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## HOUSE BILL NO. 1877

Offered January 12, 2005

Prefiled January 7, 2005

*A BILL to amend and reenact §§ 15.2-1812.2, 18.2-137 and 19.2-358 of the Code of Virginia, relating to minimum mandatory fine and jail for certain graffiti offenses; penalties.*

Patrons—McDougle, Athey and Hargrove

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-1812.2, 18.2-137 and 19.2-358 of the Code of Virginia are 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 ~~and shall include a mandatory minimum fine of \$500~~. Any such violation in which the defacement (i) is more than 20 feet off the ground or on a railroad or highway overpass, or (ii) measures six feet or more in height or width shall include a mandatory minimum jail term of ten days.

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 the owner of any private building or facility that has been defaced does not clean or cover the defacement within 15 days of defacement, the locality may clean or cover the defacement at the locality's expense.*

§ 18.2-137. Injuring, etc., any property, monument, etc.; penalty.

A. If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his own, or breaks down, destroys, defaces, damages or removes without the intent to steal, any monument or memorial for war veterans described in § 15.2-1812, any monument erected for the purpose of marking the site of any engagement fought during the War between the States, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he ~~shall be~~ is guilty of a Class 3 misdemeanor; provided that the court may, in its discretion, dismiss the charge if the locality or organization responsible for maintaining the injured property, monument, or memorial files a written affidavit with the court stating it has received full payment for the injury.

B. If any person intentionally causes such injury to such property, he ~~shall be guilty of~~ (i) a Class 1 misdemeanor if and the value of or damage to the property, memorial or monument is less than \$1,000, he is guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$500. ~~or (ii)~~ If any person

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59 *intentionally causes such injury to such property he is guilty of a Class 6 felony with a mandatory*  
60 *minimum term of confinement of ten days and a mandatory minimum fine of \$1,000 if (i) the value of or*  
61 *damage to the property, memorial or monument is \$1,000 or more, (ii) the defacement is more than 20*  
62 *feet above ground level, (iii) the height or width of the defacement measures more than six feet, or (iv)*  
63 *the person has been previously convicted under this section or § 15.2-1812.2. The amount of loss caused*  
64 *by the destruction, defacing, damage or removal of such property, memorial or monument may be*  
65 *established by proof of the fair market cost of repair or fair market replacement value. Upon conviction,*  
66 *the court may order that the defendant pay restitution.*

67 § 19.2-358. Procedure on default in deferred payment or installment payment of fine, costs, forfeiture,  
68 restitution or penalty.

69 A. When an individual obligated to pay a fine, costs, forfeiture, restitution or penalty defaults in the  
70 payment or any installment payment, the court upon the motion of the Commonwealth in the case of a  
71 conviction of a violation of a state law, or attorney for a locality or for the Commonwealth in the event  
72 of a conviction of a violation of a local law or ordinance, or upon its own motion, may require him to  
73 show cause why he should not be confined in jail or fined for nonpayment. A show cause proceeding  
74 shall not be required prior to issuance of a *capias* if an order to appear on a date certain in the event of  
75 nonpayment was issued pursuant to subsection A of § 19.2-354 and the defendant failed to appear.

76 B. Following the order to show cause or following a *capias* issued for a defendant's failure to comply  
77 with a court order to appear issued pursuant to subsection A of § 19.2-354, unless the defendant shows  
78 that his default was not attributable to an intentional refusal to obey the sentence of the court, or not  
79 attributable to a failure on his part to make a good faith effort to obtain the necessary funds for  
80 payment, or unless the defendant shows that any failure to appear was not attributable to an intentional  
81 refusal to obey the order of the court, the court may order the defendant confined as for a contempt for  
82 a term not to exceed sixty days or impose a fine not to exceed \$500. The court may provide in its order  
83 that payment or satisfaction of the amounts in default at any time will entitle the defendant to his  
84 release from such confinement or, after entering the order, may at any time reduce the sentence for good  
85 cause shown, including payment or satisfaction of such amounts.

86 C. If it appears that the default is excusable under the standards set forth in subsection B hereof, the  
87 court may enter an order allowing the defendant additional time for payment, reducing the amount due  
88 or of each installment, or remitting the unpaid portion in whole or in part.

89 D. Nothing in this section shall be deemed to alter or interfere with the collection of fines by any  
90 means authorized for the enforcement of money judgments rendered in favor of the Commonwealth or  
91 any locality within the Commonwealth.

92 E. *Any person ordered by a court to make restitution pursuant to his violation of § 15.2-1812.2 shall*  
93 *be in default if he fails to make such restitution within 60 days following the court order and shall be*  
94 *subject to driver's license suspension under § 46.2-395.*

95 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
96 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
97 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**  
98 **periods of commitment to the custody of the Department of Juvenile Justice.**