabled, the Department of Social Services, the Executive Secretary of the Supreme Court, and the Virginia Association of Commonwealth's Attorneys.

Upon completion of the study, the Department shall report its findings to the Governor and the 1989 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Appendix D

HJR 171 and SJR 42

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 171

Establishing a joint subcommittee to assess the adequacy of the provisions for establishing a legal guardianship and the provisions for monitoring the status of the ward as well as the effectiveness of protective services programs for citizens of the Commonwealth.

Agreed to by the House of Delegates, March 11, 1988

Agreed to by the Senate, March 9, 1988

WHEREAS, the Commonwealth of Virginia has an adult protective services law and local departments of social services are required to provide protective services to persons sixty years of age and older who are abused, neglected, or exploited and to incapacitated persons who are eighteen years of age and older and are abused, neglected or exploited; and

WHEREAS, the requests for investigations and the need for adult protective services have shown a steady increase, and a recent study by the Department of Social Services indicates that over 2,000 citizens have an unmet need for a guardian at present; and

WHEREAS, the current provisions for guardianship are vague and do not adequately define issues of concern such as the role of the guardian ad litem, the requirements for accountability, and other such issues; and

WHEREAS, many concerned professionals agree that we must examine our protective services and guardianship provisions and programs to ensure that the rights of self-determination and privacy for impaired persons are protected, and, at the same time, that the Commonwealth's responsibility for protecting its vulnerable citizens is maintained; and

WHEREAS, the sheriff of each jurisdiction is presently appointed as the guardian of last resort; and

WHEREAS, sheriffs, court personnel, adult protective services workers and other social work professionals often express frustration as a result of the lack of adequate resources for protective services and the lack of appropriate alternatives to guardianship; and

WHEREAS, an interagency, community-wide response in providing services to and protecting the rights of persons vulnerable to abuse, neglect, and exploitation is needed; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study protective services and guardianship programs of the Commonwealth, such report to include but not be limited to the following:

1. Information on the demand for adult protective services and guardianship in the Commonwealth, and the adequacy of resources available to local agencies for the provision of protective services and guardianship;

2. Information on the number of guardians currently serving by appointment, the number of wards being served, and the scope and quality of services rendered to the wards;

3. Consideration of the use of local departments of social services as public guardians of last resort;

4. Identification of new policies and administrative procedures to more adequately ensure a minimum level of services to every ward;

5. Identification of new policies and administrative procedures to more adequately protect the rights and privacy of the ward;

6. Consideration of alternatives for increasing the capacity of protective service workers to provide quality protective services and the capacity of the Commonwealth to provide guardianship, where necessary and appropriate; and

7. Clarification of the roles of various state agencies in the delivery of adult protective services and the initiation, utilization and monitoring of guardianships.

The joint subcommittee shall be composed in the following manner: two members each from the House Committees on Health, Welfare and Institutions and Appropriations, and one member from the House Committee for Courts of Justice, all to be appointed by the Speaker of the House of Delegates; one member each from the Senate Committees on Finance, Courts of Justice and Education and Health, to be appointed by the Senate Committee on Privileges and Elections; and one representative each from the Judicial Conference of Virginia and the Long-Term Care Council, one sheriff and one citizen at-large, all to be appointed by the Governor.

The Departments of Social Services and Mental Health, Mental Retardation and Substance Abuse Services, the Department for the Aging and the Office of the Attorney General shall cooperate with the joint subcommittee in the conduct of this study

The joint subcommittee shall complete its study and make its recommendations to the

SENATE JOINT RESOLUTION NO. 42

Establishing a joint subcommittee to assess the adequacy of the provisions for guardianship and the effectiveness of protective services programs for citizens of the Commonwealth.

