

18102534D

HOUSE BILL NO. 484

Offered January 10, 2018

Prefiled January 8, 2018

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

Patrons—Bell, Robert B., Freitas, Hugo, Miyares, Poindexter and Ransone

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-304, 19.2-305, 19.2-305.1, 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, 2018, 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 probation pursuant to subsection F 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

INTRODUCED

HB484

59 clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of
60 § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of
61 the defendant under a postrelease supervision program operated by the Department of Corrections, and
62 for at least three years of such active supervision, the defendant shall be subject to electronic monitoring
63 by means of a GPS (Global Positioning System) tracking device, or other similar device.

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

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

74 **§ 19.2-304. Increasing or decreasing probation period and modification of conditions.**

75 The court may subsequently increase or decrease the probation period and may revoke or modify any
76 condition of probation, but only upon a hearing after reasonable notice to both the defendant and the
77 attorney for the Commonwealth.

78 *At any time during the indefinite terms of probation ordered for the payment of restitution pursuant*
79 *to subsection F of § 19.2-305.1, the defendant may be removed from such probation prior to his paying*
80 *all restitution and interest in full. The court may conduct a hearing on any motion for removing the*
81 *defendant from probation or may dismiss the motion summarily without any hearing. The defendant and*
82 *the attorney for the Commonwealth shall be provided with reasonable notice of such hearing and the*
83 *attorney for the Commonwealth shall notify the victim of any hearing. When considering whether to*
84 *remove a defendant who has not paid restitution in full from probation, the court shall consider the*
85 *original amount of restitution ordered, the amount of restitution paid, the defendant's payment history,*
86 *the defendant's future ability to pay, any special circumstances that affect the defendant's ability to pay,*
87 *the portion of the original sentence served by the defendant, and the portion of the original sentence*
88 *that remains subject to revocation. At the conclusion of the hearing, the court may release the defendant*
89 *from the indefinite term of probation if the moving party establishes that it would constitute a manifest*
90 *injustice not to grant the motion.*

91 **§ 19.2-305. Requiring fines, costs, restitution for damages, support or community services from**
92 **probationer.**

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

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

104 C. *Where a court has placed a defendant on supervised probation and ordered a probation agency*
105 *to monitor the defendant's payment of restitution, the probation agency shall notify the court and the*
106 *attorney for the Commonwealth of the amount of any restitution that remains unsatisfied and the*
107 *defendant's payment history 30 days prior to the defendant's release from supervision. Such notice shall*
108 *be in writing, and the attorney for the Commonwealth shall provide a copy of the notice to the victim.*
109 *In addition, where the agency requests that a defendant be removed from supervision prior to*
110 *completion of the term ordered by the court, such request shall list the amount of any restitution that*
111 *remains unsatisfied and include the defendant's payment history.*

112 D. *Where a court has ordered the payment of restitution and no probation agency is ordered to*
113 *monitor the defendant's payment, if any restitution remains unsatisfied on the date upon which*
114 *restitution is to be paid in full, the court shall schedule a hearing within 90 days of such date for the*
115 *purpose of reviewing the defendant's noncompliance with the order.*

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

121 **§ 19.2-305.1. Restitution for property damage or loss; community service.**

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

127 B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits,
128 and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial
129 restitution for any property damage or loss caused by the crime or for any medical expenses or expenses
130 directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be
131 compelled to perform community services and, if the court so orders, shall submit a plan for doing that
132 which appears to be feasible to the court under the circumstances.

133 B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits
134 and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled
135 substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to
136 reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may
137 be, for the removal and remediation associated with the illegal manufacture of any controlled substance
138 by the defendant.

139 B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits
140 and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument,
141 statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the
142 Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages.
143 Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405,
144 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be
145 ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any
146 building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property
147 assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any
148 prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering
149 and Buildings of the Department of General Services or the Division of Risk Management shall be
150 admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building,
151 monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned
152 to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the
153 interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor,
154 Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50
155 years old and bordering the boundary streets.

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

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

173 E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the
174 defendant, the date by which all restitution is to be paid, and the terms and conditions of such
175 repayment on a form prescribed by the Office of the Executive Secretary of the Supreme Court of
176 Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the
177 attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the
178 form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of
179 such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the
180 defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact
181 information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be

182 provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request
183 and free of charge.

184 *F. For any offense committed on or after July 1, 2018, if restitution is ordered at the time of*
185 *sentencing, the court shall place the defendant on an indefinite term of probation. Except as provided in*
186 *§ 19.2-304, no defendant shall be released from an indefinite term of probation until all ordered*
187 *restitution and interest have been paid in full.*

188 *G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the*
189 *probation or imposition of the suspended sentence. A hearing shall be held in accordance with the*
190 *provisions of this Code relating to revocation of probation or imposition of a suspended sentence before*
191 *either such action is taken.*

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

196 *The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,*
197 *18.2-374.1:1, or 18.2-374.3.*

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

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

211 *J. K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to*
212 *satisfy such restitution order and any collection costs associated with restitution prior to being used to*
213 *satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.*

214 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**
215 **Commonwealth; disposition of funds collected.**

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

225 *Whenever any person receives an award from the Criminal Injuries Compensation Fund, the*
226 *Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof*
227 *compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or*
228 *his personal representative against the person, firm, or corporation who is alleged to have caused such*
229 *injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,*
230 *but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or*
231 *motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall*
232 *become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to*
233 *§ 8.01-66.6.*