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## HOUSE BILL NO. 1856

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 13, 2017)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

*A BILL to amend and reenact §§ 19.2-303, 19.2-304, 19.2-305, 19.2-305.1, 19.2-306, and 19.2-368.15 of the Code of Virginia, relating to restitution; supervised probation.*

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

**1. That §§ 19.2-303, 19.2-304, 19.2-305, 19.2-305.1, 19.2-306, and 19.2-368.15 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.**

A. After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, including monitoring by a GPS (Global Positioning System) tracking device, or other similar device, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The defendant may be ordered by the court to pay the cost of the GPS tracking device or other similar device. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01.

*B. In any case where a defendant is convicted of an offense committed on or after July 1, 2017, and ordered to pay restitution pursuant to the provisions of § 19.2-305.1, the court shall place the defendant on an indefinite term of supervised probation pursuant to subsection E of § 19.2-305.1.*

C. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

D. After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

E. In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and

60 for at least three years of such active supervision, the defendant shall be subject to electronic monitoring  
61 by means of a GPS (Global Positioning System) tracking device, or other similar device.

62 F. If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at  
63 any time before the sentence has been completely served, suspend the unserved portion of any such  
64 sentence, place the person on probation for such time as the court shall determine, or otherwise modify  
65 the sentence imposed.

66 G. If a person has been sentenced for a felony to the Department of Corrections but has not actually  
67 been transferred to a receiving unit of the Department, the court which heard the case, if it appears  
68 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any  
69 time before the person is transferred to the Department, suspend or otherwise modify the unserved  
70 portion of such a sentence. The court may place the person on probation for such time as the court shall  
71 determine.

72 **§ 19.2-304. Increasing or decreasing probation period and modification of conditions.**

73 The court may subsequently increase or decrease the probation period and may revoke or modify any  
74 condition of probation, but only upon a hearing after reasonable notice to both the defendant and the  
75 attorney for the Commonwealth. *The court may take such action at any time within the probation period*  
76 *or within the period of suspension fixed by the court. If no period of probation or suspension was fixed*  
77 *by the court, then the court may take such action at any time before the maximum period for which the*  
78 *defendant might originally have been sentenced to be imprisoned has ended.*

79 **§ 19.2-305. Requiring fines, costs, restitution for damages, support or community services from**  
80 **probationer.**

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

86 B. A defendant placed on probation following conviction may be required to make at least partial  
87 restitution or reparation to the aggrieved party or parties for damages or loss caused by the offense for  
88 which conviction was had, or may be required to provide for the support of his wife or others for whose  
89 support he may be legally responsible, or may be required to perform community services. The  
90 defendant may submit a proposal to the court for making restitution, for providing for support or for  
91 performing community services.

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

97 D. *At any time during the indefinite term of supervised probation ordered for the payment of*  
98 *restitution pursuant to subsection E of § 19.2-305.1 or subsection D of § 19.2-306, the defendant may*  
99 *file a motion to be removed from such probation prior to paying all restitution and interest in full. The*  
100 *court may conduct a hearing on the motion or may dismiss the motion summarily without any hearing.*  
101 *The defendant, attorney for the Commonwealth, and victim shall be provided reasonable notice of such*  
102 *hearing. The attorney for the Commonwealth shall notify the victim of any proceedings under this*  
103 *subsection. When considering whether to remove a defendant who has not paid restitution in full from*  
104 *supervised probation, the court shall consider the original amount of restitution ordered, the amount of*  
105 *restitution paid, the defendant's future ability to pay, any special circumstances that affect the*  
106 *defendant's ability to pay, the portion of the original sentence served by the defendant, and the portion*  
107 *of the original sentence that remains subject to revocation. At the conclusion of the hearing, and for*  
108 *good cause shown, the court may grant the motion and remove the defendant from the indefinite term of*  
109 *supervised probation.*

110 **§ 19.2-305.1. Restitution for property damage or loss; community service.**

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

116 B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits,  
117 and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial  
118 restitution for any property damage or loss caused by the crime or for any medical expenses or expenses  
119 directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be  
120 compelled to perform community services and, if the court so orders, shall submit a plan for doing that  
121 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 building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs 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. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The 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, the defendant shall 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 make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

