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SENATE BILL NO. 736

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 29, 2020)

(Patron Prior to Substitute—Senator Obenshain)

*A BILL to amend and reenact § 19.2-354 of the Code of Virginia, relating to payments of court fines and costs; community work in lieu of payment; during imprisonment.***Be it enacted by the General Assembly of Virginia:****1. That § 19.2-354 of the Code of Virginia is amended and reenacted 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. If the defendant owes court-ordered restitution and enters into a deferred or installment payment agreement, any money collected pursuant to such agreement shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any other fine, forfeiture, penalty, or cost owed. Any payment agreement authorized under this section shall be consistent with the provisions of § 19.2-354.1, including any required minimum payments or other required conditions. The requirements 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 90 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 restitution as ordered by the court;

3. Pay any fines or costs as ordered by the court;

4. 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

5. 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

60 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
61 performance of community service work (i) before or after imprisonment or (ii) in accordance with the
62 provisions of § 19.2-316.4, 53.1-59, 53.1-60, 53.1-128, 53.1-129, or 53.1-131 during imprisonment. The
63 program shall specify the rate at which credits are earned and provide for the manner of applying earned
64 credits against the fine or costs. The court assessing the fine or costs against a person shall inform such
65 person of the availability of earning credit toward discharge of the fine or costs through the performance
66 of community service work under this program and provide such person with written notice of terms
67 and conditions of this program. The court shall have such other authority as is reasonably necessary for
68 or incidental to carrying out this program.

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

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