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By: **Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and Delegates Amedori, Bartlett, Boschert, Boutin, Bozman, Bronrott, Brown, Burns, Cadden, Clagett, Conway, Cryor, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Frush, Fulton, Giannetti, Glassman, Goldwater, Healey, Heller, Hixson, Howard, Hubbard, Hubers, Hutchins, A. Jones, Kach, Klima, Kopp, La Vay, Linton, Love, Mandel, McClenahan, McHale, McKee, Minnick, Moe, Mohorovic, Morhaim, O'Donnell, Owings, Palumbo, Parrott, Patterson, Petzold, Pitkin, Proctor, Rawlings, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Sher, Sophocleus, Swain, Turner, Valderrama, and Zirkin**

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Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 16, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Victims' Rights - Juvenile Hearings and Dispositions**

3 FOR the purpose of requiring that certain victims be notified of certain ~~juvenile~~  
4 ~~proceedings~~ waiver hearings involving a child; granting ~~certain~~ victims the right  
5 to be present ~~and to address the court~~ at certain juvenile proceedings; ~~requiring~~  
6 authorizing a victim to submit a victim impact statement to the court in certain  
7 waiver hearings involving a child; ~~authorizing~~ the court to consider ~~certain~~  
8 ~~information~~ a victim impact statement in determining its jurisdiction in certain  
9 ~~delinquency proceedings~~ waiver hearings involving a child; requiring the State's  
10 Attorney to notify a victim of the victim's right to submit a victim impact  
11 statement to the court under certain circumstances; requiring the court to  
12 consider certain statements from a victim before making a disposition on a  
13 delinquency petition; altering the court's priorities in making a disposition on a  
14 delinquency petition; defining a term; altering a definition of "victim"; making  
15 stylistic changes; and generally relating to victims' rights in certain juvenile  
16 hearings and dispositions.

17 BY repealing and reenacting, with amendments,

18 Article 27 - Crimes and Punishments

1 Section 594A, 770(e), and 781  
2 Annotated Code of Maryland  
3 (1996 Replacement Volume and 1998 Supplement)

4 BY repealing and reenacting, with amendments,  
5 Article - Courts and Judicial Proceedings  
6 Section 3-801(t), 3-812(e), 3-817, and 3-820(b) and (c)  
7 Annotated Code of Maryland  
8 (1998 Replacement Volume)

9 BY repealing and reenacting, without amendments,  
10 Article - Courts and Judicial Proceedings  
11 Section 3-801(a), 3-802, and 3-818  
12 Annotated Code of Maryland  
13 (1998 Replacement Volume)

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

16 **Article 27 - Crimes and Punishments**

17 594A.

18 (a) IN THIS SECTION, "VICTIM" HAS THE MEANING STATED IN § 3-801 OF THE  
19 COURTS ARTICLE.

20 (B) In any case, except as provided in [subsection (b)] SUBSECTION (C) OF  
21 THIS SECTION, involving a child who has reached 14 years of age but has not reached  
22 18 years of age at the time of any alleged offense excluded under the provisions of §  
23 3-804(e)(1), (4), or (5) of the Courts and Judicial Proceedings Article, the court  
24 exercising jurisdiction may transfer the case to the juvenile court if a waiver is  
25 believed to be in the interests of the child or society.

26 [(b)] (C) The court may not transfer a case to the juvenile court under  
27 subsection [(a)] (B) OF THIS SECTION if:

28 (1) The child has previously been waived to juvenile court and  
29 adjudicated delinquent;

30 (2) The child was convicted in another unrelated case excluded from the  
31 jurisdiction of the juvenile court under § 3-804(e)(1) or (4) of the Courts and Judicial  
32 Proceedings Article; or

33 (3) The alleged offense is murder in the first degree and the accused  
34 child is 16 or 17 at the time the alleged offense was committed.

35 [(c)] (D) In making a determination as to waiver of jurisdiction the court shall  
36 consider the following:

- 1 (1) Age of child;
- 2 (2) Mental and physical condition of child;
- 3 (3) The child's amenability to treatment in any institution, facility, or  
4 program available to delinquents;
- 5 (4) The nature of the alleged offense; and
- 6 (5) The public safety.

