

LD3445152

## HOUSE BILL NO. 1208

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 11, 1994)

(Patron Prior to Substitute—Delegate Clement)

A BILL to amend and reenact § 19.2-353.3, as it is currently effective and as it may become effective, and §§ 19.2-354, 46.2-391.1 and 53.1-131.2 of the Code of Virginia, relating to payment of fines, costs, etc.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-353.3 as it is currently effective and as it may become effective, and §§ 19.2-354, 46.2-391.1 and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-353.3. (For effective date - See note) Acceptance of checks and credit cards in lieu of money. Notwithstanding the provisions of § 19.2-353, personal checks and credit cards ~~may~~ *shall* be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a *circuit or general* district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. ~~In addition, the chief judge of the juvenile and domestic relations district court may authorize acceptance of personal checks or credit cards for the same purposes in cases tried in the juvenile court.~~ The Committee on District Courts shall devise a procedure for *selecting the approving and accepting checks and* credit cards ~~that may be accepted by the district courts.~~ Court personnel shall not be held to be guarantors of the payment made in such manner and shall not be personally liable for any sums uncollected ~~provided that they exercised ordinary care in the acceptance of the check or credit card.~~

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit card issuer that payment will not be made, for any reason, the fine, restitution, forfeiture, penalty or costs shall be treated as unpaid and the court may pursue all available remedies to obtain payment. The court to whom the *dishonored* check or credit card was tendered may impose a fee of ~~ten~~ *twenty* dollars or ten percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed. The court, in addition to any fees, fines, restitution, forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount paid as a service charge for the acceptance of a credit card.

The clerk of ~~either~~ court may refuse acceptance of checks or credit cards of individuals (i) convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card information was used to commit the offense, (ii) who previously tendered to the court a check which was not ultimately honored or a credit card or credit card information which did not ultimately result in payment by the credit card issuer, ~~or~~ (iii) if authorization of payment is not given by the bank or credit card issuer, (iv) *if the validity of the check or credit card cannot be verified*, or (v) *if the payee on the check is other than the court.*

§ 19.2-353.3. (Delayed effective date - See notes) Acceptance of checks and credit cards in lieu of money.

Notwithstanding the provisions of § 19.2-353, personal checks and credit cards ~~may~~ *shall* be accepted in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected for offenses tried in a *circuit or general* district court, including motor vehicle violations, committed against the Commonwealth or against any county, city or town. ~~In addition, the chief judge of the family court may authorize acceptance of personal checks or credit cards for the same purposes in cases tried in the family court.~~ The Committee on District Courts shall devise a procedure for *selecting the approving and accepting checks and* credit cards ~~that may be accepted by the district courts.~~ Court personnel shall not be held to be guarantors of the payment made in such manner and shall not be personally liable for any sums uncollected ~~provided that they exercised ordinary care in the acceptance of the check or credit card.~~

If a check is returned unpaid by the financial institution on which it is drawn or notice is received from the credit card issuer that payment will not be made, for any reason, the fine, restitution, forfeiture, penalty or costs shall be treated as unpaid and the court may pursue all available remedies to obtain payment. The court to whom the *dishonored* check or credit card was tendered may impose a fee of ~~ten~~ *twenty* dollars or ten percent of the value of the payment, whichever is greater, in addition to the fine and costs already imposed. The court, in addition to any fees, fines, restitution, forfeiture, penalties or costs, may add to such payment a sum not to exceed four percent of the amount paid as a service charge for the acceptance of a credit card.

The clerk of ~~either~~ court may refuse acceptance of checks or credit cards of individuals (i) convicted of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card

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60 information was used to commit the offense, (ii) who previously tendered to the court a check which  
61 was not ultimately honored or a credit card or credit card information which did not ultimately result in  
62 payment by the credit card issuer, ~~or~~ (iii) if authorization of payment is not given by the bank or credit  
63 card issuer, (iv) *if the validity of the check or credit card cannot be verified*, or (v) *if the payee on the*  
64 *check is other than the court.*

65 § 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in  
66 installments or upon other terms and conditions; community work in lieu of payment.

67 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of  
68 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a  
69 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty, and (ii) the defendant is unable to  
70 make immediate payment of the fine, restitution, forfeiture, or penalty and costs, the court, on motion of  
71 the defendant, may order the defendant to pay such fine, restitution, forfeiture or penalty and any costs  
72 which the defendant may be required to pay in installments or upon such other terms and conditions  
73 within such period of time as may enable the defendant to pay such amounts due. *The court may assess*  
74 *a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account*  
75 *until such account is paid in full. The court may order the defendant, if such sum or sums are not paid*  
76 *in full by the date ordered, to appear in court on or after that date to show cause why he should not be*  
77 *punished in accordance with § 19.2-358.*

78 B. The court may establish a program to provide an option to any person upon whom a fine and  
79 costs have been imposed to discharge all or part of the fine or costs by earning credits for the  
80 performance of community service work before or after imprisonment. The program shall specify the  
81 rate at which credits are earned and provide for the manner of applying earned credits against the fine  
82 or costs. The court shall have such other authority as is reasonably necessary for or incidental to  
83 carrying out this program.

