

ORDER

VIRGINIA: IN THE CIRCUIT COURT OF Grayson COUNTY
JUDGE: H.L. HARRELL

In Re: Collection of Fines and Costs

In accordance with the revised Rule 1:24 of the Virginia Supreme Court Rules and Section 19.2-354.1 of the Code of Virginia, 1950, as amended (effective on July 1, 2017), both of which are attached hereto and made a part hereof, the Circuit Court of Grayson hereby adopts the requirements therein effect July 1, 2017.

Defendants currently on an installment plan that does not conform with the requirements of revised Rule 1:24 of the Virginia Supreme Court Rules and Section 19.2-354.1 of the Code of Virginia, 1950, as amended (effective on July 1, 2017) may petition the Clerk of the Court to bring their plan into accord with the Rule and the Code.

Wherein there are discretionary decisions in both the Rule and the Section 19.2-354.1, the Clerk of the Court and his/her deputies shall have the discretion to adjust the payment plan accordingly and shall, pursuant to the requirements of the Rule and Code, take into account the defendant's financial obligations, including the defendant's indigence, as well as fines and costs the defendant owes in other courts.

The following shall serve as a framework subject to more lenient discretion as allowed by this order and the Rule and the Code:

1. For applicants who have previously defaulted on payment, a down payment is required as follows:

If the fines and costs owed do not exceed \$500, a down payment of 10% of the entire amount owed shall be paid prior to reinstatement.

If the fines and costs owed exceed \$500, a down payment of 5% of the entire amount owed or \$50, whichever is greater, shall be paid prior to reinstatement.

2. Monthly payments shall be made as follows:

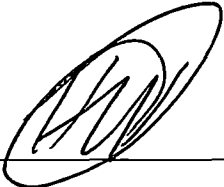
For total amounts of less than \$1000, at least \$50 per month.

For total amounts greater than \$1000 but less than \$5000, at least \$75 per month.

For total amounts greater than \$5000 or greater, at least \$100 per month.

The Clerk of this Court is directed to post this order so that it may be viewed by the public and post it on the court's web site. The Clerk is also directed to submit a copy of this order on official letterhead to the Department of Legislative and Public Relations in the Office of the Executive Secretary of the Virginia Supreme Court.

DATE: 6-29-2017

ENTER: 

H.L. Harrell, Judge

VIRGINIA ACTS OF ASSEMBLY -- 2017 RECONVENED SESSION

CHAPTER 802

An Act to amend and reenact §§ 19.2-349 and 19.2-354 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-354.1, relating to collection of unpaid court fines, etc.

[H 2386]

Approved April 5, 2017

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-349 and 19.2-354 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-354.1 as follows:

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than ~~30~~ 90 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced ~~30~~ 90 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the defendant in order to assist in the collection effort. Any such private attorney shall be subject to the penalties and provisions of § 18.2-186.3.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid

finances, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

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

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within 30 days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court assessing the fine, restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual deferred or installment payment agreements. Any payment agreement authorized under this section shall be consistent with the Rules of Supreme Court of Virginia provisions of § 19.2-354.1, including any required minimum payments or other required conditions. The requirements established by the Rules of Supreme Court of Virginia set forth in § 19.2-354.1 shall be posted in the clerk's office and on the court's website, if a website is available. As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within 30 90 days of sentencing, the court may assess a one-time fee not to exceed \$10 to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs 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 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

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

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

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

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

C. The court shall establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

D. When the court has authorized deferred payment or installment payments, the clerk shall give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

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

§ 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 who is unable to pay in full the fines and costs within 30 days of sentencing 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, (v) because the defendant has not established a payment history, or (vi) because the defendant is eligible for a restricted driver's license under subsection E of § 46.2-395.

