

2021 SPECIAL SESSION I

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SB1426ER

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[S 1426]

Approved

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 the judgment order. The order shall specify that sums paid under such order shall be paid to the clerk,

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

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

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

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

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

118 1 or 2 or the period of probation ordered by the court.

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

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

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

132 7. At every hearing conducted pursuant to subdivision 1 where the defendant was convicted of an
133 offense for which a report to the Central Criminal Records Exchange is required under subsection A of
134 § 19.2-390, if the court has not previously verified that the conviction for such offense appears on the
135 criminal history record of the defendant, the court shall review the criminal history record of the
136 defendant and determine whether the present conviction appears on that record. The probation officer for
137 the defendant shall provide the criminal history record to the court at such hearing. If the present
138 conviction does not appear on the criminal history record, the court shall order that the fingerprints and
139 photograph of the defendant be taken by a law-enforcement officer and submitted to the Central
140 Criminal Records Exchange. If fingerprints and a photograph have previously been taken for such
141 conviction, the probation officer shall provide written or electronic notification to the Central Criminal
142 Records Exchange within the Department of State Police that the conviction does not appear on the
143 offender's criminal history record prior to his release from supervision.

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

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

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

165 The Commonwealth shall make reasonable efforts to notify victims of offenses under § 18.2-374.1,
166 18.2-374.1:1, or 18.2-374.3.

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

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

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

191 **§ 19.2-305.2. Amount of restitution; enforcement.**

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

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

222 **§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of**
 223 **attorneys for Commonwealth; duties of Department of Taxation.**

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

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

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

240 2. A list of all accounts where more than 90 days have passed since an account was sent to
 241 collections and no payments have been made toward fines, costs, forfeitures, penalties, or restitution. For
 242 accounts where restitution is owed, such report shall include the defendant's name, case number, and
 243 total amount of restitution and restitution interest due.

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

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

263 The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out
 264 of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency
 265 receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act
 266 (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney
 267 for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

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

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

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

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

294 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**
 295 **restitution in installments or upon other terms and conditions; community work in lieu of**
 296 **payment.**

297 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
 298 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
 299 juvenile, is sentenced to pay a fine, restitution, forfeiture, or penalty and (ii) the defendant is unable to
 300 make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the

301 court shall order the defendant to pay such fine, restitution, forfeiture, or penalty and any costs which
302 the defendant may be required to pay in deferred payments or installments. The court assessing the fine,
303 restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual
304 deferred or installment payment agreements. If the defendant owes court-ordered restitution and enters
305 into a deferred or installment payment agreement, any money collected pursuant to such agreement shall
306 be used first to satisfy such restitution order and any collection costs associated with restitution prior to
307 being used to satisfy any other fine, forfeiture, penalty, or cost owed, *unless an order for restitution is*
308 *docketed in the name of the victim or it is ordered that an assignment of the judgment to the victim be*
309 *docketed.* Any payment agreement authorized under this section shall be consistent with the provisions
310 of § 19.2-354.1, including any required minimum payments or other required conditions. The
311 requirements set forth in § 19.2-354.1 shall be posted in the clerk's office and on the court's website, if a
312 website is available. As a condition of every such agreement, a defendant who enters into an installment
313 or deferred payment agreement shall promptly inform the court of any change of mailing address during
314 the term of the agreement. If the defendant is unable to make payment within 90 days of sentencing, the
315 court may assess a one-time fee not to exceed \$10 to cover the costs of management of the defendant's
316 account until such account is paid in full. This one-time fee shall not apply to cases in which costs are
317 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
318 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant
319 participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid
320 in full by the date ordered, shall proceed in accordance with § 19.2-358.

321 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
322 any fines, costs, forfeitures, restitution, or penalties, he shall be required as a condition of participating
323 in any work release, home/electronic incarceration, or nonconsecutive days program as set forth in
324 § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in
325 accordance with his installment or deferred payment agreement while participating in such program. If,
326 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
327 his participation in the program may be terminated until all fines, costs, forfeitures, restitution, and
328 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
329 administrative head of any local correctional facility shall withhold such ordered payments from any
330 amounts due to such person. Distribution of the money collected shall be made in the following order of
331 priority to:

- 332 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
- 333 be disbursed according to the terms of such order;
- 334 2. Pay any restitution as ordered by the court;
- 335 3. Pay any fines or costs as ordered by the court;
- 336 4. Pay travel and other such expenses made necessary by his work release employment or
- 337 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and
- 338 5. Defray the offender's keep.

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

341 The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of
342 wages paid to persons sentenced to local correctional facilities participating in such programs, the
343 withholding of payments, and the disbursement of appropriate funds. The Director of the Department of
344 Corrections shall prescribe rules governing the receipt of wages paid to persons sentenced to state
345 correctional facilities participating in such programs, the withholding of payments, and the disbursement
346 of appropriate funds.

347 C. The court shall establish a program and may provide an option to any person upon whom a fine
348 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
349 performance of community service work (i) before or after imprisonment or (ii) in accordance with the
350 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
351 program shall specify the rate at which credits are earned and provide for the manner of applying earned
352 credits against the fine or costs. The court assessing the fine or costs against a person shall inform such
353 person of the availability of earning credit toward discharge of the fine or costs through the performance
354 of community service work under this program and provide such person with written notice of terms
355 and conditions of this program. The court shall have such other authority as is reasonably necessary for
356 or incidental to carrying out this program.

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

360 E. The failure of the defendant to enter into a deferred payment or installment payment agreement
361 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow

362 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures, and
363 penalties.