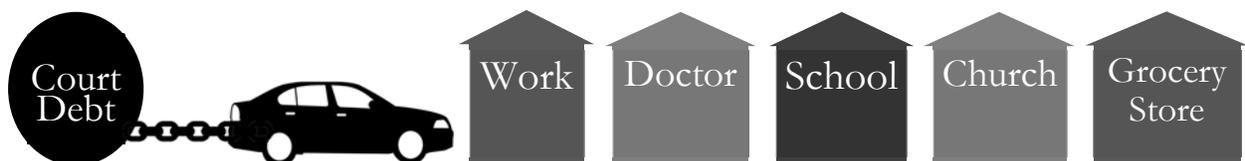


Driven Deeper Into Debt: Unrealistic Repayment Options Hurt Low-Income Court Debtors

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Approximately **1 in 6 Virginia drivers** has a suspended license due to failure to pay court costs and fines.

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*This report was prepared by the **Legal Aid Justice Center** with assistance from law student volunteers at the University of Virginia School of Law and Carolyn Kalantari.*

This report is meant to be a source of information only. It is not legal advice. Please contact a lawyer if you need legal assistance.

Angela Ciolfi, Pat Levy-Lavelle, and Mario Salas are the attorneys responsible for this material.

Executive Summary

In 2015, more than 900,000 Virginia Department of Motor Vehicles customers had suspended driver's licenses due to one or more unpaid court costs or fines. In FY2015 alone, the DMV issued 366,773 orders of driver's license suspension resulting from unpaid court costs or fines, more than a third of which (38%) were for failure to pay costs and fines assessed for offenses wholly unrelated to driving.

These costs and fines impact low-income drivers disproportionately. Wealthier drivers have the discretionary income to quickly cover these debts and retain their licenses. By contrast, low-income drivers struggle to meet the minimum down payments or monthly payments required by the courts. These low-income drivers lose their licenses after they fail to either pay in full within 30 days of sentencing or establish a payment plan within the same time period and maintain it. For many drivers that means giving up their only mode of transportation to work and forcing them to choose between losing their jobs and risking incarceration for driving illegally.

Without a license, low-income Virginia residents have a much harder time getting to work and earning the money they need to pay off their debts. Many of these workers stall out completely, no longer permitted to serve as bus drivers, truck drivers, construction foremen and delivery drivers, or to hold the many jobs that require a driver's license as an indicator of dependability. These low-income residents sink deeper and deeper into debt as interest accrues, and their prospects for repaying court costs and fines grows even dimmer.

The Virginia General Assembly passed legislation last year requiring courts to put their payment plan policies in writing. (Most of these policies are now available [online](#).) On May 18, 2015, the Judicial Council, a Virginia judicial policy-making body, endorsed "Recommendations for the Collection of Unpaid Fines and Court Costs." These Recommendations were distributed to Virginia courts prior to July 1, 2015, the date that written policies became required by law.

The Judicial Council Recommendations were drafted to assist courts in establishing their own written policies for "determining the conditions of deferred or installment payment agreements for a defendant owing fines and costs." (Exhibit 1.) The Recommendations recognize that payment guidelines should be crafted to encourage payment while also avoiding "the suspension of driver's licenses or other sanctions." Perhaps most significantly, the Recommendations urged courts to develop policies and establish payment plans that "facilitate payment by defendants of these financial obligations so as to avoid the suspension of driver's licenses or other sanctions."

The Recommendations cautioned against several widespread Virginia court debt collection practices and would have significantly improved some¹ debtors' ability to secure and remain on payment plans if implemented statewide. The Legal Aid Justice Center analyzed the payment plan policies of 105 Virginia General District Courts (representing 84% of General District Courts statewide, and whose policies were readily available), to determine how these courts responded to the Recommendations.

The analysis found that court payment plan policies diverge widely from each other and often disregard, or fall far short of, the Recommendations. Most dishearteningly, significant numbers of courts fail to consider debtors' financial situations or provide low-income debtors with alternatives to rigid payment plan terms. The results can be devastating for individuals and their families.

One Legal Aid Justice Center client sold her blood to meet basic needs, which included expenses such as food and medication. By necessity, these types of expenses took priority over her daunting load of court debt. And yet, under the typical payment plan terms in her local General District Court, debtors owing costs and fines in excess of \$300 are afforded, **at most, 12 months to pay in full**. This client owed in excess of \$1,300. Those payment plan terms, if applied, would require 12 monthly payments of \$108 to restore and maintain her driver's license. To make matters worse, the client's contacts with the court system were emblematic of her poverty: Failure to pay a speeding ticket led to a driving without a license conviction, a subsequent stop for bald tires, and a second criminal conviction of driving with a suspended license. Each time, the client was assessed additional costs and fines and driven deeper into debt.

Unfortunately, Virginia debtors are almost always left to navigate the system on their own. By the time an indigent debtor's driver's license is suspended for failure to pay court costs and fines, the criminal case has concluded, along with the court appointed legal representation. Failure to pay has hefty consequences, resulting in mandatory license suspension, probation violations, additional criminal violations for driving on a suspended license and incarceration for driving despite the license suspension. Without strict guidelines mandating trial courts to consider debtors' financial situations and provide them with alternatives to rigid payment plan terms, real people will continue to suffer.

The following is a summary of the key Judicial Council Recommendations and the corresponding findings from the Legal Aid Justice Center analysis:

¹ The Recommendations did not adequately recognize or provide for the indigent debtor for whom payment plans may remain perpetually out of reach. For this reason, even if fully implemented statewide, they do not represent a comprehensive solution.

Judicial Council Recommendation: The court should “assess the specific financial conditions” of the debtor before setting the parameters for a deferred or installment payment plan.

Finding: At least 65 of the 105 General District Courts (62%) appear to collect little to no data about a debtor’s individual financial circumstances before establishing a payment plan. In nearly half of the courts reviewed, the repayment schedule is determined by either the total amount owed or a fixed number of months to pay, meaning the individual debtor’s ability to pay is not taken into consideration when crafting the payment terms. And in at least 28 of the 105 courts (27%), a minimum monthly payment of \$50 or more is required to establish a payment plan regardless of the debtor’s ability to pay that amount.