84 C. When the court has authorized deferred payment or installment payments, the clerk shall give  
85 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant  
86 to § 19.2-358 and if convicted of any violation of the motor vehicle laws of this Commonwealth, or of  
87 any county, city or town his license to operate a motor vehicle will be suspended pursuant to  
88 § 46.2-395.

89 § 46.2-391.1. Suspension of registration certificates and plates upon suspension or revocation of  
90 driver's license.

91 Whenever the Commissioner, under the authority of law of the Commonwealth, suspends or revokes  
92 the driver's license of any person upon receiving record of that person's conviction, *or whenever the*  
93 *Commissioner is notified that a court has suspended a person's driving privilege pursuant to § 46.2-395,*  
94 the Commissioner shall also suspend all of the registration certificates and license plates issued for any  
95 motor vehicles registered *solely* in the name of ~~the~~ *such person so convicted and shall not issue any*  
96 *registration certificate or license plate for any other vehicle that such person seeks to register solely in*  
97 *his name. The* Except for persons whose privileges have been suspended by a court pursuant to  
98 § 46.2-395, the Commissioner, however, shall not suspend such registration certificates or license plates  
99 in the event such person has previously given or gives and thereafter maintains proof of his financial  
100 responsibility in the future, in the manner specified in this chapter, with respect to each and every motor  
101 vehicle owned and registered by such person. In this event it shall be lawful for said vehicle or vehicles  
102 to be operated during this period of suspension by any duly licensed driver when so authorized by the  
103 owner.

104 § 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs;  
105 escape; penalty.

106 A. Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic  
107 offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted  
108 and sentenced to confinement in jail, and if it appears to the court that such an offender is a suitable  
109 candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration  
110 program, if such program exists, under the supervision of the office of the sheriff, the administrator of a  
111 local or regional jail, or a Department of Corrections probation and parole district office established  
112 pursuant to § 53.1-141. The court may further authorize the offender's participation in work release  
113 employment or educational or other rehabilitative programs as defined in § 53.1-131. The court shall be  
114 notified in writing by the director or administrator of the program to which the offender is assigned of  
115 the offender's place of home/electronic incarceration, place of employment, and the location of any  
116 educational or rehabilitative program in which the offender participates.

117 B. In any city or county in which a home/electronic incarceration program established pursuant to  
118 this section is available, the court, subject to approval by the sheriff, may assign the accused to such a  
119 program pending trial if it appears to the court that the accused is a suitable candidate for  
120 home/electronic incarceration.

121 C. Any person who has been sentenced to jail or convicted and sentenced to confinement in prison

but is actually serving his sentence in jail and who has less than twelve months to serve in his sentence, after notice to the attorney for the Commonwealth of the convicting jurisdiction, may be assigned by the sheriff or the administrator of a local or regional jail to a home/electronic incarceration program under the supervision of the office of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole office established pursuant to § 53.1-141. Such person shall be eligible if his term of confinement does not include a sentence for a conviction of a felony violent crime, a felony sexual offense, burglary or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a Schedule I or Schedule II controlled substance. The court shall retain authority to remove the offender from such home/electronic incarceration program. The court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a local or regional jail of the offender's place of home/electronic incarceration and place of employment or other rehabilitative program.

D. The Board may prescribe regulations to govern home/electronic incarceration programs.

E. Any offender or accused assigned to such a program by the court or sheriff or the administrator of a local or regional jail who, without proper authority or just cause, leaves his place of home/electronic incarceration, the area to which he has been assigned to work or attend educational or other rehabilitative programs, or the vehicle or route of travel involved in his going to or returning from such place, shall be guilty of a Class 2 misdemeanor. An offender or accused who is found guilty of a violation of this section shall be ineligible for further participation in a home/electronic incarceration program during his current term of confinement.

F. The director or administrator of a home/electronic incarceration program who also operates a residential program may remove an offender from a home/electronic incarceration program and place him in such residential program if the offender commits a noncriminal program violation. The court shall be notified of the violation and of the placement of the offender in the residential program.

G. The director or administrator of a home/electronic incarceration program ~~may~~shall charge the offender or accused a fee for participating in the program to pay for the cost of home/electronic incarceration equipment. The offender or accused shall be required to pay the program for any damage to the equipment which is in his possession or for failure to return the equipment to the program.

H. *Any wages earned by an offender or accused assigned to a home/electronic incarceration program and participating in work release shall be paid to the director or administrator after standard payroll deductions required by law. Distribution of such wages shall be made for the following purposes:*

- 1. Pay the fee or reimbursement as provided in subsection G;*
  - 2. 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;*
  - 3. Pay such amounts as may be required under § 53.1-150; and*
  - 4. Pay fines, restitution or costs as ordered by the court.*
- The balance shall be paid to the offender.*