

House Bill 1041
Senate Judiciary Committee
Testimony Presented by Sara Behrens
March 14, 2023

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1041.

Currently, section 12.1-32-08 requires a hearing be held regarding restitution in all cases. Case law has held that the only exception is when the parties enter into a plea agreement wherein the defendant specifically agrees to payment of restitution. No timeline is provided regarding the restitution process.

HB 1041 provides a procedure and timeline for requesting restitution and objecting to a restitution request. The State must collect restitution information from the victim and provide a copy to the defendant within 60 days after the sentencing. Rather than a required hearing, the defendant can request a hearing within 30 days of receiving the restitution information from the State if the defendant disagrees with the restitution being requested. If a hearing is not requested within the 30 days, the court may enter restitution. Following the 30 days, the defendant may no longer challenge the restitution amount.

Restitution can include damages directly related to the offense and expenses actually sustained as a direct result of the criminal action. The cost of physical, psychiatric and psychological care can also be included if found to be necessary and related. Currently, the statute does not indicate what must be submitted in support of the restitution amount. HB 1041 delineates what type of

evidence must be provided to support the award. We hope that this will make the process go more smoothly and clarify what can be awarded.

Testimony was provided in the House by a victim who is dissatisfied with the payment plan set for the defendant in his case. He indicated that the defendant makes \$93,000 a year but only pays \$200 per month on the restitution judgment. This is not a typical situation. His suggestion was to use the federal restitution procedure which includes an extensive worksheet regarding the income and assets of the defendant. We do not think it would be appropriate to require such disclosures in every case. In setting the amount of restitution, the defendant's income and assets cannot be considered. Under Marsy's Law, the victim is entitled to full restitution regardless of the defendant's ability to pay. While we cannot require financial disclosures for setting restitution, there may be certain cases, such as that brought up in the House, where it may be appropriate to review the income and assets to set an appropriate payment plan. An amendment was made allowing the court to order disclosure of income and assets if appropriate to set a payment plan. We envision a form similar to the indigent defense application.

Much of the language in HB 1041 is already existing language that has been moved around and reworked. We hope that this will make the restitution process more easily understood, more workable, and save resources by not requiring a hearing when the amount is not challenged.

Thank you for your consideration and we urge a do pass.