

2017 SESSION

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HB2409

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HOUSE BILL NO. 2409

Offered January 19, 2017

A BILL to amend and reenact §§ 18.2-251, 19.2-349, 19.2-354, 46.2-395, 46.2-410.1, and 46.2-1200.1 of the Code of Virginia, relating to payment of court fines and costs; suspension of driver's licenses.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251, 19.2-349, 19.2-354, 46.2-395, 46.2-410.1, and 46.2-1200.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused ~~(i)~~(a) to successfully complete treatment or education program or services, ~~(ii)~~(b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, ~~(iii)~~(c) to make reasonable efforts to secure and maintain employment, and ~~(iv)~~(d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction for purposes of §§ ~~18.2-259.1, § 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed.~~ The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the

59 same offense.

60 **§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of**
61 **attorneys for Commonwealth; duties of Department of Taxation.**

62 A. The clerk of the circuit court and district court of every county and city shall submit to the judge
63 of his court, the Department of Taxation, the State Compensation Board and the attorney for the
64 Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which
65 are delinquent more than ~~30~~ 90 days, including court-ordered restitution of a sum certain, imposed in his
66 court for a violation of state law or a local ordinance which remain unsatisfied, including those which
67 are delinquent in installment payments. The monthly report shall include the social security number or
68 driver's license number of the defendant, if known, and such other information as the Department of
69 Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report
70 required by this subsection on behalf of those clerks who participate in the Supreme Court's automated
71 information system.

72 B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be
73 instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The
74 attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for
75 such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does
76 not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth
77 and the clerk may agree to a process by which collection activity may be commenced ~~30~~ 90 days after
78 judgment.

79 If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private
80 attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii)
81 enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of
82 Taxation, upon such terms and conditions as may be established by guidelines promulgated by the
83 Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of
84 Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he
85 shall follow the procedures established by the Department of Taxation and the Compensation Board.
86 Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private
87 attorneys and collection agencies when active collection efforts are being undertaken. As part of such
88 contract, private attorneys or collection agencies shall be given access to the social security number of
89 the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the
90 penalties and provisions of § 18.2-186.3.

91 The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out
92 of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency
93 receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act
94 (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney
95 for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

96 C. The Department of Taxation and the State Compensation Board shall be responsible for the
97 collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354.
98 Persons owing such unsatisfied judgments or failing to comply with installment payment agreements
99 under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The
100 Department of Taxation and the State Compensation Board shall establish procedures to be followed by
101 clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or
102 collection agents and may employ private attorneys or collection agencies, or engage other state agencies
103 to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct
104 a fee for services from amounts collected for violations of local ordinances.

105 The Department of Taxation and the State Compensation Board shall annually report to the Governor
106 and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and
107 unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit
108 and district court. The report shall include the procedures established by the Department of Taxation and
109 the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid
110 fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the
111 Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence
112 of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures
113 established by the Department of Taxation and the State Compensation Board.

114 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**
115 **restitution in installments or upon other terms and conditions; community work in lieu of**
116 **payment.**

117 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
118 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
119 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to
120 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, including any required minimum payments or other required conditions. The requirements established by the Rules of Supreme Court of Virginia 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 funds.

C. The court shall establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work ~~before or after imprisonment~~. *If such person is incarcerated in a local correctional facility or regional jail facility, such person may perform community service work during his period of confinement as authorized by the court.* The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

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

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

§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the Commonwealth; of any county, city, or town; or of the United States. *However, this section shall not apply to violations of Article 1 (§ 18.2-247 et seq.) or 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 or to violations not pertaining to the operator or operation of a motor vehicle.* For the purpose of this section, such fines and costs shall be deemed to include any fee assessed by the court under the

182 provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or 18.2-266 into
183 an alcohol safety action program.

184 B. In addition to any penalty provided by law and subject to the limitations on collection under
185 §§ 19.2-340 and 19.2-341, when any person is convicted of any violation of the law of the
186 Commonwealth or of the United States or of any valid local ordinance, *except as provided in subsection*
187 A, and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures,
188 restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment
189 payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a
190 motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue
191 suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the
192 defendant, after having his license suspended, pays the reinstatement fee to the Department of Motor
193 Vehicles and enters into an agreement under § 19.2-354 that is acceptable to the court to make deferred
194 payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered
195 by the court, the defendant's driver's license shall thereby be restored. If the person has not obtained a
196 license as provided in this chapter, or is a nonresident, the court may direct in the judgment of
197 conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the
198 nonpayment of the amounts due.

