

LD7058605

SENATE BILL NO. 293

Offered January 25, 1994

A BILL to amend and reenact §§ 19.2-349, 19.2-353.3, as it is currently effective and as it may become effective, §§ 19.2-354, 46.2-391.1 and 53.1-131.2 of the Code of Virginia, relating to payment of fines, costs, etc.

Patrons—Holland, E.M. and Andrews

Referred to the Committee for Courts of Justice

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, §§ 19.2-354, 46.2-391.1 and 53.1-131.2 of the Code of Virginia are amended and reenacted as follows:

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

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 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 as of the last day of the quarter preceding the quarter in which such report is made. The quarterly report shall include the social security number or driver's license number of the defendant, if known. 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 attorney for the Commonwealth is of the opinion that it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth, he may contract with attorneys or private collection agencies, 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 *superintend the collection* of any judgment which remains unsatisfied for more than three months, and in any other circumstance ~~they may~~ provide such assistance, *upon request*, in any manner ~~they deem~~ appropriate. 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.).

§ 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 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 check or credit card was tendered may impose a fee of ten 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.

64 § 19.2-353.3. (Delayed effective date - See notes) Acceptance of checks and credit cards in lieu of
65 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 *circuit or general* 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 ~~family court may authorize acceptance of personal checks or credit cards for the same purposes in cases~~
71 ~~tried in the family court.~~ The Committee on District Courts shall devise a procedure for selecting the
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84 of a violation of Chapter 6 (§ 18.2-168 et seq.) of Title 18.2 in which a check, credit card, or credit card
85 information was used to commit the offense, (ii) who previously tendered to the court a check which
86 was not ultimately honored or a credit card or credit card information which did not ultimately result in
87 payment by the credit card issuer, or (iii) if authorization of payment is not given by the bank or credit
88 card issuer.

89 § 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in
90 installments or upon other terms and conditions; community work in lieu of payment.

91 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
92 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
93 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty, and (ii) the defendant is unable to
94 make immediate payment of the fine, restitution, forfeiture, or penalty and costs, the court, on motion of
95 the defendant, may order the defendant to pay such fine, restitution, forfeiture or penalty and any costs
96 which the defendant may be required to pay in installments or upon such other terms and conditions
97 within such period of time as may enable the defendant to pay such amounts due. *The court may order*
98 *the defendant, if such sum or sums are not paid in full by the date ordered, to appear in court on or*
99 *after that date to show cause why he should not be punished in accordance with § 19.2-358.*

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

106 C. When the court has authorized deferred payment or installment payments, the clerk shall give
107 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant
108 to § 19.2-358 and if convicted of any violation of the motor vehicle laws of this Commonwealth, or of
109 any county, city or town his license to operate a motor vehicle will be suspended pursuant to
110 § 46.2-395.

111 § 46.2-391.1. Suspension of registration certificates and plates upon suspension or revocation of
112 driver's license.

113 Whenever the Commissioner, under the authority of law of the Commonwealth, suspends or revokes
114 the driver's license of any person upon receiving record of that person's conviction, *or whenever the*
115 *Commissioner is notified that a court has suspended a person's driving privilege pursuant to § 46.2-395,*
116 the Commissioner shall also suspend all of the registration certificates and license plates issued for any
117 motor vehicles registered *solely* in the name of ~~the such person so convicted and shall not issue any~~
118 *registration certificate or license plate for any other vehicle that such person seeks to register solely in*
119 *his name. The* Except for persons whose privileges have been suspended by a court pursuant to
120 § 46.2-395, the Commissioner, however, shall not suspend such registration certificates or license plates
121 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.

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

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

B. In any city or county in which a home/electronic incarceration program established pursuant to 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 for the following purposes:

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

2. The Attorney General is requested to provide a report to the 1995 Session of the General

183 Assembly detailing that Office's plan for increasing the collection of unpaid fines and costs and for
184 the implementation of the amendments to § 19.2-349 contained in this act.
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