

HOUSE BILL 1289

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By: Delegates Cox, Adams, Arentz, Arikan, Beitzel, Boteler, Buckel, Chisholm, Ciliberti, Clark, Corderman, M. Fisher, Ghrist, Grammer, Griffith, Hornberger, Jacobs, Kipke, Kittleman, Krebs, Long, Mangione, Mautz, McComas, McKay, Metzgar, Morgan, Otto, Parrott, Reilly, Saab, Shoemaker, Szeliga, and Wivell

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Victims and Victims’ Representatives – Plea Agreements**
3 **(The Victim Empowerment in Plea Deals Act of 2020)**

4 FOR the purpose of requiring the Maryland State’s Attorney’s Association to develop and
5 distribute to each State’s Attorney’s Office in the State a certain certification form
6 for a victim or victim’s representative; requiring a prosecuting attorney to request
7 that a victim or victim’s representative certify that the victim or victim’s
8 representative has received a certain notice under certain circumstances; requiring
9 a prosecuting attorney to retain a copy of the certification as part of the prosecuting
10 attorney’s case file; providing that a prosecuting attorney’s failure to obtain a certain
11 certification may not provide a basis for a court’s refusal to accept a certain plea;
12 requiring a court to allow a victim or victim’s representative to address the court
13 under oath under certain circumstances to provide certain information before the
14 court accepts a certain plea; authorizing a certain defendant or child respondent to
15 cross-examine a victim or victim’s representative under certain circumstances and
16 subject to a certain limitation; providing that a victim or victim’s representative has
17 a right not to address the court under certain circumstances; prohibiting a person
18 from attempting to coerce a victim or victim’s representative to address a court under
19 certain circumstances; requiring a certain prosecuting attorney to make a certain
20 statement on the record under certain circumstances; authorizing a court to postpone
21 the acceptance of a certain plea under certain circumstances; authorizing a victim or
22 victim’s representative who has been denied a right provided by this Act to file an
23 application for leave to appeal in a certain manner; defining a certain term; and
24 generally relating to victims and victim’s representatives.

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 11–103(b) and 11–104(f)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Procedure
Section 11–104(a)(1), (4), and (5)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY adding to
Article – Criminal Procedure
Section 11–206
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

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

Article – Criminal Procedure

11–103.

(b) Although not a party to a criminal or juvenile proceeding, a victim of a crime for which the defendant or child respondent is charged may file an application for leave to appeal to the Court of Special Appeals from an interlocutory order or appeal to the Court of Special Appeals from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section, § 4–202 of this article, § 11–102 or § 11–104 of this subtitle, **§ 11–206**, § 11–302, § 11–402, § 11–403, or § 11–603 of this title, § 3–8A–06, § 3–8A–13, or § 3–8A–19 of the Courts Article, or § 6–112 of the Correctional Services Article.

11–104.

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

(4) “Victim” means a person who suffers actual or threatened physical, emotional, or financial harm as a direct result of a crime or delinquent act.

(5) “Victim’s representative” includes a family member or guardian of a victim who is:

(i) a minor;

(ii) deceased; or

(iii) disabled.

(f) (1) Unless provided by the MDEC system, the prosecuting attorney shall send a victim or victim's representative prior notice of each court proceeding in the case, of the terms of any plea agreement, and of the right of the victim or victim's representative to submit a victim impact statement to the court under § 11-402 of this title if:

(i) prior notice is practicable; and

(ii) the victim or victim's representative has filed a notification request form or followed the MDEC system protocol under subsection (e) of this section.

(2) (i) If the case is in a jurisdiction in which the office of the clerk of the circuit court or juvenile court has an automated filing system, the prosecuting attorney may ask the clerk to send the notice required by paragraph (1) of this subsection.

(ii) If the case is in a jurisdiction that has implemented the MDEC system, the victim may follow the MDEC system protocol to receive notice by electronic mail, to notify the prosecuting attorney, and to request additional notice available through the State's Victim Information and Notification Everyday vendor.

(3) As soon after a proceeding as practicable, the prosecuting attorney shall tell the victim or victim's representative of the terms of any plea agreement, judicial action, and proceeding that affects the interests of the victim or victim's representative, including a bail hearing, change in the defendant's pretrial release order, dismissal, nolle prosequi, setting of charges, trial, disposition, and postsentencing court proceeding if:

(i) the victim or victim's representative has filed a notification request form or followed the MDEC system protocol under subsection (e) of this section and prior notice to the victim or victim's representative is not practicable; or

(ii) the victim or victim's representative is not present at the proceeding.

(4) Whether or not the victim or victim's representative has filed a notification request form or followed the MDEC system protocol under subsection (e) of this section, the prosecuting attorney may give the victim or victim's representative information about the status of the case if the victim or victim's representative asks for the information.

(5) (I) THE MARYLAND STATE'S ATTORNEY'S ASSOCIATION SHALL DEVELOP AND DISTRIBUTE TO EACH STATE'S ATTORNEY'S OFFICE IN THE STATE A STANDARD CERTIFICATION FORM FOR A VICTIM OR VICTIM'S REPRESENTATIVE TO CERTIFY THAT THE VICTIM OR VICTIM'S REPRESENTATIVE HAS RECEIVED PRIOR NOTICE OF THE TERMS OF ANY PLEA AGREEMENT AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) IN A CASE IN WHICH A PROSECUTING ATTORNEY OFFERS A

1 PLEA AGREEMENT TO A DEFENDANT, THE PROSECUTING ATTORNEY SHALL
2 REQUEST THAT A VICTIM OR VICTIM'S REPRESENTATIVE CERTIFY THAT THE VICTIM
3 OR VICTIM'S REPRESENTATIVE HAS RECEIVED PRIOR NOTICE OF THE TERMS OF THE
4 PLEA AGREEMENT USING THE STANDARD CERTIFICATION FORM DEVELOPED UNDER
5 SUBPARAGRAPH (I) OF THIS PARAGRAPH.

