

## **Virginia Beach Circuit Court Guidelines for Fines and Costs in Criminal and Traffic Cases**

**Date of Adoption: July 1, 2017**

**Date of Revision: October 31, 2018**

### **1.0 Initial payment plan if the defendant is unable to pay in full at sentencing.**

- a. The court shall order the defendant to pay in deferred payments. Code § 19.2-354(A). No down payment shall be required. The payment of costs shall not be a condition of probation or suspension of sentence.
- b. The initial deferred due date for payment shall be as follows:
  - a. In cases in which no active time is imposed – 1 year from the sentencing date.
  - b. In cases in which active time is imposed – 1 year from the length of the active time imposed. A defendant sentenced to a community corrections alternative program shall be considered a 1 year active sentence.
- c. Unpaid fines and costs shall be forwarded to tax setoff; to the Attorney for the Commonwealth for collection enforcement under § 19.2-349; and to DMV for suspension of the defendant's license or privilege to drive pursuant to § 46.2-395.

### **2.0 Subsequent extensions if not paid in full by deferred due date set at sentencing:**

- a. If the deferred due date for payment has not expired, or the due date has expired but the delinquent account has not yet been sent to Collections, clerk may approve a new payment agreement upon the defendant making a minimum down payment of \$50 to demonstrate commitment to paying the fine and costs. Code § 19.2-354.1(E). The petition form for an extension of time to pay is available in the clerk's office.
- b. A defendant may request a waiver or reduction of the down payment. The defendant shall be required to file a petition upon a Court provided form to determine the financial condition of the defendant. The form for a waiver or reduction of the down payment is posted on this Court's criminal page website.

### **3.0 If the unpaid fines and costs are delinquent and have been sent to a collection agency, the following shall apply:**

- a. The attorney for the Commonwealth has entered into a contract for the collection of unpaid fines and costs with the City Treasurer pursuant to § 19.2-349. Such contract provides that each account shall be transferred to the City Treasurer until the account is collected in full.
- b. The defendant may enter into an installment payment agreement with the City Treasurer in which the defendant agrees to make monthly or other periodic payments until the fines and costs are paid in full. The City Treasurer may require a down payment pursuant to § 19.2-354.1 (E). Any required down payment 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. The City Treasurer is authorized to approve a lesser down payment based on the financial condition of the defendant. In assessing the defendant's ability to

pay, the City Treasurer may require the defendant to provide a written financial statement setting forth the defendant's financial resources and obligations or conduct an oral examination of the defendant to determine the defendant's financial resources and obligations pursuant to § 19.2-354.1 (D).

- c. Subsection (b) shall not apply to a defendant restoring the defendant's driver's license. See Section 4.0 for requirements for restoring the defendant's driver's license.

**4.0 Payment plans to restore driver's license under Code § 46.2-395 (B):**

- a. If a defendant, after having his/her license suspended for nonpayment of fines and costs, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement under Code § 19.2-354 that is acceptable to the Court to make deferred or installment payments of such unpaid fines and costs, the defendant's driver's license may be restored. The court establishes the following criteria:
  - 1. Both the clerk and the City Treasurer (Collection entity) are authorized to enter into a subsequent payment agreement with the defendant pursuant to Code § 19.2-354.1(I).
  - 2. If the unpaid fines and costs account is delinquent but the account has not been sent to collection entity and remains with the clerk, the defendant may enter into a deferred payment agreement acceptable to the clerk. A minimal down payment shall be required. The required down payment 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. The clerk is authorized to approve a lesser down payment based on the financial condition of the defendant. A defendant requesting a waiver or reduction of the down payment shall be required to file a petition upon a court provided form to determine the financial condition of the defendant.
  - 3. If the unpaid fines and costs account is delinquent and has been referred to collection entity, the defendant must enter into a deferred payment agreement acceptable with the City Treasurer. A minimal down payment shall be required. The required down payment 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. The City Treasurer is authorized to approve a lesser down payment based on the financial condition of the defendant. A defendant must provide such financial information required by the City Treasurer to determine the defendant's ability to pay.
  - 4. Upon the defendant entering into an acceptable payment agreement with the clerk or City Treasurer, the clerk shall update the financial management system accordingly and fax a reinstatement form to DMV.
  - 5. Interest will not accrue on any account following the approval of the new time to pay unless the account becomes delinquent as a result of failure to comply with such agreement.

**5.0 Community service option to discharge all or part of the fine and costs pursuant to § 19.2-354 subsection C:**

- a. A defendant, upon whom a fine and costs have been imposed, whether the account is delinquent or not, may apply, by submitting a court provided application form, asking the court for the option of discharging all or part of the fine and costs by performing community service.
- b. If the defendant has more than one delinquent account, the defendant may only apply to discharge the fine and costs in one delinquent case at a time. After such fine and costs have been discharged the defendant may then apply for another delinquent account.
- c. The clerk is authorized to administer this program and approve a community service request.
- d. A defendant ordered to perform a specific number of community service hours as a condition of a court-ordered sentence or required by a statewide program shall not be able to apply those hours to fines and costs.
- e. In the event a defendant, in court, on his sentencing day, inquires about performing community service in lieu of making payment, the clerk should provide a copy of the court's application form. In the interim the defendant should complete an Extension Order for the payment of the fine and costs unless otherwise approved by the judge.
- f. The option of performing community service applies only to the discharge of fine and costs; not to the reinstatement of a suspended license for failure to pay fine and costs since 46.2-395 (B) requires the defendant to enter into a deferred or installment payment agreement that is acceptable to the court.

**6.0 Interest on Fines and Costs**

- a. Interest shall accrue on past due/delinquent fines and costs pursuant to §§ 19.2-340 and 19.2-353.5. The court does not have the statutory authority to waive accrued post judgment interest except (i) during a period of incarceration or (ii) if it appears to the Court that the default is excusable under the standards set forth in subsection B of 19.2-358. Code § 19.2-358(C).
- b. To apply for waiver of interest owed during a period of incarceration, the defendant must submit to the clerk FORM DC-366A (Request for Waiver of Interest on Fines and Costs) and FORM DC-366 (Certification of Incarceration Period) certified by the superintendent, warden, or other official in charge of a correctional facility. In addition, the clerk is authorized to accept written confirmation from a probation officer of this Court. The DC-366A and DC-366 are posted on this Court's criminal page website.
- c. To apply for a waiver under § 19.2-358(C), the person must file a written request for waiver of interest setting forth reason, a current financial statement and any proposed payment plan. Pursuant to subsection B of § 19.2-358 the person must show that his/her default was not attributable to an intentional refusal to pay the fine and costs, or not attributable to a failure on his/her part to make a good faith effort to obtain the necessary fund for payment.