

SENATE BILL 240

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HB 587/00 - JUD

2001 Regular Session
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By: **Senator Stone (Task Force To Examine Maryland's Crime Victims' Rights Laws)** and **Senators Colburn, Collins, Ferguson, Hollinger, Jimeno, Kelley, Lawlah, Sfikas, and Van Hollen**

Introduced and read first time: January 24, 2001

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Victims' Rights - Incompetency and Not Criminally Responsible Procedures**

3 FOR the purpose of eliminating a requirement that a victim or victim's representative
4 notify the Department of Health and Mental Hygiene every 2 years in writing in
5 order that the victim or victim's representative be notified of certain proceedings
6 concerning incompetency and not criminally responsible cases under certain
7 circumstances; requiring the Department to notify certain victims and victims'
8 representatives of any court orders to examine or commit defendants, of any
9 scheduled hearings, of any recommendations by the Department or Office of
10 Administrative Hearings concerning release, or of court orders for release or
11 discharge in cases involving incompetency and not criminally responsible;
12 eliminating a requirement that there be a certain notification before a victim or
13 victim's representative may submit certain statements; allowing a victim or
14 victim's representative to submit certain oral statements; allowing a victim or
15 victim's representative to submit certain information to a court or the Office
16 under certain circumstances; requiring a court or the Office to consider and take
17 certain actions regarding certain information; requiring a facility of the
18 Department to notify certain victims or victims' representatives of certain
19 events; providing for the admissibility of certain written victims' statements at
20 certain proceedings under certain circumstances; providing for the testimony of
21 a victim or victim's representative at certain hearings under certain
22 circumstances; allowing the Office to exclude victims and victims'
23 representatives from certain parts of certain proceedings under certain
24 circumstances; requiring the notification of certain victims and victims'
25 representatives of certain court hearings; providing for the right of certain
26 victims and victims' representatives to attend certain hearings under certain
27 circumstances; making stylistic changes; defining a certain term; and generally
28 relating to the rights of victims and victims' representatives in incompetency
29 and not criminally responsible cases.

30 BY repealing and reenacting, with amendments,
31 Article - Criminal Procedure
32 Section 3-123

1 Annotated Code of Maryland
2 (As enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2001)

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

5 **Article - Criminal Procedure**

6 3-123.

7 (a) (1) In this section the following terms have the meanings indicated.

8 (2) "DEFENDANT" MEANS:

9 (I) A COMMITTED INDIVIDUAL;

10 (II) AN INDIVIDUAL FOUND COMPETENT TO STAND TRIAL; OR

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

14 [(2)] (3) "Victim" means a victim of a crime of violence or a victim who
15 has filed a notification request form under § 11-104 of this article.

16 [(3)] (4) "Victim's representative" includes a family member or guardian
17 of a victim who is:

18 (i) a minor;

19 (ii) deceased; or

20 (iii) disabled.

21 (b) A State's Attorney shall notify a victim or victim's representative of all
22 rights provided under this section.

23 (c) (1) A victim or victim's representative may request notification under
24 this section by:

25 (i) notifying the State's Attorney and the Health Department [once
26 every 2 years in writing] of the request for notification; or

27 (ii) filing a notification request form under § 11-104 of this article.

28 (2) A request for notification under paragraph (1)(i) of this subsection
29 shall designate:

30 (i) the address and telephone number of the victim; or

1 (ii) the name, address, and telephone number of a victim's
2 representative.

3 (3) A victim or victim's representative may, at any time, withdraw a
4 request for notification.

5 (d) If a victim or victim's representative has requested notification in the
6 manner provided under subsection (c) of this section, the Health Department shall
7 promptly notify the victim or the victim's representative in writing when:

8 (1) the Health Department receives a court order to examine a defendant
9 under [§ 3-111 of] this title;

10 (2) the Health Department receives a court order committing a
11 defendant to the Health Department under [§ 3-112 of] this title;

12 (3) a hearing RELATING TO A DEFENDANT is scheduled under [§ 3-115
13 of] this title;

14 (4) the Health Department receives notice that a [committed person]
15 DEFENDANT has applied for a hearing [under § 3-119 of this title] OR FILED A
16 PETITION FOR RELEASE;

