

064631724

SENATE BILL NO. 619

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 1, 2006)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 19.2-305.1, 19.2-305.2, 19.2-305.4, 19.2-349, 19.2-353.3, and 19.2-354 of the Code of Virginia, relating to restitution for property damage or loss.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1, 19.2-305.2, 19.2-305.4, 19.2-349, 19.2-353.3, and 19.2-354 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-305.1. Restitution for property damage or loss; community service.

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit, *at or before the time of sentencing a written plan for doing that*, which appears to the court to be feasible under the circumstances, *or consent to a plan offered by the court*.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any *past or expected future* medical expenses or *past or expected future* expenses directly related to *vocational or rehabilitative physical therapy* or funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan *for doing that or consent to the plan offered by the Commonwealth*, which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

C. At or before the time of sentencing, the court shall ~~receive and consider any plan for making restitution submitted by the defendant~~ *inquire of the attorney for the Commonwealth, or the victim in district court cases where the attorney for the Commonwealth is not present, whether any financial loss subject to restitution arose from the offense. The attorney for the Commonwealth, or the victim in district court cases where the attorney for the Commonwealth is not present, shall advise whether restitution is being sought and may present evidence of financial loss. In determining restitution, the court shall consider the representations of the attorney for the Commonwealth, or the victim in district court cases where the attorney for the Commonwealth is not present, and information provided in the presentence investigation report and victim impact statements and any other relevant evidence, including but not limited to testimony, correspondence, invoices, bills, receipts, cancelled checks, and estimates of future medical expenses. The attorney for the Commonwealth, or the victim in district court cases where the attorney for the Commonwealth is not present, shall provide the defendant with reasonable prior notice of any request for restitution for losses not reasonably described in the presentence report, the victim impact statement, testimony at trial or preliminary hearing, or in police reports provided to the defendant prior to sentencing. The court shall consider the request for restitution, and determine the amount of restitution without consideration of the defendant's ability to pay. However, the court shall consider the defendant's ability to pay for the purpose of determining an appropriate restitution payment plan. The court shall hear arguments by the Commonwealth, or the victim in district court cases where the attorney for the Commonwealth is not present, and the defendant concerning any dispute about the appropriate amount of restitution to be paid. The payment plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court total amount of restitution ordered and the terms of the approved payment plan, if any, the defendant shall begin to make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant begin to make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court*

SENATE SUBSTITUTE

SB619S1

60 at sentencing.

61 D. At the time of sentencing, the court shall determine *and specify* the amount *certain* to be repaid
62 by the defendant and the terms and conditions thereof. If community service work is ordered, the court
63 shall determine the terms and conditions upon which such work shall be performed. The court shall
64 include such findings in the judgment order, *and all restitution and community service so ordered shall*
65 *be recorded by the clerk.* The order shall specify that sums paid under such order shall be ~~paid to the~~
66 ~~clerk~~ *payable to the order of the clerk of court*, who shall disburse such sums as the court may, by
67 order, direct. *Additionally, the order shall specify that any payment plan entered into by the defendant*
68 *that becomes delinquent by more than 40 days shall be void, and the outstanding balance immediately*
69 *due, and shall allow the Tax Commissioner to act in accordance with § 19.2-349 to collect any such*
70 *outstanding balance. The court may require fines, costs, and restitution be combined into a single*
71 *payment plan and that each payment would be credited first to fines and costs and the remainder to*
72 *restitution.* Any court ~~desiring to participate~~ *participating* in the Setoff Debt Collection Act
73 (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall,
74 at the time of sentencing, obtain the social security number of each defendant.

75 E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the
76 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the
77 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before
78 either such action is taken.

79 F. If restitution is ordered to be paid by the defendant ~~to the victim of a crime~~ and the victim of the
80 crime can no longer be located or identified, the clerk shall deposit any such restitution collected to the
81 Criminal Injuries Compensation Fund for the benefit of crime victims. The administrator shall reserve a
82 sum sufficient in the Fund from which he shall make prompt payment to the victim for any proper
83 claims. Before making the deposit he shall record the name, last known address and amount of
84 restitution due each victim appearing from the clerk's report to be entitled to restitution.

