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SENATE BILL NO. 854

Offered January 11, 2017

Prefiled December 2, 2016

A *BILL to amend and reenact §§ 19.2-349 and 19.2-354 of the Code of Virginia, relating to collection of unpaid court fines, etc.*

Patron—Stanley

Referred to Committee for Courts of Justice

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 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

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

66 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**
67 **restitution in installments or upon other terms and conditions; community work in lieu of**
68 **payment.**

69 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
70 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
71 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to
72 make payment of the fine, restitution, forfeiture, or penalty and costs within ~~30~~ 90 days of sentencing,
73 the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which
74 the defendant may be required to pay in deferred payments or installments. The court assessing the fine,
75 restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual
76 deferred or installment payment agreements. Any payment agreement authorized under this section shall
77 be consistent with the Rules of Supreme Court of Virginia, including any required minimum payments
78 or other required conditions. The requirements established by the Rules of Supreme Court of Virginia
79 shall be posted in the clerk's office and on the court's website, if a website is available. As a condition
80 of every such agreement, a defendant who enters into an installment or deferred payment agreement
81 shall promptly inform the court of any change of mailing address during the term of the agreement. If
82 the defendant is unable to make payment within ~~30~~ 90 days of sentencing, the court may assess a
83 one-time fee not to exceed \$10 to cover the costs of management of the defendant's account until such
84 account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to
85 § 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
86 deferred payment agreements shall include terms for payment if the defendant participates in a program
87 as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date
88 ordered, shall proceed in accordance with § 19.2-358.

89 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
90 any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in
91 any work release, home/electronic incarceration or nonconsecutive days program as set forth in
92 § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in
93 accordance with his installment or deferred payment agreement while participating in such program. If,
94 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
95 his participation in the program may be terminated until all fines, costs, forfeitures, restitution and
96 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
97 administrative head of any local correctional facility shall withhold such ordered payments from any
98 amounts due to such person. Distribution of the money collected shall be made in the following order of
99 priority to:

100 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
101 be disbursed according to the terms of such order;

102 2. Pay any fines, restitution or costs as ordered by the court;

103 3. Pay travel and other such expenses made necessary by his work release employment or
104 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

105 4. Defray the offender's keep.

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

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

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

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

120 E. The failure of the defendant to enter into a deferred payment or installment payment agreement

121 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow
122 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and
123 penalties.

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