17 (5) the Office recommends that a committed person be released [after a
18 hearing] under [§ 3-115 of] this title;

19 (6) the Health Department submits a recommendation to the court for a
20 [committed person's] DEFENDANT'S conditional release [under § 3-120 of this title];

21 (7) the facility of the Health Department that has charge of a
22 [committed person] DEFENDANT has notified the State's Attorney that a [committed
23 person] DEFENDANT is absent without authorization; or

24 (8) the Health Department receives a court order for the conditional
25 release or discharge from commitment of a [committed person under § 3-118, §
26 3-119, or § 3-120 of this title] DEFENDANT.

27 (e) (1) [On notification by the Health Department under subsection (d) of
28 this section, a] A victim or victim's representative may submit, in writing OR ORALLY,
29 to the State's Attorney and to the facility of the Health Department that has charge of
30 a [committed person] DEFENDANT:

31 [(1)] (I) any information that the victim or victim's representative
32 considers relevant; and

33 [(2)] (II) a request that the [committed person] DEFENDANT be
34 prohibited from having any contact with the victim or victim's representative, as a
35 condition of release.

1 (2) EXCEPT FOR A COURT HEARING TO DETERMINE IF A PERSON IS
2 INCOMPETENT TO STAND TRIAL OR NOT CRIMINALLY RESPONSIBLE, A VICTIM OR
3 VICTIM'S REPRESENTATIVE MAY SUBMIT A WRITTEN OR ORAL STATEMENT TO THE
4 COURT OR THE OFFICE CONDUCTING A HEARING OR REVIEW RELATING TO A
5 DEFENDANT UNDER THIS TITLE CONTAINING:

6 (I) ANY INFORMATION REGARDING THE NATURE AND
7 CONSEQUENCES OF THE CRIME AND ANY CONTACT AFTER THE CRIME BETWEEN
8 THE DEFENDANT AND THE VICTIM OR THE VICTIM'S FAMILY; AND

9 (II) A REQUEST THAT THE DEFENDANT BE PROHIBITED FROM
10 HAVING ANY CONTACT WITH THE VICTIM AS A CONDITION OF RELEASE.

11 (f) (1) If a victim or victim's representative submits WRITTEN OR ORAL
12 information [to the Health Department] under this section, the Health Department,
13 COURT, OR OFFICE shall:

14 [(1)] (I) consider the information;

15 [(2)] (II) maintain at the facility that has charge of the [committed
16 person] DEFENDANT, separate from the medical record of the [committed person]
17 DEFENDANT, the written statement of the victim or victim's representative; and

18 [(3)] (III) delete the victim's or the victim's representative's address and
19 telephone number before any document is examined by the [committed person or the
20 committed person's representative] DEFENDANT OR DEFENDANT'S
21 REPRESENTATIVE.

22 (2) (I) IF A VICTIM OR A VICTIM'S REPRESENTATIVE HAS SUBMITTED A
23 WRITTEN FACTUAL STATEMENT UNDER SUBSECTION (E)(2)(I) OF THIS SECTION TO
24 THE HEALTH DEPARTMENT, AT LEAST 30 DAYS BEFORE A HEARING OR REVIEW
25 UNDER THIS TITLE THE HEALTH DEPARTMENT SHALL NOTIFY THE DEFENDANT OR
26 DEFENDANT'S REPRESENTATIVE IN WRITING OF THE INTENDED USE OF THE
27 VICTIM'S OR VICTIM'S REPRESENTATIVE'S WRITTEN FACTUAL STATEMENT AND SEND
28 TO THE DEFENDANT OR THE DEFENDANT'S REPRESENTATIVE A COPY OF THE
29 WRITTEN FACTUAL STATEMENT TO BE ADMITTED.

30 (II) IF THE DEFENDANT OBJECTS TO THE ADMISSION OF THE
31 WRITTEN FACTUAL STATEMENT OF THE VICTIM OR VICTIM'S REPRESENTATIVE, THE
32 DEFENDANT SHALL NOTIFY THE HEALTH DEPARTMENT, STATE'S ATTORNEY, AND
33 COURT OR THE OFFICE IN WRITING NO LATER THAN 20 DAYS BEFORE THE HEARING
34 OR REVIEW.

