

HOUSE BILL NO. 1655

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Price)

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

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~~ 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:

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

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

32 C. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be
33 instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The
34 attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such
35 service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter
36 into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the
37 clerk may agree to a process by which collection activity may be commenced ~~90~~ 180 days after judgment.

38 If the attorney for the Commonwealth does not undertake collection, he shall contract with (i)
39 private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body,
40 (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of
41 Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office
42 of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation
43 and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow
44 the procedures established by the Department of Taxation and the Compensation Board. Such guidelines
45 shall not supersede contracts between attorneys for the Commonwealth and private attorneys and
46 collection agencies when active collection efforts are being undertaken. As part of such contract, private
47 attorneys or collection agencies shall be given access to the social security number of the defendant in
48 order to assist in the collection effort. Any such private attorney shall be subject to the penalties and
49 provisions of § 18.2-186.3.

50 The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis
51 out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency

52 receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act
53 (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney
54 for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

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

64 The Department of Taxation and the State Compensation Board shall annually report to the
65 Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected,
66 and 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 established
72 by the Department of Taxation and the State Compensation Board.

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

