
By: **Delegate Vallario (Task Force To Examine Maryland's Crime Victims' Rights Laws) and Delegates Amedori, Arnick, R. Baker, W. Baker, Barkley, Barve, Benson, Boschert, Boutin, Bozman, Brinkley, Bronrott, Burns, Cadden, Clagett, Cole, Conway, Cryor, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Elliott, Finifter, Flanagan, Franchot, Frush, Fulton, Giannetti, Glassman, Hammen, Harrison, Healey, Hecht, Heller, Hixson, Howard, Hubbard, Hubers, Hurson, Hutchins, A. Jones, V. Jones, Kach, K. Kelly, Klausmeier, Klima, Kopp, La Vay, Leopold, Linton, Love, Mandel, McHale, McIntosh, McKee, Menes, Moe, Morhaim, O'Donnell, Owings, Paige, Parrott, Petzold, Pitkin, Proctor, Rawlings, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Shank, Sher, Shriver, Snodgrass, Stern, Turner, Valderrama, Weir, and Wood**

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Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 20, 2000

CHAPTER _____

1 AN ACT concerning

2 **Victim's Rights - Incompetency and Not Criminally Responsible Procedures**

3 FOR the purpose of eliminating a requirement that a victim notify the Department of
4 Health and Mental Hygiene every 2 years in writing in order that a victim be
5 notified of certain proceedings concerning incompetency and not criminally
6 responsible cases under certain circumstances; requiring the Department to
7 notify certain victims and victim's representatives of any court orders to
8 examine or commit defendants, of any scheduled hearings, of any
9 recommendations by the Department or an Administrative Law Judge
10 concerning release, or of court orders for release or discharge in cases involving
11 incompetency and not criminally responsible; eliminating a requirement that
12 there be a certain notification before a victim may submit certain statements;
13 allowing a victim to submit certain oral statements; allowing a victim to submit
14 certain information to a court or Administrative Law Judge under certain
15 circumstances; requiring a court or Administrative Law Judge to consider and
16 take certain actions regarding certain information; requiring a facility of the

1 Department to notify certain victims of certain events; providing for the
 2 admissibility of certain written victims' statements at certain proceedings under
 3 certain circumstances; providing for the testimony of a victim at certain
 4 hearings under certain circumstances; allowing an administrative law judge to
 5 exclude victims from certain parts of certain proceedings under certain
 6 circumstances; requiring the notification of certain victims and victim's
 7 representatives of certain court hearings; providing for the right of certain
 8 victims and representatives to attend certain hearings under certain
 9 circumstances; making stylistic changes; defining a certain term; and generally
 10 relating to the rights of victims and victim's representatives in incompetency
 11 and not criminally responsible cases.

12 BY repealing and reenacting, with amendments,
 13 Article - Health - General
 14 Section 12-122
 15 Annotated Code of Maryland
 16 (1994 Replacement Volume and 1999 Supplement)

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

19 **Article - Health - General**

20 12-122.

21 (a) (1) In this section, "victim" means a victim of a crime of violence, as

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 23 INDICATED.

24 (2) "DEFENDANT" MEANS:

25 (I) A COMMITTED INDIVIDUAL;

26 (II) AN INDIVIDUAL FOUND INCOMPETENT TO STAND TRIAL; OR

27 (III) AN INDIVIDUAL CHARGED WITH A CRIME AND THE ISSUE OF
 28 WHETHER THE INDIVIDUAL IS INCOMPETENT TO STAND TRIAL HAS BEEN RAISED OR
 29 WHERE A PLEA OF NOT CRIMINALLY RESPONSIBLE HAS BEEN ENTERED.

30 (3) (I) "VICTIM" MEANS A VICTIM OF A CRIME OF VIOLENCE, AS
 31 defined in Article 27, § 643B of the Code or a victim who has filed a notification
 32 request form under Article 27, § 770 of the Code.

33 (2) (II) "Victim" includes a designated family member of a victim who is
 34 deceased, disabled, or a minor.

35 (b) A State's Attorney shall notify a victim of all rights provided under this
 36 section.