35 (III) IF THE TIMELY AND PROPER NOTICE REQUIRED UNDER
36 SUBPARAGRAPH (II) OF THIS PARAGRAPH IS PROVIDED BY THE DEFENDANT, THE
37 WRITTEN FACTUAL STATEMENT IS INADMISSIBLE WITHOUT THE TESTIMONY OF THE
38 VICTIM OR VICTIM'S REPRESENTATIVE.

39 (IV) FAILURE OF THE DEFENDANT TO GIVE THE TIMELY AND
40 PROPER NOTICE UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IS A WAIVER OF

1 THE DEFENDANT'S RIGHT TO THE PRESENCE AND TESTIMONY OF THE VICTIM OR
2 VICTIM'S REPRESENTATIVE AND THE WRITTEN FACTUAL STATEMENT OF THE VICTIM
3 OR VICTIM'S REPRESENTATIVE SHALL BE ADMITTED.

4 (V) IF A DEFENDANT PROVIDES NOTICE UNDER SUBPARAGRAPH
5 (II) OF THIS PARAGRAPH, THE HEALTH DEPARTMENT SHALL NOTIFY THE VICTIM
6 THAT:

7 1. THE VICTIM'S OR VICTIM'S REPRESENTATIVE'S WRITTEN
8 FACTUAL STATEMENT IS INADMISSIBLE AT THE HEARING WITHOUT THE TESTIMONY
9 OF THE VICTIM OR VICTIM'S REPRESENTATIVE; AND

10 2. THE VICTIM OR VICTIM'S REPRESENTATIVE MAY ATTEND
11 THE HEARING AND TESTIFY.

12 (g) [This] EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION, THIS
13 section may not be construed to authorize the release to the victim or victim's
14 representative of any medical, psychological, or psychiatric information on a
15 [committed person] DEFENDANT.

16 (h) The [facility of the] Health Department [that has charge of a person
17 under § 3-111 of this title] shall promptly notify the State's Attorney and a victim or
18 a victim's representative who has requested notification REGARDING A DEFENDANT
19 under this section if:

20 (1) [the person] THE DEFENDANT is absent without authorization;

21 (2) A HOSPITAL WARRANT IS ISSUED FOR THE DEFENDANT; OR

22 (3) NOTIFICATION IS REQUIRED UNDER § 11-508 OF THIS ARTICLE.

23 (i) An agent or employee of the Health Department who acts in compliance
24 with this section shall have the immunity from liability described under § 5-522 of
25 the Courts Article.

26 (J) BEFORE A HEARING UNDER THIS ARTICLE RELATING TO A DEFENDANT,
27 THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED OF THE
28 PROCEEDING AS PROVIDED UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.

29 (K) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
30 VICTIM OR VICTIM'S REPRESENTATIVE SHALL HAVE THE RIGHT TO ATTEND A
31 HEARING UNDER THIS ARTICLE RELATING TO A DEFENDANT AS PROVIDED UNDER §
32 11-102 OF THIS ARTICLE.

33 (2) AT THE REQUEST OF A DEFENDANT, THE OFFICE, IN A RELEASE
34 HEARING OR A VIOLATION HEARING UNDER THIS SUBTITLE FOR AN INDIVIDUAL
35 FOUND NOT CRIMINALLY RESPONSIBLE, MAY EXCLUDE A VICTIM OR VICTIM'S
36 REPRESENTATIVE FROM THE EXPERT TESTIMONY REGARDING THE DEFENDANT'S
37 MEDICAL, PSYCHOLOGICAL, OR PSYCHIATRIC INFORMATION IF THE OFFICE FINDS
38 THE MEDICAL, PSYCHOLOGICAL, OR PSYCHIATRIC INFORMATION IS:

1 (I) HIGHLY SENSITIVE TO THE DEFENDANT; AND

2 (II) NOT RELEVANT TO WHETHER THE DEFENDANT SHOULD BE
3 RELEASED OR HAS VIOLATED THE CONDITIONS OF RELEASE.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect October 1, 2001.