

2021 Regular Session

HOUSE BILL NO. 288

BY REPRESENTATIVE MAGEE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PENALTIES: Provides relative to the effective date of certain provisions regarding the financial obligations of criminal offenders

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

AN ACT

To enact Code of Criminal Procedure Article 875.2 and to repeal Code of Criminal Procedure Article 875.1, relative to the financial obligations for criminal offenders; to provide relative to the payment of fines, fees, costs, restitution, and other monetary obligations related to an offender's conviction; to require the court to determine the offender's ability to pay the financial obligations imposed; to authorize the court to waive, modify, or create a payment plan for the offender's financial obligations; to provide relative to the recovery of uncollected monetary obligations at the end of a probation period; to provide for effective dates; to provide for legislative intent; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 875.2 is hereby enacted to read as follows:

Art. 875.2. Determination of substantial financial hardship to the defendant

A. The purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims. These financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society. Financial

1 obligations in excess of what an offender can reasonably pay undermine the primary
2 purpose of the justice system which is to deter criminal behavior and encourage
3 compliance with the law. Financial obligations that cause undue hardship on the
4 offender should be waived, modified, or forgiven. Creating a payment plan for the
5 offender that is based upon the ability to pay, results in financial obligations that the
6 offender is able to comply with and often results in more money collected. Offenders
7 who are consistent in their payments and in good faith try to fulfill their financial
8 obligations should be rewarded for their efforts.

9 B. For purposes of this Article, "financial obligations" shall include any fine,
10 fee, cost, restitution, or other monetary obligation authorized by this Code or by the
11 Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a
12 criminal sentence, incarceration, or as a condition of the defendant's release on
13 probation or parole.

14 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
15 the imposition or enforcement of any financial obligations as defined by this Article,
16 the court shall determine whether payment in full of the aggregate amount of all the
17 financial obligations to be imposed upon the defendant would cause substantial
18 financial hardship to the defendant or his dependents.

19 (2) The defendant may not waive the judicial determination of a substantial
20 financial hardship required by the provisions of this Paragraph.

21 D.(1) If the court determines that payment in full of the aggregate amount
22 of all financial obligations imposed upon the defendant would cause substantial
23 financial hardship to the defendant or his dependents, the court shall do either of the
24 following:

25 (a) Waive all or any portion of the financial obligations.

26 (b) Order a payment plan that requires the defendant to make a monthly
27 payment to fulfill the financial obligations.

1 (2)(a) The amount of each monthly payment for the payment plan ordered
2 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be equal
3 to the defendant's average gross daily income for an eight-hour work day.

4 (b) If the court has ordered restitution, half of the defendant's monthly
5 payment shall be distributed toward the defendant's restitution obligation.

6 (c) During any periods of unemployment, homelessness, or other
7 circumstances in which the defendant is unable to make the monthly payment, the
8 court or the defendant's probation and parole officer is authorized to impose a
9 payment alternative, including but not limited to any of the following: substance
10 abuse treatment, education, job training, or community service.

11 (3) If, after the initial determination of the defendant's ability to fulfill his
12 financial obligations, the defendant's circumstances and ability to pay his financial
13 obligations change, the defendant or his attorney may file a motion with the court to
14 reevaluate the defendant's circumstances and determine, in the same manner as the
15 initial determination, whether under the defendant's current circumstances payment
16 in full of the aggregate amount of all the financial obligations imposed upon the
17 defendant would cause substantial financial hardship to the defendant or his
18 dependents. Upon such motion, if the court determines that the defendant's current
19 circumstances would cause substantial financial hardship to the defendant or his
20 dependents, the court may either waive or modify the defendant's financial
21 obligation, or recalculate the amount of the monthly payment made by the defendant
22 under the payment plan set forth in Subsubparagraph (1)(b) of this Paragraph.

23 E. If a defendant is ordered to make monthly payments under a payment plan
24 established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,
25 the defendant's outstanding financial obligations resulting from his criminal
26 conviction are forgiven and considered paid-in-full if the defendant makes consistent
27 monthly payments for either twelve consecutive months or consistent monthly
28 payments for half of the defendant's term of supervision, whichever is longer.

