

HOUSE BILL NO. 857

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Hernandez)

A BILL to amend and reenact §§ 19.2-340, 19.2-341, and 19.2-354 of the Code of Virginia, relating to fines and costs; period of limitations on collection.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-340, 19.2-341, and 19.2-354 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-340. Fines; how recovered; in what name.

A. When any statute or ordinance prescribes a fine, unless it is otherwise expressly provided or would be inconsistent with the manifest intention of the General Assembly, it shall be paid to the Commonwealth if prescribed by a statute and recoverable by presentment, indictment, information, or warrant and paid to the locality if prescribed by an ordinance and recoverable by warrant. Whenever any warrant or summons is issued pursuant to § 19.2-72 or 19.2-74 for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, and such warrant or summons references the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code, any fine prescribed by the county, city, or town ordinance shall be paid to the locality. Fines imposed and costs taxed in a criminal or traffic prosecution, including a prosecution for a violation of an ordinance adopted pursuant to § 46.2-1220, for committing an offense shall constitute a judgment and, if not paid at the time they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment, subject to the period of limitations provided by § 19.2-341.

B. Notwithstanding any other provision of law, upon the expiration of the period of limitations provided by § 19.2-341, no action shall be brought to collect the debt.

26 C. The period of limitations provided by § 19.2-341 shall apply regardless of the method of
27 collection applicable pursuant to § 19.2-349 and shall not be extended or revived on account of a partial
28 payment, a written or verbal affirmation of fines or costs, or a change in collection methods. Upon the
29 expiration of the period of limitations, it shall not be revived or restarted by any means.

30 **§ 19.2-341. Penalties other than fines; how recovered; in what name; limitation of actions.**

31 A. When any statute or ordinance prescribes a monetary penalty other than a fine, unless it is
32 otherwise expressly provided or would be inconsistent with the manifest intention of the General
33 Assembly, it shall be paid to the Commonwealth if prescribed by a statute and paid to the locality if
34 prescribed by an ordinance and recoverable by warrant, presentment, indictment, or information. Penalties
35 imposed and costs taxed in any such proceeding shall constitute a judgment and, if not paid at the time
36 they are imposed, execution may issue thereon in the same manner as upon any other monetary judgment.
37 No such proceeding of any nature, however, shall be brought or had for the recovery of such a penalty or
38 costs due the Commonwealth or any political subdivision thereof, unless within ~~60~~ 10 years from the date
39 of the ~~offense or delinquency giving rise to imposition of such penalty if imposed by a circuit court or~~
40 within 30 years if imposed by a general district court judgment.

41 B. Notwithstanding any other provision of law, upon the expiration of the period of limitations
42 provided by subsection A, no action shall be brought to collect the debt.

43 C. The period of limitations provided in subsection A shall apply regardless of the method of
44 collection applicable pursuant to § 19.2-349 and shall not be extended or revived on account of a partial
45 payment, a written or verbal affirmation of the debt, or a change in collection method. Upon the expiration
46 of the period of limitations, it shall not be revived or restarted by any means.

47 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties, or**
48 **restitution in installments or upon other terms and conditions; community work in lieu of payment.**

49 A. Any defendant convicted of a traffic infraction or a violation of any criminal law of the
50 Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile,
51 who is sentenced to pay a fine, restitution, forfeiture, or penalty may pay such fine, restitution, forfeiture,
52 or penalty and any costs that the defendant may be required to pay in deferred payments or installments.

