

**CRIMINAL PROCEDURE: CRIME VICTIM AND WITNESS RIGHTS ACT.**

**COMMISSIONS, BOARDS AND INSTITUTIONS: DEPARTMENT OF CRIMINAL JUSTICE SERVICES - VICTIM AND WITNESS ASSISTANCE PROGRAM.**

**COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, COURTHOUSES AND SUPPLIES - ATTORNEY FOR THE COMMONWEALTH.**

**Local crime victim and witness assistance program is administered by city or county government. Program's director is local government employee over whom Commonwealth's attorney has no appointment or removal authority.**

The Honorable R. Steven Landes

Member, House of Delegates

December 10, 1998

You ask whether a person holding the position of director of a local crime victim and witness assistance program funded pursuant to § 19.2-11.1 of the *Code of Virginia* is a state or local government employee or whether the person serves at the pleasure of the Commonwealth's attorney.

Section 15.2-1626 authorizes every county and city, with the approval of the Compensation Board, to provide for employing compensated assistants to the Commonwealth's attorney. The section also provides that such assistant(s) shall be appointed by the Commonwealth's attorney "for a term coterminous with his own."

Chapter 1.1 of Title 19.2 establishes the Crime Victim and Witness Rights Act<sup>1</sup> (the "Act"). Section 19.2-11.01 sets out the purposes of the Act. Included within the purposes are ensuring that crime victims and witnesses be informed of their rights, receive appropriate authorized services, and, to the extent permitted under law, have the opportunity to be heard by law-enforcement agencies, Commonwealth's attorneys, correctional agencies and the judiciary "at all critical stages of the criminal justice process."<sup>2</sup> To achieve these purposes, the Act imposes duties on Commonwealth's attorneys and on other officers, agencies or employees involved in the criminal justice system.<sup>3</sup>

The Act also imposes responsibilities on local crime victim and witness assistance programs established pursuant to § 19.2-11.1. Section 19.2-11.01(A) provides that "[u]nless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by [the Act]." Section 19.2-11.1 of the Act provides:

Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program, whose funding is provided in whole or part by grants administered by the Department of Criminal Justice Services pursuant to § 9-173.3, shall operate the program in accordance with guidelines which shall be established by the Department to implement the provisions of this chapter and other applicable laws establishing victims' rights.

Section 9-173.3 authorizes the Department of Criminal Justice Services to promulgate rules and regulations for the purpose of making funds available to "local governments" to establish and operate victim and witness assistance programs<sup>4</sup> and to establish a grant procedure governing funds awarded for the purpose.<sup>5</sup>

Under well-accepted principles of statutory construction, when the language of a statute is plain and unambiguous and its meaning is clear and definite, it must be given effect.<sup>6</sup> It is equally well-settled that when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>7</sup> While the director of the program and the Commonwealth's attorney may work together in fulfilling certain requirements of the Act, it is clear from the language of §§ 19.2-11.01, 19.2-11.1 and 9-173.3 that a local crime victim and witness assistance program is to be administered by the city or county government.<sup>8</sup> It is thus my opinion that the director of the program is an employee of the local government and that the Commonwealth's attorney has no authority to appoint or to remove the director.

<sup>1</sup>Sections 19.2-11.01 to 19.2-11.4.

<sup>2</sup>Section 19.2-11.01(A).

<sup>3</sup>See §§ 19.2-11.01(A), (C); 19.2-11.2; 19.2-11.4(B).

<sup>4</sup>Section 9-173.3(A).

<sup>5</sup>Section 9-173.3(B).

<sup>6</sup>Temple v. City of Petersburg, 182 Va. 418, 29 S.E.2d 357 (1944); 1997 Op. Va. Att'y Gen. 16, 17.

<sup>7</sup>2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1998); 1996 Op. Va. Att'y Gen. 61, 62, and opinions cited therein.

<sup>8</sup>Section 19.2-11.01 refers to "the responsibility of a *locality's* crime victim and witness assistance program" (§ 19.2-11.01(A)); § 19.2-11.1 relates to such a program established by a "*local governmental body*"; and § 9-173.3 concerns the provision to "*local governments*" of funds to operate such programs (§ 9-173.3(A)). (Emphasis added.)