

HOUSE BILL 1109

Unofficial Copy  
E2

1998 Regular Session  
(8lr0137)

**ENROLLED BILL**  
*-- Judiciary/Judicial Proceedings --*

Introduced by **Delegates Genn, Comeau, R. Baker, Goldwater, Kopp, Preis,  
and Grosfeld**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **~~Criminal Offenders - Notice of Escape to Victims and Local Law~~**  
3 **~~Enforcement Agencies~~**  
4 **Criminal Procedure - Witnesses - Notification of Release and Escape of**  
5 **Offender**

6 FOR the purpose of ~~requiring a supervising authority to provide certain notice if a~~  
7 ~~person convicted of a certain crime of violence escapes from a facility or the~~  
8 ~~custody of a supervising authority; requiring that certain persons receive~~  
9 ~~notification; requiring notice information to be confidential; requiring notice of~~  
10 ~~recapture of an offender; requiring the Secretary of Public Safety and~~  
11 ~~Correctional Services to adopt certain regulations; defining certain terms; and~~  
12 ~~generally relating to notice of escape of certain criminal offenders under certain~~  
13 ~~circumstances authorizing a State's Attorney to provide a State's witness with a~~  
14 ~~copy of certain guidelines; allowing certain witnesses to request a certain notice~~  
15 ~~of a defendant's release under certain circumstances; requiring certain~~

1 commitment agencies provide certain notices to witnesses and to notify certain  
 2 witnesses of a defendant's release, escape, recapture, transfer, or death under  
 3 certain circumstances; ~~establishing that this Act does not create certain causes~~  
 4 ~~of action providing certain immunity for elected public officials, public~~  
 5 ~~employees, and public agencies; establishing that certain victims and witnesses~~  
 6 ~~of delinquent acts should be notified of certain releases and escapes; defining a~~  
 7 ~~certain term; and generally relating to the notification of witnesses of certain~~  
 8 ~~releases of defendants from custody.~~

9 ~~BY adding to~~

10 ~~Article 27—Crimes and Punishments~~  
 11 ~~Section 789A~~  
 12 ~~Annotated Code of Maryland~~  
 13 ~~(1996 Replacement Volume and 1997 Supplement)~~

14 BY repealing and reenacting, with amendments,

15 Article 27 - Crimes and Punishments  
 16 Section 770(c), 789, and 851(a)(7) and (8)  
 17 Annotated Code of Maryland  
 18 (1996 Replacement Volume and 1997 Supplement)

19 BY repealing and reenacting, without amendments,

20 Article 27 - Crimes and Punishments  
 21 Section 848(15) and (17), 849, and 851(b)  
 22 Annotated Code of Maryland  
 23 (1996 Replacement Volume and 1997 Supplement)

24 BY adding to

25 Article 27 - Crimes and Punishments  
 26 Section 851(a)(9)  
 27 Annotated Code of Maryland  
 28 (1996 Replacement Volume and 1997 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article 27 - Crimes and Punishments**

32 ~~789A:~~

33 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~  
 34 ~~INDICATED.~~

35 ~~(2) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC SAFETY AND~~  
 36 ~~CORRECTIONAL SERVICES.~~

1           (3)     "LOCAL LAW ENFORCEMENT AGENCY" MEANS THE LAW  
2 ENFORCEMENT AGENCY IN A COUNTY THAT HAS BEEN DESIGNATED BY THE  
3 COUNTY GOVERNING BODY AS THE PRIMARY LAW ENFORCEMENT UNIT IN THE  
4 COUNTY.

5           (4)     "OFFENDER" MEANS A PERSON WHO HAS BEEN CONVICTED OF A  
6 CRIME OF VIOLENCE AS DEFINED IN § 643B(A) OF THIS ARTICLE.

7           (5)     "SECRETARY" MEANS THE SECRETARY OF THE DEPARTMENT OF  
8 PUBLIC SAFETY AND CORRECTIONAL SERVICES.