53 The court assessing the fine, restitution, forfeiture, or penalty and costs shall authorize the clerk to
54 establish and approve individual deferred or installment payment agreements. If the defendant owes court-
55 ordered restitution and enters into a deferred or installment payment agreement, any moneys collected
56 pursuant to such agreement shall be used first to satisfy such restitution order and any collection costs
57 associated with restitution prior to being used to satisfy any other fine, forfeiture, penalty, or cost owed,
58 unless an order for restitution is docketed in the name of the victim or it is ordered that an assignment of
59 the judgment to the victim be docketed. Any payment agreement authorized under this section shall be
60 consistent with the provisions of § 19.2-354.1. The requirements set forth in § 19.2-354.1 shall be posted
61 in the clerk's office and on the court's website, if a website is available. As a condition of every such
62 agreement, a defendant who enters into an installment or deferred payment agreement shall promptly
63 inform the court of any change of mailing address during the term of the agreement. If the defendant is
64 unable to make payment within 90 days of sentencing, the court may assess a one-time fee not to exceed
65 \$10 to cover the costs of management of the defendant's account until such account is paid in full. This
66 one-time fee shall not apply to cases in which costs are assessed pursuant to § 17.1-275.1, 17.1-275.2,
67 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, or 17.1-275.9. Installment or deferred payment
68 agreements shall include terms for payment if the defendant participates in a program as provided in
69 subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed
70 in accordance with § 19.2-358.

71 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
72 any fines, costs, forfeitures, restitution, or penalties, he shall be required as a condition of participating in
73 any work release, home/electronic incarceration, or nonconsecutive days program as set forth in § 53.1-
74 60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in accordance with
75 his installment or deferred payment agreement while participating in such program. If, after the person
76 has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in
77 the program may be terminated until all fines, costs, forfeitures, restitution, and penalties are satisfied.
78 The Director of the Department of Corrections and any sheriff or other administrative head of any local

79 correctional facility shall withhold such ordered payments from any amounts due to such person.

80 Distribution of the moneys collected shall be made in the following order of priority to:

81 1. Meet the obligation of any judicial or administrative order to provide support and such funds

82 shall be disbursed according to the terms of such order;

83 2. Pay any restitution as ordered by the court;

84 3. Pay any fines or costs as ordered by the court;

85 4. Pay travel and other such expenses made necessary by his work release employment or

86 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

87 5. Defray the offender's keep.

88 The balance shall be credited to the offender's account or sent to his family in an amount the

89 offender so chooses.

90 The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of

91 wages paid to persons sentenced to local correctional facilities participating in such programs, the

92 withholding of payments, and the disbursement of appropriate funds. The Director of the Department of

93 Corrections shall prescribe rules governing the receipt of wages paid to persons sentenced to state

94 correctional facilities participating in such programs, the withholding of payments, and the disbursement

95 of appropriate funds.

96 C. The court shall establish a program and may provide an option to any person upon whom a fine

97 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the

98 performance of community service work (i) before or after imprisonment or (ii) in accordance with the

99 provisions of § 19.2-316.4, 53.1-59, 53.1-60, 53.1-128, 53.1-129, or 53.1-131 during imprisonment. The

100 program shall specify the rate at which credits are earned and provide for the manner of applying earned

101 credits against the fine or costs. The court assessing the fine or costs against a person shall inform such

102 person of the availability of earning credit toward discharge of the fine or costs through the performance

103 of community service work under this program and provide such person with written notice of terms and

104 conditions of this program. The court shall have such other authority as is reasonably necessary for or

105 incidental to carrying out this program.

106 D. 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 to
108 § 19.2-358.

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

113 F. For any defendant sentenced to an active term of incarceration and ordered to pay any fine, cost,
114 forfeiture, or penalty related to the charge that such defendant is incarcerated for, or any other charge for
115 which such defendant was sentenced on the same day, the court shall enter such defendant into a deferred
116 payment agreement, as defined in § 19.2-354.1, for such fines, costs, forfeitures, or penalties. The due
117 date for such deferred payment agreement shall be set no earlier than the defendant's scheduled release
118 from incarceration on the charge for which such defendant received the longest period of active
119 incarceration. Notwithstanding any other provisions of law, the period of limitations provided by § 19.2-
120 341 for payment of such fines, costs, forfeitures, or penalties shall start to run on the due date for such
121 deferred payment agreement.

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