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SENATE BILL NO. 1284

Offered January 11, 2017

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A BILL to amend and reenact §§ 19.2-305.1, 19.2-305.2, 19.2-349, 19.2-354, 19.2-358, and 19.2-368.15 of the Code of Virginia, relating to restitution; enforcement, noncompliance, etc.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1, 19.2-305.2, 19.2-349, 19.2-354, 19.2-358, and 19.2-368.15 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

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59 terms and conditions upon which such work shall be performed. The court shall include such findings in
60 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,
61 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the
62 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or
63 providing restitution shall, at the time of sentencing, obtain the social security number of each
64 defendant.

65 E. *At the time of sentencing, the court shall enter the amount of restitution to be repaid by the*
66 *defendant and the terms and conditions of such repayment on a form prescribed by the Office of the*
67 *Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated*
68 *in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete,*
69 *to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the*
70 *defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did*
71 *not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A*
72 *copy of the form, excluding contact information for the victim, shall be provided to the defendant at*
73 *sentencing. A copy of the form shall be provided to the victim, his agent, or his estate upon request and*
74 *free of charge.*

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

83 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
84 18.2-374.1:1, or 18.2-374.3.

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

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

98 **§ 19.2-305.2. Amount of restitution; enforcement.**

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

104 B. An order of restitution may be docketed as provided in § 8.01-446 when so ordered by the court
105 or upon written request of the victim and may be enforced by a victim named in the order to receive the
106 restitution in the same manner as a judgment in a civil action. *Such docketing shall not be construed to*
107 *prohibit the court from exercising any authority otherwise available to enforce the order of restitution.*

108 **§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of**
109 **attorneys for Commonwealth; duties of Department of Taxation.**

110 A. The clerk of the circuit court and district court of every county and city shall submit to the judge
111 of his court, the Department of Taxation, the State Compensation Board and the attorney for the
112 Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which
113 are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his
114 court for a violation of state law or a local ordinance which remain unsatisfied, including those which
115 are delinquent in installment payments. The monthly report shall include the social security number or
116 driver's license number of the defendant, if known, and such other information as the Department of
117 Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report
118 required by this subsection on behalf of those clerks who participate in the Supreme Court's automated
119 information system.

120 B. *The clerk of the circuit court and district court of every county and city shall submit quarterly to*

121 *the attorney for the Commonwealth of his county or city:*

122 *1. A list of all defendants with an outstanding balance of restitution ordered by the court served by*
123 *such clerk. Such report shall include the defendant's name, case number, total amount of restitution*
124 *ordered, amount of restitution remaining due, and last date of payment; and*

125 *2. A list of all accounts where more than 90 days have passed since an account was sent to*
126 *collections and no payments have been made toward fines, costs, forfeitures, penalties, or restitution.*
127 *For accounts where restitution is owed, such report shall include the defendant's name, case number,*
128 *and total amount of restitution and restitution interest due.*

129 *C. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be*
130 *instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The*
131 *attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for*
132 *such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does*
133 *not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth*
134 *and the clerk may agree to a process by which collection activity may be commenced 30 days after*
135 *judgment.*

136 *If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private*
137 *attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii)*
138 *enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of*
139 *Taxation, upon such terms and conditions as may be established by guidelines promulgated by the*
140 *Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of*
141 *Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he*
142 *shall follow the procedures established by the Department of Taxation and the Compensation Board.*
143 *Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private*
144 *attorneys and collection agencies when active collection efforts are being undertaken. As part of such*
145 *contract, private attorneys or collection agencies shall be given access to the social security number of*
146 *the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the*
147 *penalties and provisions of § 18.2-186.3.*

148 *The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out*
149 *of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency*
150 *receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act*
151 *(§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney*
152 *for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.*

153 *C. D. The Department of Taxation and the State Compensation Board shall be responsible for the*
154 *collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354.*
155 *Persons owing such unsatisfied judgments or failing to comply with installment payment agreements*
156 *under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The*
157 *Department of Taxation and the State Compensation Board shall establish procedures to be followed by*
158 *clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or*
159 *collection agents and may employ private attorneys or collection agencies, or engage other state agencies*
160 *to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct*
161 *a fee for services from amounts collected for violations of local ordinances.*

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

171 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**
172 **restitution in installments or upon other terms and conditions; community work in lieu of**
173 **payment.**

