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## HOUSE BILL NO. 2233

House Amendments in [ ] - January 26, 2021

A BILL to amend and reenact §§ 19.2-305.1, 19.2-305.2, 19.2-349, and 19.2-354 of the Code of Virginia, relating to orders of restitution; enforcement.

Patron Prior to Engrossment—Delegate Bell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-305.1, 19.2-305.2, 19.2-349, and 19.2-354 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-305.1. Restitution for property damage or loss; community service.**

A. Notwithstanding any other provision of law, no person convicted of a crime in violation of any provision in Title 18.2, which resulted in property damage or loss, shall be placed on probation or have his sentence suspended unless such person shall make at least partial restitution for such property damage or loss, or shall be compelled to perform community services, or both, or shall submit a plan for doing that which appears to the court to be feasible under the circumstances.

B. Notwithstanding any other provision of law, any person who, on or after July 1, 1995, commits, and is convicted of, a crime in violation of any provision in Title 18.2 shall make at least partial restitution for any property damage or loss caused by the crime or for any medical expenses or expenses directly related to funeral or burial incurred by the victim or his estate as a result of the crime, may be compelled to perform community services and, if the court so orders, shall submit a plan for doing that which appears to be feasible to the court under the circumstances.

B1. Notwithstanding any other provision of law, any person, who on or after July 1, 2005 commits and is convicted of a crime in violation of § 18.2-248 involving the manufacture of any controlled substance, may be ordered, upon presentation of suitable evidence of such costs, by the court to reimburse the Commonwealth or the locality for the costs incurred by the jurisdiction, as the case may be, for the removal and remediation associated with the illegal manufacture of any controlled substance by the defendant.

B2. Notwithstanding any other provision of law, any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-138 for damage to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages. Any person who, on or after July 1, 2015, commits and is convicted of a violation of § 18.2-405, 18.2-407, or 18.2-408 in Capitol Square, or at any other property assigned to the Capitol Police, shall be ordered to pay restitution to the Commonwealth for the full amount of damages to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police, to which damage is caused during such riot or unlawful assembly. In any prosecution under § 18.2-138, 18.2-405, 18.2-407, or 18.2-408, testimony of the Division of Engineering and Buildings of the Department of General Services or the Division of Risk Management shall be admissible as evidence of value or extent of damages or cost of repairs to the Capitol or any building, monument, statuary, artwork, or other state property in Capitol Square, or at any other property assigned to the Capitol Police. For the purposes of this subsection, "Capitol Square" means the grounds and the interior and exterior of all buildings in that area in the City of Richmond bounded by Bank, Governor, Broad, and Ninth Streets. "Capitol Square" includes the exterior of all state buildings that are at least 50 years old and bordering the boundary streets.

C. At or before the time of sentencing, the court shall receive and consider any plan for making restitution submitted by the defendant. The plan shall include the defendant's home address, place of employment and address, social security number and bank information. If the court finds such plan to be reasonable and practical under the circumstances, it may consider probation or suspension of whatever portion of the sentence that it deems appropriate. By order of the court incorporating the defendant's plan or a reasonable and practical plan devised by the court, the defendant shall make restitution while he is free on probation or work release or following his release from confinement. Additionally, the court may order that the defendant make restitution during his confinement, if feasible, based upon both his earning capacity and net worth as determined by the court at sentencing.

D. At the time of sentencing, the court shall determine the amount to be repaid by the defendant and the terms and conditions thereof. If community service work is ordered, the court shall determine the terms and conditions upon which such work shall be performed. The court shall include such findings in

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HB2233E

59 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,  
60 who shall disburse such sums as the court may, by order, direct. The clerk shall record receipt of  
61 restitution payments in an automated financial management system operated and maintained by the  
62 Executive Secretary of the Supreme Court or such other system established and maintained by a circuit  
63 court clerk pursuant to § 17.1-502. Any court desiring to participate in the Setoff Debt Collection Act  
64 (§§ 58.1-520 through 58.1-535) for the purpose of collecting fines or costs or providing restitution shall,  
65 at the time of sentencing, obtain the social security number of each defendant.

66 E. At the time of sentencing, the court shall enter the amount of restitution to be repaid by the  
67 defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment,  
68 and the victim's name and contact information, including the victim's home address, telephone number,  
69 and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court  
70 of Virginia. If the attorney for the Commonwealth participated in the prosecution of the defendant, the  
71 attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the  
72 form excluding the amount of restitution to be repaid by the defendant and the terms and conditions of  
73 such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the  
74 defendant, the court or the clerk shall complete the form. A copy of the form, excluding contact  
75 information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be  
76 provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request  
77 and free of charge. Except as provided in this section or otherwise required by law, the victim's contact  
78 information shall be confidential, and the clerk shall not disclose such confidential information to any  
79 person.

