

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-354.1 of the Code of Virginia, relating to deferred or installment*  
 3 *payment agreements; minimum payments.*

4 [H 1661]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-354.1 of the Code of Virginia is amended and reenacted as follows:**8 **§ 19.2-354.1. Deferred or installment payment agreements.**

9 A. For purposes of this section:

10 "Deferred payment agreement" means an agreement in which no installment payments are required and  
 11 the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's stated term.12 "Fines and costs" means all fines, court costs, forfeitures, and penalties assessed in any case by a single  
 13 court against a defendant for the commission of any crime or traffic infraction. "Fines and costs" includes  
 14 restitution unless the court orders a separate payment schedule for restitution.15 "Installment payment agreement" means an agreement in which the defendant agrees to make monthly or  
 16 other periodic payments until the fines and costs are paid in full.17 "Modified deferred payment agreement" means a deferred payment agreement in which the defendant also  
 18 agrees to use best efforts to make monthly or other periodic payments.19 B. The court shall give a defendant ordered to pay fines and costs written notice of the availability of  
 20 deferred, modified deferred, and installment payment agreements and, if a community service program has  
 21 been established, the availability of earning credit toward discharge of fines and costs through the  
 22 performance of community service work. The court shall offer any defendant the opportunity to enter into a  
 23 deferred payment agreement, modified deferred payment agreement, or installment payment agreement.24 C. The court shall not deny a defendant the opportunity to enter into a deferred, modified deferred, or  
 25 installment payment agreement solely (i) because of the category of offense for which the defendant was  
 26 convicted or found not innocent, (ii) because of the total amount of all fines and costs, (iii) because the  
 27 defendant previously defaulted under the terms of a payment agreement, (iv) because the fines and costs have  
 28 been referred for collections pursuant to § 19.2-349, or (v) because the defendant has not established a  
 29 payment history.30 D. In determining the length of time to pay under a deferred, modified deferred, or installment payment  
 31 agreement and the amount of the payments, ~~a~~ *the* court shall take into account the defendant's financial  
 32 resources and obligations, including any fines and costs owed by the defendant in other courts. ~~In assessing~~  
 33 ~~the~~ *If the defendant requests to enter into an installment agreement, the court may offer installment payments*  
 34 *of (i) \$25 per month, or a higher amount, depending on a defendant's ability to pay, which the court shall use*  
 35 *determine using a written financial statement, on a form developed by the Executive Secretary of the*  
 36 *Supreme Court, setting forth the defendant's financial resources and obligations or* ~~conduct~~ *by conducting*  
 37 *an oral examination of the defendant to determine his financial resources and obligations or (ii) less than \$25*  
 38 *per month, if the defendant is determined to be indigent by the court pursuant to § 19.2-159. The length of a*  
 39 *payment agreement and the amount of the payments shall be reasonable in light of the defendant's financial*  
 40 *resources and obligations and shall not be based solely on the amount of fines and costs. The court may offer*  
 41 *a payment agreement combining an initial period during which no payment of fines and costs is required*  
 42 *followed by a period of installment payments.*43 E. No court shall require a defendant to make a down payment upon entering a deferred, modified  
 44 deferred, or installment payment agreement, other than a subsequent payment agreement, in which case the  
 45 court may require a down payment pursuant to subsection I. Nothing in this section shall prevent a defendant  
 46 from voluntarily making a down payment upon entering any payment agreement.47 F. All fines and costs that a defendant owes for all cases in any single court may be incorporated into one  
 48 payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement shall  
 49 include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not  
 50 run.

51 G. Any payment received within 10 days of its due date shall be considered to be timely made.

52 H. At any time during the duration of a payment agreement, the defendant may request a modification of  
 53 the agreement in writing on a form provided by the Executive Secretary of the Supreme Court, and the court  
 54 may grant such modification based on a good faith showing of need.55 I. A defendant who has defaulted on a payment agreement may petition the court for a subsequent  
 56 payment agreement. In determining whether to approve the request for a subsequent payment agreement, the

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57 court shall consider any change in the defendant's circumstances. A court may require a down payment to  
58 enter into a subsequent payment agreement, provided that the down payment required to enter into a  
59 subsequent payment agreement shall not exceed (i) if the fines and costs owed are \$500 or less, 10 percent of  
60 such amount or (ii) if the fines and costs owed are more than \$500, five percent of such amount or \$50,  
61 whichever is greater. When a defendant enters into a subsequent payment agreement, a court shall not require  
62 a defendant to establish a payment history on the subsequent payment agreement before restoring the  
63 defendant's driver's license.

64 J. In any case in which a defendant owes fines and costs and where such defendant's sole financial  
65 resource is a Social Security benefit or Supplemental Security Income, then such defendant shall be exempt  
66 from making payments at least until such time that such defendant has a resource other than a Social Security  
67 benefit or Supplemental Security Income. If such defendant informs the court that his sole financial resource  
68 is a Social Security benefit or Supplemental Security Income, the case shall not be referred to collections  
69 pursuant to § 19.2-349. Courts shall include in payment plan policies developed in accordance with §§  
70 19.2-354 and 19.2-354.1 that where the court is informed that a defendant receives a Social Security benefit  
71 or Supplemental Security Income, no payment toward fines and costs shall be taken from such exempt  
72 resource.

73 No Social Security benefit or Supplemental Security Income shall be considered an available resource in  
74 determining the length of time to pay under a deferred, modified deferred, or installment payment agreement  
75 and the amount of payments, if any, pursuant to subsection D.