9           (6)     "SUPERVISING AUTHORITY" MEANS:

10           (I)     IF THE OFFENDER IS IN THE CUSTODY OF A FACILITY  
11 OPERATED BY THE DEPARTMENT;

12           (II)    IF THE OFFENDER IS IN THE CUSTODY OF A LOCAL OR  
13 REGIONAL DETENTION CENTER, INCLUDING AN OFFENDER WHO IS PARTICIPATING  
14 IN A HOME DETENTION PROGRAM, THE MANAGING OFFICIAL OF THE FACILITY;

15           (III)   EXCEPT AS PROVIDED IN ITEM (VII) OF THIS PARAGRAPH, IF  
16 THE OFFENDER IS GRANTED PROBATION BEFORE JUDGMENT, PROBATION AFTER  
17 JUDGMENT, OR A SUSPENDED SENTENCE, THE COURT THAT GRANTED THE  
18 PROBATION OR SUSPENDED SENTENCE;

19           (IV)    IF THE OFFENDER IS IN THE CUSTODY OF THE PATUXENT  
20 INSTITUTION, THE SECRETARY;

21           (V)     IF THE OFFENDER IS IN THE CUSTODY OF A FACILITY  
22 OPERATED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE  
23 SECRETARY OF HEALTH AND MENTAL HYGIENE;

24           (VI)    IF THE OFFENDER IS IN THE STATE UNDER THE TERMS AND  
25 CONDITIONS OF THE INTERSTATE COMPACTS UNDER ARTICLE 41, §§ 4-801 AND 4-1201  
26 THROUGH 4-1211 OF THE CODE, THE SECRETARY; OR

27           (VII)   IF THE OFFENDER IS UNDER THE SUPERVISION OF THE  
28 DIVISION OF PAROLE AND PROBATION, THE SECRETARY.

29    (B)    (1)     IF AN OFFENDER ESCAPES FROM A FACILITY OR THE CUSTODY OF A  
30 SUPERVISING AUTHORITY, THE SUPERVISING AUTHORITY SHALL IMMEDIATELY  
31 NOTIFY, BY THE MOST REASONABLE AND EXPEDIENT MEANS AVAILABLE:

32           (I)     IN ACCORDANCE WITH § 789 OF THIS ARTICLE, ANY VICTIM OR  
33 VICTIM'S REPRESENTATIVE OF THE CRIME FOR WHICH THE OFFENDER WAS  
34 CONVICTED, IF THE VICTIM OR VICTIM'S REPRESENTATIVE HAS FILED A  
35 NOTIFICATION REQUEST FORM UNDER § 770 OF THIS ARTICLE OR MADE A WRITTEN  
36 REQUEST TO A SUPERVISING AUTHORITY;

1                   (II)    ANY OF THE FOLLOWING INDIVIDUALS WHO HAVE REQUESTED  
2 IN WRITING NOTIFICATION OF ESCAPE ABOUT A SPECIFIC OFFENDER:

3                   1.     ANY WITNESS WHO TESTIFIED AGAINST THE REGISTRANT  
4 IN ANY COURT PROCEEDING INVOLVING THE OFFENSE; AND

5                   2.     ANY INDIVIDUAL SPECIFIED IN WRITING BY THE STATE'S  
6 ATTORNEY;

7                   (III) THE LOCAL LAW ENFORCEMENT AGENCY IN THE  
8 JURISDICTION IN WHICH:

9                   1.     THE OFFENDER RESIDED BEFORE THE OFFENDER WAS  
10 COMMITTED TO THE CUSTODY OF THE SUPERVISING AUTHORITY; AND

11                   2.     THE OFFENDER ESCAPED; AND

12                   (IV) ANY PERSON OR AGENCY ENTITLED TO NOTICE UNDER § 792 OF  
13 THIS ARTICLE.

14                   (2)    INFORMATION REGARDING ANY INDIVIDUAL WHO RECEIVES NOTICE  
15 UNDER PARAGRAPH (1) OF THIS SUBSECTION IS CONFIDENTIAL AND MAY NOT BE  
16 DISCLOSED TO THE OFFENDER OR ANY OTHER PERSON OR OTHER ENTITY.

17                   (3)    IF THE OFFENDER IS RECAPTURED, THE SUPERVISING AUTHORITY  
18 SHALL SEND NOTICE, AS SOON AS POSSIBLE AND IN NO EVENT LATER THAN 2  
19 WORKING DAYS AFTER THE SUPERVISING AUTHORITY LEARNS OF THE RECAPTURE,  
20 TO:

21                   (1)    THE LOCAL LAW ENFORCEMENT AGENCY IN THE  
22 JURISDICTION IN WHICH:

23                   1.     THE OFFENDER RESIDED BEFORE THE OFFENDER WAS  
24 COMMITTED TO THE CUSTODY OF THE SUPERVISING AUTHORITY; AND

