

17103916D

## HOUSE BILL NO. 2338

House Amendments in [ ] — February 1, 2017

A *BILL to amend and reenact §§ 19.2-305.1 and 19.2-354 of the Code of Virginia, relating to restitution; priority of payments.*

Patron Prior to Engrossment—Delegate Bell, Robert B.

Referred to Committee for Courts of Justice

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

**1. That §§ 19.2-305.1 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 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 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 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,

ENGROSSED

HB2338E

59 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the  
60 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or  
61 providing restitution shall, at the time of sentencing, obtain the social security number of each  
62 defendant.

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

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

71 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,  
72 18.2-374.1:1, or 18.2-374.3.

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

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

86 *H. Whenever a defendant is ordered to pay restitution, any sums collected [ by the clerk ] shall be [*  
87 *distributed used ] first [ to the victim ] to satisfy such restitution order [ and any collection costs*  
88 *associated with restitution ] prior to being used to satisfy any [ fines or costs fine, forfeiture, penalty, or*  
89 *cost ] assessed against the defendant.*

90 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**  
91 **restitution in installments or upon other terms and conditions; community work in lieu of**  
92 **payment.**

93 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of  
94 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a  
95 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to  
96 make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the  
97 court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the  
98 defendant may be required to pay in deferred payments or installments. The court assessing the fine,  
99 restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual  
100 deferred or installment payment agreements. *If the defendant owes court-ordered restitution and enters*  
101 *into a deferred or installment payment agreement, any money collected pursuant to such agreement shall*  
102 *be distributed first to the victim to satisfy such restitution order prior to being used to satisfy any other*  
103 *fine, forfeiture, penalty, or cost owed.* Any payment agreement authorized under this section shall be  
104 consistent with the Rules of Supreme Court of Virginia, including any required minimum payments or  
105 other required conditions. The requirements established by the Rules of Supreme Court of Virginia shall  
106 be posted in the clerk's office and on the court's website, if a website is available. As a condition of  
107 every such agreement, a defendant who enters into an installment or deferred payment agreement shall  
108 promptly inform the court of any change of mailing address during the term of the agreement. If the  
109 defendant is unable to make payment within 30 days of sentencing, the court may assess a one-time fee  
110 not to exceed \$10 to cover the costs of management of the defendant's account until such account is  
111 paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to  
112 § 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. Installment or  
113 deferred payment agreements shall include terms for payment if the defendant participates in a program  
114 as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date  
115 ordered, shall proceed in accordance with § 19.2-358.

116 B. When a person sentenced to the Department of Corrections or a local correctional facility owes  
117 any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in  
118 any work release, home/electronic incarceration or nonconsecutive days program as set forth in  
119 § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in  
120 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;

3. *Pay any fines or costs as ordered by the court;*

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

4. 5. Defray the offender's keep.

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

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

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

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

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

ENGROSSED

HB2338E