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**SENATE BILL NO. 1355**

Offered January 16, 2007

*A BILL to amend and reenact § 19.2-11.01 of the Code of Virginia, relating to plea agreements in cases of driving while intoxicated that resulted in bodily injury.*

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Patron—O'Brien

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-11.01 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless 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 this chapter, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims, the name, address and telephone number of the office of the attorney for the Commonwealth, and the name, address and telephone number of the investigating law-enforcement agency.

1. Victim and witness protection and law-enforcement contacts.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation, and that does not place the victim in close proximity to the defendant or the defendant's family.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current

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59 addresses and telephone numbers.

60 c. Victims shall receive notification, if requested, subject to such reasonable procedures as the  
61 Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and  
62 disposition of any appeal or habeas corpus proceeding involving their case.

63 d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in  
64 whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to  
65 the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have  
66 provided their names, current addresses and telephone numbers in writing.

67 e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all  
68 agencies and persons having such duties must have current victim addresses and telephone numbers  
69 given by the victims. Victims shall also be advised that any such information given shall be confidential  
70 as provided by § 19.2-11.2.

71 4. Victim input.

72 a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim  
73 impact statement prior to sentencing of a defendant and may provide information to any individual or  
74 agency charged with investigating the social history of a person or preparing a victim impact statement  
75 under the provisions of §§ 16.1-273 and 53.1-155 or any other applicable law.

76 b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding  
77 pursuant to the provisions of § 19.2-265.01.

78 c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant  
79 to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the  
80 offense.

81 d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall  
82 consult with the victim either verbally or in writing (i) to inform the victim of the contents of a  
83 proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including  
84 the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, *except as*  
85 *provided in subdivision A 4 e*, nothing in this section shall limit the ability of the attorney for the  
86 Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the  
87 disposition of any criminal case. The court shall not accept the plea agreement unless it finds that,  
88 except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause  
89 shown shall include, but not be limited to, the unavailability of the victim due to incarceration,  
90 hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

91 Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b  
92 of any proceeding in which the plea agreement will be tendered to the court.

93 The responsibility to consult with the victim under this subdivision shall not confer upon the  
94 defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the  
95 defendant.

96 *e. In a case for driving while intoxicated brought pursuant to § 18.2-266 that resulted in physical*  
97 *harm to the victim, the attorney for the Commonwealth shall not enter into any plea agreement with the*  
98 *defendant that would allow the defendant to plead guilty to an offense not related to his intoxication*  
99 *without first obtaining the consent of the victim.*

100 5. Courtroom assistance.

101 a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be  
102 disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the  
103 conduct of the criminal proceeding.

104 b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in  
105 accordance with §§ 19.2-164 and 19.2-164.1.

106 c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed  
107 preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on  
108 the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years  
109 of age or younger at the time of the trial, that two-way closed-circuit television may be used in the  
110 taking of testimony in accordance with § 18.2-67.9.

111 6. Post trial assistance.

112 a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the  
113 case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the  
114 case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known,  
115 and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the  
116 defendant.

117 b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had  
118 custody of the defendant immediately prior to his release shall notify the victim as soon as practicable  
119 that the defendant has been released.

120 c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to

retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, (iv) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or (v) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.