7 [(d)] (E) For the purpose of making its determination, the court may request  
8 that a study concerning the child, [his] THE CHILD'S family, [his] THE CHILD'S  
9 environment, and other matters relevant to the disposition of the case be made.

10 [(e)] (F) If the jurisdiction is waived, the court may order the person held for  
11 trial under the regular procedures of the juvenile court.

12 [(f)] (G) The court may order a minor to be held in a juvenile facility pending  
13 a determination under this section to waive jurisdiction over the case involving the  
14 minor to the juvenile court.

15 (H) (1) (I) A VICTIM SHALL HAVE A RIGHT TO:

16 ~~(1)~~ (I) BE PRESENT AT A WAIVER HEARING AS PROVIDED UNDER § 857  
17 OF THIS ARTICLE; AND

18 ~~(II)~~ (II) ADDRESS THE COURT BEFORE THE DETERMINATION AS TO  
19 WHETHER TO WAIVE JURISDICTION.

20 ~~(2)~~ (2) THE COURT SHALL CONSIDER THE STUDY MADE UNDER  
21 SUBSECTION (E) OF THIS SECTION, THE VICTIM IMPACT STATEMENT, AND ANY ORAL  
22 ADDRESS BY THE VICTIM WHEN DETERMINING WHETHER TO WAIVE JURISDICTION  
23 MAY SUBMIT A VICTIM IMPACT STATEMENT TO THE COURT AS PROVIDED IN § 781 OF  
24 THIS ARTICLE.

25 (II) THIS PARAGRAPH DOES NOT PRECLUDE A VICTIM WHO HAS  
26 NOT FILED A NOTIFICATION REQUEST FORM UNDER § 770 OF THIS ARTICLE FROM  
27 SUBMITTING A VICTIM IMPACT STATEMENT TO THE COURT.

28 (III) THE COURT MAY CONSIDER A VICTIM IMPACT STATEMENT IN  
29 DETERMINING WHETHER TO WAIVE JURISDICTION UNDER THIS SECTION.

30 ~~(3)-(2)~~ (2) THE A VICTIM SHALL BE GIVEN NOTICE OF THE WAIVER HEARING  
31 AS PROVIDED UNDER § 770 OF THIS ARTICLE.

32 770.

33 (e) (1) If a victim has filed a notification request form under subsection (d)  
34 of this section, the State's Attorney shall send to the victim prior notice, if practicable,  
35 of all court proceedings in the case, including the terms and conditions of a plea

1 agreement, if any, AND OF THE VICTIM'S RIGHT TO SUBMIT A VICTIM IMPACT  
2 STATEMENT TO THE COURT AS PROVIDED IN § 781 OF THIS ARTICLE.

3           (2)     If the case is in a jurisdiction in which the office of the clerk is  
4 equipped with an automated filing system, nothing in this subsection precludes the  
5 State's Attorney from requesting the clerk to send the notice required under  
6 paragraph (1) of this subsection.

7           (3)     After a victim has filed a notification request form under subsection  
8 (d) of this section and if prior notice to the victim is not practicable, or if the victim is  
9 not present at the proceeding, the State's Attorney shall, as soon after the proceeding  
10 as practicable, advise the victim of the terms and conditions of any plea agreement,  
11 judicial action, and all other proceedings that affect the victim's interests, including a  
12 bail hearing or change in the defendant's pretrial release order, dismissal, nolle  
13 prosequi or setting of charges, trial, disposition, or post-sentencing court proceeding.

14           (4)     Whether or not the victim has filed a notification request form under  
15 subsection (d) of this section, if the victim requests such information, nothing may  
16 preclude the State's Attorney from giving the victim information concerning the  
17 current status of the case.

18 781.

19       (a)     In this section, "defendant" means:

20           (1)     A person who is charged with a crime; or

21           (2)     A child who is alleged to have committed a delinquent act.

22       (b)     A presentence investigation that is completed by the Division of Parole and  
23 Probation under Article 41, § 4-609 of the Code or a predisposition investigation that  
24 is completed by the Department of Juvenile Justice shall include a victim impact  
25 statement, if:

26           (1)     The defendant, in committing a felony or delinquent act that would  
27 be a felony if committed by an adult, caused physical, psychological, or economic  
28 injury to the victim; or

29           (2)     The defendant, in committing a misdemeanor, caused serious  
30 physical injury or death to the victim.