80 F. 1. In any case in which the court orders the defendant to pay restitution and places the defendant  
81 on probation that includes a period of active supervision, the probation agency supervising the defendant  
82 shall notify the court and the attorney for the Commonwealth of the amount of any restitution that  
83 remains unsatisfied and the last known address for the defendant (i) 60 days prior to the defendant's  
84 release from supervision pursuant to the terms of the sentencing order or (ii) if the agency requests that  
85 the defendant be released from supervision, at the time the agency submits its request to the court. Such  
86 notice shall be in writing and the attorney for the Commonwealth shall, if practicable, provide a copy of  
87 the notice to the victim. If any amount of restitution remains unsatisfied, the court shall conduct a  
88 hearing prior to the defendant's release from supervision after providing notice of the hearing to the  
89 defendant and the attorney for the Commonwealth. If the court finds that the defendant is not in  
90 compliance with the restitution order, the court may (a) release the defendant from supervision, (b)  
91 modify the period or terms of supervision pursuant to § 19.2-304, (c) revoke some or all of the  
92 suspended sentence or probation pursuant to § 19.2-306, or (d) proceed in accordance with subsection E  
93 of § 19.2-358. The court shall also docket the restitution order as a ~~civil judgment~~ pursuant to subsection  
94 B of § 19.2-305.2 unless such order has previously been docketed. Any defendant who is released from  
95 supervision shall be subject to the provisions of subdivision 3.

96 2. In any case in which the court orders the defendant to pay restitution and places the defendant on  
97 probation that does not include a period of active supervision, the court shall include in the order a date,  
98 not to exceed two years from the date of the entry of the order or, if the court has sentenced the  
99 defendant to an active term of incarceration, from the date of the defendant's release from incarceration,  
100 on which the defendant's compliance with the restitution order shall be reviewed and the court shall  
101 schedule a hearing for such date. The court may, on its own motion, cancel the hearing if the amount of  
102 restitution has been satisfied. If at the hearing the court finds that the defendant is not in compliance  
103 with the restitution order, the court may (i) modify the period or terms of probation pursuant to  
104 § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or  
105 (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall also  
106 docket the restitution order as a ~~civil judgment~~ pursuant to subsection B of § 19.2-305.2 unless such  
107 order has previously been docketed. After the hearing conducted pursuant to this subdivision, the  
108 defendant shall be subject to the provisions of subdivision 3.

109 3. If any amount of restitution remains unsatisfied at the time of a hearing conducted pursuant to  
110 subdivision 1 or 2, the court shall continue to schedule hearings to review the defendant's compliance  
111 with the restitution order until the amount of restitution has been satisfied and provide notice of such  
112 hearings to the defendant. The court may, on its own motion, cancel any such hearing if the amount of  
113 restitution has been satisfied or if the defendant is in compliance with the restitution order. If at any  
114 hearing conducted pursuant to this subdivision the court finds that the defendant is not in compliance  
115 with the restitution order, the court may (i) modify the period or terms of probation pursuant to  
116 § 19.2-304, (ii) revoke some or all of the suspended sentence or probation pursuant to § 19.2-306, or  
117 (iii) proceed in accordance with the provisions of subsection E of § 19.2-358. The court shall follow the  
118 procedures set forth in this subdivision for the purpose of reviewing compliance with a restitution order  
119 by a defendant (a) until the amount of restitution has been satisfied or (b) if any amount of restitution  
120 remains unsatisfied, for the longer of 10 years from the date of the hearing held pursuant to subdivision

121 1 or 2 or the period of probation ordered by the court.

122 4. If the court determines at any hearing conducted pursuant to this subsection that the defendant is  
123 unable to pay restitution and will remain unable to pay restitution for the duration of the review period  
124 set forth in subdivision 3, the court may discontinue any further hearings to review a defendant's  
125 compliance with the restitution order.

126 5. If the court determines that a defendant would be incarcerated on the date of any hearing  
127 scheduled pursuant to this subsection, the court may remove the case from the docket, reschedule such  
128 hearing to a date after the defendant's release from incarceration, and provide notice of the hearing to  
129 the defendant and the attorney for the Commonwealth. If the defendant who is on probation that  
130 includes a period of active supervision is incarcerated, the probation agency supervising the defendant  
131 shall notify the court when the defendant has been released from incarceration.

