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HOUSE BILL NO. 2386

Offered January 17, 2017

A BILL to amend and reenact § 19.2-354 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-354.1, relating to payment of court-ordered fines, etc.; deferred or installment payment agreements.

Patrons—Loupassi, Bell, Robert B., Yost, Albo, Carr, Cline, Fariss, Farrell, Freitas, Garrett, Hodges, Howell, Hugo, Ingram, Jones, Kilgore, Knight, Landes, LeMunyon, Lopez, Massie, Miyares, O'Bannon, Peace, Pogge, Robinson, Villanueva, Ware, Wilt and Yancey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-354 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-354.1 as follows:

§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in installments or upon other terms and conditions; community work in lieu of payment.

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court assessing the fine, restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual deferred or installment payment agreements. Any payment agreement authorized under this section shall be consistent with the ~~Rules of Supreme Court of Virginia~~ *provisions of § 19.2-354.1*, including any required minimum payments or other required conditions. The requirements ~~established by the Rules of Supreme Court of Virginia set forth in § 19.2-354.1~~ shall be posted in the clerk's office and on the court's website, if a website is available. As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within 30 days of sentencing, the court may assess a one-time fee not to exceed \$10 to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

B. When a person sentenced to the Department of Corrections or a local correctional facility owes any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work release, home/electronic incarceration or nonconsecutive days program as set forth in § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in accordance with his installment or deferred payment agreement while participating in such program. If, after the person has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in the program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director of the Department of Corrections and any sheriff or other administrative head of any local correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court;

3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate

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57 funds.

58 C. The court shall establish a program and may provide an option to any person upon whom a fine
59 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
60 performance of community service work before or after imprisonment. The program shall specify the
61 rate at which credits are earned and provide for the manner of applying earned credits against the fine
62 or costs. The court shall have such other authority as is reasonably necessary for or incidental to
63 carrying out this program.

64 D. When the court has authorized deferred payment or installment payments, the clerk shall give
65 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant
66 to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

67 E. The failure of the defendant to enter into a deferred payment or installment payment agreement
68 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow
69 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and
70 penalties.

71 **§ 19.2-354.1. Deferred or installment payment agreements.**

72 A. For purposes of this section:

73 *"Deferred payment agreement" means an agreement in which no installment payments are required*
74 *and the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's*
75 *stated term.*

76 *"Fines and costs" means all fines, court costs, forfeitures, and penalties assessed in any case by a*
77 *court against a defendant for the commission of any crime or traffic infraction. "Fines and costs"*
78 *includes restitution unless the court orders a separate payment schedule for restitution.*

79 *"Installment payment agreement" means an agreement in which the defendant agrees to make*
80 *monthly or other periodic payments until the fines and costs are paid in full.*

81 *"Modified deferred payment agreement" means a deferred payment agreement in which the defendant*
82 *also agrees to use best efforts to make monthly or other periodic payments.*

83 B. The court shall give a defendant ordered to pay fines and costs written notice of the availability
84 of deferred and installment payment agreements and, if a community service program has been
85 established, the availability of earning credit toward discharge of fines and costs through the
86 performance of community service work. The court shall offer any defendant who is unable to pay in
87 full the fines and costs within 30 days of sentencing the opportunity to enter into a deferred payment
88 agreement, modified deferred payment agreement, or installment payment agreement.

89 C. The court shall not deny a defendant the opportunity to enter into a deferred or installment
90 payment agreement solely (i) because of the category of offense for which the defendant was convicted
91 or found not innocent, (ii) because of the total amount of all fines and costs, (iii) because the defendant
92 previously defaulted under the terms of a payment agreement, (iv) because the fines and costs have been
93 referred for collections pursuant to § 19.2-349, (v) because the defendant has not established a payment
94 history, or (vi) because the defendant is eligible for a restricted driver's license under subsection E of
95 § 46.2-395.

96 D. In determining the length of time to pay under a deferred or installment payment agreement and
97 the amount of the payments, a court shall take into account (i) the defendant's financial resources and
98 obligations, including any fines and costs owed by the defendant in other courts, and (ii) whether the
99 defendant has been determined to be indigent. In assessing the defendant's ability to pay, the court shall
100 use a written financial statement, on a form developed by the Executive Secretary of the Supreme Court,
101 setting forth the defendant's financial resources and obligations or conduct an oral examination of the
102 defendant to determine his financial resources and obligations. The length of a payment agreement and
103 the amount of the payments (a) shall be reasonable in light of the defendant's financial resources and
104 obligations and (b) shall not be based solely on the amount of the fines and costs. The court may offer
105 a payment agreement combining an initial period during which no payment of fines and costs is
106 required followed by a period of installment payments.

107 E. A court may require a down payment as a condition of a defendant entering a deferred or
108 installment payment agreement. In the case of a deferred or modified deferred payment agreement, any
109 required down payment shall be a minimal amount to demonstrate the defendant's commitment to paying
110 the fees and costs. In the case of an installment payment agreement, the required down payment may
111 not exceed (i) if the fines and costs owed are \$500 or less, 20 percent of such amount or (ii) if the fines
112 and costs owed are more than \$500, 10 percent of such amount or \$100. The court may require a
113 higher down payment from a defendant for good cause shown. A defendant may make a larger down
114 payment than that required by this subsection.

115 F. All fines and costs that a defendant owes for all cases in any court may be incorporated into one
116 payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement shall
117 include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341
118 has not run.

119 G. Any payment received within 10 days of its due date shall be considered to be timely made.

120 H. At any time during the duration of a payment agreement, the defendant may request a
121 modification of the agreement, and the court shall grant such modification based on a good faith
122 showing of need.

123 I. A court shall consider a request by a defendant who has defaulted on a payment agreement to
124 enter into a subsequent payment agreement. In determining whether to approve the request for a
125 subsequent payment agreement, the court shall consider the any change in the defendant's
126 circumstances. A court may require a down payment to enter into a subsequent payment agreement in
127 excess of the amount set forth in subsection E, provided that the down payment required to enter into a
128 subsequent payment agreement shall not exceed 20 percent of the total fines and costs owed. When a
129 defendant enters into a subsequent payment agreement, a court shall not require a defendant to
130 establish a payment history on the subsequent payment agreement before restoring the defendant's
131 driver's license.

132 J. If a community service program has been established, a court shall, in any case the court deems
133 appropriate, allow a defendant to earn credit toward discharge of fines and costs through the
134 performance of community service work. No credit shall be given for community service work for any
135 amounts owed as restitution or accrued interest on restitution or any required collection fee.