25                   2.     THE OFFENDER ESCAPED; AND

26                   (II)   ANY INDIVIDUAL WHO IS ENTITLED TO RECEIVE NOTICE  
27 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

28                   (4)    A SUPERVISING AUTHORITY SHALL SEND ANY NOTICE REQUIRED  
29 UNDER PARAGRAPHS (1) AND (3) OF THIS SUBSECTION TO THE LAST ADDRESS  
30 PROVIDED TO THE SUPERVISING AUTHORITY FOR AN INDIVIDUAL WHO IS ENTITLED  
31 TO NOTICE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

32                   (5)    (1)    THE DEPARTMENT AND LOCAL LAW ENFORCEMENT AGENCIES  
33 SHALL ESTABLISH PROCEDURES FOR CARRYING OUT THE NOTIFICATION  
34 REQUIREMENTS OF PARAGRAPHS (1) AND (3) OF THIS SUBSECTION, INCLUDING THE  
35 CIRCUMSTANCES UNDER AND MANNER IN WHICH NOTIFICATION SHALL BE  
36 PROVIDED.

1 ~~(H) A LOCAL LAW ENFORCEMENT AGENCY AND THE DEPARTMENT~~  
2 ~~MAY NOT RELEASE THE IDENTITY OF A VICTIM OF AN OFFENSE WHO RECEIVES~~  
3 ~~NOTIFICATION UNDER THIS SECTION.~~

4 ~~(6) A DISCLOSURE UNDER THIS SUBSECTION MAY NOT BE CONSTRUED~~  
5 ~~TO LIMIT OR PROHIBIT ANY OTHER DISCLOSURE PERMITTED OR REQUIRED UNDER~~  
6 ~~LAW.~~

7 ~~(C) THE SECRETARY SHALL ADOPT REGULATIONS TO IMPLEMENT THE~~  
8 ~~PROVISIONS OF THIS SECTION.~~

9 770.

10 (c) (1) Within 10 days after the later of the filing or the unsealing of an  
11 indictment or information in circuit court, the State's Attorney shall:

12 (i) Mail or otherwise deliver to the victim a copy of the pamphlet  
13 described in § 841(8)(ii) of this article;

14 (ii) Mail or otherwise deliver to the victim a copy of the notification  
15 request form described in § 841(9) of this article; and

16 (iii) Certify to the clerk that the State's Attorney has complied with  
17 the requirements in items (i) and (ii) of this paragraph or is unable to identify the  
18 victim.

19 (2) On the filing of a petition alleging delinquency in a case in which the  
20 child is alleged to have committed an act that could only be tried in the circuit court  
21 if committed by an adult, the State's Attorney shall:

22 (i) Inform the victim of the right to request restitution under § 807  
23 of this article;

24 (ii) Mail or otherwise deliver to the victim a copy of the notification  
25 request form described in § 841(9) of this article; and

26 (iii) Certify to the clerk that the State's Attorney has complied with  
27 the requirements in items (i) and (ii) of this paragraph or is unable to identify the  
28 victim.

29 (3) FOR CASES DESCRIBED UNDER THIS SUBSECTION, THE STATE'S  
30 ATTORNEY MAY PROVIDE ANY STATE'S WITNESS IN THE CASE WITH A COPY OF THE  
31 GUIDELINES FOR VICTIMS AND WITNESSES AVAILABLE UNDER §§ 847 THROUGH 850  
32 OF THIS TITLE.

33 789.

34 (a) (1) In this section the following words have the meanings indicated.

1           (2)     "Commitment agency" means a department or facility that has been  
2 ordered by a court to retain custody of a defendant or child and has received a  
3 notification request form under § 770(f) or (i) of this article.

4           (3)     "Release from confinement" means work release, home detention,  
5 and any other administrative or statutorily authorized release of a defendant from a  
6 confinement facility.

7           (4)     "Victim" means a victim who has filed a notification request form  
8 under § 770 of this article.

9           (5)     "WITNESS" MEANS ANY PERSON WHO:

10           (I)     HAS KNOWLEDGE OF THE EXISTENCE OF FACTS RELATING TO  
11 A CRIME OF VIOLENCE AS DEFINED UNDER § 643B OF THIS ARTICLE OR CONSPIRACY  
12 OR SOLICITATION TO COMMIT A CRIME OF VIOLENCE AS DEFINED UNDER § 643B OF  
13 THIS ARTICLE; AND

14           (II)    1.     MAKES A DECLARATION UNDER OATH THAT IS RECEIVED  
15 AS EVIDENCE FOR ANY PURPOSE; OR

16                   2.     HAS BEEN SERVED WITH A SUBPOENA ISSUED UNDER  
17 THE AUTHORITY OF A COURT OF THE STATE, OF ANY OTHER STATE, OR OF THE  
18 UNITED STATES.