132 6. No provision of this subsection shall be construed to prohibit the court from exercising any  
133 authority otherwise granted by law over a defendant during any period of probation ordered by the  
134 court.

135 7. At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an  
136 offense for which a report to the Central Criminal Records Exchange is required under subsection A of  
137 § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the  
138 criminal history record of the defendant, the court shall review the criminal history record of the  
139 defendant and determine whether the present conviction appears on that record. The probation officer for  
140 the defendant shall provide the criminal history record to the court at such hearing. If the present  
141 conviction does not appear on the criminal history record, the court shall order that the fingerprints and  
142 photograph of the defendant be taken by a law-enforcement officer and submitted to the Central  
143 Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such  
144 conviction, the probation officer shall provide written or electronic notification to the Central Criminal  
145 Records Exchange within the Department of State Police that the conviction does not appear on the  
146 offender's criminal history record prior to his release from supervision.

147 8. At every hearing conducted pursuant to subdivision 2 where the attorney for the Commonwealth  
148 participated in the prosecution and the defendant was convicted of an offense for which a report to the  
149 Central Criminal Records Exchange is required under subsection A of § 19.2-390, if the court has not  
150 previously verified that the conviction for such offense appears on the criminal history record of the  
151 defendant, the court shall review the criminal history record of the defendant and determine whether the  
152 present conviction appears on that record. If the attorney for the Commonwealth participated in the  
153 prosecution of the offense, the attorney for the Commonwealth shall provide the criminal history record  
154 to the court at such hearing. If the present conviction does not appear on the criminal history record, the  
155 court shall order that the fingerprints and photograph of the defendant be taken by a law-enforcement  
156 officer and submitted to the Central Criminal Records Exchange. If fingerprints and a photograph have  
157 previously been taken for such conviction, the attorney for the Commonwealth shall provide written or  
158 electronic notification to the Central Criminal Records Exchange within the Department of State Police  
159 that the conviction does not appear on the offender's criminal history record.

160 G. Unreasonable failure to execute the plan by the defendant shall result in revocation of the  
161 probation or imposition of the suspended sentence. A hearing shall be held in accordance with the  
162 provisions of this Code relating to revocation of probation or imposition of a suspended sentence before  
163 either such action is taken.

164 H. A defendant convicted of an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3 shall be  
165 ordered to pay mandatory restitution to the victim of the offense in an amount as determined by the  
166 court. For purposes of this subsection, "victim" means a person who is depicted in a still or  
167 videographic image involved in an offense under § 18.2-374.1, 18.2-374.1:1, or 18.2-374.3.

168 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,  
169 18.2-374.1:1, or 18.2-374.3.

170 I. If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no  
171 longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal  
172 Injuries Compensation Fund for the benefit of crime victims by November 1 of each year. If a clerk  
173 does not have any such restitution to deposit, the clerk shall provide a statement to that effect to the  
174 Fund by November 1 of each year. The administrator shall reserve a sum sufficient in the Fund from  
175 which he shall make prompt payment directly to the victim for any proper claims. When depositing such  
176 restitution to the Fund, the clerk shall report the victim's last known contact information, including the  
177 victim's home address, telephone number, and email address, and the amount of restitution being  
178 deposited for that victim. Before making the deposit, the administrator shall record the name, contact  
179 information, and amount of restitution being deposited for each victim appearing from the clerk's report  
180 to be entitled to restitution. The victim's contact information reported to the Fund shall be confidential  
181 and shall not be disseminated further except as otherwise required by law.

182 J. If restitution pursuant to § 19.2-305 or this section is ordered to be paid by the defendant to the  
183 victim of a crime or other entity, and the Criminal Injuries Compensation Fund has made any payments  
184 to or on behalf of the victim for any loss, damage, or expenses included in the restitution order, then  
185 upon presentation by the Fund of a written request that sets forth the amount of payments made by the  
186 Fund to the victim or on the victim's behalf, the entity collecting restitution shall pay to the Fund as  
187 much of the restitution collected as will reimburse the Fund for its payments made to the victim or on  
188 the victim's behalf.

189 K. Whenever a defendant is ordered to pay restitution, any sums collected shall be used first to  
190 satisfy such restitution order and any collection costs associated with restitution prior to being used to  
191 satisfy any fine, forfeiture, penalty, or cost assessed against the defendant [ , *unless an order for*  
192 *restitution is docketed in the name of the victim or it is ordered that an assignment of the judgment to*  
193 *the victim be docketed* ].