Without a clear understanding of debtors’ financial situation, courts are likely to have little appreciation of the hardships faced by Virginians who may need (for example) to decide between paying child support, buying food, or covering court costs. Under such circumstances, a payment plan that requires “just” \$50 a month may be out of reach.

Judicial Council Recommendation: Courts should consider the debtor’s financial obligations in other courts when assessing ability to pay.

Finding: At least 90 General District Court policies (86%) make no reference to the debtor’s financial obligations in other courts and do not appear to use them to determine how much time a debtor will be provided to pay court debts.

Judicial Council Recommendation: Each court should ensure that debtors have the option to perform community service to offset their debts.

Finding: At least 59 General District Courts (56%) make no reference in their policies to community service as a means of offsetting court costs and fines. Community service is not a solution for all debtors, but may serve as a viable alternative in some cases.

Judicial Council Recommendation: A down payment should not be required to enter into a deferred payment plan.

Finding: At least 19 General District Courts (18%) require a down payment to establish a deferred payment plan, even prior to a single default. Other court policies become especially punitive after default. For instance, after default, courts in the 6th Judicial District require 50% down or \$200, whichever is less, to receive up to four additional months to pay in full.

Judicial Council Recommendation: If a down payment is required to enter an installment plan, the amount should be minimal so as not to bar access to the plan.

Finding: In at least 26 General District Courts (25%), a significant down payment is required to enter an installment plan after a single default. In Charlotte and Greene Counties, for example, debtors must pay 50% down to begin a new installment payment plan.

Judicial Council Recommendation: A debtor whose fines and costs have been referred to a collection agency should still be eligible to enter into an initial or subsequent payment plan with the court.

Finding: In at least a few jurisdictions, after debtors default on payments and have been referred to a collection agency, they no longer have the option to enter into a payment plan with the court.

Conclusion

Virginia courts need to do much more to ensure that state residents who are unable to pay their court debts aren't pushed further into debt and further into the criminal justice system by ill-conceived payment policies. Suspending the driver's licenses of these individuals does nothing to improve their ability to pay and takes away the transportation they may need to get to work and earn a living. The Recommendations are a worthy first step, but require wider implementation to help Virginians who lack discretionary income to establish a payment plan under current policies. Similarly, indigent Virginians should receive consideration beyond what even the Recommendations recognize, such as foregoing driver's license suspension when poverty precludes payment, and reduction or remission of court debt, where appropriate. These individuals should be afforded a way to maintain licenses, and their livelihood, despite their poverty.

The Vicious Court Debt Cycle

Jane gets a ticket for speeding to pick up her son from school. She has no history of driving or criminal offenses. Jane is convicted and assessed court costs and fines.

Jane earns 7.25/hour and has no savings. After paying for rent, food, and utilities, she lacks the \$50 down payment required to establish a payment plan in her GDC Court.

Jane does not pay in 30 days, and her license is suspended. She is expected to know this, because she signed a DC-210 form on the day she was convicted advising her of this in the fine print.

Jane is pulled over for a minor traffic infraction, a broken taillight, that she can't afford to fix. She is also charged with driving on a suspended license.

Jane returns to court and is convicted of driving with a suspended license. She is assessed additional fines and costs. Her court debt continues to accrue interest at a rate of 6%.

Jane does not have access to public transportation, but needs to pay the rent for herself and her son. She continues to drive to work and is caught two more times.

The third time that Jane is convicted of driving with a suspended license, she is sentenced to a mandatory 10 days in jail. She is assessed additional fines and costs, including the cost of her court-appointed lawyer.

She is released from jail with a conviction and no license. She must convince her employer that despite her absence and loss of license, she remains dependable and should have another chance.

Most Virginia payment plans result in default.

Default is likely when courts collect insufficient financial information from debtors. A significant percentage of payment plans result in default. When payment plan terms are unrealistic or unsustainable, default may be inevitable.

Each unrealistic and unsustainable payment plan costs the courts time and money to set up and administer.

In order to restore a license suspended due to unpaid court costs and fines, the debtor must pay in full or establish a payment plan with each court in which money is owed. The debtor must also pay a DMV reinstatement fee and satisfy any additional grounds for license suspension.

“The costs of arresting, processing, administering, and enforcing ... driver license suspensions [for unpaid court costs and fines] create a significant strain on budgets and other resources and detract from highway and public safety priorities.”*

*Source: Best Practice Guide to Reducing Suspended Drivers, American Association of Motor Vehicle Administrators, Suspended/Revoked Working Group, February, 2013.

Methodology

The Legal Aid Justice Center has analyzed 105 Virginia General District Court payment plans, representing plans from approximately 84% of the Virginia General District Courts.² Virginia courts are required to commit their payment plans to writing, pursuant to an amendment to Va. Code § 19.2-354 that took effect July 1, 2015.³

We have compared these plans to the “Recommendations for the Collection of Unpaid Fines and Court Costs Pursuant to Chapter 21 of Title 19.2 (§§ 19.2-339 through -368) and the Suspension of Driving Privileges Pursuant to § 46.2-395 of the Virginia Code” (dated May 18, 2015) (hereinafter “Recommendations”).⁴ Generally, the plans in Alexandria, Arlington, and Prince William appear to be most consistent with the Recommendations. However, even these plans would require some changes to fully incorporate the letter and spirit of the Recommendations.