Agreed to by the Senate, February 2, 1988

Agreed to by the House of Delegates, March 12, 1988

WHEREAS, the Commonwealth of Virginia has an adult protective services law and local departments of social services are required to provide protective services to persons sixty years of age and older who are abused, neglected, or exploited and to incapacitated persons who are eighteen years of age and older and are abused, neglected or exploited; and

WHEREAS, the requests for investigations and the need for adult protective services have shown a steady increase and that a recent study by the Department of Social Services indicates that over 2,000 citizens have an unmet need for a guardian at present; and

WHEREAS, the current provisions for guardianship are vague and do not adequately define issues of concern such as the role and compensation of the guardian ad litem, the requirements for accountability, and other such issues; and

WHEREAS, many concerned professionals agree that we must examine our protective services and guardianship provisions and programs to ensure that the rights of self-determination and privacy for impaired persons are protected, and, at the same time, that the Commonwealth's responsibility for protecting its vulnerable citizens is maintained; and

WHEREAS, the sheriff of each jurisdiction is presently appointed as the guardian of last resort; and

WHEREAS, sheriffs, court personnel, adult protective services workers and other social work professionals often express frustration as a result of the lack of adequate resources for protective services and the lack of appropriate alternatives to guardianship; and

WHEREAS, an interagency, community-wide response in providing services to and protecting the rights of persons vulnerable to abuse, neglect, and exploitation is needed; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study protective services and guardianship programs of the Commonwealth, to include information on: the demand for adult protective services and guardianship in the Commonwealth; the number of guardians currently serving by appointment; the possibility of public guardianship to include the use of local departments of social services as guardians of last resort; the adequacy of resources available to local departments of social services for the provision of protective services and guardianship; the roles of human services agencies in guardianship; and new policies and administrative procedures to more adequately protect the rights and privacy of the person and to increase the capacity of protective service workers in providing quality protective services and the capacity of the Commonwealth to provide guardianship, where necessary and appropriate.

The joint subcommittee shall be composed in the following manner: two members of the Senate Committee on Education and Health and one member of the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Privileges and Elections; three members of the House Committee on Health, Welfare and Institutions and two members of the House Committee for Courts of Justice, all to be appointed by the Speaker; and one representative each from the Judicial Conference of Virginia and the Long Term Care Council, one sheriff and one citizen at large, all to be appointed by the Governor. For purposes of this resolution, the terms "guardianship" and "guardian" shall be taken to include guardian ad litem, committee, and all other fiduciary relationships of one person over another.

The joint subcommittee shall complete its work and make its recommendations to the 1989 Session of the General Assembly.

The indirect costs of this study are estimated to be \$10,650; the direct costs of this study shall not exceed \$8,640.

Appendix E

HJR 166 and HJR 127

1988 SESSION

LD4217594

HOUSE JOINT RESOLUTION NO. 166

Offered January 26, 1988

Establishing a joint subcommittee to study investigation procedures used in child abuse cases.

Patron—Wilkins

Referred to the Committee on Rules

WHEREAS, local departments of social services have the statutory mandate to establish child protective services with the responsibility to receive and investigate reports of child abuse; and

WHEREAS, child abuse, though not uncommon before but rarely reported, has been receiving a great deal of attention and concern in our society today; and

WHEREAS, while the rights and protection of the child should be the primary concern in such cases, there must be a mechanism to equally protect the rights of other involved individuals; and

WHEREAS, there is great concern over the informal reporting and investigation procedures used by the departments in that there are due process questions which need to be answered; and

WHEREAS, many of these complaints are erroneous and unfounded but defendants have little recourse to reinstate their reputation in the eyes of the community under the current system; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is established to study the child abuse reporting and investigative procedures in order to assess the due process problems identified with such procedures and determine what method, if any, would alleviate the gross injustices inflicted upon those falsely accused of such acts.

The joint subcommittee shall be composed in the following manner: three members of the House Committee on Health, Welfare and Institutions and two members of the House Committee for Courts of Justice, to be appointed by the Speaker; and two members of the Senate Committee on Rehabilitation and Social Services and one member of the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Privileges and Elections.

The Department of Social Services, the Office of the Attorney General and the state court system, as well as any other state agency, shall provide assistance to the study as appropriate.

The study should examine, but not be restricted to, the following: (i) the child abuse complaint and investigative process; (ii) an examination and evaluation of federal regulations governing this issue and the legal and monetary requirements involved with state compliance; (iii) the numbers of persons affected; and (iv) review of the current study being done by the American Bar Association on screening of child abuse complaints in which Virginia is participating.