D. In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, a court shall take into account the defendant's financial resources and obligations, including any fines and costs owed by the defendant in other courts. In assessing the defendant's ability to pay, the court shall use 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 conduct an oral examination of the defendant to determine his financial resources and obligations. The court may require the defendant to present a summary prepared by the Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs. 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. A court may require a down payment as a condition of a defendant entering a deferred, modified deferred, or installment payment agreement. Any down payment shall be a minimal amount to demonstrate the defendant's commitment to paying the fines and costs. In the case of an installment payment agreement, the required down payment may not exceed (i) if the fines and costs owed are \$500 or less, 10 percent of such amount or (ii) if the fines and costs owed are more than \$500, five percent of such amount or \$50, whichever is greater. A defendant may make a larger down payment than what is provided by this subsection.

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

RULES OF SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

Rule 1:24. Requirements for Court Payment Plans Agreements for the Collection of Fines and Costs.

The purposes of the statutory court collection process are (i) to facilitate the payment of fines, court costs, penalties, restitution and other financial responsibilities assessed against defendants convicted of a criminal offense or traffic infraction, (ii) to collect the monies due to the Commonwealth and localities as a result of these convictions, and (iii) to assure payment of court-ordered restitution to victims of crime. To achieve these purposes and the additional purpose of enabling defendants to restore their driver's licenses pursuant to § 46.2-395, this Rule is intended to ensure that all courts approve deferred and installment payment ~~plans~~ agreements pursuant to § ~~19.2-354~~ consistent with §§ 19.2-354, 19.2-354.1, and the provisions of this Rule and to further the legal values of predictability, fairness, and similarity in the collection of fines, court costs, penalties, and restitution throughout the courts of the Commonwealth.

(a) *Definitions.* —

- (1) "Fines and costs" shall mean all the fines, court costs, forfeitures, and penalties assessed in all cases by a single ~~trial~~ court against a defendant for the commission of crimes or traffic infractions. "Fines and costs" shall also include restitution unless the court orders a ~~specific~~, separate payment schedule for restitution ~~as part of the disposition of the criminal case~~.
- (2) An "installment payment ~~plan~~ agreement" is a ~~plan~~ an agreement in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full.
- (3) A "deferred payment ~~plan~~ agreement" is a ~~plan~~ an agreement in which the defendant agrees to pay the full amount of the fines and costs at the end of its the agreement's stated term and no installment payments are required.
- (4) A "modified deferred payment ~~plan~~ agreement" is a deferred payment ~~plan~~ agreement in which the defendant also agrees to use best efforts to make monthly or other periodic payments.

(b) *Access to payment alternatives.* — Any defendant who is unable to pay in full fines and costs for a particular offense within 30 days of conviction, or other disposition authorized by law, must be offered by the convicting court the opportunity to enter into either a deferred payment ~~plan~~ agreement, a modified deferred payment ~~plan~~ agreement or an installment payment ~~plan~~ agreement to pay those fines and costs. The court shall not deny a defendant the opportunity to enter into a pay plan deferred, modified deferred, or installment payment agreement solely because (i) ~~of a~~ the defendant's prior previously defaulted under the terms of a payment agreement, (ii) the fines and costs have been referred ~~to~~ for collections pursuant to § 19.2-349, (iii) a defendant has not established a payment history, (iv) ~~of the conviction in~~ question is of a particular category of offense for which the defendant was convicted or found not innocent, (v) ~~of the availability of the defendant is~~ eligible for a restricted license authorization under subsection E of § 46.2-395 (E), or (vi) of the total amount of all fines and costs.

(c) *Notice of payment alternatives.* — The court shall give the defendant written notice of all payment alternatives set forth in subsection (b). ~~The written notice shall also include the availability of the community service program referenced in subsection (d)~~ 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.

(d) *Conditions of a payment ~~plan~~ agreement.* — All the fines and costs ~~subject to the collection process which~~ that a defendant owes for all cases in a particular any single court may be incorporated into one payment ~~plan~~ agreement, unless otherwise ordered by the court in specific cases. A payment ~~plan~~ agreement shall include only those outstanding fines and costs ~~subject to collection under the period of time~~ for which the limitations period set forth in § 19.2-341 has not run.