Background

The Virginia DMV recently took a snapshot of its data. This snapshot demonstrated that:

- 914,450 individual Virginia DMV customers, at a moment in time in 2015, had at least one outstanding license suspension order due to unpaid court costs and fines.⁵
- Many individuals carry multiple orders of suspension. As of September 2015, there were nearly 2.6 million orders of suspension due to unpaid court costs and fines in effect in Virginia.
- In FY2015, the Virginia DMV issued 366,773 orders of suspension due to unpaid court costs or fines. Roughly 38% of these orders (140,252) were due to unpaid costs or fines related to non-motor vehicle convictions; the other orders of suspension were due to unpaid costs or fines related to motor vehicle convictions, rather than suspension penalties due to the convictions themselves (such as suspension for a DUI).
- Approximately 1 in 6 Virginia drivers has their license suspended for non-payment of court costs and fines and, therefore, cannot drive to work, medical appointments, the grocery store, church, or their children’s schools.

² Our review included the General District Court (GDC) policies in Caroline, King William, Lunenburg, and Patrick Counties, which were provided directly to LAJC by those courts, and all of the GDC policies available as of March 28, 2016 on the Virginia Courts website at: http://www.courts.state.va.us/online/ppp_fines_costs/dc/home.pdf. For a breakdown of the courts reviewed, and the courts outside the scope of this review, please see Exhibit 2.

³ See HB1506 (2015).

⁴ These Recommendations were endorsed by the Judicial Council of Virginia at its meeting on May 18, 2015.

⁵ When a debtor pays in full or establishes a payment plan with the court, the order of license suspension is lifted with respect to all cases in that court that are included in the payment plan.

Most payment plans result in default.

In fiscal years 2008-2012, of the GDC cases that did result in payment plans, 61% resulted in default.⁶⁷

Default is likely when courts collect inadequate financial information from debtors.

Many courts do not collect meaningful financial information from defendants in traffic or misdemeanor cases. The defendant's financial information is typically deemed relevant only in cases in which the defendant may serve jail time. In these cases, which include just a subset of the misdemeanor docket, defendants complete a DC-333 form, which provides the court with a summary of the defendant's financial circumstances. This information then is used to determine if the defendant is eligible for a court-appointed attorney pursuant to Va. Code §19.2-159.

The DC-333, which is signed under oath, requires defendants to disclose:

- Whether they received needs-based public assistance (TANF, SNAP, etc.)
- Net income, net spousal income, and other sources of income;
- Employment history, including whether they are unemployed;
- Number of household dependents;
- Medical expenses;
- Court-ordered support payment/alimony;
- Child-care payments (e.g., day care); and
- Other exceptional expenses.

More commonly, when defendants are unable to pay court debt within 30 days, GDC defendants are instructed to fill out a DC-210 form. The DC-210 form asks only for employer name and "monthly income," and fails to capture other pertinent information such as expenses, other court-ordered financial obligations, and household size. Unlike the DC-333 form, the DC-210 form does not specify whether it seeks gross or net income data. Without a more comprehensive view of a debtor's financial circumstances, and given the considerable volume of cases pending on each court's docket, the courts are missing critical information that might permit realistic and sustainable payment plans to issue in appropriate cases.⁸

⁶ Likewise, during the same period, of the Circuit Court cases that resulted in payment plans, 66% resulted in default.

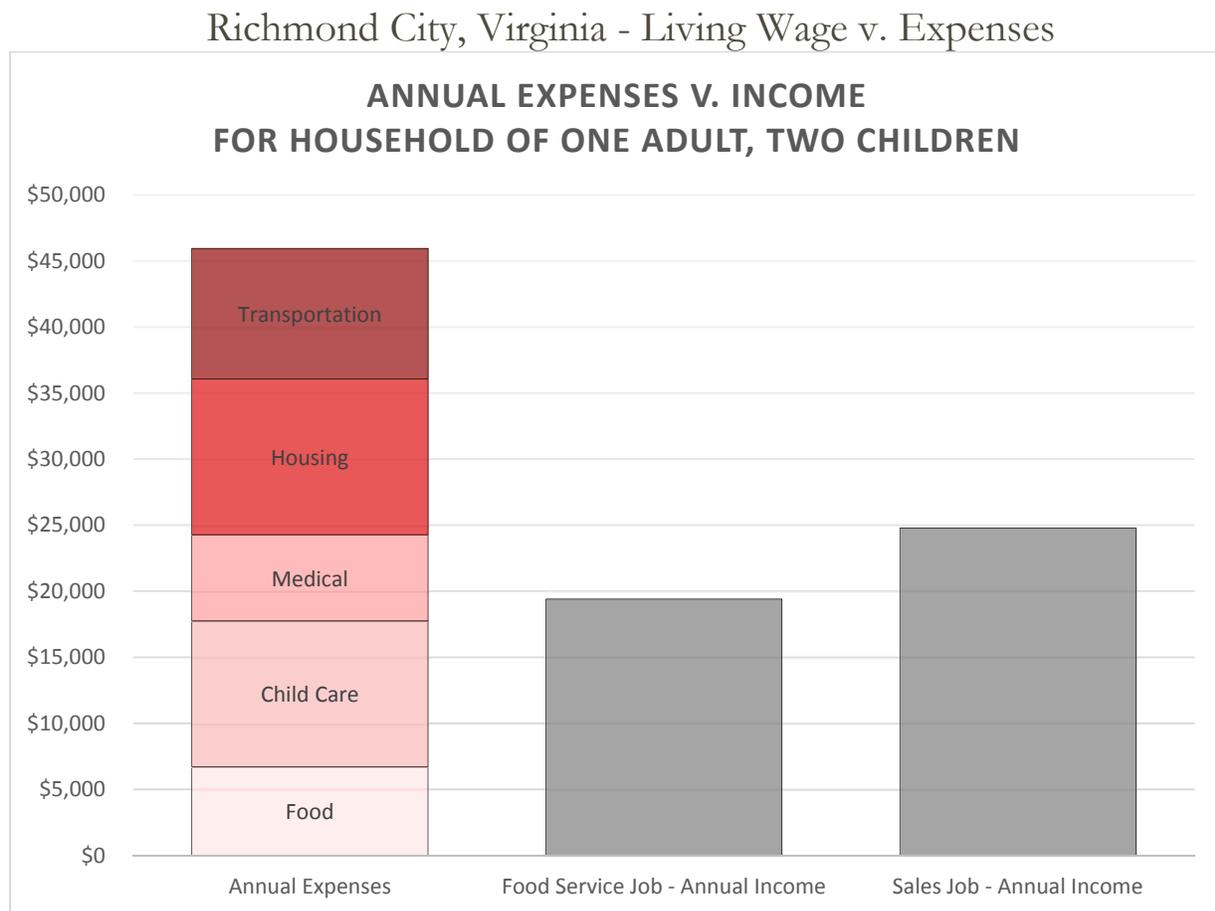
⁷ This data was provided to the Legal Aid Justice Center by the Auditor of Public Accounts in response to a FOIA request that sought some of the underlying data used to support the April 2013 "Commonwealth Court Collections Review" of the Auditor of Public Accounts. A copy of the chart that supports this analysis is attached at Exhibit 3.

