

063858724

SENATE BILL NO. 619

Offered January 13, 2006

A BILL to amend and reenact §§ 19.2-305.1, 19.2-305.2, 19.2-305.4, 19.2-349, 19.2-353.3, 19.2-354, and 19.2-358 of the Code of Virginia, relating to restitution for property damage or loss.

Patron—Deeds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1, 19.2-305.2, 19.2-305.4, 19.2-349, 19.2-353.3, 19.2-354, and 19.2-358 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 or consent to the plan offered by the attorney for the Commonwealth 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 past or expected future medical expenses or past or expected future expenses directly related to vocational or rehabilitative physical therapy or 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 or consent to the plan offered by the attorney for the Commonwealth 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.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant inquire of the attorney for the Commonwealth whether any financial loss subject to restitution arose from the offense. The attorney for the Commonwealth shall advise whether restitution is being sought and shall present evidence of financial loss. Evidence may include, but shall not be limited to, invoices, bills, receipts, cancelled checks, estimates of future medical expenses, presentence investigation reports, victim impact statements, evidence from bond hearings, and witness testimony. The attorney for the Commonwealth shall provide the defendant with reasonable prior notice of any specific request for restitution. The court shall consider the request for restitution and determine the amount of restitution without consideration of the defendant's ability to pay. However, the court shall consider the defendant's ability to pay for the purpose of determining an appropriate restitution payment plan. The court shall hear arguments by the Commonwealth and the defendant concerning any dispute about the appropriate amount of restitution to be paid. The payment 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 total amount of restitution ordered and the terms of the approved payment plan, if any, the defendant shall begin to make restitution within 30 days of sentencing while he is free on probation or work release or following within 30 days of 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 and specify the amount certain 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 payable to the order of the clerk of court, who shall disburse such sums as the

INTRODUCED

SB619

59 court may, by order, direct. *Additionally, the order shall specify that any installment plan entered into*
60 *by the defendant that becomes delinquent by more than 90 days shall be void, and the outstanding*
61 *balance immediately due, and shall allow the Tax Commissioner to act in accordance with § 19.2-349 to*
62 *collect any such outstanding balance.* Any court ~~desiring to participate~~ *participating* in the Setoff Debt
63 Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing
64 restitution shall, at the time of sentencing, obtain the social security number of each defendant.

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

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

75 G. *Pursuant to subsection B, the clerk of the circuit court or the district court may delegate to*
76 *another bonded agency the responsibility of receiving restitution payments that are properly payable to*
77 *the order of the clerk of court. The clerk of circuit court or district court shall retain the responsibility*
78 *of recording such payment pursuant to subsection H.*

79 H. *The clerk shall record receipt of restitution payments in the Supreme Court's automated*
80 *information system or another database approved by the Supreme Court.*

81 § 19.2-305.2. Amount of restitution; enforcement.

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

87 B. An order of restitution ~~may~~ *shall* be docketed as provided in § 8.01-446 ~~when so ordered by the~~
88 ~~court or upon written request of the victim~~ and may be enforced by a victim named in the order to
89 receive the restitution in the same manner as a judgment in a civil action.

90 § 19.2-305.4. When interest to be paid on award of restitution.

91 The court, when ordering restitution pursuant to § 19.2-305 or 19.2-305.1, ~~may~~ *shall* provide in the
92 order for interest on the restitution. ~~If the court orders the payment of interest, it~~ *Interest* shall accrue
93 from the date of the loss or damage unless the court specifies a different date in the order, at the rate
94 specified in § 6.1-330.54.

95 § 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for
96 Commonwealth; duties of Department of Taxation.

97 A. The clerk of the circuit court and district court of every county and city shall submit to the judge
98 of his court, the Department of Taxation, the State Compensation Board, ~~and~~ the attorney for the
99 Commonwealth of his county or city, *and any agency in his county or city designated to monitor*
100 *restitution* a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than
101 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state
102 law or a local ordinance which remain unsatisfied, including those which are delinquent in installment
103 payments. The monthly report shall include the social security number or driver's license number of the
104 defendant, if known, and such other information as the Department of Taxation and the Compensation
105 Board deem appropriate. The Executive Secretary shall make the report required by this subsection on
106 behalf of those clerks who participate in the Supreme Court's automated information system.

107 B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be
108 instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The
109 attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for
110 such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does
111 not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth
112 and the clerk may agree to a process by which collection activity may be commenced 15 days after
113 judgment.

114 If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private
115 attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii)
116 enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of
117 Taxation, upon such terms and conditions as may be established by guidelines promulgated by the
118 Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of
119 Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he
120 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.

The Except in cases involving the collection of court-ordered restitution, 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.). Whenever the attorney for the Commonwealth uses the Department of Taxation or contracts with any private attorney or collection agency to collect delinquent court-ordered restitution, the fees of such entity or individual shall be paid by the defendant in addition to the court-ordered restitution.

C. 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 State Compensation Board shall consider duties related to the collection, recording, and disbursement of restitution when determining appropriate staffing standards for clerks, their deputies, or employees.* 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, *restitutions*, 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.

