VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-305.1, 19.2-349, and 19.2-368.3 of the Code of Virginia, relating to restitution; collection; Criminal Injuries Compensation Fund.

[H 483]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-305.1, 19.2-349, and 19.2-368.3 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 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,

who shall disburse such sums as the court may, by order, direct. *The clerk shall record receipt of restitution payments in an automated financial management system operated and maintained by the Executive Secretary of the Supreme Court or such other system established and maintained by a circuit court clerk pursuant to § 17.1-502.* Any court desiring to participate in the Setoff Debt Collection Act (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall, at the time of sentencing, obtain the social security number of each defendant.

E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the defendant, the date by which all restitution is to be paid, ~~and~~ the terms and conditions of such repayment, *and the victim's name and contact information, including the victim's home address, telephone number, and email address,* on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge. *Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.*

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

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

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

H. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims *by November 1 of each year. If a clerk does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the Fund by November 1 of each year.* The administrator shall reserve a sum sufficient in the Fund from which he shall make prompt payment *directly* to the victim for any proper claims. *When depositing such restitution to the Fund, the clerk shall report the victim's last known contact information, including the victim's home address, telephone number, and email address, and the amount of restitution being deposited for that victim.* Before making the deposit ~~he~~, *the administrator* shall record the name, ~~last known address~~ *contact information,* and amount of restitution ~~due~~ *being deposited for* each victim appearing from the clerk's report to be entitled to restitution. *The victim's contact information reported to the Fund shall be confidential and shall not be disseminated further except as otherwise required by law.*

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

J. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any fine, forfeiture, penalty, or cost assessed against the defendant.

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

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 90 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or

driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. The clerk of the circuit court and district court of every county and city shall submit quarterly to the attorney for the Commonwealth of his county or city and any probation agency that serves such county or city:

1. A list of all defendants with an outstanding balance of restitution ordered by the court served by such clerk. Such report shall include the defendant's name, case number, total amount of restitution ordered, amount of restitution remaining due, and last date of payment; and

2. A list of all accounts where more than 90 days have passed since an account was sent to collections and no payments have been made toward fines, costs, forfeitures, penalties, or restitution. For accounts where restitution is owed, such report shall include the defendant's name, case number, and total amount of restitution and restitution interest due.

C. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 90 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he 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. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of § 18.2-186.3.

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.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

D. 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 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, 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.

The Office of the Executive Secretary of the Supreme Court shall annually report to the Governor, the General Assembly, the Chairmen of the House and Senate Committees for Courts of Justice, and the Virginia State Crime Commission on the total of restitution assessed, collected, and unpaid for each circuit and district court and the total of restitution collected and deposited into the Criminal Injuries Compensation Fund pursuant to subsection H of § 19.2-305.1 by each circuit and district court.

§ 19.2-368.3. Powers and duties of Commission.

The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter, to include a distinct policy (i) for the payment of physical evidence recovery kit examinations and (ii) to require each health care provider as defined in § 8.01-581.1 that provides services under this chapter to negotiate with the Commission or its designee to establish prospective agreements relating to rates for payment of claims for such services allowed under § 19.2-368.11:1, such rates to discharge the obligation to the provider in full except where the provider is an agency of the Commonwealth and the claimant receives a third party recovery in addition to the payment from the Fund.

2. Notwithstanding the provisions of § 2.2-3706, to acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such investigative results, information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. These data shall include prior adult arrest records and juvenile court disposition records of the offender. For such purposes and in accordance with § 16.1-305, the Commission may also acquire from the juvenile and domestic relations district courts a copy of the order of disposition relating to the crime. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall be confidential and shall not be disseminated further. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue summonses requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities. *This report shall include a detailed section on all unclaimed restitution collected and disbursed to the victim from the Criminal Injuries Compensation Fund pursuant to subsection H of § 19.2-305.1.*

8. To accept from the government of the United States grants of federal moneys for disbursement under the provisions of this chapter.

9. To collect and disburse unclaimed restitution pursuant to subsection H of § 19.2-305.1 and develop, in consultation with circuit court clerks and the Office of the Executive Secretary of the Supreme Court of Virginia, policies and procedures for the receipt, collection, and disbursement of unclaimed restitution to victims of crime.

10. To identify and locate victims of crime for whom restitution owed to such victims has been deposited into the Criminal Injuries Compensation Fund pursuant to subsection H of § 19.2-305.1. Notwithstanding the provisions of § 2.2-3706, the Commission may acquire from the attorneys for the Commonwealth, State Police, local police departments, and sheriffs' departments such information as will enable the Commission to identify and locate such victims. The use of any information received by the Commission pursuant to this subdivision shall be limited to carrying out the purposes set forth in this section, and this information shall be confidential and shall not be disseminated further.