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SENATE BILL NO. 1284

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 20, 2017)

(Patron Prior to Substitute—Senator Obenshain)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1, 19.2-305.2, 19.2-349, 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 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

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

74 F. Unreasonable failure to execute the plan by the defendant shall result in revocation of the
75 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the
76 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before
77 either such action is taken.

78 ~~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
79 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the
80 court. For purposes of this subsection, "victim" means a person who is depicted in a still or
81 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

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

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

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

97 **§ 19.2-305.2. Amount of restitution; enforcement.**

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

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

107 **§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of**
108 **attorneys for Commonwealth; duties of Department of Taxation.**

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

119 B. *The clerk of the circuit court and district court of every county and city shall submit quarterly to*
120 *the attorney for the Commonwealth of his county or city and any probation agency that serves such*
121 *county or city:*

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

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

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

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

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

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

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

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

Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the extent of such award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses resulting from the crime with respect to which the award is made. However, except as otherwise provided in subsection G 1 of § 19.2-305.1, the Commonwealth shall not institute any proceedings in connection with its right of subrogation under this section within one year from the date of commission of the crime, unless any claimant or victim's right or action shall have been previously terminated. All funds collected by the Commonwealth in a proceeding instituted pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries Compensation Fund.

Whenever any person receives an award from the Criminal Injuries Compensation Fund, the

183 Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof
184 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or
185 his personal representative against the person, firm, or corporation who is alleged to have caused such
186 injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,
187 but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or
188 motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall
189 become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to
190 § 8.01-66.6.