

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 18.2-138.1 of the Code of Virginia, relating to willful and malicious*
3 *damage to or defacement of public or private facilities; penalty.*

4 [H 2441]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 18.2-138.1 of the Code of Virginia is amended and reenacted as follows:**

8 § 18.2-138.1. Willful and malicious damage to or defacement of public or private facilities; penalty.

9 A. Any county, city or town may by ordinance make unlawful the willful and malicious damage to
10 or defacement of any public buildings, facilities and personal property *or of any private buildings,*
11 *facilities and personal property if the damage to the private property is less than \$1,000.* The penalty
12 for violation of such ordinance shall be a Class 1 misdemeanor.

13 B. *Upon a finding of guilt under any such ordinance in any case tried before the court without a*
14 *jury, in the event the violation constitutes a first offense which results in property damage or loss, the*
15 *court, without entering a judgment of guilt, upon motion of the defendant, may defer further proceedings*
16 *and place the defendant on probation pending completion of a plan of community service work. If the*
17 *defendant fails or refuses to complete the community service as ordered by the court, the court may*
18 *make final disposition of the case and proceed as otherwise provided. If the community service work is*
19 *completed as the court prescribes, the court may discharge the defendant and dismiss the proceedings*
20 *against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a*
21 *conviction only for the purposes of applying the ordinance in subsequent proceedings.*

22 C. *The ordinance shall direct that the community service, to the extent feasible, include the repair,*
23 *restoration or replacement of any damage or defacement to property within the locality, and may*
24 *include clean-up, beautification, landscaping or other appropriate community service within the locality.*
25 *Any ordinance adopted pursuant to this section shall make provision for a designee of the locality to*
26 *supervise the performance of any community service work required and to report thereon to the court*
27 *imposing such requirement. At or before the time of sentencing under the ordinance, the court shall*
28 *receive and consider any plan for making restitution or performing community service submitted by the*
29 *defendant. The court shall also receive and consider the recommendations of the supervisor of*
30 *community service in the locality concerning the plan.*

31 D. *Notwithstanding any other provision of law, no person convicted of a violation of an ordinance*
32 *adopted pursuant to this section shall be placed on probation or have his sentence suspended unless*
33 *such person shall make at least partial restitution for such property damage or is compelled to perform*
34 *community services, or both, as is more particularly set forth in § 19.2-305.1.*

ENROLLED

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