19           (B)     IF A WITNESS REQUESTS IN WRITING FOR A COMMITMENT AGENCY TO  
20 NOTIFY THE WITNESS IN WRITING OF A DEFENDANT'S RELEASE FROM  
21 CONFINEMENT, THE PROVISIONS OF THIS SECTION SHALL APPLY.

22           [(b)] (C)     On receipt of a notification request form under § 770(f) or (i) of this  
23 article OR A WRITTEN REQUEST FROM A WITNESS FOR NOTIFICATION, if practicable,  
24 a commitment agency shall notify the victim OR WITNESS of:

25           (1)     The commitment agency's receipt of the notification request form;

26           (2)     The date on which the defendant was placed under the custody of the  
27 commitment agency;

28           (3)     How to change the address of the [victim] WITNESS, VICTIM, or of  
29 the person to receive notice for the victim; and

30           (4)     How to elect not to receive any future notices.

31           [(c)] (D)    A commitment agency shall notify a victim OR WITNESS, in advance if  
32 practicable, if any of the following events occur concerning the defendant:

33           (1)     An escape;

34           (2)     A recapture;

35           (3)     A transfer to another commitment agency;

1 (4) A release from confinement and any conditions attached to the  
2 release; and

3 (5) The death of the defendant.

4 [(d)] (E) A commitment agency may not disclose to a defendant the address or  
5 telephone number of a [victim] WITNESS, VICTIM, or person who receives notice for  
6 the victim.

7 ~~(F) NOTHING IN THIS SECTION MAY BE CONSTRUED AS CREATING A CAUSE~~  
8 ~~OF ACTION ON BEHALF OF ANY INDIVIDUAL AGAINST ANY PUBLIC OFFICIAL,~~  
9 ~~EMPLOYEE, PUBLIC AGENCY, OR STATE OR LOCAL GOVERNMENT, OR ANY AGENCY~~  
10 ~~RESPONSIBLE FOR CARRYING OUT THE PROVISIONS OF THIS SECTION.~~

11 (F) AN ELECTED PUBLIC OFFICIAL, PUBLIC EMPLOYEE, OR PUBLIC AGENCY  
12 SHALL HAVE THE IMMUNITY DESCRIBED IN §§ 5-302 AND 5-522 OF THE COURTS  
13 ARTICLE REGARDING CIVIL LIABILITY FOR DAMAGES ARISING OUT OF ANY ACTION  
14 RELATING TO THE PROVISIONS OF THIS SECTION, UNLESS IT IS SHOWN THAT THE  
15 OFFICIAL, EMPLOYEE, OR AGENCY ACTED WITH GROSS NEGLIGENCE OR IN BAD  
16 FAITH.

17 848.

18 A crime victim or witness should:

19 (15) On written request to the parole authority, be informed any time  
20 there is to be a hearing on provisional release from custody and any time the offender  
21 is to receive such a release;

22 (17) On written request to the agency that has custody of the offender  
23 after sentencing, be informed by the agency any time the offender escapes or receives  
24 a mandatory supervision release.

25 849.

26 The Department of Public Safety and Correctional Services shall be responsible  
27 for making the guidelines available to the agencies involved. To the extent feasible,  
28 the guidelines shall be printed by the inmates employed by State Use Industries.

29 851.

30 (a) A victim of a delinquent act or a witness should:

31 (7) Be advised of the right to have stolen or other property promptly  
32 returned and, on written request, have the property promptly returned by law  
33 enforcement agencies when means can be employed to otherwise satisfy evidentiary  
34 requirements for prosecution unless there is a compelling law enforcement reason for  
35 retaining it; [and]

1           (8)     Be informed, in appropriate cases, by the State's Attorney of the right  
2 to request restitution and, on request, be provided assistance in the preparation of the  
3 request and advice as to the collection of the payment of any restitution awarded; AND

4           (9)     ON WRITTEN REQUEST TO THE APPROPRIATE AGENCY, BE  
5 INFORMED ANY TIME THAT THE CHILD IS TO BE RELEASED OR ESCAPES.

6           (b)     The Department of Juvenile Justice shall be responsible for making the  
7 guidelines available to the agencies involved.

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 1998.