



Recommendations and Policy Options

December 5, 2016



Restitution

HB 605

Restitution



Recommendation 1:

- Virginia Code § 19.2-305.1 should be amended to require the Office of the Executive Secretary (OES) of the Supreme Court to develop a form order for restitution, which should include at a minimum the following information:
 - Contact information for the defendant and victim(s);
 - The total amount ordered and the terms of payment;
 - For restitution ordered as joint and several, any other defendant(s) and victim(s) related to said order;
 - If interest is ordered on the restitution, the date from which the interest accrues; and,
 - A signature line for the defendant.

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Recommendation 2:

- Virginia Code § 19.2-305.1 should be amended to require that the form order developed by the OES of the Supreme Court should be completed in part by the Commonwealth's Attorney prior to sentencing and should be entered by the court at the time of sentencing.
 - If the Commonwealth's Attorney is not involved in the prosecution, then the court or clerk shall complete the form.
 - A copy of this form order should be provided to the defendant, without the victim's contact information, at the sentencing.
 - A copy of this form order should be provided to the victim(s), free of charge, upon request of the victim(s).
 - This form will provide vital information for clerks to collect and distribute restitution.

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Recommendation 3:

- Virginia Code § 19.2-305.2 should be amended to clarify that the docketing of a criminal restitution order as a civil judgment does not prohibit criminal or contempt enforcement of that restitution order.

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Recommendation 4:

- Virginia Code § 19.2-305.1 should be amended to allow for both the defendant and the Commonwealth's Attorney to seek modification of the terms of payment of restitution in the event that a defendant's ability to pay changes.

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Recommendation 5:

- Virginia Code § 19.2-305.1 should be amended to specify that the court shall not order the defendant to pay restitution directly to the victim or through the defendant's counsel.

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Recommendation 6:

- Virginia Code §§ 19.2-305.1, 19.2-305.2, and 19.2-354 should be amended to allow the court discretion to order a defendant who is unable to pay restitution the option to perform community service at the rate of the state minimum wage in lieu of restitution, provided that such community service is with the consent of the victim, the victim's estate, or the victim's agent, and the Commonwealth's Attorney.

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Recommendation 7:

- The Department of Taxation Court Debt Collections Office should explore the possibility of accepting payments for delinquent restitution and upgrading current software to allow for a more streamlined approach to the collection of restitution.
 - May require legislation if funding is provided for new software.
 - May require an amendment to Virginia Code § 19.2-349 to encompass all Commonwealth's Attorneys and collection agents.
 - Adds a second enactment clause requiring OES, Tax, DMV, DOC, and DCJS to develop recommendations for enhancing the collection of restitution and to report findings and recommendations to the Chairman of the Crime Commission by November 1, 2017.

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Recommendation 8:

- Virginia Code §§ 19.2-303, 19.2-304, 19.2-305, 19.2-305.1, and 19.2-306 should be amended to specify who is responsible for monitoring compliance with the payment of restitution. Such amendments should include:
 - If restitution is ordered, the defendant should be placed on indefinite supervised probation until all restitution is paid in full;
 - The Department of Corrections or the local probation office should be responsible for monitoring compliance with the restitution order;
 - For misdemeanor cases, as an alternative to probation, the court may instead schedule a review hearing to determine compliance with the restitution order;
 - If supervision services are not available in the locality, then the court shall schedule a review hearing to determine compliance with the restitution order;

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Recommendation 8 (cont.):

- Such amendments should include:
 - The court should be required to conduct a hearing upon notice from the probation officer that the defendant is not in compliance with restitution payments;
 - The court should verify with the clerk of court that all restitution has been paid before releasing the defendant from supervised probation; and,
 - A provision allowing the court to release the defendant from supervised probation under special circumstances, after consideration of the amount owed and paid, payment history, and the defendant's future ability to pay.

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Recommendation 9:

- The General Assembly should authorize funding for the OES of the Supreme Court to allow for circuit courts to accept online payments.

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Recommendation 10:

- The General Assembly should provide additional resources to the Department of Corrections to support the monitoring of restitution and the extension of probation.



