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HOUSE BILL NO. 612

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 19.2-349 and 19.2-354 of the Code of Virginia, relating to fines, costs, forfeitures, penalties, and restitution; collection fees; assessment against incarcerated defendant; deferred payment agreement.

Patrons—Price, Bennett-Parker and Shin

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~~ *that* are delinquent more than ~~90~~ 180 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance ~~which that~~ remain unsatisfied, including those ~~which that~~ 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. The clerk of the circuit court and district court of every county and city shall submit quarterly to the attorney for the Commonwealth of his county or city and any probation agency that serves such county or city:

1. A list of all defendants with an outstanding balance of restitution ordered by the court served by such clerk. Such report shall include the defendant's name, case number, total amount of restitution ordered, amount of restitution remaining due, and last date of payment; and

2. A list of all accounts where more than ~~90~~ 180 days have passed since an account was sent to collections and no payments have been made toward fines, costs, forfeitures, penalties, or restitution. For accounts where restitution is owed, such report shall include the defendant's name, case number, and total amount of restitution and restitution interest due.

C. 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 ~~90~~ 180 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.

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59 D. The Department of Taxation and the State Compensation Board shall be responsible for the
60 collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354.
61 Persons owing such unsatisfied judgments or failing to comply with installment payment agreements
62 under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The
63 Department of Taxation and the State Compensation Board shall establish procedures to be followed by
64 clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or
65 collection agents and may employ private attorneys or collection agencies, or engage other state agencies
66 to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct
67 a fee for services from amounts collected for violations of local ordinances.

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

77 The Office of the Executive Secretary of the Supreme Court shall annually report to the Governor,
78 the General Assembly, the Chairmen of the House Committee for Courts of Justice and Senate
79 Committee on the Judiciary, and the Virginia State Crime Commission on the total of restitution
80 assessed, collected, and unpaid for each circuit and district court and the total of restitution collected and
81 deposited into the Criminal Injuries Compensation Fund pursuant to subsection I of § 19.2-305.1 by each
82 circuit and district court.

83 E. The provisions of this section shall not apply to any orders of restitution docketed in the name of
84 the victim or when it is ordered that an assignment of the judgment for restitution to the victim be
85 docketed.

86 **§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or**
87 **restitution in installments or upon other terms and conditions; community work in lieu of**
88 **payment.**

89 A. Any defendant convicted of a traffic infraction or a violation of any criminal law of the
90 Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile,
91 who is sentenced to pay a fine, restitution, forfeiture, or penalty may pay such fine, restitution,
92 forfeiture, or penalty and any costs that the defendant may be required to pay in deferred payments or
93 installments. The court assessing the fine, restitution, forfeiture, or penalty and costs shall authorize the
94 clerk to establish and approve individual deferred or installment payment agreements. If the defendant
95 owes court-ordered restitution and enters into a deferred or installment payment agreement, any moneys
96 collected pursuant to such agreement shall be used first to satisfy such restitution order and any
97 collection costs associated with restitution prior to being used to satisfy any other fine, forfeiture,
98 penalty, or cost owed, unless an order for restitution is docketed in the name of the victim or it is
99 ordered that an assignment of the judgment to the victim be docketed. Any payment agreement
100 authorized under this section shall be consistent with the provisions of § 19.2-354.1. The requirements
101 set forth in § 19.2-354.1 shall be posted in the clerk's office and on the court's website, if a website is
102 available. As a condition of every such agreement, a defendant who enters into an installment or
103 deferred payment agreement shall promptly inform the court of any change of mailing address during
104 the term of the agreement. If the defendant is unable to make payment within 90 days of sentencing, the
105 court may assess a one-time fee not to exceed \$10 to cover the costs of management of the defendant's
106 account until such account is paid in full. This one-time fee shall not apply to cases in which costs are
107 assessed pursuant to § 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
108 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant
109 participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid
110 in full by the date ordered, shall proceed in accordance with § 19.2-358.

111 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
112 any fines, costs, forfeitures, restitution, or penalties, he shall be required as a condition of participating
113 in any work release, home/electronic incarceration, or nonconsecutive days program as set forth in
114 § 53.1-60, 53.1-131, 53.1-131.1, or 53.1-131.2 to either make full payment or make payments in
115 accordance with his installment or deferred payment agreement while participating in such program. If,
116 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
117 his participation in the program may be terminated until all fines, costs, forfeitures, restitution, and
118 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
119 administrative head of any local correctional facility shall withhold such ordered payments from any
120 amounts due to such person. Distribution of the moneys collected shall be made in the following order

of priority to:

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

2. Pay any restitution as ordered by the court;

3. Pay any fines or costs as ordered by the court;

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

5. Defray the offender's keep.

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

The State Board of Local and Regional Jails shall promulgate regulations governing the receipt of wages paid to persons sentenced to local correctional facilities participating in such programs, the withholding of payments, and the disbursement of appropriate funds. The Director of the Department of Corrections shall prescribe rules governing the receipt of wages paid to persons sentenced to state correctional facilities participating in such programs, the withholding of payments, and the disbursement of appropriate funds.

C. The court shall establish a program and may provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work (i) before or after imprisonment or (ii) in accordance with the provisions of § 19.2-316.4, 53.1-59, 53.1-60, 53.1-128, 53.1-129, or 53.1-131 during imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court assessing the fine or costs against a person shall inform such person of the availability of earning credit toward discharge of the fine or costs through the performance of community service work under this program and provide such person with written notice of terms and conditions of this program. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

D. When the court has authorized deferred payment or installment payments, the clerk shall give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant to § 19.2-358.

E. The failure of the defendant to enter into a deferred payment or installment payment agreement with the court or the failure of the defendant to make payments as ordered by the agreement shall allow the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures, and penalties.

F. For any defendant sentenced to an active term of incarceration and ordered to pay any fine, cost, forfeiture, or penalty related to the charge that such defendant is incarcerated for, or any other charge that such defendant is convicted of, the court shall enter such defendant into a deferred payment agreement for such fines, costs, forfeitures, or penalties. The due date for such deferred payment agreement shall be set no earlier than the defendant's scheduled release from incarceration on the charge for which such defendant received the longest period of active incarceration.