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HOUSE BILL NO. 1086

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 19.2-349 of the Code of Virginia, relating to restitution; collection.

Patron—O'Bannon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-349 of the Code of Virginia is amended and reenacted 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 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 15 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.

The victim to whom restitution is owed may authorize in writing the attorney for the Commonwealth to utilize the collection procedures under this section to collect the restitution owed, including any procedure in which costs or fees associated with collection may be paid out of the proceeds of the amounts collected. The amount collected pursuant to such authorization, including any costs or fees associated with collection, shall not exceed the total amount of restitution owed to the victim. The attorney for the Commonwealth shall settle and discharge the victim's claim for restitution when the amount of restitution collected plus the costs or fees associated with collection equals the total amount of restitution owed to the victim.

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

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59 Department of Taxation and the State Compensation Board shall establish procedures to be followed by
60 clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or
61 collection agents and may employ private attorneys or collection agencies, or engage other state agencies
62 to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct
63 a fee for services from amounts collected for violations of local ordinances.

64 The Department of Taxation and the State Compensation Board shall annually report to the Governor
65 and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and
66 unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit
67 and district court. The report shall include the procedures established by the Department of Taxation and
68 the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid
69 fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the
70 Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence
71 of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures
72 established by the Department of Taxation and the State Compensation Board.