199 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
200 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
201 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
202 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
203 Virginia, effective 30 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
204 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
205 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
206 on the summons or bail recognizance document as the person's current mailing address, or to such
207 mailing address as the person has subsequently provided to the court as a change of address. If so
208 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
209 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
210 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
211 No other notice shall be required to make the suspension effective. A record of the person's failure or
212 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
213 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
214 on the failure to make a scheduled payment.

215 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
216 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall
217 cause to be sent to the person written notice of the failure and of the suspension of his license or
218 privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the
219 notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the
220 suspension by paying the full amount owed by cash, cashier's check or certified check prior to the
221 effective date of the suspension if the notice is mailed by first class mail to the address provided by the
222 person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice,
223 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
224 certified check, unless otherwise ordered by the court, for good cause shown.

225 D. If the person pays the amounts assessed against him subsequent to the time the suspended license
226 has been transmitted to the Department, and his license is not under suspension or revocation for any
227 other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the
228 person on presentation of the official report of the court evidencing the payment of the fine, costs,
229 forfeiture, restitution, or penalty.

230 E. Any person otherwise eligible for a restricted license may petition each court that suspended his
231 license pursuant to this section for authorization for a restricted license. A court may, upon written
232 verification of employment and for good cause shown, authorize the Department of Motor Vehicles to
233 issue a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of
234 § 18.2-271.1. No restricted license may be issued unless each court which suspended the person's license
235 pursuant to this section provides authorization for a restricted license. Such restricted license shall not be
236 issued for more than a six-month period. No restricted license issued pursuant to this subsection shall
237 permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License
238 Act (§ 46.2-341.1 et seq.).

239 The court shall forward to the Commissioner a copy of its authorization entered pursuant to this
240 section, which shall specifically enumerate the restrictions imposed and contain such information
241 regarding the person to whom such a license is issued as is reasonably necessary to identify the person.
242 The court shall also provide a copy of its authorization to the person, who may not operate a motor
243 vehicle until receipt from the Commissioner of a restricted license. A copy of the restricted license

issued by the Commissioner shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be punished as provided in subsection C of § 46.2-301.

§ 46.2-410.1. Judicial review of revocation or suspension by Commissioner.

A. Notwithstanding the provisions of § 46.2-410, when the Commissioner orders a revocation or suspension of a person's driver's license under the provisions of this chapter, ~~unless such revocation or suspension is required under § 46.2-390.1,~~ the person so aggrieved may, in cases of manifest injustice, within ~~sixty~~ 60 days of receipt of notice of the suspension or revocation, petition the circuit court of the jurisdiction wherein he resides for a hearing to review the Commissioner's order. Manifest injustice is defined as those instances where the Commissioner's order was the result of an error or was issued without authority or jurisdiction. The person shall provide notice of his petition to the attorney for the Commonwealth of that jurisdiction.

B. At the hearing on the petition, if the court finds that the Commissioner's order is manifestly unjust the court may, notwithstanding any other provision of law, order the Commissioner to modify the order or issue the person a restricted license in accordance with the provisions of § 18.2-271.1. For any action under this section, no appeal shall lie from the determination of the circuit court.

C. This section shall not apply to any disqualification of eligibility to operate a commercial motor vehicle imposed by the Commissioner pursuant to Article 6.1 (§ 46.2-341.1 et seq.) ~~of this chapter.~~

§ 46.2-1200.1. Abandoning motor vehicles prohibited; penalty.

No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in § 46.2-1200. In any prosecution for a violation of this section, proof that the defendant was, at the time that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable presumption that the owner was the person who committed the violation. Such presumption, however, shall not arise if the owner of the vehicle provided notice to the Department, as provided in § 46.2-604, that he had sold or otherwise transferred the ownership of the vehicle.

A summons for a violation of this section shall be executed by mailing a copy of the summons by first-class mail to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the person fails to appear on the date of return set out in the summons, a new summons shall be issued and delivered to the sheriff of the county, city, or town for service on the accused personally. If the person so served then fails to appear on the date of return set out in the summons, proceedings for contempt shall be instituted.

Any person convicted of a violation of this section shall be subject to a civil penalty of no more than \$500. ~~If any person fails to pay any such penalty, his privilege to drive a motor vehicle on the highways of the Commonwealth shall be suspended as provided in § 46.2-395.~~

All penalties collected under this section shall be paid into the state treasury to be credited to the Literary Fund as provided in § 46.2-114.

2. That §§ 18.2-259.1 and 46.2-390.1 of the Code of Virginia are repealed.

3. That the provisions of this act shall serve as the resolution of the General Assembly in expressing its opposition to 23 U.S.C. § 159(a)(3)(A).

4. That the Governor shall provide the necessary certifications required pursuant to 23 U.S.C. § 159(a)(3)(B) by July 15, 2017.

5. That the first and second enactments of this act shall become effective on September 1, 2017.