⁸ Indigent debtors require different treatment than those who are unable to pay immediately but could comply with realistic payment plan terms. Just as recipients of TANF, SNAP, Medicaid, and SSI are presumptively eligible for indigent defense services, indigent debtors could be presumptively eligible for full or partial remission of court costs or fines. Given the volume of cases pending in the courts and the substantial amount of costs and fines that are imposed but remain uncollected each year, such a presumption may be needed to strike an appropriate balance between collecting court costs and fines (when possible) and ensuring that collateral hardships (such as the administrative costs borne by

For many debtors, paying costs and fines first could mean taking food off the table.

Absent this key financial information, courts may have a particularly difficult time appreciating what it truly means to be unable to pay (e.g., “I can pay child support, buy food, or pay court costs this month, but I can’t do all three”) or why a payment plan that requires payment of “just \$50 a month” may be, in fact, out of reach for some Virginians.

The following chart compares annual income for a food service and a sales job in a one adult, two children household in Richmond City against the typical estimated annual expenses for transportation, housing, medical, child care, and food expenses.⁹



Without an individualized inquiry into ability to pay, payment plan terms will likely remain unrealistic or unsustainable, and we may expect that a significant percentage of payment plans will continue to result in default.

the courts, and the loss of economic and employment opportunity caused by driver’s license suspensions) are balanced appropriately. Full consideration of this complex issue is outside the scope of this report.

⁹ Source: MIT 2014 living wage data for Richmond City. <http://livingwage.mit.edu/counties/51760>. MIT has estimated typical expenses and wages for both a statewide Virginia average as well as in individual Virginia cities and towns.

Payment Plan Policy Analysis

A significant number of Virginia General District Courts have implemented written payment plan policies that impose considerable hurdles at two pivotal points in the process: 1) barriers to a first payment plan, and 2) barriers imposed after a single default.

The following analysis describes these barriers in greater detail. It should be noted that the payment plans are narrative in form; accordingly, our efforts to quantify the number of payment plans that have a given feature required are, in some cases, an exercise of judgment.

Barriers to Establishing a First Payment Plan

The following payment plans include practices that create significant barriers to establishing an initial payment plan, especially for low-income debtors.

ONE: The Judicial Council Recommendations state that in determining the conditions of a deferred or installment plan, the court should “assess the specific financial conditions” of a debtor.

We reviewed the policies to determine whether the court collects individual financial data from the debtor before setting payment plan terms, either by requiring completion of the DC-333 form or by reference in the policy to the types of financial information the court would collect or consider.

Findings

At least 65 of the 105 General District Courts (62%) appear to collect little to no data about a debtor’s individual financial circumstances before establishing a payment plan. A list of these courts is attached in Exhibit 4. In nearly half of the courts reviewed, the repayment schedule is driven by (1) the total amount owed or (2) a fixed number of months to pay. In these cases, the individual debtor’s ability to pay plays little to no role in crafting the payment terms:

The amount of the debt owed, and not the debtor’s financial circumstances, determines the amount of time a debtor is given to pay in at least 41 of the 105 courts (39%). (See Exhibit 5.) For example:

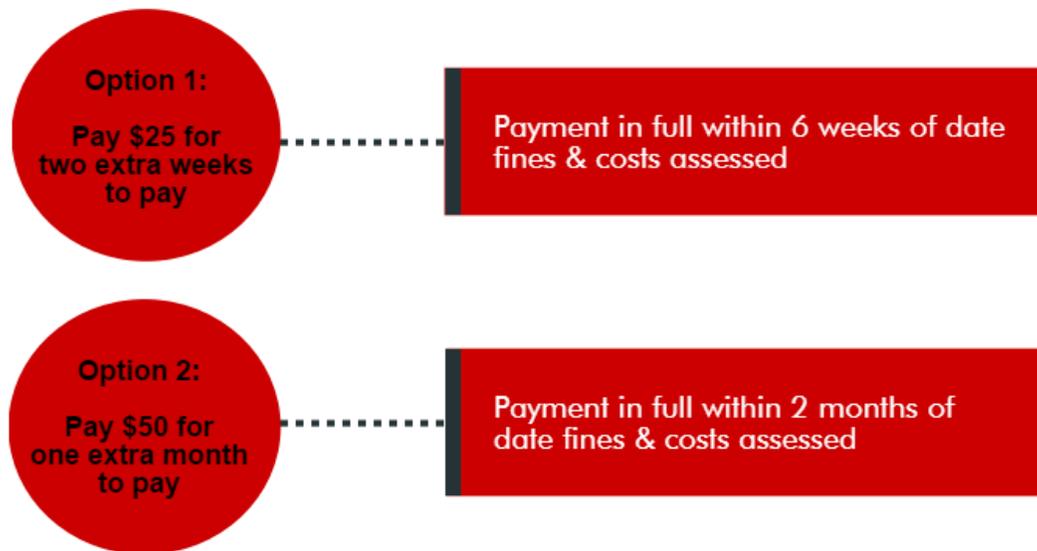
Amount of Debt Owed:	Amount of Time to Pay:
\$100-\$150	2 months to pay
\$150-\$500	6 months to pay

In a different subset of courts, a fixed number of months, and not the debtor’s financial circumstances, determine the amount of time a debtor is given to pay:

- Cumberland, Danville, Goochland (6 months/180 days to pay)
- King George (12 months to pay \$499 or less)
- Mecklenburg (90 days to pay)
- Pittsylvania (60 days to pay, extension possible)
- Richmond GDC (criminal & traffic) (120 days to pay, additional time possible if 20% balance paid)
- The Virginia Beach General District Court policy is particularly rigid:

Virginia Beach GDC Policy

City Population:
448,479



Additional time to pay may be negotiated prior to default, but only after the initial payment plan has been established.

