

SENATE BILL NO. 625

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Bagby)

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

**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.

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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