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## HOUSE BILL NO. 1705

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 16, 2013)

(Patron Prior to Substitute—Delegate Stolle)

A BILL to amend and reenact §§ 8.01-66.9, 19.2-305.1, and 19.2-368.15 of the Code of Virginia, relating to Criminal Injuries Compensation Fund; lien and restitution.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.9, 19.2-305.1, and 19.2-368.15 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries, etc.

Whenever any person sustains personal injuries and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type of medical or rehabilitative device, apparatus, or treatment which is paid for pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or provided at or paid for by any hospital or rehabilitation center operated by the Commonwealth, the Department for Aging and Rehabilitative Services or any state institution of higher education, the Commonwealth shall have a lien for the total amount paid pursuant to such program, and the Commonwealth or such Department or institution shall have a lien for the total amount due for the services, equipment or devices provided at or paid for by such hospital or center operated by the Commonwealth or such Department or institution, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or of his personal representative against the person, firm, or corporation who is alleged to have caused such injuries.

Whenever any person receives an award from the Criminal Injuries Compensation Fund, the Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or his personal representative against the person, firm, or corporation who is alleged to have caused such injuries.

The Commonwealth or such Department or institution or Fund shall also have a lien on the claim of the injured person or his personal representative for any funds which may be due him from insurance moneys received for such medical services under the injured party's own insurance coverage or through an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or the Criminal Injuries Compensation Fund shall have priority over the lien for the amounts due for services, equipment or devices provided at a hospital or center operated by the Commonwealth. The Commonwealth's or such Department's or institution's or Fund's lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be superior to all other liens created by the provisions of this chapter and otherwise. Expenses for reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the lien may be compromised pursuant to § 2.2-514.

The court in which a suit by an injured person or his personal representative has been filed against the person, firm or corporation alleged to have caused such injuries or in which such suit may properly be filed, may, upon motion or petition by the injured person, his personal representative or his attorney, and after written notice is given to all those holding liens attaching to the recovery, reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution, or Fund as the equities of the case may appear, provided that the injured person, his personal representative or attorney has made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the basis for any such reduction in a written order.

§ 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 a plan for doing that which appears to the court to be feasible under the circumstances.

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

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

72 C. At or before the time of sentencing, the court shall receive and consider any plan for making  
73 restitution submitted by the defendant. The plan shall include the defendant's home address, place of  
74 employment and address, social security number and bank information. If the court finds such plan to be  
75 reasonable and practical under the circumstances, it may consider probation or suspension of whatever  
76 portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's  
77 plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while  
78 he is free on probation or work release or following his release from confinement. Additionally, the  
79 court may order that the defendant make restitution during his confinement, if feasible, based upon both  
80 his earning capacity and net worth as determined by the court at sentencing.

81 D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and  
82 the terms and conditions thereof. If community service work is ordered, the court shall determine the  
83 terms and conditions upon which such work shall be performed. The court shall include such findings in  
84 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,  
85 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the  
86 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or  
87 providing restitution shall, at the time of sentencing, obtain the social security number of each  
88 defendant.

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

93 E1. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be  
94 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the  
95 court. For purposes of this subsection, "victim" means a person who is depicted in a still or  
96 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

97 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,  
98 18.2-374.1:1, or 18.2-374.3.

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

105 G. *If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the*  
106 *victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments*  
107 *to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then*  
108 *upon presentation by the Fund of a written request that sets forth the amount of payments made by the*  
109 *Fund to the victim or on the victim's behalf, the clerk or other entity collecting restitution shall pay to*  
110 *the Fund as much of the restitution collected as will reimburse the Fund for its payments made to the*  
111 *victim or on the victim's behalf.*

112 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; disposition of funds**  
113 **collected.**

114 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the  
115 extent of such award, to any right or right of action accruing to the claimant or the victim to recover  
116 payments on account of losses resulting from the crime with respect to which the award is made.  
117 However, *except as otherwise provided in subsection G of § 19.2-305.1*, the Commonwealth shall not  
118 institute any proceedings in connection with its right of subrogation under this section within one year  
119 from the date of commission of the crime, unless any claimant or victim's right or action shall have  
120 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted  
121 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries

**122** Compensation Fund.