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SENATE BILL NO. 1478

Offered January 17, 2017

A *BILL to amend and reenact §§ 19.2-305.1 and 19.2-368.15 of the Code of Virginia, relating to restitution; modification of terms and conditions of payment plan.*

Patron—McClellan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1 and 19.2-368.15 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 terms and conditions upon which such work shall be performed. The court shall include such findings in

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59 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,
60 who shall disburse such sums as the court may, by order, direct. Any court desiring to participate in the
61 Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or
62 providing restitution shall, at the time of sentencing, obtain the social security number of each
63 defendant.

64 E. *At any time during the duration of the payment plan for restitution ordered pursuant to subsection*
65 *D, upon motion of the Commonwealth or the defendant, or on its own motion, and for good cause*
66 *shown, the court may modify the terms or conditions of such payment plan, but only upon a hearing*
67 *after reasonable notice to the defendant and the attorney for the Commonwealth. If new or additional*
68 *information that was not known or available at the time of sentencing regarding the total amount of*
69 *restitution owed becomes available after the entry of the original sentencing order, then, upon motion of*
70 *the Commonwealth or upon its own motion, and for good cause shown, the court may amend the total*
71 *amount of restitution to be repaid and the terms and conditions of the payment, but only upon a hearing*
72 *after reasonable notice to the defendant and the attorney for the Commonwealth.*

73 *The attorney for the Commonwealth shall provide advance notification when practicable to the victim*
74 *of any judicial proceeding under this subsection. The court may dismiss any motion filed under this*
75 *subsection summarily without a hearing.*

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

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

84 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
85 18.2-374.1:1, or 18.2-374.3.

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

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

99 **§ 19.2-368.15. Subrogation of Commonwealth to claimant's right of action; lien in favor of the**
100 **Commonwealth; disposition of funds collected.**

101 Acceptance of an award made pursuant to this chapter shall subrogate the Commonwealth, to the
102 extent of such award, to any right or right of action accruing to the claimant or the victim to recover
103 payments on account of losses resulting from the crime with respect to which the award is made.
104 However, except as otherwise provided in subsection ~~G~~ I of § 19.2-305.1, the Commonwealth shall not
105 institute any proceedings in connection with its right of subrogation under this section within one year
106 from the date of commission of the crime, unless any claimant or victim's right or action shall have
107 been previously terminated. All funds collected by the Commonwealth in a proceeding instituted
108 pursuant to this section shall be paid over to the Comptroller for deposit into the Criminal Injuries
109 Compensation Fund.

110 Whenever any person receives an award from the Criminal Injuries Compensation Fund, the
111 Commonwealth shall have a lien for the total amount paid by the Fund, or any portion thereof
112 compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or
113 his personal representative against the person, firm, or corporation who is alleged to have caused such
114 injuries. The Fund's lien shall be inferior to any lien for payment of reasonable attorney fees and costs,
115 but shall be superior to all other liens created by § 8.01-66.2. The injured person may file a petition or
116 motion to reduce the lien and apportion the recovery pursuant to § 8.01-66.9. The Fund's lien shall
117 become effective when notice is provided pursuant to § 8.01-66.5 and liability shall attach pursuant to
118 § 8.01-66.6.