

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-354 of the Code of Virginia, relating to community service work in lieu*  
 3 *of payment of fines and costs; work performed while incarcerated.*

4 [H 16]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-354 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 19.2-354. Authority of court to order payment of fines, costs, forfeitures, penalties, or restitution**  
 9 **in installments or upon other terms and conditions; credits for community service work or work**  
 10 **performed while incarcerated in lieu of payment.**

11 A. Any defendant convicted of a traffic infraction or a violation of any criminal law of the  
 12 Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, who is  
 13 sentenced to pay a fine, restitution, forfeiture, or penalty may pay such fine, restitution, forfeiture, or penalty  
 14 and any costs that the defendant may be required to pay in deferred payments or installments. The court  
 15 assessing the fine, restitution, forfeiture, or penalty and costs shall authorize the clerk to establish and  
 16 approve individual deferred or installment payment agreements. If the defendant owes court-ordered  
 17 restitution and enters into a deferred or installment payment agreement, any moneys collected pursuant to  
 18 such agreement shall be used first to satisfy such restitution order and any collection costs associated with  
 19 restitution prior to being used to satisfy any other fine, forfeiture, penalty, or cost owed, unless an order for  
 20 restitution is docketed in the name of the victim or it is ordered that an assignment of the judgment to the  
 21 victim be docketed. Any payment agreement authorized under this section shall be consistent with the  
 22 provisions of § 19.2-354.1. The requirements set forth in § 19.2-354.1 shall be posted in the clerk's office and  
 23 on the court's website, if a website is available. As a condition of every such agreement, a defendant who  
 24 enters into an installment or deferred payment agreement shall promptly inform the court of any change of  
 25 mailing address during the term of the agreement. If the defendant is unable to make payment within 90 days  
 26 of sentencing, the court may assess a one-time fee not to exceed \$10 to cover the costs of management of the  
 27 defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs  
 28 are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or  
 29 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant  
 30 participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full  
 31 by the date ordered, shall proceed in accordance with § 19.2-358.

32 B. When a person sentenced to the Department of Corrections or a local correctional facility owes any  
 33 fines, costs, forfeitures, restitution, or penalties, he shall be required as a condition of participating in any  
 34 work release, home/electronic incarceration, or nonconsecutive days program as set forth in § 53.1-60,  
 35 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in accordance with his  
 36 installment or deferred payment agreement while participating in such program. If, after the person has an  
 37 installment or deferred payment agreement, the person fails to pay as ordered, his participation in the  
 38 program may be terminated until all fines, costs, forfeitures, restitution, and penalties are satisfied. The  
 39 Director of the Department of Corrections and any sheriff or other administrative head of any local  
 40 correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution  
 41 of the moneys collected shall be made in the following order of priority to:

- 42 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be  
 43 disbursed according to the terms of such order;  
 44 2. Pay any restitution as ordered by the court;  
 45 3. Pay any fines or costs as ordered by the court;  
 46 4. Pay travel and other such expenses made necessary by his work release employment or participation in  
 47 an education or rehabilitative program, including the sums specified in § 53.1-150; and  
 48 5. Defray the offender's keep.

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

51 The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of wages  
 52 paid to persons sentenced to local correctional facilities participating in such programs, the withholding of  
 53 payments, and the disbursement of appropriate funds. The Director of the Department of Corrections shall  
 54 prescribe rules governing the receipt of wages paid to persons sentenced to state correctional facilities  
 55 participating in such programs, the withholding of payments, and the disbursement of appropriate funds.

56 C. The court shall establish a program and ~~may provide an option to~~ shall allow any person upon whom a

57 fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the  
58 performance of (i) community service work ~~(i)~~ before or after imprisonment or (ii) *work* in accordance with  
59 the provisions of § 19.2-316.4, ~~53.1-59, 53.1-60~~ Article 3 (§ 53.1-41 et seq.) of Chapter 2 of Title 53.1, or §  
60 53.1-128, 53.1-129, or 53.1-131 during imprisonment *at a local, regional, or state correctional facility*. The  
61 program shall specify the rate at which credits are earned and provide for the manner of applying earned  
62 credits against the fine or costs. The court assessing the fine or costs against a person shall inform such  
63 person of the availability of earning credit toward discharge of the fine or costs through the performance of  
64 community service work *or work performed while incarcerated* under this program and provide such person  
65 with written notice of terms and conditions of this program. The court shall have such other authority as is  
66 reasonably necessary for or incidental to carrying out this program. *For the purposes of this subsection, a*  
67 *person who is performing work while incarcerated shall be credited at the same rate as the community*  
68 *service work rate less any wages received. As used in this subsection, "work performed while incarcerated"*  
69 *means any work done on or after July 1, 2023, by a person confined in any local, regional, or state*  
70 *correctional facility who is paid a wage that is less than the Virginia minimum wage as provided in*  
71 *§ 40.1-28.10. Upon request by any person who has performed work while incarcerated or his designated*  
72 *representative, the local, regional, or state correctional facility shall provide confirmation of the hours such*  
73 *person has worked and the credits earned for such work.*

74 D. When the court has authorized deferred payment or installment payments, the clerk shall give notice to  
75 the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant to § 19.2-358.

76 E. The failure of the defendant to enter into a deferred payment or installment payment agreement with  
77 the court or the failure of the defendant to make payments as ordered by the agreement shall allow the Tax  
78 Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures, and penalties.