

LD7229152

HOUSE BILL NO. 1208

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 4, 1994)

(Patron Prior to Substitute—Delegate Clement)

A *BILL to amend and reenact § 19.2-349, § 19.2-353.3, as it is currently effective and as it may become effective, and §§ 19.2-354, 46.2-391.1, 46.2-395 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 § 19.2-349, § 19.2-353.3, as it is currently effective and as it may become effective, and §§ 19.2-354, 46.2-391.1, 46.2-395 and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; assistance by the office of the Attorney General.

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

B. It shall be the duty of the attorney for the Commonwealth to ~~make inquiries into the reasons why~~ such fines, costs, forfeitures, penalties and restitution remain unsatisfied. If it appears from such inquiries that any such amounts may be satisfied, the attorney for the Commonwealth forthwith shall cause proper proceedings to be instituted for the collection and satisfaction thereof. ~~If the of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth is of the opinion that 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 ten days after judgment.~~

If the attorney for the Commonwealth does not undertake collection, he may shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, or (iii) 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 and, the Executive Secretary of the Supreme Court, or request the office of the Attorney General or the office of the Executive Secretary to assist in the collection of unpaid fines, costs, forfeitures and penalties. The Attorney General and the Executive Secretary of the Supreme Court shall render such assistance, in the case of any judgment which remains unsatisfied for more than three months, and in any other circumstance they may provide such assistance, in any manner they deem appropriate 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.

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.).

C. *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*

60 agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled
61 to deduct a fee for services from amounts collected for violations of local ordinances.

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

71 § 19.2-353.3. (For effective date - See note) Acceptance of checks and credit cards in lieu of money.

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

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

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

97 § 19.2-353.3. (Delayed effective date - See notes) Acceptance of checks and credit cards in lieu of
98 money.

99 Notwithstanding the provisions of § 19.2-353, personal checks and credit cards ~~may~~ shall be accepted
100 in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected
101 for offenses tried in a ~~general~~ circuit or district court, including motor vehicle violations, committed
102 against the Commonwealth or against any county, city or town. ~~In addition, the chief judge of the~~
103 ~~family court may authorize acceptance of personal checks or credit cards for the same purposes in cases~~
104 ~~tried in the family court.~~ The Committee on District Courts shall devise a procedure for
105 ~~selecting~~ approving and accepting checks and the credit cards that ~~may~~ shall be accepted by the district
106 courts. Court personnel shall not be held to be guarantors of the payment made in such manner and
107 shall not be personally liable for any sums uncollected ~~provided that they exercised ordinary~~
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119 information was used to commit the offense, (ii) who previously tendered to the court a check which
120 was not ultimately honored or a credit card or credit card information which did not ultimately result in
121 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 of the check is other than the court.

§ 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 immediate payment of the fine, restitution, forfeiture, or penalty and costs, the court, ~~on motion of the defendant, may~~ shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in installments ~~or upon such other terms and conditions within such period of time as may enable the defendant to pay such amounts due.~~ The court may assess a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account until such account is paid in full. Installment 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, work release, home/electronic incarceration or nonconsecutive days program as set forth in §§ 53.1-42, 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 payment agreement while participating in such program. If, after the person has an installment 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 such wages shall be made in accordance with regulations promulgated by the Board of Corrections, 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 fines, restitution or costs as ordered by the court;

3. 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

4. Defray the prisoner's keep.

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

C. The court shall establish a program to 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 before or after 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 shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

~~C.D.~~ 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 and if convicted of any violation of the motor vehicle laws of this Commonwealth, or of any county, city or town his license to operate a motor vehicle will be suspended pursuant to § 46.2-395.

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.

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

Whenever the Commissioner, under the authority of law of the Commonwealth, suspends or revokes the driver's license of any person upon receiving record of that person's conviction, *or whenever the Commissioner is notified that a court has suspended a person's driving privilege pursuant to § 46.2-395,* the Commissioner shall also suspend all of the registration certificates and license plates issued for any motor vehicles registered solely in the name of ~~the~~ such person ~~so convicted~~ and shall not issue any registration certificate or license plate for any other vehicle that such person seeks to register solely in his name. Except for persons whose privileges have been suspended by a court pursuant to § 46.2-395, the Commissioner, ~~however,~~ shall not suspend such registration certificates or license plates in the event such person has previously given or gives and thereafter maintains proof of his financial responsibility in the future, in the manner specified in this chapter, with respect to each and every motor vehicle

183 owned and registered by such person. In this event it shall be lawful for said vehicle or vehicles to be
184 operated during this period of suspension by any duly licensed driver when so authorized by the owner.

185 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

186 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
187 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
188 costs, forfeitures, restitution, and penalties assessed against him for violations of the ~~motor vehicle~~ laws
189 of the Commonwealth; of any county, city, or town; or of the United States. For the purpose of this
190 section, such fines and costs shall be deemed to include any fee assessed by the court under the
191 provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-266 into an alcohol
192 safety action program.

193 B. In addition to any penalty provided by law, when any person is convicted of any violation of this
194 title, ~~or any other the~~ law of the Commonwealth or of the United States ~~pertaining to the driver or~~
195 ~~driving of a motor vehicle in the Commonwealth~~ or of any valid local ordinance adopted pursuant to
196 ~~§ 46.2-1300~~, and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures,
197 restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment
198 payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a
199 motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue
200 suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. If the person has
201 not obtained a license as required by this chapter, or is a nonresident, the court may direct in the
202 judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to
203 coincide with the nonpayment of the amounts due.

204 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay any
205 fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to
206 § 19.2-354, the clerk of the court that convicted the person shall send or provide the person written
207 notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective ten
208 days from the date of conviction, if the fine and costs are not paid prior to the effective date of the
209 suspension as stated on the notice. Notice shall be provided to the person at the time of trial or shall be
210 mailed by first class mail to the address certified on the summons or bail recognizance document as the
211 person's current mailing address, or to such mailing address as the person has subsequently provided to
212 the court as a change of address. If so mailed on the date of conviction or within two days thereof, or if
213 delivered to the person at the time of trial, such notice shall be adequate notice of the license suspension
214 and of the person's ability to avoid suspension by paying the fines and costs prior to the effective date.
215 No other notice shall be required to make the suspension effective. A record of the person's failure or
216 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
217 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
218 on the failure to make a scheduled payment.

219 D. If the person pays the amounts assessed against him subsequent to the time the license has been
220 transmitted to the Department, and his license is not under suspension or revocation for any other lawful
221 reason, except pursuant to this section, then the Commissioner shall return the license to the person on
222 presentation of the official report of the court evidencing the payment of the fine, costs, forfeiture,
223 restitution, or penalty.

224 E. If the court has suspended or revoked the driver's license for any lawful reason other than this
225 section, or the conviction is one for which revocation or suspension is required under any provision of
226 this title, except for this section, then the suspension permitted under this section shall be in addition to,
227 and run consecutively with, the revocation or suspension. The period of suspension shall be calculated
228 from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has
229 been paid.

230 § 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs;
231 escape; penalty.

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

243 B. In any city or county in which a home/electronic incarceration program established pursuant to
244 this section is available, the court, subject to approval by the sheriff, may assign the accused to such a

program pending trial if it appears to the court that the accused is a suitable candidate for home/electronic incarceration.

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 in accordance with regulations promulgated by the Board of Corrections, 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 fines, restitution or costs as ordered by the court;

3. 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

4. Defray the prisoner's keep.

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

2. That the amendments to §§ 46.2-391.1 and 46.2-395 shall be effective January 1, 1995.