"A 30 day extension is the most that will be given at one time."

Some courts presume that all debtors can pay “just \$50” to establish a payment plan. In at least 28 of the 105 courts (27%), a minimum payment of \$50 or more is required to establish a payment plan. (See Exhibit 6.)

Some courts require "just \$50" to establish a payment plan.

Compare with Frederick/Winchester GDC: "In determining the conditions of an installment plan, the court will consider the specific financial condition of a defendant upon completion of a financial statement with the court, Form DC-333."

TWO: The Judicial Council Recommendations indicate that courts should consider the debtor’s financial obligations in other courts in assessing ability to pay.

Findings

At least 90 of the 105 General District Court policies (86%) make no reference to the debtor’s financial obligations in other courts and do not appear to use it to determine how much time a debtor will be provided to pay his debts. (See Exhibit 7.)

A larger question implied—but not answered—by the Recommendations is which debts should take priority over others. For instance, if a debtor has been ordered to make monthly child support payments, owes restitution in jurisdiction A, and now is ordered to pay court costs in jurisdiction B, which of the three debts takes priority? What mechanisms exist to ensure that any court costs now imposed are realistic?

Some courts will extend the time originally granted to pay if the debtor has a record of payment. For instance, in Suffolk¹⁰, an additional deferral may be granted “provided the Court has received satisfactory and timely payments during the previous 90-day period.”

By incentivizing payments in this way, the courts may influence the response of those debtors who are able to pay. However, such policies will further impair the low-income debtors who are least able to make payments.

THREE: The Judicial Council Recommendations state that each court should ensure that debtors have the option to perform community service to offset their debts.

Findings

At least 59 of the 105 General District Courts (56%) make no reference to community service as a means of offsetting court costs and fines. (See Exhibit 8.) Community service is not a solution for all debtors. In some communities, there are limited organizations willing to supervise this work. In others, debtors may lack transportation to community service sites. However, including the community service option in the policy alerts debtors that they may have additional options and may lead to the development of additional service opportunities.

¹⁰ Southampton, Danville and Rockingham/Harrisonburg have similar provisions.

Among the jurisdictions that do offer community service, there are significant differences in how it is used to offset court costs. For example:

Accomack, Northampton	Frederick/ Winchester	27 th Judicial Circuit (includes Floyd, Pulaski, Montgomery and others)
Nonprofit organization supervises service. Probation officer also plays a role in supervision.	Community service is supervised by a probation officer with the office of Community Corrections.	Community service hours are supervised by New River Valley Community Service.
Service hours are credited at minimum wage rate, but capped at \$174 in total community service hours.	Community service is credited at \$10 per hour. ¹¹	Service hours are credited at minimum wage rate.

In several courts, community service opportunities are limited and may not be used to offset costs and fines when the debtor’s driver’s license has been suspended. Charles City, Gloucester, King William, Lee, Mathews/Middlesex and New Kent each contain language:

“**Community Service in lieu of fines and costs** is available to anyone who meets the guidelines for indigent persons and whose privilege to drive is not currently suspended for failure to pay fines/costs on the accounts in question. Please check with the Clerk’s Office for more details. This option is NOT AVAILABLE for restoration of driving privileges or payment of restitution.”

(Emphasis in original.) This limitation is not required by Va. Code to §19.2-354(C).

FOUR: The Judicial Council Recommendations state that a down payment should not be required to enter into a deferred payment plan.

Findings

Despite this guidance, at least 19 of the 105 General District Courts (18%) require a down payment to establish a deferred payment plan, even prior to a single default. (See Exhibit 9.¹²) After a default in the 6th Judicial District, the courts require 50% down or \$200, whichever is less, to receive up to four additional months to pay in full.

¹¹ Frederick/Winchester credit community service hours at an hourly rate that exceeds minimum wage, as permitted by Va. Code to §19.2-354(C). By setting this wage rate above minimum wage, the court holds debtors accountable, while reducing slightly the number of hours that require supervision. MIT has identified living wage rates for each Virginia county and metropolitan statistical area at: <http://livingwage.mit.edu/states/51/locations>.

¹² In some courts, such as King & Queen, Madison, and Warren, a down payment is only required after a default. See Exhibit 8. In others, such as Hanover, Petersburg, and Virginia Beach, the down payment amount increases after a single default.

Barriers to Establishing Payment Plan after a Single Default

Many payment plan policies create significant barriers after an individual defaults on a payment plan. Some Virginia General District Courts utilize installment plans, while others use deferred plans or a combination of the two.

ONE: The Judicial Council Recommendations state that if a down payment is required to enter an installment plan, the amount should be minimal so as not to bar access to the plan.

Findings

In at least 26 of 105 GDC courts (25%), a significant down payment is required to enter an installment plan after a single default. In some cases, the down payment is calculated as a percentage of the total debt owed; in other cases, the down payment is a fixed dollar amount.

Significant down payment required to establish installment plan after default, calculated as a percentage of total debt owed:

- In Buchanan, a 50% down payment is required after default to reestablish payment plan. “Balance of account paid in \$100.00 per month installments... Only one chance to participate in a new time to pay agreement.” There are no exceptions or special circumstances described in the policy.
- In Franklin and Pittsylvania, if debtors owe more than \$500 at the time of default, they must pay 50% down to begin a new installment payment.
- In Charlotte and Greene, debtors must pay 50% down to begin a new installment payment irrespective of the amount they owe.
- In Hampton, a 25% down payment is required unless the debtor proves that a lesser amount is warranted.¹³

Compare with Alexandria GDC

Policy requires 20% down after default to establish a subsequent deferred or installment plan, but also states:

“Individual circumstances may require different agreements, which can be made. An assessment will be made of the specific financial conditions of a defendant. A defendant’s other obligations can be considered.”

