

SENATE BILL NO. 1159

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Boysko)

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.

79           E. Notwithstanding any other provision of law, no fines, costs, forfeitures, penalties, or restitution  
80 imposed in a criminal case or in a case involving a traffic infraction shall be subject to collection by the  
81 attorney for the Commonwealth or any collection agency on behalf of the attorney for the Commonwealth,  
82 including any private attorney and private or public collection agency, nor shall any collection fees,  
83 including administrative fees authorized by § 58.1-3958, or any other fees related to collection activities  
84 be assessed (i) for any period during which the defendant is incarcerated and (ii) for a period of 180 days  
85 following the date of the defendant's release from incarceration if the sentence includes an active term of  
86 incarceration.

87           F. The provisions of this section shall not apply to any orders of restitution docketed in the name  
88 of the victim or when it is ordered that an assignment of the judgment for restitution to the victim be  
89 docketed.

90           G. For the purposes of this section, "incarceration" or "incarcerated" means the same as this term  
91 is defined in § 8.01-195.10.

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