- 1 (c) (1) A victim may request notification under this section by:
- 2 (i) Notifying the State's Attorney and the Department [once every
3 2 years in writing] of the victim's request for notification; or
- 4 (ii) Filing a notification request form under Article 27, § 770 of the
5 Code.
- 6 (2) A victim's request for notification under paragraph (1)(i) of this
7 subsection shall designate:
- 8 (i) The address and telephone number of the victim; or
- 9 (ii) The name, address, and telephone number of a representative
10 to receive notice on behalf of the victim.
- 11 (3) A victim may, at any time, withdraw a request for notification.
- 12 (d) If a victim has requested notification in the manner provided under
13 subsection (c) of this section, the Department shall promptly notify the victim or the
14 victim's representative in writing when:
- 15 (1) The Department receives a court order to examine a defendant under
16 [§ 12-110 of] this subtitle;
- 17 (2) The Department receives a court order committing a defendant to the
18 Department under [§ 12-111 of] this subtitle;
- 19 (3) A hearing is scheduled under [§ 12-114 of] this ~~subtitle~~ ARTICLE
20 RELATING TO A DEFENDANT;
- 21 (4) The Department receives notice that a ~~committed individual~~
22 DEFENDANT has applied for a hearing ~~under [§ 12-118 of] this subtitle~~ OR FILED A
23 PETITION FOR RELEASE;
- 24 (5) An administrative law judge recommends that a committed
25 individual be released [after a hearing under § 12-114 of] UNDER this subtitle;
- 26 (6) The Department submits a recommendation to the court for a
27 ~~committed individual's~~ DEFENDANT'S conditional release ~~under [§ 12-119 of] this~~
28 ~~subtitle~~;
- 29 (7) The facility of the Department that has charge of a ~~committed~~
30 ~~individual~~ DEFENDANT has notified the State's Attorney that a ~~committed individual~~
31 DEFENDANT is absent without authorization; or
- 32 (8) The Department receives a court order for the conditional release or
33 discharge from commitment of a ~~committed individual~~ DEFENDANT ~~under [§ 12-117,~~
34 ~~§ 12-118, or § 12-119 of] this subtitle.~~

1 (e) (1) [Upon notification by the Department under subsection (d) of this
2 section, a] A victim may submit, in writing OR ORALLY, to the State's Attorney and to
3 the facility of the Department that has charge of a ~~committed individual~~ DEFENDANT:

4 [(1)] (I) Any information that the victim considers relevant; and

5 [(2)] (II) A request that the ~~committed individual~~ DEFENDANT be
6 prohibited from having any contact with the victim, as a condition of release.

7 (2) EXCEPT FOR A COURT HEARING TO DETERMINE IF A PERSON IS ~~NOT~~
8 ~~COMPETENT~~ INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE, A
9 VICTIM MAY SUBMIT A WRITTEN OR ORAL STATEMENT TO THE COURT OR
10 ADMINISTRATIVE LAW JUDGE CONDUCTING A HEARING OR REVIEW UNDER THIS
11 ~~SUBTITLE~~ ARTICLE RELATING TO A DEFENDANT CONTAINING:

12 (I) ANY INFORMATION ~~THAT THE VICTIM CONSIDERS RELEVANT~~
13 REGARDING THE NATURE AND CONSEQUENCES OF THE CRIME AND ANY CONTACT
14 AFTER THE CRIME BETWEEN THE DEFENDANT AND THE VICTIM OR THE VICTIM'S
15 FAMILY; AND

16 (II) A REQUEST THAT THE ~~COMMITTED INDIVIDUAL~~ DEFENDANT
17 BE PROHIBITED FROM HAVING ANY CONTACT WITH THE VICTIM AS A CONDITION OF
18 RELEASE.

19 (f) (1) If a victim submits WRITTEN OR ORAL information [to the
20 Department] under this section, the Department, COURT, OR ADMINISTRATIVE LAW
21 JUDGE shall:

22 ~~(+)~~ (I) Consider the information;

23 ~~(=)~~ (II) Maintain at the facility that has charge of the ~~committed~~
24 ~~individual~~ DEFENDANT, separate from the medical record of the ~~committed individual~~
25 DEFENDANT, the written statement of the victim; and

26 ~~(=)~~ (III) Delete the victim's or the victim's representative's address and
27 telephone number before any document is examined by the ~~committed individual or~~
28 ~~the committed individual's representative~~. DEFENDANT OR DEFENDANT'S
29 REPRESENTATIVE.

30 (2) (I) IF A VICTIM HAS SUBMITTED A WRITTEN FACTUAL STATEMENT
31 UNDER SUBSECTION (E)(2)(I) OF THIS SECTION TO THE DEPARTMENT, AT LEAST 30
32 DAYS BEFORE A HEARING OR REVIEW UNDER THIS ARTICLE THE DEPARTMENT
33 SHALL NOTIFY THE DEFENDANT OR DEFENDANT'S REPRESENTATIVE IN WRITING OF
34 THE INTENDED USE OF THE VICTIM'S WRITTEN FACTUAL STATEMENT AND SEND TO
35 THE DEFENDANT OR THE DEFENDANT'S REPRESENTATIVE A COPY OF THE WRITTEN
36 FACTUAL STATEMENT TO BE ADMITTED.

