VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 614

An Act to amend and reenact § 15.2-1812.2 of the Code of Virginia, relating to minimum mandatory fine and jail for certain graffiti offenses; penalties.

[H 1877]

Approved March 23, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-1812.2 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-1812.2. Willful and malicious damage to or defacement of public or private facilities; penalty.

A. Any locality may by ordinance make unlawful the willful and malicious damage to or defacement of any public buildings, facilities and personal property or of any private buildings, facilities and personal property ~~if the damage to the private property is less than $1,000~~. The penalty for violation of such ordinance is a Class 1 misdemeanor. *The punishment for any such violation in which the defacement is (i) more than 20 feet off the ground, (ii) on a railroad or highway overpass, or (iii) committed for the benefit of, at the direction of, or in association with any criminal street gang, as that term is defined by § 18.2-46.1, shall include a mandatory minimum fine of $500.*

B. Upon a finding of guilt under any such ordinance in any case tried before the court without a jury, in the event the violation constitutes a first offense that results in property damage or loss, the court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings and place the defendant on probation pending completion of a plan of community service work. If the defendant fails or refuses to complete the community service as ordered by the court, the court may make final disposition of the case and proceed as otherwise provided. If the community service work is completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying the ordinance in subsequent proceedings.

C. The ordinance shall direct that the community service, to the extent feasible, include the repair, restoration or replacement of any damage or defacement to property within the locality, and may include clean-up, beautification, landscaping or other appropriate community service within the locality. Any ordinance adopted pursuant to this section shall make provision for a designee of the locality to supervise the performance of any community service work required and to report thereon to the court imposing such requirement. At or before the time of sentencing under the ordinance, the court shall receive and consider any plan for making restitution or performing community service submitted by the defendant. The court shall also receive and consider the recommendations of the supervisor of community service in the locality concerning the plan.

D. Notwithstanding any other provision of law, no person convicted of a violation of an ordinance adopted pursuant to this section shall be placed on probation or have his sentence suspended unless such person makes at least partial restitution for such property damage or is compelled to perform community services, or both, as is more particularly set forth in § 19.2-305.1.

E. If a locality seeks to clean or cover the defacement, it shall give notice to the owner and lessee, if any, of any private building or facility that has been defaced that, within 15 days of receipt of such notice, if the owner or lessee does not clean or cover the defacement or object to the removal of the defacement, the locality may clean or cover the defacement at the locality's expense.