In determining the ~~amount and length of time to pay under a deferred, payment plan or an installment payment plan~~ modified deferred, or installment payment agreement and the amount of the payments, a court ~~must~~ shall take into account the defendant's financial resources ~~in light of the defendant's financial and obligations, including defendant's indigence, as well as the any~~ in light of the defendant's financial and obligations, including defendant's indigence, as well as the any fines and costs the defendant owes in other courts. ~~The~~ In assessing the defendant's ability to pay, the court should utilize either shall use a written financial statement, on a form developed by

the Executive Secretary of the Supreme Court, ~~or a colloquy with the defendant to assess the defendant's ability to pay~~ setting forth the defendant's financial resources and obligations or conduct an oral examination of the defendant to determine his financial resources and obligations. The court may require the defendant to present a compliance summary from prepared by the Department of Motor Vehicles in order to assess the number of other courts in of the other courts in which the defendant also owes fines and costs are owed.

The length of a payment ~~plan~~ agreement and the amount of the payments shall not be based solely on the amount of the fines and costs and shall be reasonable in light of the defendant's financial resources and obligations.

~~Unless otherwise ordered by the court in a specific case, (i) if~~ If a down payment is required to enter into a payment ~~plan~~ agreement, it ~~should~~ shall be a minimal amount to demonstrate ~~commitment and to facilitate entry into a plan~~ the defendant's commitment to paying the fines and costs. ; and (ii) ~~for installment payment plans, any monthly or periodic payment and the length of time to pay should be a reasonable amount and time considering all the financial circumstances of the defendant. If~~ In the case of an installment payment agreement, if the fines and costs owed are \$500 or less, the required down payment must ~~may~~ not exceed 20% 10 percent of the such amount owed if: or, if the fines and costs owed are more than \$500, the required down payment must ~~may~~ not exceed 10% five percent of the such amount owed or \$100 \$50, whichever is greater. Nothing in this Rule shall preclude a A defendant from choosing ~~may choose~~ to make a larger down payment.

Where available, the court ~~should liberally use~~ may provide community service work as an option to defray fines and costs, especially when the defendant is indigent or otherwise unable to make ~~substantial~~ meaningful payments. Any portion of the community service completed should be credited to the defendant's obligations. Community service shall not be credited against any amount owed as restitution, the interest which has accrued on restitution, and any collection fee required.

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

(e) *Timeliness of payments.* — Any payment which is received within 10 days of the date due shall be considered timely made.

(f) *Combined payment plans agreements.* — ~~When taking into account the defendant's financial obligations, including the fines and costs the defendant owes in other courts, the~~ The court may offer a payment plan agreement combining an appropriate initial period during which no payment of fines and costs is required, followed by a period of installment payments. Such a combined payment plan may be appropriate when the defendant is incarcerated, but should not be limited only to these circumstances.

(g) *Re-entry into a payment plan agreement after default.* — ~~A defendant who has defaulted on a payment plan must have the opportunity to request a new payment plan and the court should consider the defendant's change in circumstances in~~ A court shall consider a request by a defendant who has defaulted on a payment agreement to enter into a subsequent payment agreement. In determining whether to approve such the request for a subsequent payment agreement, the court shall consider any change in the defendant's circumstances.

~~When a defendant enters into a subsequent payment plan agreement, a court shall not require a defendant to establish a payment history on the subsequent payment plan agreement before restoring the defendant's driver's license. A court may shall require a down payment to enter into a subsequent payment plan agreement, which is higher than the down payment required for entry into an initial plan, although provided that, the down payment required to enter into a subsequent payment plan should not exceed 20% of the total fines and costs owed (i) if the fines and costs owed are \$500 or less, the required down payment shall not exceed 10 percent of such amount or (ii) if the fines and costs owed are more than \$500, the required down payment shall not exceed five percent of such amount or \$50, whichever is greater.~~

Promulgated by Order dated November 1, 2016; effective February 1, 2017.

Last amended by Order dated April 27, 2017; effective July 1, 2017.