

1 SB417
2 167716-1
3 By Senator Marsh
4 RFD: Judiciary
5 First Read: 28-APR-15

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8 SYNOPSIS: Under existing law, a collection fee is
9 added to the total amount of funds due for
10 court-ordered restitution after a matter has been
11 transferred to the district attorney for collection
12 purposes. Under existing law, the total amount of
13 the collection fee is distributed to the district
14 attorney and the circuit clerk before any other
15 distributions to a victim or victims or any other
16 entity are made.

17 This bill would provide for a pro rata
18 distribution of the total amount collected by the
19 district attorney, the Unified Judicial System, and
20 the circuit clerk for court-ordered restitution and
21 other fines and court costs including the
22 distribution to victims of a pro rata share of any
23 collections.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

1
2 Relating to restitution recovery; to amend Sections
3 12-17-225, 12-17-225.2, 12-17-225.3, 12-17-225.4, and
4 12-17-225.7, Code of Alabama 1975, to provide further for the
5 collection of court-ordered restitution, victim compensation
6 assessments, bail bond forfeitures, court costs, fines, and
7 other court-ordered sums payable to the state or to crime
8 victims; to provide for the distribution of court-ordered
9 restitution collected by the district attorney; and require
10 that victims receive a pro rata share of amounts collected.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. This act shall be known and may be cited
13 as The Victim Restitution Fairness Act of 2015.

14 Section 2. Sections 12-17-225, 12-17-225.2,
15 12-17-225.3, 12-17-225.4, and 12-17-225.7, Code of Alabama
16 1975, are amended to read as follows:

17 "§12-17-225.

18 "It is the purpose of this legislation to ensure
19 that court-ordered restitution to crime victims, victim
20 compensation assessments, bail bond forfeitures, court costs
21 required by law, fines levied against criminals for wrongful
22 conduct, and other court-ordered sums payable to the state or
23 to the crime victims be paid in full and that cost of
24 collection be borne by the person who is responsible for
25 payment. The Legislature ~~of this state further~~ recognizes that
26 the district attorneys of the various judicial circuits are
27 mandated by law to represent the people of the state, and a

1 strong public policy dictates that restitution, court costs,
2 fines, and other court-ordered sums be enforced within each
3 judicial circuit by the district attorneys in conjunction with
4 the circuit clerks and local courts. The Legislature
5 recognizes that court personnel and the electronic system used
6 to administer the state's judicial system also provide a
7 resource for the collection of court-ordered monies.

8 "§12-17-225.2.

9 "(a) Once a defendant is 90 days delinquent in
10 making a requisite payment on a court-ordered sum of money
11 which that defendant owes and in addition to other notices
12 already sent to the defendant, the circuit court clerk or the
13 Administrative Office of Courts may send notice to the
14 nonpaying defendant of the defendant's noncompliance and the
15 additional 30 percent collection fee that has been added to
16 the amount owing if that amount is over 90 days delinquent and
17 a warning of the penalty for noncompliance. The circuit court
18 clerk or the Administrative Office of Courts shall send a
19 transmittal to the sentencing court at each notification of
20 the defendant regarding the defendant's noncompliance.

21 "(b) After sentencing and until the defendant makes
22 full payment of court-ordered monies, the court which
23 sentenced the defendant retains jurisdiction to order the
24 nonpaying defendant to a hearing and may have a nonindigent
25 defendant arrested for failure to pay the amount due and owing
26 pursuant to the sentence or for failure to appear at a
27 court-ordered appointment or hearing. The sentencing court or

1 another judge appointed by appropriate authority may revise
2 the sentence's terms of payment and impose lawful punishment
3 for failure to comply with the sentence for the purpose of
4 ensuring the defendant fully complies with the sentence.
5 Punishment for noncompliance with a sentence ordering payment
6 of court-ordered monies includes all forms recognized by
7 Alabama law for the enforcement of court orders.

8 "(c) The Administrative Office of Courts, the court,
9 or the circuit court clerk of the court shall notify the
10 district attorney in writing when any bail bond forfeitures,
11 court costs, fines, penalty payments, crime victims'
12 restitution, or victims' compensation assessments or like
13 payments in any civil or criminal proceeding ordered by the
14 court to be paid to the state or to crime victims have not
15 been paid or are in default and the default has not been
16 vacated. Upon written notification to the district attorney,
17 the restitution recovery division of the office of the
18 district attorney may collect or enforce the collection of any
19 funds that have not been paid or that are in default which,
20 under the direction of the district attorney, are appropriate
21 to be processed. In no event shall the Administrative Office
22 of Courts, a court, or circuit court clerk notify the district
23 attorney in less than 90 days from the date the payments are
24 due to be paid in full.

25 "§12-17-225.3.

26 "(a) After notification as provided in Section
27 12-17-225.2 the court-ordered payment becomes 90 days

1 delinquent, the district attorney may take all lawful steps
2 necessary in order to require compliance with the
3 court-ordered payments, including, but not limited to, any of
4 the following: (1) a petition for revocation of probation; (2)
5 a show cause petition for contempt of court; (3) any other
6 civil or criminal proceedings which may be authorized by law
7 or by rule of court. In addition, the district attorney may
8 issue appropriate notices to inform the defendant of the
9 noncompliance of the defendant and a warning of the penalty
10 for noncompliance.

