

LD3780677

## HOUSE BILL NO. 1208

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 28, 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 report of all fines, costs, forfeitures and penalties, 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, including those which are delinquent in installment payments as of the last day of the quarter month preceding the quarter month in which such report is made. 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 he does not undertake collection, he may shall contract with attorneys or, private collection agencies, under an agreement with a local governing body, or 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.*

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 collection agents and may employ private collection agencies, personnel, or 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*

60 *Taxation and the State Compensation Board pursuant to this section and a plan for increasing the*  
61 *collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually*  
62 *report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to*  
63 *the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the*  
64 *procedures established by the Department of Taxation and the State Compensation Board.*

65 § 19.2-353.3. (For effective date - See note) Acceptance of checks and credit cards in lieu of money.  
66 Notwithstanding the provisions of § 19.2-353, personal checks and credit cards ~~may~~ *shall* be accepted  
67 in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs collected  
68 for offenses tried in a ~~general circuit or~~ district court, including motor vehicle violations, committed  
69 against the Commonwealth or against any county, city or town. ~~In addition, the chief judge of the~~  
70 ~~juvenile and domestic relations district court may authorize acceptance of personal checks or credit cards~~  
71 ~~for the same purposes in cases tried in the juvenile court.~~ The Committee on District Courts shall devise  
72 a procedure for selecting the credit cards that may be accepted *by the district courts*. Court personnel  
73 shall not be held to be guarantors of the payment made in such manner and shall not be personally  
74 liable for any sums uncollected provided that they exercised ordinary care in the acceptance of the check  
75 or credit card.

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

84 The clerk of ~~either~~ court may refuse acceptance of checks or credit cards of individuals (i) convicted  
85 of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card  
86 information was used to commit the offense, (ii) who previously tendered to the court a check which  
87 was not ultimately honored or a credit card or credit card information which did not ultimately result in  
88 payment by the credit card issuer, or (iii) if authorization of payment is not given by the bank or credit  
89 card issuer.

90 § 19.2-353.3. (Delayed effective date - See notes) Acceptance of checks and credit cards in lieu of  
91 money.

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

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112 was not ultimately honored or a credit card or credit card information which did not ultimately result in  
113 payment by the credit card issuer, or (iii) if authorization of payment is not given by the bank or credit  
114 card issuer.

115 § 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in  
116 installments or upon other terms and conditions; community work in lieu of payment.

117 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of  
118 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a  
119 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty, and (ii) the defendant is unable to  
120 make immediate payment of the fine, restitution, forfeiture, or penalty and costs, the court, ~~on motion of~~  
121 ~~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.~~ *Installment payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court shall order the defendant, if such sum or sums are not paid in full by the date ordered, to appear in court on or after that date to show cause why he should not be punished 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 shall 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 to (i) pay an amount to defray the cost of his keep, (ii) provide support and maintenance for his dependents or to make payments to the local department of welfare or social services or the Commissioner of Social Services, as appropriate, on behalf of dependents who are receiving public assistance as defined in § 63.1-87, (iii) 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, or (iv) pay fines, restitution, or costs as ordered by the court.

C. The court may establish a program to ~~provide an option to require that~~ 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.~~ 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 owned and registered by such person. In this event it shall be lawful for said vehicle or vehicles to be operated during this period of suspension by any duly licensed driver when so authorized by the owner.

§ 46.2-395. (Effective January 1, 1994) Suspension of license for failure or refusal to pay fines or costs.

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

B. In addition to any penalty provided by law, when any person is convicted of any violation of ~~this title, or any other~~ the law of the Commonwealth or of the United States ~~pertaining to the driver or~~

183 driving of a motor vehicle in the Commonwealth or of any valid local ordinance adopted pursuant to  
184 § 46.2-1300, and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures,  
185 restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment  
186 payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a  
187 motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue  
188 suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. If the person has  
189 not obtained a license as required by this chapter, or is a nonresident, the court may direct in the  
190 judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to  
191 coincide with the nonpayment of the amounts due.

192 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay any  
193 fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to  
194 § 19.2-354, the clerk of the court that convicted the person shall send or provide the person written  
195 notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective ten  
196 days from the date of conviction, if the fine and costs are not paid prior to the effective date of the  
197 suspension as stated on the notice. Notice shall be provided to the person at the time of trial or shall be  
198 mailed by first class mail to the address certified on the summons or bail recognizance document as the  
199 person's current mailing address, or to such mailing address as the person has subsequently provided to  
200 the court as a change of address. If so mailed on the date of conviction or within two days thereof, or if  
201 delivered to the person at the time of trial, such notice shall be adequate notice of the license suspension  
202 and of the person's ability to avoid suspension by paying the fines and costs prior to the effective date.  
203 No other notice shall be required to make the suspension effective. A record of the person's failure or  
204 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,  
205 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or  
206 on the failure to make a scheduled payment.

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

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

218 § 53.1-131.2. Assignment to a home/electronic incarceration program; payment to defray costs;  
219 escape; penalty.

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

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

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

245 court which sentenced the offender shall be notified in writing by the sheriff or the administrator of a  
 246 local or regional jail of the offender's place of home/electronic incarceration and place of employment or  
 247 other rehabilitative program.

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

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

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

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

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

268 1. *To pay the fee or reimbursement as provided in subsection G;*  
 269 2. *To meet the obligation of any judicial or administrative order to provide support and such funds*  
 270 *shall be disbursed according to the terms of such order;*

271 3. *To pay such amounts as may be required under § 53.1-150; and*

272 4. *To pay fines, restitution or costs as ordered by the court.*

273 *The balance shall be paid to the offender.*