6 (III) THE PROSECUTING ATTORNEY SHALL RETAIN A COPY OF
7 THE CERTIFICATION AS PART OF THE PROSECUTING ATTORNEY'S CASE FILE.

8 (IV) A PROSECUTING ATTORNEY'S FAILURE TO OBTAIN A
9 CERTIFICATION UNDER THIS PARAGRAPH MAY NOT PROVIDE A BASIS FOR A COURT'S
10 REFUSAL TO ACCEPT A GUILTY PLEA, ALFORD PLEA, OR PLEA OF NOLO
11 CONTENDERE.

12 11-206.

13 (A) IN THIS SECTION, "PLEA AGREEMENT" MEANS AN AGREEMENT
14 BETWEEN A DEFENDANT AND THE STATE'S ATTORNEY THAT THE DEFENDANT WILL
15 ENTER A PLEA OF GUILTY, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE ON
16 THE CONDITION THAT THE STATE'S ATTORNEY WILL TAKE SOME ACTION THAT IS
17 FAVORABLE TO THE DEFENDANT.

18 (B) BEFORE A COURT ACCEPTS A GUILTY PLEA, AN ALFORD PLEA, OR A
19 PLEA OF NOLO CONTENDERE RESULTING FROM A PLEA AGREEMENT, AT THE
20 REQUEST OF THE PROSECUTING ATTORNEY, THE VICTIM, OR THE VICTIM'S
21 REPRESENTATIVE, OR IF THE VICTIM HAS FILED A NOTIFICATION REQUEST FORM
22 OR FOLLOWED THE MDEC SYSTEM PROTOCOL TO REQUEST NOTICE UNDER §
23 11-104 OF THIS TITLE, THE COURT, IF PRACTICABLE, SHALL ALLOW THE VICTIM OR
24 THE VICTIM'S REPRESENTATIVE TO ADDRESS THE COURT UNDER OATH TO STATE
25 WHETHER THE VICTIM AGREES OR DISAGREES WITH THE TERMS OF THE PLEA
26 AGREEMENT AND TO PROVIDE ANY OTHER FACTS RELEVANT TO THE COURT'S
27 DETERMINATION AS TO WHETHER TO ACCEPT THE PLEA.

28 (C) (1) IF THE VICTIM OR THE VICTIM'S REPRESENTATIVE IS ALLOWED
29 TO ADDRESS THE COURT, THE DEFENDANT OR CHILD RESPONDENT MAY
30 CROSS-EXAMINE THE VICTIM OR THE VICTIM'S REPRESENTATIVE.

31 (2) THE CROSS-EXAMINATION IS LIMITED TO THE FACTUAL
32 STATEMENTS MADE TO THE COURT.

33 (D) (1) A VICTIM OR THE VICTIM'S REPRESENTATIVE HAS THE RIGHT NOT
34 TO ADDRESS THE COURT UNDER THIS SECTION.

1 **(2) A PERSON MAY NOT ATTEMPT TO COERCE A VICTIM OR THE**
2 **VICTIM’S REPRESENTATIVE TO ADDRESS THE COURT UNDER THIS SECTION.**

3 **(E) (1) IF THE VICTIM OR THE VICTIM’S REPRESENTATIVE FAILS TO**
4 **APPEAR TO ADDRESS THE COURT BEFORE THE COURT ACCEPTS A GUILTY PLEA, AN**
5 **ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, THE PROSECUTING ATTORNEY**
6 **SHALL STATE ON THE RECORD THAT PROCEEDING WITHOUT THE APPEARANCE OF**
7 **THE VICTIM OR VICTIM’S REPRESENTATIVE IS JUSTIFIED BECAUSE:**

8 **(I) THE VICTIM OR VICTIM’S REPRESENTATIVE HAS BEEN**
9 **CONTACTED BY THE PROSECUTING ATTORNEY AND WAIVED THE RIGHT TO ATTEND**
10 **THE HEARING;**

11 **(II) EFFORTS WERE MADE TO CONTACT THE VICTIM OR THE**
12 **VICTIM’S REPRESENTATIVE AND, TO THE BEST KNOWLEDGE AND BELIEF OF THE**
13 **PROSECUTING ATTORNEY, THE VICTIM OR VICTIM’S REPRESENTATIVE CANNOT BE**
14 **LOCATED; OR**

15 **(III) THE VICTIM OR VICTIM’S REPRESENTATIVE HAS NOT FILED**
16 **A NOTIFICATION REQUEST FORM OR FOLLOWED THE MDEC PROTOCOL TO**
17 **REQUEST NOTICE UNDER § 11–104 OF THIS TITLE.**

18 **(2) IF THE COURT IS NOT SATISFIED BY THE STATEMENT THAT**
19 **PROCEEDING WITHOUT THE APPEARANCE OF THE VICTIM OR THE VICTIM’S**
20 **REPRESENTATIVE IS JUSTIFIED, OR IF NO STATEMENT IS MADE, THE COURT MAY**
21 **POSTPONE THE ACCEPTANCE OF THE GUILTY PLEA, ALFORD PLEA, OR PLEA OF**
22 **NOLO CONTENDERE.**

23 **(F) A VICTIM OR VICTIM’S REPRESENTATIVE WHO HAS BEEN DENIED A**
24 **RIGHT PROVIDED UNDER THIS SECTION MAY FILE AN APPLICATION FOR LEAVE TO**
25 **APPEAL IN THE MANNER PROVIDED UNDER § 11–103 OF THIS TITLE.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2020.