1 F. If, at the termination or end of the defendant's term of supervision, any
2 restitution ordered by the court remains outstanding, the balance of the unpaid
3 restitution shall be reduced to a civil money judgment in favor of the person to whom
4 restitution is owed, which may be enforced in the same manner as provided for the
5 execution of judgments pursuant to the Code of Civil Procedure. For any civil
6 money judgment ordered under this Article, the clerk shall send notice of the
7 judgment to the last known address of the person to whom the restitution is ordered
8 to be paid.

9 G. The provisions of this Article shall apply only to defendants convicted of
10 offenses classified as felonies under applicable law.

11 Section 2. Code of Criminal Procedure Article 875.1 is hereby repealed in its
12 entirety.

13 Section 3.(A) Notwithstanding Section 3 of Act No. 260 of the 2017 Regular Session
14 or any other Act to the contrary, the provisions of Act No. 260 of the 2017 Regular Session
15 shall become effective on August 1, 2022, except as provided by Subsection (B) of this
16 Section.

17 (B) It is the intent of the legislature that the provisions of Act No. 260 of the 2017
18 Regular Session that enacted Code of Criminal Procedure Article 875.1 and that amended
19 and reenacted Code of Criminal Procedure Article 885.1(A), (C), and (D) and 894.4 shall
20 never become effective.

21 Section 4. The legislature recognizes that the provisions of Act No. 668 of the 2018
22 Regular Session which amended and reenacted Code of Criminal Procedure Article 894.4
23 and which became effective on August 1, 2019, are in effect, and that the provisions of Act
24 No. 253 of the 2019 Regular Session amending and reenacting Code of Criminal Procedure
25 Article 885.1 and which became effective on August 1, 2019, are in effect.

26 Section 5.(A) The provisions of Sections 1 and 2 of this Act shall become effective
27 on August 1, 2022.

28 (B) The provisions of Sections 3, 4, and this Section of this Act shall become
29 effective on August 1, 2021.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 288 Engrossed

2021 Regular Session

Magee

Abstract: Relative to the financial obligations of criminal defendants, provides relative to the effective date of Act No. 260 of the 2017 R.S., and specifies the effectiveness of overlapping provisions subsequently amended by Act No. 668 of the 2018 R.S. and Act No. 253 of the 2019 R.S.

Present law (C.Cr.P. Art. 875.1) relative to the financial obligations of criminal offenders was enacted by Act No. 260 of the 2017 R.S. with an effective date of Aug. 1, 2018. Subsequent Acts delayed the effective date of Act No. 260 to Aug. 1, 2021. (See Acts No. 137 and 668 of the 2018 R.S. and Act No. 253 of the 2019 R.S.). Act No. 668 of the 2018 R.S. amended the substance of present law with an effective date of Aug. 1, 2019, which was not amended by the 2019 Act which delayed the effective date of Act No. 260 of the 2017 R.S. to Aug. 1, 2021.

Proposed law retains present law but removes the uncertainty in effective dates by moving present law to a new Article, C.Cr.P. Art. 875.2, from the prior Article, C.Cr.P. Art. 875.1.

Present law (C.Cr.P. Art. 885.1) relative to the suspension of driving privileges for failure to pay criminal fines was amended by Act No. 260 of the 2017 R.S. and by Act No. 253 of the 2019 R.S.

Present law (C.Cr.P. Art. 894.4) relative to the authority of the court to extend probation when the defendant is unable to pay fines, fees, or restitution was amended by Act No. 260 of the 2017 R.S. and by Act No. 668 of the 2018 R.S.

Proposed law retains present law and specifies that the provisions of Act No. 260 of the 2017 R.S. shall become effective on Aug. 1, 2022, except that the provisions of that Act that enacted C.Cr.P. Art. 875.1 and that amended and reenacted C.Cr.P. Art. 885.1(A), (C), and (D) and 894.4 shall never become effective.

Proposed law provides an effective date for certain provisions of Act No. 260 of the 2017 R.S., and provides that certain provisions shall never go into effect. Proposed law recognizes that the provisions of Act No. 668 of the 2018 R.S. which amended and reenacted C.Cr.P. Art. 894.4 and which became effective on Aug. 1, 2019, are in effect, and that the provisions of Act No. 253 of the 2019 R.S. amending and reenacting C.Cr.P. Art. 885.1 and which became effective on Aug. 1, 2019, are in effect.

Proposed law that enacts C.Cr.P. Art. 875.2 and that repeals C.Cr.P. Art. 875.1 shall become effective Aug. 1, 2022.

(Adds C.Cr.P. Art. 875.2; Repeals C.Cr.P. Art. 875.1)