The joint subcommittee shall complete its work and make its recommendations to the 1989 Session of the General Assembly

The indirect costs of this study are estimated to be \$10,650; the direct costs of this study shall not exceed \$5,760.

GENERAL ASSEMBLY OF VIRGINIA -- 1988 SESSION

HOUSE JOINT RESOLUTION NO. 127

Establishing a joint subcommittee to study investigative procedures used in child abuse cases.

Agreed to by the House of Delegates, March 11, 1988

Agreed to by the Senate, March 9, 1988

WHEREAS, local departments of social services have the statutory mandate to establish child protective services with the responsibility to receive and investigate reports of child abuse; and

WHEREAS, child abuse, though not uncommon before but rarely reported, has been receiving a great deal of attention and concern in our society today; and

WHEREAS, while the rights and protection of the child should be the primary concern in such cases, there must be a mechanism to equally protect the rights of other involved individuals; and

WHEREAS, there is great concern over the informal reporting and investigation procedures used by the departments in that there are due process questions which need to be answered; and

WHEREAS, many of these complaints are erroneous and unfounded but defendants have little recourse to reinstate their reputation in the eyes of the community under the current system; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is established to study the child abuse reporting and investigative procedures in order to assess the due process problems identified with such procedures and determine what method, if any, would alleviate the gross injustices inflicted upon those falsely accused of such acts.

The joint subcommittee shall be composed in the following manner: three members of the House Committee on Health, Welfare and Institutions and two members of the House Committee for Courts of Justice, to be appointed by the Speaker; and two members of the Senate Committee on Rehabilitation and Social Services and one member of the Senate Committee for Courts of Justice, to be appointed by the Senate Committee on Privileges and Elections.

The Department of Social Services, the Office of the Attorney General and the state court system, as well as any other state agency, shall provide assistance to the study as appropriate.

The study should examine, but not be restricted to, the following: (i) the child abuse complaint and investigative process; (ii) an examination and evaluation of federal regulations governing this issue and the legal and monetary requirements involved with state compliance; (iii) the numbers of persons affected; and (iv) review of the current study being done by the American Bar Association on screening of child abuse complaints in which Virginia is participating.

The joint subcommittee shall complete its work and make its recommendations to the 1989 Session of the General Assembly

The indirect costs of this study are estimated to be \$10,650; the direct costs of this study shall not exceed \$5,760.

Appendix F
1988 Victim Legislation

1988 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 748

An Act to amend and reenact §§ 19.2-368.2, 19.2-368.11.1 and 19.2-368.18 of the Code of Virginia, relating to the Criminal Injuries Compensation Fund.

[H 399]

Approved APR 11 1988

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.2, 19.2-368.11.1 and 19.2-368.18 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.2. Definitions.—For the purpose of this chapter

1. "Commission" shall mean the Industrial Commission of Virginia.

2. "Claimant" shall mean the person filing a claim pursuant to this chapter

3. "Crime" shall mean an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-266

4. "Family," when used with reference to a person, means (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person residing in the same household with such person, or (3) a spouse.

5. "Victim" means a person who suffers personal physical injury or death as a direct result of a crime.

§ 19.2-368.11.1. Amount of award.—A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed \$200. The victim's average weekly wages shall be determined as provided in § 65.1-6.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to sixty-six and two-thirds percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed \$200 per week.

C. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.1-65 and 65.1-66 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

D. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.. Awards may also be made on claims, or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not to exceed \$1,500; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for

E. Any award made pursuant to this section shall be subject to a deduction of \$100 from any and all losses, except that an award to a person sixty-five years of age or older shall not be subject to any deduction. Payments under this chapter. To qualify for an award under this chapter a claim must have a minimum value of \$100 and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses shall not exceed \$15,000 in the aggregate.

§ 19.2-368.18. Criminal Injuries Compensation Fund.—A. There is hereby created a

1988 SESSION
VIRGINIA ACTS OF ASSEMBLY - CHAPTER 542

An Act to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.1, consisting of a section numbered 19.2-11.1, relating to standards for crime victim and witness assistance programs.