85 G. An "agency receiving restitution payments" shall be defined as an agency that accepts restitution
86 payments from the offender on behalf of the victim and issues a receipt noting the offender's compliance
87 with the order of restitution, or continuing compliance with the terms of the payment plan approved by
88 the court. An agency receiving restitution payments prior to January 1, 2006, may continue to receive
89 payments provided that the payments are payable to the order of the clerk of the court and the
90 payments are forwarded to the clerk for deposit and recordation pursuant to subsection H of this
91 section.

92 A "restitution monitoring agency" shall be defined as the agency that tracks the offender's
93 compliance with the terms of the restitution order or payment plan approved by the court and that upon
94 default by the offender may request the issuance of a show cause order or implement other punitive
95 measures to force the offender's compliance with the restitution order. The clerk of the circuit or
96 district court or other local agency, which was not monitoring prior to January 1, 2006, shall not be
97 required to monitor compliance with the restitution, but the clerk shall, pursuant to subsection H of this
98 section, be required to receive payments from offenders or any other agency receiving restitution
99 payments.

100 H. The clerk shall record receipt of restitution payments in the Supreme Court's automated
101 information system or another database compatible with the Supreme Court's automated information
102 system.

103 § 19.2-305.2. Amount of restitution; enforcement.

104 A. The court, when ordering restitution pursuant to § 19.2-305.1, ~~may~~ shall require that such
105 defendant, in the case of an offense resulting in damage to or loss or destruction of property of a victim
106 of the offense (i) return the property to the owner or (ii) if return of the property is impractical or
107 impossible, pay an amount equal to the greater of the value of the property at the time of the offense or
108 the value of the property at the time of sentencing.

109 B. An order of restitution ~~may~~ shall be docketed as provided in § 8.01-446 ~~when so ordered by the~~
110 ~~court or upon written request of the victim~~ and may be enforced by a victim named in the order to
111 receive the restitution in the same manner as a judgment in a civil action. *If the clerk receives a*
112 *certificate of satisfaction or a similar document verifying that a judgment for restitution has been*
113 *satisfied, in whole or in part, the clerk shall comply with subsection H of § 19.2-305.1.*

114 § 19.2-305.4. When interest to be paid on award of restitution.

115 The court, when ordering restitution pursuant to § 19.2-305 or 19.2-305.1, ~~may~~ shall provide in the
116 order for interest on the restitution. ~~If the court orders the payment of interest, it~~ Interest shall accrue
117 from the date of the loss or damage unless the court specifies a different date in the order, at the rate
118 specified in § 6.1-330.54.

119 § 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for
120 Commonwealth; duties of Department of Taxation.

121 A. The clerk of the circuit court and district court of every county and city shall submit to the judge

of his court, the Department of Taxation, the State Compensation Board ~~and~~, the attorney for the Commonwealth of his county or city, *and any restitution monitoring agency in his county or city* a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 15 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). *Whenever the attorney for the Commonwealth uses the Department of Taxation or contracts with any private attorney or collection agency to collect delinquent court-ordered restitution, the fees of such entity or individual shall be paid by the defendant in addition to the court-ordered restitution in accordance with the procedures established by the Department of Taxation and the Compensation Board.*

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. *The State Compensation Board shall consider duties related to the collection, recording, and disbursement of restitution when determining appropriate staffing standards for clerks, their deputies, or employees.* The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, *restitution*, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

§ 19.2-353.3. Acceptance of checks and credit cards in lieu of money; additional fee.