¹³ Similarly, in Accomack, Harrisonburg/Rockingham and Northampton, significant down payments are required to reestablish an installment or deferred payment plan. These courts permit exceptions to this standard pay plan if the debtor can demonstrate through a written application and financial statement that “special circumstances should be considered....”

Significant down payment required to establish installment plan after default, calculated as a dollar amount:

At least 17 General District Courts require a significant down payment amount (\$50+) and in some cases, a waiting period, to establish an installment payment plan after a single default:

- \$50 down payment: Orange, Portsmouth (if total is \$500 or less)
- \$100 down payment: Appomattox, Buckingham, Cumberland, Halifax, Prince Edward, Virginia Beach
- \$100 down payment or completion of 12 community service hours, plus passage of 90 days since last plan: 25th Judicial District (Alleghany, Augusta, Bath, Botetourt, Buena Vista, Highland, Lexington/Rockbridge, Staunton, Waynesboro).

TWO: The Judicial Council Recommendations state that debtors have a statutory right to approach the court to establish a new payment plan after a default and therefore courts should not have a blanket prohibition barring a debtor's access to a subsequent payment plan.

Findings

A small minority of courts, about 10%, still have blanket prohibitions barring debtors from establishing payment plans after default. (See Exhibit 10.) A few of these policies are described below:

Amelia: A debtor may establish one “subsequent payment plan” after default. “If the defendant defaults on the subsequent payment plan, he/she must pay fines and costs in full in order to have license reinstated.”

Buchanan: After a single default, debtors have only one chance to establish a new payment plan. Debtors must pay half of the total balance due and then pay a minimum of \$100/month until the debt is paid in full.

King & Queen GDC: If a debtor has defaulted on a payment plan and owes more than \$500, the court will evaluate the debtor's financial circumstances to determine “ability to make installment payments.” The policy suggests that debtors, who lack sufficient “disposable income” to pay installment payments of at least \$25 per week, are not permitted to establish such plans.

Virginia Beach GDC: In addition to a significant down payment, Virginia Beach GDC allows just one chance at a payment plan to restore licensure after a single default.

Virginia Beach GDC Policy, After a Single Default



Minimum \$100 down payment required to enter a payment plan to restore a driver's license.



"If this new agreement becomes delinquent, the license will re-suspend and the defendant shall not be eligible for another Time to Pay Agreement."

THREE: The Judicial Council Recommendations state that a debtor whose fines and costs have been referred to a collection agency under Virginia Code § 19.2-349 shall nevertheless be eligible to enter into an initial or subsequent payment plan with the court.

In at least a few jurisdictions, after a debtor has defaulted on his/her payments and has been referred to a collection agency, the debtor no longer has the option to enter into a payment plan with the court:

Richmond GDC (Criminal and Traffic): "A defendant can enter into a payment agreement with [collection agent] Parrish and Lebar if court costs are delinquent and have already been transmitted to the collection agency."

Danville GDC: "All cases will be transferred to Commonwealth Collections after the 41st day following the last due date. Once the account is transferred to Commonwealth Collections, all efforts to collect in whatever form or manner will originate from Commonwealth Collections."

Henrico GDC: "Payment arrangements may be set up at the Court ONLY if the monies have not been transmitted to our Collection Agency."

Hampton GDC: This policy describes the role that the Department of Taxation plays in its collection efforts. Hampton's policy warns debtors:

"The Court must receive your payment on or before the due date. No extensions or reductions will be granted. Entering a 'Restored' Agreement will not recall your account(s) from the Department of Taxation. You may still be subject to a Tax Refund Interception. The 'Restored' agreement will not stop a lien that the court's collection agent, the Hampton Treasurer's Office, may place against your pay check."

Conclusion

As the foregoing analysis reveals, Virginia’s General District Courts issued written payment policies that diverge widely from each other and in many critical ways disregard, and fall far short of, the Recommendations. Common problems include policies that fail to consider the specific financial conditions of debtors, set fixed payment amounts, require substantial down payments, and/or put up barriers to entry into subsequent payment plans.

The Judicial Council of Virginia exercised commendable leadership by encouraging and endorsing the Recommendations, and they represent an important first step toward reform. Nonetheless, this analysis should not be read to suggest that the Recommendations themselves adequately address the challenging issue of court debt. Much more must be done to improve payment plan policies to ensure that Virginia’s court debt collection system does not punish people solely for their poverty or cause them to accumulate debilitating debts they can never hope to repay.

Indeed, growing national attention is focusing on court debt and the ways in which assessment and recoupment systems do—or do not—give adequate attention to indigence and inability to pay.¹⁴ This analysis does not address questions such as how ability-to-pay should be taken into account at the time that financial obligations are assessed; whether full or partial remission of financial obligations is required when a debtor cannot afford to pay and is unlikely to be able to pay in the foreseeable future; and whether any enforcement action, including driver’s license suspension, may be taken against indigent debtors upon default.

¹⁴ See, e.g., “Dear Colleague” Letter, Office for Access to Justice, Civil Rights Division, U.S. Department of Justice, March 14, 2016 (listing “legal obligations with respect to fines and fees and [] shar[ing] best practices”), available at <https://www.justice.gov/crt/file/832461/download>.

Exhibit 1: Judicial Council Recommendations

2015

Judicial Council of Virginia



Report to the General Assembly and Supreme Court of Virginia

**Recommendations for the Collection of Unpaid Fines and Court Costs
Pursuant to Chapter 21 of Title 19.2 (§§ 19.2-339 through -368)
and the Suspension of Driving Privileges Pursuant to § 46.2-395 of the Virginia Code**

Office of the Executive Secretary
Supreme Court of Virginia

Endorsed by the Judicial Council of Virginia
May 18, 2015

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.