[H 410]

Approved **APR 4 1988**

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 1.1, consisting of a section numbered 19.2-11.1, as follows:

CHAPTER 1.1.

CRIME VICTIM AND WITNESS ASSISTANCE PROGRAMS.

§ 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 of this Code, shall observe the following guidelines:

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.

1988 SESSION
VIRGINIA ACTS OF ASSEMBLY - CHAPTER 415

An Act to amend and reenact § 18.2-465.1 of the Code of Virginia, relating to penalizing employees for jury duty or court appearances; penalty

[H 412]

Approved MAR 31 1988

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-465.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-465.1. Penalizing employee for court appearance or service on jury panel.—Any person who is summoned to serve on jury duty or any person, except a defendant in a criminal case, who is summoned or subpoenaed to appear in a court of law when a case is to be heard shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall he be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance, upon giving reasonable notice to his employer of such court appearance or summons. Any employer violating the provisions of this section shall be guilty of a Class 4 misdemeanor

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

SENATE JOINT RESOLUTION NO. 25

Requesting the establishment of crime victim and witness assistance programs by local governing bodies.

Agreed to by the Senate, February 15, 1988

Agreed to by the House of Delegates, March 2, 1988

WHEREAS, every year thousands of crimes are committed in Virginia which result in injury or loss to an untold number of men, women and children; and

WHEREAS, the physical, emotional and financial suffering of these victims and witnesses and their families is sometimes overlooked by the agencies which comprise our criminal justice system; and

WHEREAS, the major emphasis of the criminal justice system thus far has been the apprehension, prosecution and rehabilitation of the accused; and

WHEREAS, although positive steps are currently underway in Virginia through the Criminal Injuries Compensation Fund and other initiatives, additional steps are needed; and

WHEREAS, it is the civic responsibility of all citizens to become involved in the criminal justice system; and

WHEREAS, the General Assembly in 1984 authorized the Department of Criminal Justice Services to award grants for the purpose of assisting in the funding of local programs to serve crime victims and witnesses; and

WHEREAS, thirty-two localities in Virginia have initiated local programs to assist victims and witnesses of crime; and

WHEREAS, the General Assembly, in recognizing the importance of citizen cooperation to the general effectiveness of the criminal justice system, finds that all crime victims and witnesses in the criminal justice system should be treated with dignity, respect, courtesy and sensitivity; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the General Assembly by this resolution calls upon all local governing bodies to establish, operate and maintain assistance programs to help victims and witnesses of crime in dealing with the complexities of the criminal justice system and in coping with the trauma and emotional toll to which such persons are subjected; and, be it

RESOLVED FURTHER, That the Clerk of the Senate prepare a copy of this resolution for presentation to all local governing bodies in the Commonwealth that they may be apprised of the sense of the General Assembly.

Appendix G.
Proposed Legislation

1 D 9/7/88 Brinson C 9/12/88 df

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend the Code of Virginia by adding a section numbered
4 19.2-269.2, relating to nondisclosure of the addresses or
5 telephone numbers of crime victims and witnesses.

6

7 Be it enacted by the General Assembly of Virginia.

8 1. That the Code of Virginia is amended by adding a section numbered
9 19.2-269.2 as follows:

10 § 19.2-269.2. Nondisclosure of addresses or telephone numbers of
11 crime victims and witnesses.--During any criminal proceeding upon
12 motion of the defendant or the attorney for the Commonwealth, a judge
13 may prohibit testimony as to the current address or telephone number
14 of a victim or witness if the judge determines that this information
15 is not material under the circumstances of the case

16

#

1 D 9/7/88 Brinson C 9/8/88 df

2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 53 1-160 of the Code of Virginia,
4 relating to notice to be given prior to the release of prisoners.