31       (c)     If the court does not order a presentence investigation or predisposition  
32 investigation, the State's Attorney or the victim may prepare a victim impact  
33 statement to be submitted to the court and the defendant in accordance with the  
34 Maryland Rules pertaining to presentence investigations.

35       (d)     The court shall consider the victim impact statement in determining the  
36 appropriate sentence or disposition, and in entering any judgment of restitution for  
37 the victim under § 807 of this subtitle.

1 (E) (1) THE STATE'S ATTORNEY SHALL NOTIFY A VICTIM WHO HAS FILED A  
2 NOTIFICATION REQUEST FORM UNDER § 770 OF THIS ARTICLE OF THE VICTIM'S  
3 RIGHT TO SUBMIT A VICTIM IMPACT STATEMENT TO THE COURT IN A WAIVER  
4 HEARING UNDER § 594A OF THIS ARTICLE OR UNDER § 3-817 OF THE COURTS  
5 ARTICLE.

6 (2) THIS SUBSECTION DOES NOT PRECLUDE A VICTIM WHO HAS NOT  
7 FILED A NOTIFICATION REQUEST FORM UNDER § 770 OF THIS ARTICLE FROM  
8 SUBMITTING A VICTIM IMPACT STATEMENT TO THE COURT.

9 (3) THE COURT MAY CONSIDER A VICTIM IMPACT STATEMENT IN  
10 DETERMINING WHETHER TO WAIVE JURISDICTION UNDER § 594A OF THIS ARTICLE  
11 OR UNDER § 3-817 OF THE COURTS ARTICLE.

12 [(e)] (F) A victim impact statement shall:

13 (1) Identify the victim of the offense;

14 (2) Itemize any economic loss suffered by the victim as a result of the  
15 offense;

16 (3) Identify any physical injury suffered by the victim as a result of the  
17 offense along with its seriousness and permanence;

18 (4) Describe any change in the victim's personal welfare or familial  
19 relationships as a result of the offense;

20 (5) Identify any request for psychological services initiated by the victim  
21 or the victim's family as a result of the offense;

22 (6) Identify any request by the victim that the defendant be prohibited  
23 from having contact with the victim as a condition of probation, parole, mandatory  
24 supervision, work release, or any other judicial or administrative release of the  
25 defendant; and

26 (7) Contain any other information related to the impact of the offense  
27 upon the victim or the victim's family that the court requires.

28 [(f)] (G) If the victim is deceased, under a mental, physical, or legal disability,  
29 or otherwise unable to provide the information required under this section, the  
30 information may be obtained from the personal representative, guardian, or  
31 committee, or such family members as may be necessary.

## 32 **Article - Courts and Judicial Proceedings**

33 3-801.

34 (a) In this subtitle, the following words have the meanings indicated, unless  
35 the context of their use indicates otherwise.

1 (t) (1) "Victim" means a person who suffers direct or threatened physical,  
2 emotional, or financial harm as a result of a delinquent act.

3 (2) "Victim" includes a family member of a minor, [incompetent]  
4 DISABLED, or a [homicide] DECEASED victim.

5 (3) "Victim" includes, if the victim is not an individual, the victim's agent  
6 or designee.

7 3-802.

8 (a) The purposes of this subtitle are:

9 (1) To ensure that the Juvenile Justice System balances the following  
10 objectives for children who have committed delinquent acts:

11 (i) Public safety and the protection of the community;

12 (ii) Accountability of the child to the victim and the community for  
13 offenses committed; and

14 (iii) Competency and character development to assist children in  
15 becoming responsible and productive members of society;

16 (2) To hold parents of children found to be delinquent responsible for the  
17 child's behavior and accountable to the victim and the community;

18 (3) To hold parents of children found to be delinquent or in need of  
19 assistance or supervision responsible, where possible, for remedying the  
20 circumstances that required the court's intervention;

21 (4) To provide for the care, protection, and wholesome mental and  
22 physical development of children coming within the provisions of this subtitle; and to  
23 provide for a program of treatment, training, and rehabilitation consistent with the  
24 child's best interests and the protection of the public interest;

25 (5) To conserve and strengthen the child's family ties and to separate a  
26 child from his parents only when necessary for his welfare or in the interest of public  
27 safety;

28 (6) If necessary to remove a child from his home, to secure for him  
29 custody, care, and discipline as nearly as possible equivalent to that which should  
30 have been given by his parents; and

31 (7) To provide judicial procedures for carrying out the provisions of this  
32 subtitle.

