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HOUSE BILL NO. 1423

Offered January 8, 2020
Prefiled January 8, 2020

A BILL to amend and reenact §§ 19.2-305.1 and 19.2-305.2 of the Code of Virginia, relating to orders of restitution; enforcement.

Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1 and 19.2-305.2 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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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. The clerk shall record receipt of restitution payments in an automated financial management system operated and maintained by the Executive Secretary of the Supreme Court or such other system established and maintained by a circuit court clerk pursuant to § 17.1-502. 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. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that includes a period of active supervision, the probation agency supervising the defendant shall notify the court and the attorney for the Commonwealth of the amount of any restitution that remains unsatisfied and the last known address for the defendant (i) 60 days prior to the defendant's release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that the defendant be released from supervision, at the time the agency submits its request to the court. Such notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a hearing prior to the defendant's release from supervision after providing notice of the hearing to the defendant and the attorney for the Commonwealth. If the court finds that the defendant is not in compliance with the restitution order, the court may (a) release the defendant from supervision, (b) modify the period or terms of supervision pursuant to § 19.2-304, (c) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (d) proceed in accordance with subsection E of § 19.2-358. The court shall also docket the restitution order ~~as a civil judgment~~ pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. Any defendant who is released from supervision shall be subject to the provisions of subdivision 3.

2. In any case in which the court orders the defendant to pay restitution and places the defendant on probation that does not include a period of active supervision, the court shall include in the order a date, not to exceed two years from the date of the entry of the order or, if the court has sentenced the defendant to an active term of incarceration, from the date of the defendant's release from incarceration, on which the defendant's compliance with the restitution order shall be reviewed and the court shall schedule a hearing for such date. The court may, on its own motion, cancel the hearing if the amount of restitution has been satisfied. If at the hearing the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall also docket the restitution order ~~as a civil judgment~~ pursuant to subsection B of § 19.2-305.2 unless such order has previously been docketed. After the hearing conducted pursuant to this subdivision, the defendant shall be subject to the provisions of subdivision 3.

3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance with the restitution order until the amount of restitution has been satisfied and provide notice of such hearings to the defendant. The court may, on its own motion, cancel any such hearing if the amount of restitution has been satisfied or if the defendant is in compliance with the restitution order. If at any hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance with the restitution order, the court may (i) modify the period or terms of probation pursuant to § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall follow the procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order by a defendant (a) until the amount of restitution has been satisfied or (b) if any amount of restitution

remains unsatisfied, for the longer of 10 years from the date of the hearing held pursuant to subdivision 1 or 2 or the period of probation ordered by the court.

4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is unable to pay restitution and will remain unable to pay restitution for the duration of the review period set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's compliance with the restitution order.

5. If the court determines that a defendant would be incarcerated on the date of any hearing scheduled pursuant to this subsection, the court may remove the case from the docket, reschedule such hearing to a date after the defendant's release from incarceration, and provide notice of the hearing to the defendant and the attorney for the Commonwealth. If the defendant who is on probation that includes a period of active supervision is incarcerated, the probation agency supervising the defendant shall notify the court when the defendant has been released from incarceration.

6. No provision of this subsection shall be construed to prohibit the court from exercising any authority otherwise granted by law over a defendant during any period of probation ordered by the court.

7. At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. The probation officer for the defendant shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such conviction, the probation officer shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record prior to his release from supervision.

8. At every hearing conducted pursuant to subdivision 2 where the attorney for the Commonwealth participated in the prosecution and the defendant was convicted of an offense for which a report to the Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the criminal history record of the defendant, the court shall review the criminal history record of the defendant and determine whether the present conviction appears on that record. If the attorney for the Commonwealth participated in the prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record to the court at such hearing. If the present conviction does not appear on the criminal history record, the court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such conviction, the attorney for the Commonwealth shall provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that the conviction does not appear on the offender's criminal history record.

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

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

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

I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims by November 1 of each year. If a clerk does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the Fund by November 1 of each year. The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment directly to the victim for any proper claims. When depositing such restitution to the Fund, the clerk shall report the victim's last known contact information, including the victim's home address, telephone number, and email address, and the amount of restitution being deposited for that victim. Before making the deposit, the administrator shall record the name, contact information, and amount of restitution being deposited for each victim appearing from the clerk's report to be entitled to restitution. The victim's contact information reported to the Fund shall be confidential

and shall not be disseminated further except as otherwise required by law.

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

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

§ 19.2-305.2. Amount of restitution; enforcement.

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

B. An order of restitution ~~may~~ *shall* be docketed, *in the name of the Commonwealth on behalf of the victim,* as provided in § 8.01-446 when so ordered by the court ~~or upon written request of the victim and may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action~~, *unless the victim named in the order of restitution requests in writing that the order be docketed in the name of the victim. An order of restitution docketed in the name of the victim shall be enforced by the victim as a civil judgment. The clerk shall record and disburse restitution payments as provided in subsection D of § 19.2-305.1 and subsection A of § 19.2-354 in accordance with orders of restitution or judgments for restitution docketed in the name of the Commonwealth. At any time before a judgment for restitution docketed in the name of the Commonwealth is satisfied, the court shall, at the written request of the victim, order the circuit court clerk to execute and docket an assignment of the judgment to the victim. The clerk shall remove from its automated financial system the amount of unpaid restitution upon docketing the assignment.* Enforcement by a victim of any order of restitution docketed as provided in § 8.01-446 is not subject to any statute of limitations. Such docketing shall not be construed to prohibit the court from exercising any authority otherwise available to enforce the order of restitution.