174 *A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of*
175 *the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a*
176 *juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to*
177 *make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the*
178 *court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the*
179 *defendant may be required to pay in deferred payments or installments. The court assessing the fine,*
180 *restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual*
181 *deferred or installment payment agreements. Any payment agreement authorized under this section shall*

182 be consistent with the Rules of Supreme Court of Virginia, including any required minimum payments
183 or other required conditions. The requirements established by the Rules of Supreme Court of Virginia
184 shall be posted in the clerk's office and on the court's website, if a website is available. As a condition
185 of every such agreement, a defendant who enters into an installment or deferred payment agreement
186 shall promptly inform the court of any change of mailing address during the term of the agreement. If
187 the defendant is unable to make payment within 30 days of sentencing, the court may assess a one-time
188 fee not to exceed \$10 to cover the costs of management of the defendant's account until such account is
189 paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to
190 § 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
191 deferred payment agreements shall include terms for payment if the defendant participates in a program
192 as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date
193 ordered, shall proceed in accordance with § 19.2-358.

194 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
195 any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in
196 any work release, home/electronic incarceration or nonconsecutive days program as set forth in
197 § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in
198 accordance with his installment or deferred payment agreement while participating in such program. If,
199 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
200 his participation in the program may be terminated until all fines, costs, forfeitures, restitution and
201 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
202 administrative head of any local correctional facility shall withhold such ordered payments from any
203 amounts due to such person. Distribution of the money collected shall be made in the following order of
204 priority to:

205 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
206 be disbursed according to the terms of such order;

207 2. Pay any fines, restitution or costs as ordered by the court;

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

210 4. Defray the offender's keep.

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

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

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

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

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

229 **§ 19.2-358. Procedure on default in deferred payment or installment payment of fine, costs,
230 forfeiture, restitution or penalty.**

231 A. When an individual obligated to pay a fine, costs, forfeiture, restitution or penalty defaults in the
232 payment or any installment payment, the court upon the motion of the Commonwealth in the case of a
233 conviction of a violation of a state law, or attorney for a locality or for the Commonwealth in the event
234 of a conviction of a violation of a local law or ordinance, or upon its own motion, may require him to
235 show cause why he should not be confined in jail or ~~fin~~ for nonpayment. A show cause proceeding
236 shall not be required prior to issuance of a capias if an order to appear on a date certain in the event of
237 nonpayment was issued pursuant to subsection A of § 19.2-354 and the defendant failed to appear.

238 B. Following the order to show cause or following a capias issued for a defendant's failure to comply
239 with a court order to appear issued pursuant to subsection A of § 19.2-354, unless the defendant shows
240 that his default was not attributable to an intentional refusal to obey the sentence of the court, or not
241 attributable to a failure on his part to make a good faith effort to obtain the necessary funds for
242 payment, or unless the defendant shows that any failure to appear was not attributable to an intentional
243 refusal to obey the order of the court, the court may order the defendant confined as for a contempt for

244 a term not to exceed ~~sixty 60 days or impose a fine not to exceed \$500~~. The court may provide in its
245 order that payment or satisfaction of the amounts in default at any time will entitle the defendant to his
246 release from such confinement or, after entering the order, may at any time reduce the sentence for good
247 cause shown, including payment or satisfaction of such amounts.

248 C. If it appears that the default is excusable under the standards set forth in subsection B hereof, the
249 court may enter an order allowing the defendant additional time for payment, reducing the amount due
250 or of each installment, or remitting the unpaid portion in whole or in part.

251 D. Nothing in this section shall be deemed to alter or interfere with the collection of fines by any
252 means authorized for the enforcement of money judgments rendered in favor of the Commonwealth or
253 any locality within the Commonwealth.

254 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**
255 **Commonwealth; disposition of funds collected.**

256 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the
257 extent of such award, to any right or right of action accruing to the claimant or the victim to recover
258 payments on account of losses resulting from the crime with respect to which the award is made.
259 However, except as otherwise provided in subsection ~~G~~ I of § 19.2-305.1, the Commonwealth shall not
260 institute any proceedings in connection with its right of subrogation under this section within one year
261 from the date of commission of the crime, unless any claimant or victim's right or action shall have
262 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted
263 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries
264 Compensation Fund.

265 Whenever any person receives an award from the Criminal Injuries Compensation Fund, the
266 Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof
267 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or
268 his personal representative against the person, firm, or corporation who is alleged to have caused such
269 injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,
270 but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or
271 motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall
272 become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to
273 § 8.01-66.6.