5

6 Be it enacted by the General Assembly of Virginia:

7 1. That § 53.1-160 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 53.1-160. Notice to be given prior to release of prisoners.--

10 A. Prior to the release or discharge of any prisoner, the Department
11 shall have notice of the release or discharge delivered by first class
12 mail to the court which committed the person to the Department of
13 Corrections , to the last known address of any victim of the offense
14 for which the prisoner was incarcerated if such victim has submitted a
15 written request for notification to the Virginia Parole Board, and to
16 the sheriff, chief of police and Commonwealth's attorney (1) of the
17 jurisdiction in which the offense occurred, (11) of the jurisdiction
18 in which the person resided prior to conviction and (111) if different
19 from (1) and (11), of the jurisdiction in which the person intends to
20 reside subsequent to being released or discharged.

21 B. Prior to the release of any prisoner to an authorized work
22 release program or release to attend a business, educational or other
23 related community program, the Department shall give notice to the
24 Commonwealth's attorney and the chief law-enforcement officer of the
25 jurisdiction in which the work on release will be performed or

1 attendance at an authorized program will be permitted.

2

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2 SENATE BILL NO. HOUSE BILL NO.

3 A BILL to amend and reenact § 19.2-299 of the Code of Virginia,
4 relating to investigations and reports by court probation
5 officers in certain felony cases.

6

7 Be it enacted by the General Assembly of Virginia:

8 1. That § 19.2-299 of the Code of Virginia is amended and reenacted
9 as follows:

10 § 19.2-299. Investigations and reports by probation officers in
11 certain cases.-- A. When a person is tried upon a felony charge ,
12 and is adjudged guilty of such charge, the court may, or on the motion
13 of the defendant shall, before imposing sentence direct a probation
14 officer of such court to thoroughly investigate and report upon the
15 history of the accused and any and all other relevant facts, to ~~the~~
16 ~~end that~~ fully advise the court may be fully advised as to the
17 appropriate and just sentence to be imposed. The probation officer,
18 after having made furnished a copy of this report available at least
19 five days prior to sentencing to counsel for the accused and the
20 attorney for the Commonwealth by ~~furnishing them with a copy for their~~
21 permanent use at least five days ~~prior thereto~~ , shall submit his
22 report in advance of the sentencing hearing to the judge in chambers ,
23 who shall keep such report confidential. The probation officer shall
24 be available to testify from this report in open court in the presence
25 of the accused , who shall have been advised of the its contents of
26 the same and be given the right to cross-examine the investigating

1 officer as to any matter contained therein and to present any
2 additional facts bearing upon the matter ~~whæh~~ he may desire to
3 present . The report of the investigating officer shall at all times
4 be ~~eensidered~~ and kept confidential by each recipient thereof , and
5 shall be filed as a part of the record in the case. Notwithstanding
6 any other provision of law ~~te the contrary~~ , any report so filed shall
7 be sealed upon the entry of the sentencing order by the court and made
8 available only by court order, except that such reports or copies
9 thereof shall be available at any time to any criminal justice agency,
10 as defined in § 9-169, of this or any other state or of the United
11 States ~~for any lawful purpose~~ , and shall be made available to counsel
12 for any person who has been indicted jointly for the same felony as
13 the person subject to the report. Any report prepared pursuant to the
14 provisions hereof shall without court order be made available to
15 counsel for the person who is the subject of the report if that person
16 is charged with a felony subsequent to the time of the preparation of
17 the report. On and after January 1, 1982, in any case where a
18 presentence report is ordered pursuant to this section, it shall be in
19 a form prescribed by the Department of Corrections. In all cases where
20 such report is not ordered, a simplified report shall be prepared on a
21 form prescribed by the Department of Corrections.

22 B. As a part of any presentence investigation conducted pursuant
23 to subsection A where the offense for which the defendant was
24 convicted involved a crime against the person, the court probation
25 officer shall advise any victim of such offense in writing that he may
26 submit to the Virginia Parole Board a written request (1) to be given
27 the opportunity to submit to the Board a written statement in advance
28 of any parole hearing describing the impact of the offense upon him

1 and his opinion regarding the defendant's release and (11) to receive
2 copies of such other notifications pertaining to the defendant as the
3 Board may provide.