11 "(b) With or without a district attorney taking
12 steps necessary in order to require compliance with
13 court-ordered payments, the sentencing court or other lawfully
14 appointed judge may take steps necessary to ensure the
15 nonpaying defendant makes payments, including, but not limited
16 to, any of the following: (1) ordering the defendant to appear
17 before the court; (2) ordering the arrest of a nonindigent
18 defendant for failure to pay; (3) ordering the arrest of the
19 defendant for failure to appear at a court hearing regarding
20 the defendant's court-ordered payments; and (4) suspension of
21 driver and other licenses, as allowed by Alabama law.

22 "(c) With or without the district attorney or court
23 taking steps necessary in order to require compliance with
24 court-ordered payments, the Administrative Office of Courts
25 may use all lawful means to ensure the nonpaying defendant
26 makes payments, including, but not limited to, any of the
27 following: (1) sending notice to the nonpaying defendant of

1 the delinquency and, if the delinquency is over 90 days in
2 duration, the additional 30 percent collection fee that has
3 been added to the amount the defendant owes; (2) assessing
4 state or federal income tax refunds; (3) sending out notices
5 of noncompliance to defendants and warning of the penalty for
6 noncompliance; and (4) suspension of driver and other
7 licenses, as allowed by Alabama law.

8 "(d) A nonpaying defendant shall be defined as any
9 defendant who has not made a court-ordered payment within 30
10 days after it is due and owing, unless the sentencing court's
11 sentencing order allows the defendant to make payments less
12 frequently than monthly. If the sentencing court's order
13 allows payment less frequently than monthly, then the
14 defendant becomes a non-paying defendant upon failure to meet
15 the sentencing order schedule for payment.

16 "§12-17-225.4.

17 "(a) After a matter has been transferred to a
18 district attorney under Section 12-17-225.2, a court shall
19 assess court-ordered payment becomes 90 days delinquent, there
20 shall be an automatic assessment of a collection fee of 30
21 percent of the funds due which shall be added to the amount of
22 funds due. Any amount collected pursuant to this division
23 shall be distributed as follows:

24 "(1) ~~Seventy-five percent of the collection fee~~ Ten
25 and thirty-eight one hundredths percent of the total amount
26 collected shall be distributed pro rata along with victim
27 restitution and other costs to the county district attorney's

1 fund to be expended for lawful purposes for the operation of
2 the office of the district attorney. Funds provided to the
3 district attorney by this ~~division~~ subdivision shall not
4 reduce the amount payable to the district attorney under any
5 local act or general act or reduce or affect the amounts of
6 funding allocated by law to the budget of the district
7 attorney. The funds shall be audited as all other state funds
8 are audited.

9 "(2) Ten and thirty-eight one hundredths percent of
10 the total amount collected shall be distributed pro rata along
11 with victim restitution and other costs to the State Judicial
12 Administration Fund established by Section 12-19-310 to be
13 expended for the operation of the court system. Funds provided
14 to the State Judicial Administration Fund by this subdivision
15 shall not reduce the amount payable to the court system under
16 any local act or general act or reduce or affect the amounts
17 of funding allocated by law to the budget of the court system.
18 The funds shall be audited as all other state funds are
19 audited.

20 ~~"(2) (3) Twenty-five percent of the collection fee~~
21 Two and thirty-one one hundredths percent of the total amount
22 collected shall be distributed pro rata along with victim
23 restitution and other costs to the circuit clerk's fund which
24 shall be kept and maintained by the circuit clerk in a
25 separate account to be used for the operation of the office of
26 the clerk to include, but not be limited to, equipment
27 purchases, education, and other office related expenses

1 including personnel. Funds retained by the circuit clerk shall
2 not reduce the amount payable to the circuit clerk under any
3 local act or general act or reduce or affect the amounts of
4 funding allocated by the Administrative Office of Courts to
5 the budget of the circuit clerk. The funds shall be audited as
6 all other state funds are audited.

7 "(4) All other recipients of disbursements of
8 court-ordered funds, including victims, shall receive a pro
9 rata portion of every payment made by a defendant paying the
10 costs.

11 ~~"The Legislature may, by local law, adjust the~~
12 ~~distribution in this section.~~

13 ~~"The remainder of the fees, fines, penalties,~~
14 ~~charges, court costs, and bail bond forfeitures after the~~
15 ~~deduction for collection shall be disbursed as provided by law~~
16 ~~on a monthly basis.~~

17 ~~"(3) (b) This division section shall not affect the~~
18 ~~right of the office of the district attorney to proceed with~~
19 ~~the prosecution of any violation as currently provided by law.~~

20 "§12-17-225.7.

21 "Any district attorney and the Administrative Office
22 of Courts in this state ~~shall be allowed to~~ may contract with
23 a private collection agency ~~under the same terms and~~
24 ~~conditions as set forth in this division~~ to pursue court
25 ordered payments due and owing in that district attorney's
26 jurisdiction. The Administrative Office of Courts may contract

1 with a private collection agency to pursue court-ordered
2 payments due and owing throughout the state."

3 Section 3. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.