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HOUSE BILL NO. 2441**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Counties, Cities and Towns
on January 28, 1997)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend the Code of Virginia by adding in Article 2 of Chapter 1 of Title 15.1 a section numbered 15.1-37.3:15, relating to defacement of property; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 1 of Title 15.1 a section numbered 15.1-37.3:15 as follows:

§ 15.1-37.3:15. Prohibiting willful or malicious damage or defacement to property; penalty.

A. Any county, city or town may by ordinance make unlawful the willful and malicious damage to or defacement of any building, facility, structure, or personal property, found or being on public property or the private property of another. In adopting an ordinance pursuant to the provisions of this section, the governing body may provide that any person who violates the provisions of such ordinance shall be guilty of a Class 1 misdemeanor.

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

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

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

HOUSE SUBSTITUTE

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