Given these purposes, a court should develop policies and establish payment guidelines that facilitate payment by defendants of these financial obligations so as to avoid the suspension of driver's licenses or other sanctions.

In order to assist courts in establishing written guidelines for determining the conditions of deferred or installment payment agreements for a defendant owing fines and costs¹, the Judicial Council of Virginia recommends the following practices and procedures:

▶ Since a court is statutorily required to order a defendant who is unable to pay fines and costs within 30 days to pay those fines and costs "in deferred payments or installments," a court should not have blanket refusals to enter into time-to-pay agreements with defendants. Va. Code § 19.2-354 A.

▶ Eligibility for a payment agreement should not be restricted based on the type of offense which resulted in the fine and costs or the nature of the financial obligation (e.g., restitution, penalty, etc.). All unpaid fines and costs, of whatever source or type, should be eligible.

▶ Since a court is obligated to "order the defendant to pay such fine, restitution, forfeiture or penalty and any costs . . . in deferred payments or installments," courts should offer defendants the option of deferred or installment payment plans. Va. Code § 19.2-354 A.

¹ The collection process applies to court-ordered "fines, court costs, forfeitures, restitution, and penalties." Va. § 46.2-395. For convenience, when this policy refers to "fines and costs," reference to these other types of debts is also intended.

▶ In determining the conditions of a deferred or installment plan, a court should assess the specific financial conditions of a defendant, as opposed to applying fixed payment amounts based solely on the amount of the fines or costs. Va. Code § 19.2-355.

▶ Defendants who have unpaid fines and costs in more than one court will need to pay or establish payment plans with respect to each court in order to remove the suspension of their driving privileges. Accordingly, a court should consider the defendant's other obligations in determining the amount needed for down payments and installment payments.

▶ Since "installment or deferred payment agreements shall include terms for payment if the defendant participates in a [community service] program," each court should ensure that a viable community service program is available as an option for suitable participants in deferred or installment payment plans. Va. Code § 19.2-354 A and C. Any portion of the community service completed should be credited to the defendant's obligations.

▶ A down payment should not be required to enter into a payment plan when the agreement sets forth deferred payments.

▶ If a down payment is required to enter into an installment plan, it should be a minimal amount calculated to facilitate entry into a plan. This consideration is especially important if the down payment may function to bar access to the installment plan process.

▶ Since a defendant who has defaulted on a payment plan has a statutory right to approach the court seeking entry into a new payment plan, courts should not have a blanket prohibition barring such a defendant's access to a subsequent payment plan. Va. Code § 46.2-395 B.

▶ If a defendant enters into a subsequent payment plan, then after payment of the reinstatement fee to the Department of Motor Vehicles, the defendant's driver's license "shall thereby be restored." Va. Code § 46.2-395 B. A court should not require a defendant to establish a payment history on a subsequent payment plan before restoring the defendant's driver's license.

▶ No driver's license suspension should occur while a defendant is in good standing on a deferred or installment payment plan. Va. Code § 46.2-395 B.

▶ A defendant whose fines and costs have been referred to the collection process under Virginia Code § 19.2-349 shall nevertheless be eligible to enter into an initial or subsequent payment plan with the court.

► In district court only, when a defendant enters into a payment plan, “the [district] 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.” Va. Code § 19.2-354.

Exhibit 2: GDC Policies Reviewed

Accomack	Frederick/Winchester	Page
Albemarle	Fredericksburg	Patrick
Alexandria	Galax	Petersburg
Allegheny	Giles	Pittsylvania
Amelia	Gloucester	Portsmouth
Amherst	Goochland	Powhatan
Appomattox	Grayson	Prince Edward
Arlington	Greene	Prince George
Augusta	Greensville	Prince William
Bath	Halifax	Pulaski
Bedford	Hampton	Radford
Bland	Hanover	Rappahannock
Botetourt	Harrisonburg/Rockingham	Richmond GDC, Criminal
Brunswick	Henrico	Richmond GDC, Traffic
Buchanan	Henry	Roanoke City
Buckingham	Highland	Roanoke County
Buena Vista	Hopewell	Salem City
Campbell	Isle of Wight	Scott
Caroline	King and Queen	Shenandoah
Carroll	King George	Southampton
Charles City	King William	Stafford
Charlotte	Lee	Staunton
Chesapeake	Lexington/Rockbridge	Surry
Chesterfield	Loudoun	Sussex
Clarke	Louisa	Virginia Beach
Colonial Heights	Lunenburg	Warren
Craig	Lynchburg	Waynesboro
Culpeper	Madison	Wise/Norton
Cumberland	Martinsville	Wythe
Danville	Mathews/Middlesex	
Dickenson	Mecklenburg	
Dinwiddie	Montgomery	
Emporia	Nelson	
Fairfax City	New Kent	
Fairfax County	Newport News Traffic	
Falls Church	Northampton	
Floyd	Nottoway	
Franklin	Orange	

Exhibit 2: GDC Policies Not Reviewed

Bristol
Charlottesville
Essex
Fauquier
Fluvanna
Lancaster
Newport News Criminal
Norfolk
Northumberland
Richmond County
Richmond Manchester
Russell
Smyth
Spotsylvania
Suffolk
Tazewell
Washington
Westmoreland
Williamsburg/James City
York

**Exhibit 3: Payment Plan Default Rates,
Source: Auditor of Public Accounts**

Circuit court payment plans			
Payment plan?	In default?	Number of cases	Percent of total
No	Yes	255,147	44%
No	No	69,117	12%
Yes	Yes	165,241	29%
Yes	No	84,194	15%

General district court payment plans			
Payment plan?	In default?	Number of cases	Percent of total
No	Yes	3,979,644	41%
No	No	5,636,493	58%
Yes	Yes	35,080	<1%
Yes	No	22,765	<1%