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Recommendation 11:

- The OES of the Supreme Court, in coordination with other stakeholders involved in the restitution process, should develop best practice guidelines for managing the restitution process. The guidelines should address such practices as:
 - Developing a local plan for the collection, monitoring and disbursement of restitution;
 - Addressing repeat offenders;
 - Handling joint and several restitution orders;
 - Determining how payments are applied when the defendant owes fines, costs and restitution;
 - Addressing issues surrounding micro-checks for restitution;

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Recommendation 11:

- The guidelines should address such practices as (cont.):
 - Issues involving collections when the victim is a large corporation or insurance company;
 - How to handle unclaimed restitution;
 - Options for locating the victim for disbursement;
 - Availability of payment options, including credit and debit cards and online payment;
 - Feasibility of developing a uniform payment schedule for restitution, similar to the child/spousal support model; and,
 - Defining when a case is closed for purposes of collection and monitoring.
- *If the Court later determines that some of these items would be better addressed by legislation they will notify Crime Commission staff.*

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Recommendation 12:

- The OES of the Supreme Court should provide training to clerks and judges on the best practice guidelines for managing the restitution process.

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Recommendation 13:

- The Department of Criminal Justice Services should convene representatives from the Virginia Victim Assistance Network, the Criminal Injuries Compensation Fund, Commonwealth's Attorneys' Offices, and any other interested stakeholders, to develop an informational brochure for victims to explain restitution and the victim's role in the restitution process.

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Recommendation 14:

- The OES of the Supreme Court should enhance their FAS to allow clerks the ability to generate a payment notice, as is the practice with fines and costs, along with any other capabilities that would enhance the management of restitution.

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Policy Option 1:

- Virginia Code § 19.2-358 could be amended to remove the court's authority to impose up to a \$500 fine for a defendant's failure to pay a fine, costs, forfeiture, restitution or penalty.

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Policy Option 2:

- Virginia Code § 19.2-349 could be amended to require the court to notify the Commonwealth's Attorney if a defendant who owes restitution has not made any payments within 90 days after his account was sent to collections.



Cigarette Trafficking

Cigarette Trafficking



Recommendation 1:

- A new section (Virginia Code § 58.1-623.2) should be enacted to create a cigarette exemption certificate issued by the Department of Taxation following a vetting process, which includes a background investigation and verification of a physical place of business.
 - Creates an expedited process for active valid ABC licensees and OTP licenses.
 - Creates a 30 day waiting period to obtain certificate by mail.
 - Allows for retailers to purchase cigarettes exempt from sales tax.
 - The use of a forged or invalid Virginia cigarette exemption certificate would be punishable under existing Virginia Code § 58.1-1017.3.

Cigarette Trafficking



Recommendation 2:

- A new section (Virginia Code § 58.1-623.3) should be enacted requiring that a form be completed and maintained for any cigarette purchase of more than 10,000 sticks or 50 cartons, or when the total value of the purchase is over \$10,000.
 - The form should be developed by the Office of the Attorney General.
 - The form must be accompanied by photographic identification.
 - The form will be available for inspection and transmitted to the Office of the Attorney General on a regular basis.

Cigarette Trafficking



Recommendation 3:

- Reduce the number of tax-paid cigarettes that an individual may possess under Virginia Code § 58.1-1017.1 in relation to the charge of possession with intent to distribute contraband cigarettes.

Cigarette Trafficking



Recommendation 4:

- Amend two definitions under Virginia Code § 58.1-1000:
 - Amend “authorized holder” to disqualify anyone as an authorized holder who has been convicted of a criminal offense under Chapter 10 of Title 58.1.
 - Amend “retail dealer” to include the requirement that the retail dealer possess a valid cigarette exemption certificate.



Search Warrants (SB 247/ HB 361)

Search Warrants



Recommendation 1:

- The Crime Commission should endorse the substitute version of SB 247 that:
 - Adds the phrase “any person to be arrested for whom a warrant or process for arrest has been issued” to the search warrant statutes; and,
 - Deletes the phrase “... any person who is unlawfully restrained” from the original version of the bill.

** NOTE: This recommendation was voted on and unanimously endorsed in concept at the October 3rd Crime Commission meeting.*



Use of the Term “Mental Retardation” in Capital Cases



Recommendation 1:

- The term “mental retardation” should be replaced with the term “intellectual disability” in Virginia’s capital murder statutes.
 - These changes will apply to Va. Code §§ 8.01-654.2, 18.2-10, 19.2-264.3:1.1, 19.2-264.3:1.2, and 19.2-264.3:3.
 - Should a second enactment clause be included in the legislation, stating that the change in term is not to be construed as a change to Virginia’s substantive law?



Habeas Corpus

Habeas Corpus



Policy Option 1:

- Should legislation be enacted, similar to the Texas scientific evidence statute, to allow for a mechanism to seek post-conviction relief when new or changing scientific evidence calls into question the outcome of the original trial and DNA evidence is not available?



Discussion
