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HOUSE BILL NO. 797

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 19.2-354 of the Code of Virginia, relating to community service work in lieu of payment of fines and costs; underpaid work.

Patrons—Price and Plum

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 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. Any 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, who is sentenced to pay a fine, restitution, forfeiture, or penalty may pay such fine, restitution, forfeiture, or penalty and any costs that the defendant may be required to pay in deferred payments or installments. The court assessing the fine, restitution, forfeiture, or penalty and costs shall 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 moneys 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 judgment to the victim be docketed. Any payment agreement authorized under this section shall be consistent with the provisions of § 19.2-354.1. 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 moneys 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

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59 withholding of payments, and the disbursement of appropriate funds. The Director of the Department of
60 Corrections shall prescribe rules governing the receipt of wages paid to persons sentenced to state
61 correctional facilities participating in such programs, the withholding of payments, and the disbursement
62 of appropriate funds.

63 C. The court shall establish a program and ~~may~~ *shall* provide an option to any person upon whom a
64 fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
65 performance of community service work *or underpaid work* (i) before or after imprisonment ~~or~~; (ii) in
66 accordance with the provisions of § 19.2-316.4, ~~53.1-59, 53.1-60~~, 53.1-128, 53.1-129, or 53.1-13 *or the*
67 *provisions of Article 3 (§ 53.1-41 et seq.) of Chapter 2 of Title 53.1* during imprisonment; *or (iii)*
68 *before, during, or after such person is incarcerated in a local correctional facility.* The program shall
69 specify the rate at which credits are earned and provide for the manner of applying earned credits
70 against the fine or costs. The court assessing the fine or costs against a person shall inform such person
71 of the availability of earning credit toward discharge of the fine or costs through the performance of
72 community service work *or underpaid work* under this program and provide such person with written
73 notice of terms and conditions of this program. The court shall have such other authority as is
74 reasonably necessary for or incidental to carrying out this program. *For purposes of this subsection, a*
75 *person who is performing underpaid work shall be credited at the same rate as the community service*
76 *work rate less any wages received for the underpaid work, provided that such underpaid work is*
77 *authorized by the court pursuant to this subsection.*

78 D. When the court has authorized deferred payment or installment payments, the clerk shall give
79 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant
80 to § 19.2-358.

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

85 F. *As used in this section, "underpaid work" means any work done on or after July 1, 2020, by a*
86 *person confined in any penal or corrective institution of the Commonwealth or any of its political*
87 *subdivisions who is paid a wage that is less than the Virginia minimum wage as provided for in §*
88 *40.1-28.10.*