33 (b) This subtitle shall be liberally construed to effectuate these purposes.

1 3-812.

2 (e) (1) The court shall conduct all hearings in an informal manner.

3 (2) In any proceeding in which a child is alleged to be in need of  
4 supervision or assistance or to have committed a delinquent act that would be a  
5 misdemeanor if committed by an adult, the court may exclude the general public from  
6 a hearing, and admit only THE VICTIM AND those persons having a direct interest in  
7 the proceeding and their representatives.

8 (3) Except as provided in paragraph (4) of this subsection, in a case in  
9 which a child is alleged to have committed a delinquent act that would be a felony if  
10 committed by an adult, the court shall conduct in open court any hearing or other  
11 proceeding at which the child has a right to appear.

12 (4) For good cause shown, the court may exclude the general public from  
13 a hearing or other proceeding in a case in which a child is alleged to have committed  
14 a delinquent act that would be a felony if committed by an adult and admit only the  
15 victim and those persons having a direct interest in the proceeding and their  
16 representatives.

17 (5) Except as provided in paragraph (6) of this subsection, the court shall  
18 announce, in open court, adjudications and dispositions in cases where a child is  
19 alleged to have committed a delinquent act which would be a felony if committed by  
20 an adult.

21 (6) For good cause shown, the court may exclude the general public from  
22 a proceeding at which an adjudication or disposition is announced and admit only the  
23 victim and those persons having a direct interest in the proceeding and their  
24 representatives.

25 3-817.

26 (a) The court may waive the exclusive jurisdiction conferred by § 3-804 OF  
27 THIS SUBTITLE with respect to a petition alleging delinquency by:

28 (1) A child who is 15 years old or older; or

29 (2) A child who has not reached his 15th birthday, but who is charged  
30 with committing an act which if committed by an adult, would be punishable by death  
31 or life imprisonment.

32 (b) ~~(4)~~ The court may not waive its jurisdiction until after it has conducted a  
33 waiver hearing, held prior to an adjudicatory hearing and after notice has been given  
34 to all parties as prescribed by the Maryland Rules. The waiver hearing is solely to  
35 determine whether the court should waive its jurisdiction.

36 ~~(2)~~ (C)(1) NOTICE OF THE WAIVER HEARING SHALL BE GIVEN TO ~~THE~~ A  
37 VICTIM AS PROVIDED UNDER ARTICLE 27, § 770 OF THE CODE.

1 ~~(3) A VICTIM SHALL HAVE A RIGHT TO BE PRESENT AT THE WAIVER~~  
 2 ~~HEARING AND SHALL HAVE THE RIGHT TO ADDRESS THE COURT PRIOR TO THE~~  
 3 ~~DETERMINATION AS TO WHETHER TO WAIVE ITS JURISDICTION.~~

4 (2) (I) A VICTIM MAY SUBMIT A VICTIM IMPACT STATEMENT TO THE  
 5 COURT AS PROVIDED IN ARTICLE 27, § 781 OF THE CODE.

6 (II) THIS PARAGRAPH DOES NOT PRECLUDE A VICTIM WHO HAS  
 7 NOT FILED A NOTIFICATION REQUEST FORM UNDER ARTICLE 27, § 770 OF THE CODE  
 8 FROM SUBMITTING A VICTIM IMPACT STATEMENT TO THE COURT.

9 (III) THE COURT MAY CONSIDER A VICTIM IMPACT STATEMENT IN  
 10 DETERMINING WHETHER TO WAIVE JURISDICTION UNDER THIS SECTION.

11 (⇌) (D) (1) The court may not waive its jurisdiction unless it determines,  
 12 from a preponderance of the evidence presented at the hearing, that the child is an  
 13 unfit subject for juvenile rehabilitative measures.

14 (2) For purposes of determining whether to waive its jurisdiction, the  
 15 court shall assume that the child committed the delinquent act alleged.

