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**HOUSE BILL NO. 605**

Offered January 13, 2016

Prefiled January 11, 2016

A *BILL to amend and reenact §§ 19.2-305 and 19.2-305.1 of the Code of Virginia, relating to restitution; extension of probation.*

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Patron—Bell, Robert B.

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Referred to Committee for Courts of Justice

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

**1. That §§ 19.2-305 and 19.2-305.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-305. Requiring fines, costs, restitution for damages, support, or community service from probationer.**

A. While on probation the defendant may be required to pay in one or several sums a fine or costs, or both such fine and costs, imposed at the time of being placed on probation as a condition of such probation, and the failure of the defendant to pay such fine or costs, or both such fine and costs, at the prescribed time or times may be deemed a breach of such probation. The provisions of this subsection shall also apply to any person ordered to pay costs pursuant to § 19.2-303.3.

B. A defendant placed on probation following conviction may be required to make at least partial restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for which conviction was had, or may be required to provide for the support of his wife or others for whose support he may be legally responsible, or may be required to perform community ~~services~~ service. The defendant may submit a proposal to the court for making restitution, for providing for support, or for performing community ~~services~~ service. *The failure of the defendant to make such restitution or reparation payments, to make such support payments, or to perform such community service at the prescribed time or times may be deemed a breach of such probation. Any such failure shall automatically extend the probation period until all payments are made and community service performed or until the defendant is released from his obligation by order of the court.*

C. No defendant shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, ~~or~~ costs, *or restitution*, provided that, following notice by the probation and parole officer to each court and attorney for the Commonwealth in whose jurisdiction any fines, fees, ~~or~~ costs, *or restitution* are owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from supervised probation.

**§ 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~~ service, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

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 medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community ~~services~~ service and, if the court so orders, shall submit a plan for doing that 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.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any

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59 building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property  
60 assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any  
61 prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering  
62 and Buildings of the Department of General Services or the Division of Risk Management shall be  
63 admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building,  
64 monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned  
65 to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the  
66 interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor,  
67 Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50  
68 years old and bordering the boundary streets.

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

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

86 E. Unreasonable failure to execute the plan by the defendant shall result in revocation of the  
87 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the  
88 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before  
89 either such action is taken. *Any such failure shall automatically extend the probation period until all*  
90 *payments are made and community service performed or until the defendant is released from his*  
91 *obligation by order of the court. No defendant shall be kept under supervised probation solely because*  
92 *of his failure to make full payment of restitution, provided that, following notice by the probation and*  
93 *parole officer to each court and attorney for the Commonwealth in whose jurisdiction any restitution is*  
94 *owed by the defendant, no such court or attorney for the Commonwealth objects to his removal from*  
95 *supervised probation.*

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

100 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,  
101 18.2-374.1:1, or 18.2-374.3.

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

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