Juvenile and domestic relations court payment plans			
Payment plan?	In default?	Number of cases	Percent of total
No	Yes	196,303	46%
No	No	172,128	40%
Yes	Yes	44,671	10%
Yes	No	18,093	4%

Totals			
Payment plan?	In default?	Number of cases	Percent of total
No	Yes	4,431,094	41.49%
No	No	5,877,738	55.04%
Yes	Yes	244,992	2.29%
Yes	No	125,052	1.17%

Source: Virginia Auditor of Public Accounts, 2014

Exhibit 4: Policies that do not specify that the court collects detailed information about the debtor's financial condition

Albemarle	Henry
Allegheny	Highland
Amelia	Hopewell
Amherst	Lexington/Rockbridge
Augusta	Louisa
Bath	Lunenburg
Bedford	Lynchburg
Bland	Martinsville
Botetourt	Mecklenburg
Brunswick	Montgomery
Buchanan	Nelson
Buena Vista	Nottoway
Campbell	Orange
Carroll	Page
Charlotte	Patrick
Chesterfield	Petersburg
Colonial Heights	Pittsylvania
Craig	Powhatan
Danville	Prince George
Dickenson	Pulaski
Dinwiddie	Radford
Emporia	Richmond GDC, Criminal
Floyd	Richmond GDC, Traffic
Franklin	Roanoke City
Galax	Roanoke County
Giles	Salem City
Grayson	Staunton
Greene	Surry
Greensville	Sussex
Halifax	Virginia Beach
Hanover	Waynesboro
Harrisonburg/Rockingham	Wythe
Henrico	

Exhibit 5: In these policies, for an initial payment plan, the amount of debt owed determines the amount of time provided to pay in full

Accomack	King and Queen
Albemarle	King William
Amelia	Lee
Amherst	Loudoun
Bedford	Lynchburg
Campbell	Martinsville
Charles City	Mathews/Middlesex
Charlotte	Nelson
Chesapeake	New Kent
Chesterfield	Newport News Traffic
Colonial Heights	Northampton
Dinwiddie	Nottoway
Fairfax	Page
Fairfax County	Patrick
Frederick	Petersburg
Fredericksburg	Powhatan
Gloucester	Scott
Greene	Stafford
Hanover	Warren
Henrico	Wise/Norton
Henry	

Exhibit 6: In these policies, for an initial payment plan, entered within 30 days of sentencing, the minimum monthly payment is \$50 or more.

Accomack
Allegheny
Augusta
Bath
Botetourt
Buena Vista
Carroll
Charlotte
Floyd
Galax
Giles
Grayson
Halifax
Highland
Lexington/Rockbridge
Loudoun
Madison
Montgomery
Northampton
Patrick
Pulaski
Radford
Roanoke City
Roanoke County
Salem City
Staunton
Waynesboro
Wythe

Exhibit 7: Policies that do not require the court to consider any potential financial obligations that the debtor has to other courts

Accomack	Galax	Newport News Traffic
Albemarle	Giles	Northampton
Allegheny	Gloucester	Nottoway
Amelia	Goochland	Orange
Amherst	Grayson	Page
Augusta	Greene	Patrick
Bath	Greensville	Petersburg
Bedford	Halifax	Pittsylvania
Bland	Hanover	Portsmouth
Botetourt	Harrisonburg/Rockingham	Powhatan
Brunswick	Henrico	Prince Edward
Buchanan	Henry	Prince George
Buena Vista	Highland	Pulaski
Campbell	Hopewell	Radford
Caroline	Isle of Wight	Rappahannock
Carroll	King and Queen	Richmond GDC, Criminal
Charles City	King George	Richmond GDC, Traffic
Chesapeake	King William	Roanoke City
Chesterfield	Lee	Roanoke County
Colonial Heights	Lexington/Rockbridge	Salem City
Craig	Louisa	Scott
Danville	Lunenburg	Southampton
Dickenson	Lynchburg	Staunton
Dinwiddie	Madison	Surry
Emporia	Martinsville	Sussex
Fairfax	Mathews/Middlesex	Virginia Beach
Fairfax County	Mecklenburg	Warren
Floyd	Montgomery	Waynesboro
Franklin	Nelson	Wise/Norton
Fredericksburg	New Kent	Wythe

Exhibit 8: Policies that do not mention community service as a substitute for payment court costs and fines.

Albemarle	King and Queen
Amelia	King George
Amherst	Louisa
Appomattox	Lunenburg
Arlington	Lynchburg
Bedford	Martinsville
Brunswick	Mecklenburg
Buckingham	Nelson
Campbell	Newport News Traffic
Caroline	Nottoway
Chesterfield	Orange
Clarke	Page
Colonial Heights	Patrick
Craig	Petersburg
Cumberland	Portsmouth
Dinwiddie	Powhatan
Emporia	Prince Edward
Fairfax	Prince George
Fairfax County	Richmond GDC, Criminal
Falls Church	Richmond GDC, Traffic
Farmville	Roanoke City
Goochland	Roanoke County
Greene	Salem City
Greensville	Shenandoah
Hampton	Stafford
Hanover	Surry
Henrico	Sussex
Henry	Virginia Beach
Hopewell	Warren
Isle of Wight	

Exhibit 9

Group A: Policies that require a down payment to establish a first deferred payment plan

Group B: Policies that require a down payment on deferred payment plans after a default

Amelia
Amherst
Bedford
Campbell
Chesterfield
Colonial Heights
Dinwiddie
Fredericksburg
Hanover
Henrico
Louisa
Lynchburg
Nelson
Nottoway
Orange
Page
Petersburg
Powhatan
Virginia Beach

Albemarle
Brunswick
Chesterfield
Colonial Heights
Dinwiddie
Emporia
Greensville
Hanover
Hopewell
King and Queen
Madison
Petersburg
Prince George
Surry
Sussex
Warren

Exhibit 10: Policies that have blanket prohibitions barring debtors from establishing payment plans after default

Amelia
Amherst
Bedford
Buchanan
Campbell
Danville
King and Queen
Lunenburg
Lynchburg
Nelson
Virginia Beach