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SENATE BILL NO. 1285

Offered January 11, 2017

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A BILL to amend and reenact §§ 19.2-303, 19.2-304, 19.2-305, 19.2-305.1, 19.2-306, and 19.2-368.15 of the Code of Virginia, relating to restitution; supervised probation.

Patron—Obenshain

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, 19.2-306, 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, 2017, 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 supervised probation pursuant to subsection E 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

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. *The court may take such action at any time within the probation period*
78 *or within the period of suspension fixed by the court. If no period of probation or suspension was fixed*
79 *by the court, then the court may take such action at any time before the maximum period for which the*
80 *defendant might originally have been sentenced to be imprisoned has ended.*

81 **§ 19.2-305. Requiring fines, costs, restitution for damages, support or community services from**
82 **probationer.**

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

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

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

99 D. *At any time during the indefinite term of supervised probation ordered for the payment of*
100 *restitution pursuant to subsection E of § 19.2-305.1 or subsection D of § 19.2-306, the defendant may*
101 *file a motion to be removed from such probation prior to paying all restitution and interest in full. The*
102 *court may conduct a hearing on the motion or may dismiss the motion summarily without any hearing.*
103 *The defendant, attorney for the Commonwealth, and victim shall be provided reasonable notice of such*
104 *hearing. The attorney for the Commonwealth shall notify the victim of any proceedings under this*
105 *subsection. When considering whether to remove a defendant who has not paid restitution in full from*
106 *supervised probation, the court shall consider the original amount of restitution ordered, the amount of*
107 *restitution paid, the defendant's future ability to pay, any special circumstances that affect the*
108 *defendant's ability to pay, the portion of the original sentence served by the defendant, and the portion*
109 *of the original sentence that remains subject to revocation. At the conclusion of the hearing, and for*
110 *good cause shown, the court may grant the motion and remove the defendant from the indefinite term of*
111 *supervised probation.*

112 **§ 19.2-305.1. Restitution for property damage or loss; community service.**

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

118 B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits,
119 and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial
120 restitution for any property damage or loss caused by the crime or for any medical expenses or expenses

121 directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be
122 compelled to perform community services and, if the court so orders, shall submit a plan for doing that
123 which appears to be feasible to the court under the circumstances.

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

130 B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits
131 and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument,
132 statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the
133 Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages.
134 Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405,
135 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be
136 ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any
137 building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property
138 assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any
139 prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering
140 and Buildings of the Department of General Services or the Division of Risk Management shall be
141 admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building,
142 monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned
143 to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the
144 interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor,
145 Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50
146 years old and bordering the boundary streets.

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

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

164 E. *For any offense which occurs on or after July 1, 2017, if restitution is ordered at the time of*
165 *sentencing, the court shall place the defendant on an indefinite term of supervised probation, not to*
166 *exceed the period of suspension fixed by the court pursuant to § 19.2-303.1, until all ordered restitution*
167 *and interest is paid in full. If no period of suspension was fixed by the court, then the indefinite term of*
168 *supervised probation shall not exceed the maximum period for which the defendant might originally*
169 *have been sentenced to be imprisoned. If the offense for which the restitution was ordered is a*
170 *misdemeanor, (i) the court shall place the defendant on an indefinite term of supervised probation or*
171 *(ii) as an alternative, the court shall schedule a hearing within 90 days of the date upon which*
172 *restitution and interest is to be paid in full for the purpose of reviewing compliance with the restitution*
173 *order. If a local probation agency does not serve the locality, then the court that entered the order for*
174 *restitution shall schedule a hearing within 90 days of the date upon which restitution and interest is to*
175 *be paid in full for the purpose of reviewing compliance with the restitution order. The probation agency*
176 *assigned to the case shall review the case not less than twice each year to ensure that restitution is*
177 *being paid as ordered. If the probation agency or the attorney for the Commonwealth requests that a*
178 *show cause or capias be issued for the defendant for failure to comply with the restitution order, the*
179 *court shall conduct a hearing and promptly take any action necessary to compel compliance.*

180 F. *Except as provided in subsection D of § 19.2-305, no defendant shall be released from an*
181 *indefinite term of supervised probation until all ordered restitution and interest has been paid in full.*

182 *Prior to releasing the defendant from an indefinite term of supervised probation, the court shall verify*
183 *with the clerk that all ordered restitution and interest has been paid in full.*

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

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

192 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
193 18.2-374.1:1, or 18.2-374.3.

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

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

207 **§ 19.2-306. Revocation of suspension of sentence and probation.**

208 A. In any case in which the court has suspended the execution or imposition of sentence, the court
209 may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any
210 time within the probation period, or within the period of suspension fixed by the court. If neither a
211 probation period nor a period of suspension was fixed by the court, then the court may revoke the
212 suspension for any cause the court deems sufficient that occurred within the maximum period for which
213 the defendant might originally have been sentenced to be imprisoned.

214 B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues
215 process to notify the accused or to compel his appearance before the court within one year after the
216 expiration of the period of probation or the period of suspension or, in the case of a failure to pay
217 restitution, within three years after such expiration. If neither a probation period nor a period of
218 suspension was fixed by the court, then the court shall issue process within one year after the expiration
219 of the maximum period for which the defendant might originally have been sentenced to be incarcerated.
220 Such notice and service of process may be waived by the defendant, in which case the court may
221 proceed to determine whether the defendant has violated the conditions of suspension.

222 C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of
223 suspension, then: (i) if the court originally suspended the imposition of sentence, the court shall revoke
224 the suspension, and the court may pronounce whatever sentence might have been originally imposed or
225 (ii) if the court originally suspended the execution of the sentence, the court shall revoke the suspension
226 and the original sentence shall be in full force and effect. The court may again suspend all or any part
227 of this sentence and may place the defendant upon terms and conditions or probation.

228 D. *For any alleged violation in which the original offense occurred on or after July 1, 2017, if the*
229 *court, after a hearing, finds good cause to believe that the defendant has violated the terms of*
230 *suspension or probation by failing to pay restitution as ordered pursuant to § 19.2-305.1 and the*
231 *defendant continues to owe restitution, then, in addition to the actions authorized under subsection C,*
232 *the court shall place the defendant on an indefinite term of supervised probation pursuant to the*
233 *provisions of subsection E of § 19.2-305.1, until all ordered restitution and interest is paid in full.*

234 E. If any court has, after hearing, found no cause to impose a sentence that might have been
235 originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a
236 sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which
237 the hearing was held, shall be barred.

238 ~~E~~. F. Nothing contained herein shall be construed to deprive any person of his right to appeal in the
239 manner provided by law to the circuit court having criminal jurisdiction from a judgment or order
240 revoking any suspended sentence.

241 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**
242 **Commonwealth; disposition of funds collected.**

243 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the

244 extent of such award, to any right or right of action accruing to the claimant or the victim to recover
245 payments on account of losses resulting from the crime with respect to which the award is made.
246 However, except as otherwise provided in subsection *G J* of § 19.2-305.1, the Commonwealth shall not
247 institute any proceedings in connection with its right of subrogation under this section within one year
248 from the date of commission of the crime, unless any claimant or victim's right or action shall have
249 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted
250 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries
251 Compensation Fund.

252 Whenever any person receives an award from the Criminal Injuries Compensation Fund, the
253 Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof
254 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or
255 his personal representative against the person, firm, or corporation who is alleged to have caused such
256 injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,
257 but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or
258 motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall
259 become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to
260 § 8.01-66.6.