16 ~~(3) IF A STUDY IS MADE UNDER § 3-818 OF THIS SUBTITLE, THE COURT~~  
 17 ~~SHALL CONSIDER THE STUDY AND ANY ORAL ADDRESS OR WRITTEN STATEMENT OF~~  
 18 ~~A VICTIM WHEN DETERMINING WHETHER TO WAIVE ITS JURISDICTION.~~

19 (⇌) (E) In making its determination, the court shall consider the following  
 20 criteria individually and in relation to each other on the record:

21 (1) Age of the child;

22 (2) Mental and physical condition of the child;

23 (3) The child's amenability to treatment in any institution, facility, or  
 24 program available to delinquents;

25 (4) The nature of the offense and the child's alleged participation in it;  
 26 and

27 (5) The public safety.

28 (⇌) (F) If the jurisdiction is waived, the court shall order the child held for  
 29 trial under the regular procedures of the court which would have jurisdiction over the  
 30 offense if committed by an adult. The petition alleging delinquency shall be  
 31 considered a charging document for purposes of detaining the child pending a bail  
 32 hearing.

33 (⇌) (G) An order waiving jurisdiction is interlocutory.

34 (⇌) (H) If the court has once waived its jurisdiction with respect to a child in  
 35 accordance with this section, and that child is subsequently brought before the court



1 on another charge of delinquency, the court may waive its jurisdiction in the  
2 subsequent proceeding after summary review.

3 3-818.

4 (a) After a petition or a citation has been filed, the court may direct the  
5 Department of Juvenile Justice or another qualified agency to make a study  
6 concerning the child, his family, his environment, and other matters relevant to the  
7 disposition of the case.

8 (b) As part of the study, the child or any parent, guardian, or custodian may be  
9 examined at a suitable place by a physician, psychiatrist, psychologist, or other  
10 professionally qualified person.

11 (c) The report of the study is admissible as evidence at a waiver hearing and  
12 at a disposition hearing, but not at an adjudicatory hearing. However, the attorney for  
13 each party has the right to inspect the report prior to its presentation to the court, to  
14 challenge or impeach its findings and to present appropriate evidence with respect to  
15 it.

16 3-820.

17 (b) The priorities in making a disposition are [the public safety and a program  
18 of treatment, training, and rehabilitation best suited to the physical, mental, and  
19 moral welfare of the child consistent with the public interest] CONSISTENT WITH THE  
20 PURPOSES SPECIFIED IN § 3-802 OF THIS SUBTITLE.

21 (c) (1) In making a disposition on a petition, the court may:

22 (i) Place the child on probation or under supervision in his own  
23 home or in the custody or under the guardianship of a relative or other fit person,  
24 upon terms the court deems appropriate;

25 (ii) Subject to the provisions of paragraph (2) of this subsection,  
26 commit the child to the custody or under the guardianship of the Department of  
27 Juvenile Justice, a local department of social services, the Department of Health and  
28 Mental Hygiene, or a public or licensed private agency on terms that the court  
29 considers appropriate to meet the priorities set forth in [subsection (b) of this section]  
30 § 3-802 OF THIS SUBTITLE, including designation of the type of facility where the child  
31 is to be accommodated, until custody or guardianship is terminated with approval of  
32 the court or as required under § 3-825 of this subtitle; or

33 (iii) Order the child, parents, guardian, or custodian of the child to  
34 participate in rehabilitative services that are in the best interest of the child and the  
35 family.

36 (2) A child committed under paragraph (1)(ii) of this subsection may not  
37 be accommodated in a facility that has reached budgeted capacity if a bed is available  
38 in another comparable facility in the State, unless the placement to the facility that

1 has reached budgeted capacity has been recommended by the Department of Juvenile  
2 Justice.

3 (3) THE COURT SHALL CONSIDER ~~AN~~ ANY ORAL ADDRESS MADE IN  
4 ACCORDANCE WITH ARTICLE 27, § 780 OF THE CODE OR WRITTEN STATEMENT OF A  
5 VICTIM ANY VICTIM IMPACT STATEMENT, AS DESCRIBED IN ARTICLE 27, § 781 OF THE  
6 CODE, IN DETERMINING AN APPROPRIATE DISPOSITION ON A PETITION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 1999.