Notwithstanding the provisions of § 19.2-353, personal checks *payable to the order of the clerk of court may be accepted* and credit cards shall be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. Notwithstanding the provisions of § 19.2-353, personal checks *payable to the order of the clerk of court* ~~shall~~ may be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle violations,

committed against the Commonwealth or against any county, city or town. The clerk of any circuit court shall not be required to but may, in his discretion, accept credit card payment in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeitures, penalties, and costs collected. The Committee on District Courts shall devise a procedure for approving and accepting checks and credit cards that shall be accepted by the district courts. Court personnel shall not be held to be guarantors of the payment made in such manner and shall not be personally liable for any sums uncollected. The clerk of the court, in addition to any fees, fines, restitution, forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount paid as a service charge for the acceptance of a credit card.

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit card issuer that payment will not be made, for any reason, the fees, fine, restitution, forfeiture, penalty or costs shall be treated as unpaid, and the court may pursue all available remedies to obtain payment. The clerk of the court to whom the dishonored check or credit card was tendered may impose a fee of twenty dollars or ten percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed.

The clerk of court may refuse acceptance of checks or credit cards of an individual if (i) he has been convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card information was used to commit the offense, (ii) he has previously tendered to the court a check which was not ultimately honored or a credit card or credit card information which did not ultimately result in payment by the credit card issuer, (iii) authorization of payment is not given by the bank or credit card issuer, or (iv) the validity of the check or credit card cannot be verified, ~~or (v) the~~ *payee of the check is other than the court. If the clerk receives a restitution payment made payable to the order of the victim, the clerk shall have the authority, notwithstanding other provisions of law, to endorse the payment on behalf of the victim and process the payment in the same manner as if payable to the order of the clerk of court.*

§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in installments or upon other terms and conditions; community work in lieu of payment.

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within fifteen days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements, pursuant to guidelines established by the court. *Receipt of all deferred or installment payments shall be recorded by the clerk pursuant to subsection H of § 19.2-305.1.* As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within fifteen days of sentencing, the court may assess a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, ~~17.1-275.3~~, 17.1-275.4, 17.1-275.7, 17.1-275.8 or § 17.1-275.9. *Pursuant to the court order set forth in subsection D of § 19.2-305.1, a payment plan delinquent by more than 40 days shall be void, and the outstanding balance immediately due unless the court determines that the defendant satisfies the conditions provided in subsection C of this section.* Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

B. When a person sentenced to the Department of Corrections or a local correctional facility owes any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work release, home/electronic incarceration or nonconsecutive days program as set forth in §§ 53.1-60, 53.1-131, 53.1-131.1 or § 53.1-131.2 to either make full payment or make payments in accordance with his installment or deferred payment agreement while participating in such program. If, after the person has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in the program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director of the Department of Corrections and any sheriff or other administrative head of any local correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;
2. Pay any fines, restitution or costs as ordered by the court;

245 3. Pay travel and other such expenses made necessary by his work release employment or
246 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

247 4. Defray the offender's keep.

248 The balance shall be credited to the offender's account or sent to his family in an amount the
249 offender so chooses.

250 The Board of Corrections shall promulgate regulations governing the receipt of wages paid to
251 persons participating in such programs, the withholding of payments and the disbursement of appropriate
252 funds.

253 C. The court shall establish a program to provide an option to any person upon whom a fine and
254 costs have been imposed to discharge all or part of the fine or costs by earning credits for the
255 performance of community service work before or after imprisonment. The program shall specify the
256 rate at which credits are earned and provide for the manner of applying earned credits against the fine
257 or costs. The court shall have such other authority as is reasonably necessary for or incidental to
258 carrying out this program.

259 D. When the court has authorized deferred payment or installment payments, the ~~clerk~~ court shall
260 give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned
261 pursuant to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to
262 § 46.2-395.

263 E. The failure of the defendant to enter into a deferred payment or installment payment agreement
264 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow
265 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, *restitution*,
266 forfeitures and penalties.

267 2. That the clerk of circuit or district court who was not an agency monitoring restitution in the
268 local jurisdiction prior to January 1, 2006, pursuant to subsection G of § 19.2-305.1, shall not be
269 required to monitor restitution.

270 3. That the provisions of this act shall become effective as to any restitution ordered on or after
271 July 1, 2007.