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HOUSE BILL NO. 988

Offered January 25, 1994

A BILL to amend and reenact §§ 19.2-303, 19.2-349 and 46.2-395 of the Code of Virginia, relating to failure to pay fines, costs, etc.

Patrons—Baker, Bloxom, Giesen, Hamilton, Marshall and Wilkins

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-303, 19.2-349 and 46.2-395 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the accused on probation under such conditions as the court shall determine or may, as a condition of a suspended sentence, require the accused to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. *In every case in which the defendant is placed on probation, the payment of fines, costs, forfeitures, restitution and penalties shall be made a condition of such probation.* The judge, after convicting the accused of a felony, shall determine whether a copy of the accused's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation, *conditioned on the payment of fines, costs, forfeitures, restitution and penalties*, for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation, *conditioned on the payment of fines, costs, forfeitures, restitution and penalties*, for such time as the court shall determine.

§ 19.2-349. Clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; assistance by the office of the Attorney General.

The clerk of the circuit court and district court of every county and city shall submit to the judge of his court and to the attorney for the Commonwealth of his county or city a report of all fines, costs, forfeitures and penalties, 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 as of the last day of the quarter preceding the quarter in which such report is made. The quarterly report shall include the social security number or driver's license number of the defendant, if known. ~~It shall be the duty of the attorney for the Commonwealth to make inquiries into the reasons why such fines, costs, forfeitures, penalties and restitution remain unsatisfied. If it appears from such inquiries that any such amounts may be satisfied, the .~~ The clerk shall also notify the Department of Taxation at least quarterly to initiate setoff under the Setoff Debt Collection Act (§ 58.1-520, et seq.) for the collection of any unpaid fines, costs, forfeitures, restitution and penalties. The attorney for the Commonwealth forthwith shall cause proper proceedings, including garnishment proceedings, to be instituted for the collection and satisfaction thereof. If the attorney for the Commonwealth is of the opinion that it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth, he may contract with attorneys or private collection agencies, upon such terms and conditions as may be established by guidelines promulgated by the office of the Attorney General and the Executive Secretary of the Supreme Court, or request the office of the Attorney General or the office of the Executive Secretary to assist in the collection of unpaid fines, costs, forfeitures and penalties. The Attorney General and the Executive Secretary of the Supreme Court shall render such assistance, in the case of any judgment which remains unsatisfied for more than three months, and in any other circumstance they may provide such assistance in any manner they deem appropriate. The fees of any private attorneys or

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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.).

§ 46.2-395. (Effective January 1, 1994) Suspension of license for failure or refusal to pay fines or costs.

A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court costs, forfeitures, restitution, and penalties assessed against him for violations of the motor vehicle laws of the Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section, such fines and costs shall be deemed to include any fee assessed by the court under the provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-266 into an alcohol safety action program.

B. In addition to any penalty provided by law, when any person is convicted of any violation of this title, or any other law of the Commonwealth or of the United States pertaining to the driver or driving of a motor vehicle in the Commonwealth or of any valid local ordinance adopted pursuant to § 46.2-1300, and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. If the person has not obtained a license as required by this chapter, or is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to § 19.2-354, the clerk of the court that convicted the person shall send or provide the person written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective ten days from the date of conviction, if the fine and costs are not paid prior to the effective date of the suspension as stated on the notice. Notice shall be provided to the person at the time of trial or shall be mailed by first class mail to the address certified on the summons or bail recognizance document as the person's current mailing address, or to such mailing address as the person has subsequently provided to the court as a change of address. If so mailed on the date of conviction or within two days thereof, or if delivered to the person at the time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to avoid suspension by paying the fines and costs prior to the effective date. No other notice shall be required to make the suspension effective. A record of the person's failure or refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a scheduled payment.

D. If the person pays the amounts assessed against him subsequent to the time the license has been transmitted to the Department, and his license is not under suspension or revocation for any other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the person on presentation of the official report of the court evidencing the payment of the fine, costs, forfeiture, restitution, or penalty.

E. If the court has suspended or revoked the driver's license for any lawful reason other than this section, or the conviction is one for which revocation or suspension is required under any provision of this title, except for this section, then the suspension permitted under this section shall be in addition to, and run consecutively with, the revocation or suspension. The period of suspension shall be calculated from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has been paid.

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