4

#

2 SENATE BILL NO. HOUSE BILL NO

3 A BILL to amend and reenact § 19.2-299.1 of the Code of Virginia,
4 relating to victim impact statements.

5

6 Be it enacted by the General Assembly of Virginia.

7 1. That § 19.2-299.1 of the Code of Virginia is amended and reenacted
8 as follows:

9 § 19.2-299 1. When Victim Impact Statement required, contents;
10 uses.--The presentence report prepared pursuant to § 19 2-299 shall,
11 on motion of the Commonwealth's attorney with the consent of the
12 victim, in all cases involving abduction, malicious wounding, robbery
13 or criminal sexual assault, include a Victim Impact Statement and may,
14 in the discretion of the court, include a Victim Impact Statement, in
15 any other case except capital murder in which the court determines
16 that the defendant, in committing the felony for which he has been
17 convicted, may have caused significant physical, psychological or
18 economic injury to the victim. For purposes of this section, a victim
19 is (1) an individual who has suffered physical, psychological or
20 economic harm as a direct result of the commission of a felony, (11) a
21 spouse, child, parent or legal guardian of a minor victim, or (111) a
22 spouse, child, parent or legal guardian of a victim of a homicide in
23 non-capital cases

24 A Victim Impact Statement, which shall be kept confidential and
25 shall be sealed upon entry of the sentencing order, shall (1) identify

1 the victim, (ii) itemize any economic loss suffered by the victim as a
2 result of the offense, (iii) identify the nature and extent of any
3 physical or psychological injury suffered by the victim as a result of
4 the offense, (iv) detail any change in the victim's personal welfare,
5 lifestyle or familial relationships as a result of the offense, (v)
6 identify any request for psychological or medical services initiated
7 by the victim or the victim's family as a result of the offense, and
8 (vi) provide such other information as the court may require related
9 to the impact of the offense upon the victim.

10 If the court does not order a presentence investigation and
11 report, the Commonwealth's attorney may prepare a Victim Impact
12 Statement. The Victim Impact Statement may be considered by the court
13 in determining the appropriate sentence. A copy of the statement
14 prepared pursuant to this section shall be made available to the
15 defendant or counsel for the defendant without court order at least
16 five days prior to the sentencing hearing. The statement shall not be
17 admissible in any civil proceeding for damages arising out of the acts
18 upon which the conviction was based. The statement, however, may be
19 utilized by the Industrial Commission in its determinations on claims
20 by victims of crimes pursuant to Chapter 211 (§ 19.2-368.1 et seq.)
21 of this title.

22

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HOUSE JOINT RESOLUTION NO.....

Requesting local governing bodies to provide separate waiting rooms for victims and witnesses during court proceedings.

WHEREAS, every year numerous crimes are committed in Virginia which result in injury and loss to untold numbers of men, women and children; and

WHEREAS, the physical, emotional, and financial suffering of these victims and witnesses and their families is sometimes overlooked by the agencies which comprise our criminal justice system; and

WHEREAS, the major emphasis of the criminal justice system thus far has been the apprehension, prosecution and rehabilitation of the accused; and

WHEREAS, separate waiting areas for victims and witnesses create a less threatening, more comfortable environment in courthouses; and

WHEREAS, the General Assembly in 1984 passed House Joint Resolution No. 105, which stipulates that "victims and witnesses be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation"; and

WHEREAS, the General Assembly in 1988 added § 19.2-11.1 to the Code of Virginia, which requires locally operated victim-witness programs receiving funding administered by the Department of Criminal Justice Services to ensure that "victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation"; and

WHEREAS, many localities throughout the Commonwealth have responded to the needs of victims and witnesses by establishing separate waiting areas and are to be highly commended for their initiative.

WHEREAS, the Virginia State Crime Commission, as a result of its study of victims and witnesses of crime, recommended that the 1989 Session of the General Assembly adopt a resolution encouraging the inclusion of separate witness rooms in all courthouses planned and built or substantially renovated after July 1, 1989; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the General Assembly of Virginia by this resolution affirms the recommendation of the Virginia State Crime Commission and calls upon all local governing bodies who have not yet done so, make all reasonable efforts to furnish a separate waiting area for victims of crime and their families and witnesses during court proceedings that afford them privacy and protection from intimidation; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates prepare a copy of the resolution for presentation to the heads of all local governing bodies in order that they may be apprised of the sense of the General Assembly

