

26107244D

HOUSE BILL NO. 1142
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Public Safety
 on _____)

(Patron Prior to Substitute—Delegate Cherry)

A BILL to amend and reenact § 19.2-354.1 of the Code of Virginia, relating to deferred or installment payment agreements; outstanding court-assessed fines, fees, taxes, or costs.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-354.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-354.1. Deferred or installment payment agreements.

A. For purposes of this section:

"Deferred payment agreement" means an agreement in which no installment payments are required and the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's stated term.

"Fines and costs" means all fines, court costs, forfeitures, and penalties assessed in any case by a single court against a defendant for the commission of any crime or traffic infraction. "Fines and costs" includes restitution unless the court orders a separate payment schedule for restitution.

"Installment payment agreement" means an agreement in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.

"Modified deferred payment agreement" means a deferred payment agreement in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

B. The court shall give a defendant ordered to pay fines and costs written notice of the availability of deferred, modified deferred, and installment payment agreements and, if a community service program has been established, the availability of earning credit toward discharge of fines and costs through the performance of community service work. The court shall offer any defendant the opportunity to enter into a deferred payment agreement, modified deferred payment agreement, or installment payment agreement.

C. The court shall not deny a defendant the opportunity to enter into a deferred, modified deferred, or installment payment agreement solely (i) because of the category of offense for which the defendant was convicted or found not innocent, (ii) because of the total amount of all fines and costs, (iii) because the defendant previously defaulted under the terms of a payment agreement, (iv) because the fines and costs have been referred for collections pursuant to § 19.2-349, or (v) because the defendant has not established a payment history.

D. In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, the court shall take into account the defendant's financial resources and obligations, including any fines and costs owed by the defendant in other courts. If the defendant requests to enter into an installment agreement, the court may offer installment payments of (i) \$25 per month, or a higher amount, depending on a defendant's ability to pay, which the court shall determine using a written financial statement, on a form developed by the Executive Secretary of the Supreme Court, setting forth the defendant's financial resources and obligations or by conducting an oral examination of the defendant to determine his financial resources and obligations or (ii) less than \$25 per month if the defendant is determined to be indigent by the court pursuant to § 19.2-159. The length of a payment agreement and the amount of the payments shall be reasonable in light of the defendant's financial resources and obligations and shall not be based solely on the amount of fines and costs. The court may offer a payment agreement combining an initial period during which no payment of fines and costs is required followed by a period of installment payments.

E. No court shall require a defendant to make a down payment upon entering a deferred, modified deferred, or installment payment agreement, other than a subsequent payment agreement, in which case the court may require a down payment pursuant to subsection I. Nothing in this section shall prevent a defendant from voluntarily making a down payment upon entering any payment agreement.

F. All fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement shall include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not run.

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

H. At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

I. A defendant who has defaulted on a payment agreement may petition the court for a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court shall consider any change in the defendant's circumstances. A court may require a down payment to

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

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

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

78 K. *For any defendant sentenced to an active term of incarceration and ordered to pay any fine, cost,*
79 *forfeiture, or penalty related to the charge for which such defendant was incarcerated, or any other charge*
80 *for which such defendant was sentenced on the same day, the court shall enter such defendant into a deferred*
81 *payment agreement for such fines, costs, forfeitures, or penalties. The due date for such deferred payment*
82 *agreement shall be set no earlier than 180 days after the defendant's scheduled release from incarceration on*
83 *the charges for which such defendant was sentenced on the same day. Notwithstanding any other provisions*
84 *of law, the period of limitations provided by § 19.2-341 for payment of such fines, costs, forfeitures, or*
85 *penalties shall start to run on the due date for such deferred payment agreement.*