37 (II) IF THE DEFENDANT OBJECTS TO THE ADMISSION OF THE
38 WRITTEN FACTUAL STATEMENT OF THE VICTIM, THE DEFENDANT SHALL NOTIFY

1 THE DEPARTMENT, STATE'S ATTORNEY, AND COURT OR ADMINISTRATIVE LAW
 2 JUDGE IN WRITING NO LATER THAN 20 DAYS BEFORE THE HEARING OR REVIEW.

3 (III) IF THE TIMELY AND PROPER NOTICE REQUIRED UNDER
 4 SUBPARAGRAPH (II) OF THIS PARAGRAPH IS PROVIDED BY THE DEFENDANT, THE
 5 WRITTEN FACTUAL STATEMENT IS INADMISSIBLE WITHOUT THE TESTIMONY OF THE
 6 VICTIM.

7 (IV) FAILURE OF THE DEFENDANT TO GIVE THE TIMELY AND
 8 PROPER NOTICE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH CONSTITUTES A
 9 WAIVER OF THE DEFENDANT'S RIGHT TO THE PRESENCE AND TESTIMONY OF THE
 10 VICTIM AND THE WRITTEN FACTUAL STATEMENT OF THE VICTIM SHALL BE
 11 ADMITTED.

12 (V) IF A DEFENDANT PROVIDES NOTICE UNDER SUBPARAGRAPH
 13 (II) OF THIS PARAGRAPH, THE DEPARTMENT SHALL NOTIFY THE VICTIM THAT:

14 1. THE VICTIM'S WRITTEN FACTUAL STATEMENT IS
 15 INADMISSIBLE AT THE HEARING WITHOUT THE TESTIMONY OF THE VICTIM; AND

16 2. THE VICTIM MAY ATTEND THE HEARING AND TESTIFY.

17 (g) ~~This~~ EXCEPT AS PROVIDED BY THIS SECTION, THIS section may not be
 18 construed to authorize the release to the victim of any medical, psychological, or
 19 psychiatric information on a ~~committed individual~~ DEFENDANT.

20 (h) ~~The facility of the Department that has charge of an individual under §~~
 21 ~~12-110 of this subtitle~~ THE DEPARTMENT shall promptly notify the State's Attorney
 22 and a victim or a victim's representative who has requested notification REGARDING
 23 A DEFENDANT under this section if:

24 (1) [the] ~~THE individual~~ DEFENDANT is absent without authorization;

25 (2) A HOSPITAL WARRANT IS ISSUED FOR THE ~~INDIVIDUAL~~ DEFENDANT;
 26 OR

27 (3) REQUIRED UNDER ARTICLE 27, § 789 OF THE CODE.

28 (i) An agent or employee of the Department who acts in compliance with the
 29 provisions of this section shall have the immunity from liability described under §
 30 5-522 of the Courts Article.

31 (J) ~~BEFORE A COURT HEARING UNDER THIS SUBTITLE~~ ARTICLE RELATING TO
 32 A DEFENDANT, THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED OF
 33 THE PROCEEDING AS PROVIDED UNDER ARTICLE 27, § 770 OR § 784 OF THE CODE.

34 (K) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
 35 VICTIM OR VICTIM'S REPRESENTATIVE SHALL HAVE THE RIGHT TO ATTEND A
 36 HEARING UNDER THIS SUBTITLE ARTICLE RELATING TO A DEFENDANT AS PROVIDED
 37 UNDER ARTICLE 27, § 857 OF THE CODE.

1 (2) AT THE REQUEST OF A COMMITTED INDIVIDUAL, AN
2 ADMINISTRATIVE LAW JUDGE IN A RELEASE HEARING OR A VIOLATION HEARING
3 UNDER THIS SUBTITLE FOR AN INDIVIDUAL FOUND NOT CRIMINALLY RESPONSIBLE
4 MAY EXCLUDE A VICTIM OR VICTIM'S REPRESENTATIVE FROM THE EXPERT
5 TESTIMONY REGARDING THE COMMITTED INDIVIDUAL'S MEDICAL, PSYCHOLOGICAL,
6 OR PSYCHIATRIC INFORMATION IF THE ADMINISTRATIVE LAW JUDGE FINDS THE
7 MEDICAL, PSYCHOLOGICAL, OR PSYCHIATRIC INFORMATION IS:

8 (I) HIGHLY SENSITIVE TO THE COMMITTED INDIVIDUAL; AND

9 (II) NOT RELEVANT TO WHETHER THE INDIVIDUAL SHOULD BE
10 RELEASED OR HAS VIOLATED THE CONDITIONS OF RELEASE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2000.