194 **§ 19.2-305.2. Amount of restitution; enforcement.**

195 A. The court, when ordering restitution pursuant to § 19.2-305.1, may require that such defendant, in  
196 the case of an offense resulting in damage to or loss or destruction of property of a victim of the  
197 offense, (i) return the property to the owner or (ii) if return of the property is impractical or impossible,  
198 pay an amount equal to the greater of the value of the property at the time of the offense or the value  
199 of the property at the time of sentencing.

200 B. An order of restitution ~~may~~ *shall* be docketed, *in the name of the Commonwealth, or a locality if*  
201 *applicable, on behalf of the victim, as provided in § 8.01-446 when so ordered by the court or upon*  
202 *written request of the victim and may be enforced by a victim named in the order to receive the*  
203 *restitution in the same manner as a judgment in a civil action, unless the victim named in the order of*  
204 *restitution requests in writing that the order be docketed in the name of the victim. An order of*  
205 *restitution docketed in the name of the victim shall be enforced by the victim as a civil judgment. The*  
206 *clerk shall record and disburse restitution payments as provided in subsection D of § 19.2-305.1 and*  
207 *subsection A of § 19.2-354 in accordance with orders of restitution or judgments for restitution docketed*  
208 *in the name of the Commonwealth or a locality. At any time before a judgment for restitution docketed*  
209 *in the name of the Commonwealth or a locality is satisfied, the court shall, at the written request of the*  
210 *victim, order the circuit court clerk to execute and docket an assignment of the judgment to the victim.*  
211 *The circuit court clerk shall remove from its automated financial system the amount of unpaid restitution*  
212 *upon docketing the assignment. If a judge of a district court orders the circuit court clerk to execute*  
213 *and docket an assignment of the judgment to the victim, the district court clerk shall remove from its*  
214 *automated financial system the amount of unpaid restitution upon sending the order to the circuit court*  
215 *clerk. If the victim requests that the order of restitution be docketed in the name of the victim or that a*  
216 *judgment for restitution previously docketed in the name of the Commonwealth or a locality be assigned*  
217 *to the victim, the victim shall provide to the court an address where the defendant can mail payment for*  
218 *the amount due and such address shall not be confidential. When a [ ~~judgement~~ judgment ] for*  
219 *restitution previously docketed in the name of the Commonwealth or a locality is ordered to be assigned*  
220 *to the victim, the court shall provide notice of such order to the defendant at the defendant's last known*  
221 *address and shall include the mailing address provided by the victim. Enforcement by a victim of any*  
222 *order of restitution docketed as provided in § 8.01-446 is not subject to any statute of limitations. Such*  
223 *docketing shall not be construed to prohibit the court from exercising any authority otherwise available*  
224 *to enforce the order of restitution.*

225 **§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of**  
226 **attorneys for Commonwealth; duties of Department of Taxation.**

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

237 B. The clerk of the circuit court and district court of every county and city shall submit quarterly to  
238 the attorney for the Commonwealth of his county or city and any probation agency that serves such  
239 county or city:

240 1. A list of all defendants with an outstanding balance of restitution ordered by the court served by  
241 such clerk. Such report shall include the defendant's name, case number, total amount of restitution  
242 ordered, amount of restitution remaining due, and last date of payment; and

243 2. A list of all accounts where more than 90 days have passed since an account was sent to

collections and no payments have been made toward fines, costs, forfeitures, penalties, or restitution. For accounts where restitution is owed, such report shall include the defendant's name, case number, and total amount of restitution and restitution interest due.

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

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

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

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

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

The Office of the Executive Secretary of the Supreme Court shall annually report to the Governor, the General Assembly, the Chairmen of the House and Senate Committees for Courts of Justice, and the Virginia State Crime Commission on the total of restitution assessed, collected, and unpaid for each circuit and district court and the total of restitution collected and deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1 by each circuit and district court.

*E. The provisions of this section shall not apply to any orders of restitution docketed in the name of the victim or when it is ordered that an assignment of the judgment for restitution to the victim be docketed.*

**§ 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, *unless an order for restitution is docketed in the name of the victim or it is ordered that an assignment of the [ judgement judgment ] to the victim be docketed.* 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 State Board of Local and Regional Jails shall promulgate regulations governing the receipt of wages paid to persons sentenced to local correctional facilities participating in such programs, the withholding of payments, and the disbursement of appropriate funds. The Director of the Department of Corrections shall prescribe rules governing the receipt of wages paid to persons sentenced to state correctional facilities 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 (i) before or after imprisonment or (ii) in accordance with the 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 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 assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program. 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.

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.