D. The clerk of the circuit court and the clerk of the district court shall receive restitution payments, and shall record the receipt of such payments in an approved automated system as set forth in subsection H of § 19.2-305.1. The clerk of the circuit court or district court may, by mutual agreement, delegate the responsibility of receiving restitution payments to a local victim witness program, community correction board, or local office of probation and parole. Such delegation of the responsibility shall only occur on the conditions that (i) the agency is bonded, (ii) the restitution payments are properly payable to the order of the clerk of court, and (iii) the chosen agency has entered into a written agreement with the clerk detailing the specific responsibilities to be delegated.

§ 19.2-353.3. Acceptance of checks and credit cards in lieu of money; additional fee.

Notwithstanding the provisions of § 19.2-353, personal checks payable to the order of the clerk of court and credit cards shall may be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. Notwithstanding the provisions of § 19.2-353, personal checks payable to the order of the clerk of court shall may be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a circuit court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. The clerk of any circuit court shall not be required to but may, in his discretion, accept credit card payment in lieu of money to collect and secure all fees, including filing fees, fines, restitution, forfeitures, penalties, and costs collected. The Committee on District Courts shall devise a procedure for approving and accepting checks and credit cards that shall be accepted by the district courts. Court personnel shall not be held to be guarantors of the payment made in such manner and shall not be personally liable for any sums uncollected. The clerk of the court, in addition to any fees, fines, restitution, forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount paid as a service charge for the acceptance of a credit card.

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit card issuer that payment will not be made, for any reason, the fees, fine, restitution, forfeiture, penalty or costs shall be treated as unpaid, and the court may pursue all available remedies to obtain payment. The clerk of the court to whom the dishonored check or credit card was tendered may impose a fee of twenty dollars or ten percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed.

The clerk of court may refuse acceptance of checks or credit cards of an individual if (i) he has been

convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card information was used to commit the offense, (ii) he has previously tendered to the court a check which was not ultimately honored or a credit card or credit card information which did not ultimately result in payment by the credit card issuer, (iii) authorization of payment is not given by the bank or credit card issuer, or (iv) the validity of the check or credit card cannot be verified, ~~or (v) the payee of the check is other than the court.~~ *If the clerk receives a restitution payment made payable to the order of the victim, the clerk shall have the authority to endorse the payment on behalf of the victim and process the payment in the same manner as if payable to the order of the clerk of court.*

§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in installments or upon other terms and conditions; community work in lieu of payment.

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within fifteen days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements, pursuant to guidelines established by the court. *The court shall require the clerk to record all deferred or installment payments pursuant to subsection H of § 19.2-305.1.* As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within fifteen days of sentencing, the court may assess a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8 or § 17.1-275.9. *Pursuant to the court order set forth in subsection D of § 19.2-305.1, an installment payment plan delinquent by more than 90 days shall be void, and the outstanding balance immediately due unless the court determines that the defendant satisfies the conditions provided in subsection C of this section.* Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

B. When a person sentenced to the Department of Corrections or a local correctional facility owes any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work release, home/electronic incarceration or nonconsecutive days program as set forth in §§ 53.1-60, 53.1-131, 53.1-131.1 or § 53.1-131.2 to either make full payment or make payments in accordance with his installment or deferred payment agreement while participating in such program. If, after the person has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in the program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director of the Department of Corrections and any sheriff or other administrative head of any local correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

C. The court shall establish a program to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

D. When the court has authorized deferred payment or installment payments, the clerk shall *record such authorization pursuant to subsection H of § 19.2-305.1, and the clerk shall* give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant to § 19.2-358

and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

E. The failure of the defendant to enter into a deferred payment or installment payment agreement with the court or the failure of the defendant to make payments as ordered by the agreement shall allow the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, *restitutions*, forfeitures and penalties.

§ 19.2-358. Procedure on default in deferred payment or installment payment of fine, costs, forfeiture, restitution or penalty.

A. When an individual obligated to pay a fine, costs, forfeiture, restitution or penalty defaults in the payment or any installment payment, the court upon the motion of the Commonwealth in the case of a conviction of a violation of a state law, or attorney for a locality or for the Commonwealth in the event of a conviction of a violation of a local law or ordinance, or upon its own motion, may require him to show cause why he should not be confined in jail or fined for nonpayment. A show cause proceeding shall not be required prior to issuance of a *capias* if an order to appear on a date certain in the event of nonpayment was issued pursuant to subsection A of § 19.2-354 and the defendant failed to appear.

B. Following the order to show cause or following a *capias* issued for a defendant's failure to comply with a court order to appear issued pursuant to subsection A of § 19.2-354, unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, or unless the defendant shows that any failure to appear was not attributable to an intentional refusal to obey the order of the court, the court may order the defendant confined as for a contempt for a term not to exceed sixty days or impose a fine not to exceed \$500. The court may provide in its order that payment or satisfaction of the amounts in default at any time will entitle the defendant to his release from such confinement or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of such amounts.

C. If it appears that the default is excusable under the standards set forth in subsection B hereof, the court may enter an order allowing the defendant additional time for payment, reducing the amount due or of each installment, or remitting the unpaid portion in whole or in part. *The court shall require the clerk to record the default and additional conditions pursuant to subsection H of § 19.2-305.1.*

D. Nothing in this section shall be deemed to alter or interfere with the collection of fines by any means authorized for the enforcement of money judgments rendered in favor of the Commonwealth or any locality within the Commonwealth.