

1 HOUSE BILL NO. 896
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee for Courts of Justice
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Hernandez)

6 A BILL to amend and reenact § 19.2-354.1 of the Code of Virginia, relating to deferred or installment
 7 payment agreements; certain benefits; maximum amounts to be paid.

8 **Be it enacted by the General Assembly of Virginia:**

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

10 **§ 19.2-354.1. Deferred or installment payment agreements.**

11 A. For purposes of this section:

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

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

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

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

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

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

33 D. In determining the length of time to pay under a deferred, modified deferred, or installment
34 payment agreement and the amount of the payments, a court shall take into account the defendant's
35 financial resources and obligations, including any fines and costs owed by the defendant in other courts.
36 In assessing the defendant's ability to pay, the court shall use a written financial statement, on a form
37 developed by the Executive Secretary of the Supreme Court, setting forth the defendant's financial
38 resources and obligations or conduct an oral examination of the defendant to determine his financial
39 resources and obligations. The length of a payment agreement and the amount of the payments shall be
40 reasonable in light of the defendant's financial resources and obligations and shall not be based solely on
41 the amount of fines and costs. The court may offer a payment agreement combining an initial period during
42 which no payment of fines and costs is required 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
45 the court may require a down payment pursuant to subsection I. Nothing in this section shall prevent a
46 defendant 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
48 into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement
49 shall include only those outstanding fines and costs for which the limitations period set forth in § 19.2-
50 341 has not 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
53 modification of the agreement in writing on a form provided by the Executive Secretary of the Supreme
54 Court, and the court 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,
57 the court shall consider any change in the defendant's circumstances. A court may require a down payment
58 to 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
60 of 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
62 require a defendant to establish a payment history on the subsequent payment agreement before restoring
63 the 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
66 exempt from making payments at least until such time that such defendant has a resource other than a
67 Social Security benefit or Supplemental Security Income. If such defendant informs the court that his sole
68 financial resource is a Social Security benefit or Supplemental Security Income, the case shall not be
69 referred to collections pursuant to § 19.2-349. Courts shall include in payment plan policies developed in
70 accordance with §§ 19.2-354 and 19.2-354.1 that where the court is informed that a defendant receives a
71 Social Security benefit or Supplemental Security Income, no payment toward fines and costs shall be
72 taken from such exempt resource.

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

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