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

E. *For any offense which occurs on or after July 1, 2017, if restitution is ordered at the time of sentencing, the court shall place the defendant on an indefinite term of supervised probation, not to exceed the period of suspension fixed by the court pursuant to § 19.2-303.1, until all ordered restitution and interest is paid in full. If no period of suspension was fixed by the court, then the indefinite term of supervised probation shall not exceed the maximum period for which the defendant might originally have been sentenced to be imprisoned. If the offense for which the restitution was ordered is a misdemeanor, (i) the court shall place the defendant on an indefinite term of supervised probation or (ii) as an alternative, the court shall schedule a hearing within 90 days of the date upon which restitution and interest is to be paid in full for the purpose of reviewing compliance with the restitution order. If a local probation agency does not serve the locality, then the court that entered the order for restitution shall schedule a hearing within 90 days of the date upon which restitution and interest is to be paid in full for the purpose of reviewing compliance with the restitution order. The probation agency assigned to the case shall review the case to ensure that restitution is being paid as ordered. If the probation agency or the attorney for the Commonwealth requests that a show cause or capias be issued for the defendant for failure to comply with the restitution order, the court shall conduct a hearing and promptly take any action necessary to compel compliance.*

F. *Except as provided in subsection D of § 19.2-305, no defendant shall be released from an indefinite term of supervised probation until all ordered restitution and interest has been paid in full. Prior to releasing the defendant from an indefinite term of supervised probation, the court shall verify with the clerk that all ordered restitution and interest has been paid in full.*

G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the

183 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the  
184 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before  
185 either such action is taken.

186 ~~E. H.~~ A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be  
187 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the  
188 court. For purposes of this subsection, "victim" means a person who is depicted in a still or  
189 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

190 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,  
191 18.2-374.1:1, or 18.2-374.3.

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

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

205 **§ 19.2-306. Revocation of suspension of sentence and probation.**

206 A. In any case in which the court has suspended the execution or imposition of sentence, the court  
207 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any  
208 time within the probation period, or within the period of suspension fixed by the court. If neither a  
209 probation period nor a period of suspension was fixed by the court, then the court may revoke the  
210 suspension for any cause the court deems sufficient that occurred within the maximum period for which  
211 the defendant might originally have been sentenced to be imprisoned.

212 B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues  
213 process to notify the accused or to compel his appearance before the court within one year after the  
214 expiration of the period of probation or the period of suspension or, in the case of a failure to pay  
215 restitution, within three years after such expiration. If neither a probation period nor a period of  
216 suspension was fixed by the court, then the court shall issue process within one year after the expiration  
217 of the maximum period for which the defendant might originally have been sentenced to be incarcerated.  
218 Such notice and service of process may be waived by the defendant, in which case the court may  
219 proceed to determine whether the defendant has violated the conditions of suspension.

220 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of  
221 suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke  
222 the suspension, and the court may pronounce whatever sentence might have been originally imposed or  
223 (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension  
224 and the original sentence shall be in full force and effect. The court may again suspend all or any part  
225 of this sentence and may place the defendant upon terms and conditions or probation.

226 D. *For any alleged violation in which the original offense occurred on or after July 1, 2017, if the*  
227 *court, after a hearing, finds good cause to believe that the defendant has violated the terms of*  
228 *suspension or probation by failing to pay restitution as ordered pursuant to § 19.2-305.1 and the*  
229 *defendant continues to owe restitution, then, in addition to the actions authorized under subsection C,*  
230 *the court shall place the defendant on an indefinite term of supervised probation pursuant to the*  
231 *provisions of subsection E of § 19.2-305.1, until all ordered restitution and interest is paid in full.*

232 E. If any court has, after hearing, found no cause to impose a sentence that might have been  
233 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a  
234 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which  
235 the hearing was held, shall be barred.

236 ~~E. F.~~ Nothing contained herein shall be construed to deprive any person of his right to appeal in the  
237 manner provided by law to the circuit court having criminal jurisdiction from a judgment or order  
238 revoking any suspended sentence.

239 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**  
240 **Commonwealth; disposition of funds collected.**

241 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the  
242 extent of such award, to any right or right of action accruing to the claimant or the victim to recover  
243 payments on account of losses resulting from the crime with respect to which the award is made.  
244 However, except as otherwise provided in subsection G J of § 19.2-305.1, the Commonwealth shall not

245 institute any proceedings in connection with its right of subrogation under this section within one year  
246 from the date of commission of the crime, unless any claimant or victim's right or action shall have  
247 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted  
248 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries  
249 Compensation Fund.

250 Whenever any person receives an award from the Criminal Injuries Compensation Fund, the  
251 Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof  
252 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or  
253 his personal representative against the person, firm, or corporation who is alleged to have caused such  
254 injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,  
255 but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or  
256 motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall  
257 become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to  
258 § 8.01-66.6.

259 **2. That the provisions of this act shall not become effective unless an appropriation effectuating**  
260 **the purposes of this act is included in a general appropriation act passed in 2017 by the General**  
261 **Assembly that becomes law.**