

HOUSE COMMITTEE AMENDMENTS

2018 Regular Session

Amendments proposed by House Committee on Administration of Criminal Justice to Reengrossed Senate Bill No. 389 by Senator Claitor

1 AMENDMENT NO. 1

2 On page 1, delete lines 2 and 9 in their entirety and insert the following:

3 "To amend and reenact Section 3 of Act No. 260 of the 2017 Regular
 4 Session of the Legislature, R.S. 15:574.6.1(B) and
 5 574.9(H)(1)(a)(introductory paragraph), Code of Criminal Procedure
 6 Article 894.4 as amended by Act No. 260 of the 2017 Regular
 7 Session of the Legislature, and Code of Criminal Procedure Articles
 8 875.1, 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and 900(A)(5)
 9 and (6)(b)(introductory paragraph) and (iv) and (d)(v) and to enact
 10 Code of Criminal Procedure Articles 893(H) and 900(A)(6)(b)(v),
 11 relative to felony probation; to provide relative to payment of
 12 restitution to the victim of a crime; to delay the effective date of Act
 13 No. 260 of the 2017 Regular Session of the Legislature which
 14 provided relative to the payment of fines, fees, costs, restitution, and
 15 other monetary obligations related to an offender's conviction; to
 16 provide relative to earned compliance credits; to provide a procedure
 17 by which the court determines whether a defendant has earned
 18 compliance credits toward his probation period and whether his
 19 probation term may be terminated early; to prohibit the extension or
 20 revocation of probation based solely upon a defendant's inability to
 21 pay; to"

22 AMENDMENT NO. 2

23 On page 1, delete lines 14 through 17 in their entirety, on page 2, delete line 1 in its entirety,
 24 and insert the following:

25 "Section 1. Code of Criminal Procedure Article 894.4 as amended by
 26 Act No. 260 of the 2017 Regular Session of the Legislature, and Code of
 27 Criminal Procedure Article 875.1 are hereby amended and reenacted to read
 28 as follows:"

29 AMENDMENT NO. 3

30 On page 2, delete lines 3 through 11 in their entirety and insert the following:

31 "A. The purpose of imposing financial obligations on an offender
 32 who is convicted of a criminal offense is to hold the offender accountable for
 33 his action, to compensate victims for any actual pecuniary loss or costs
 34 incurred in connection with a criminal prosecution, to defray the cost of court
 35 operations, and to provide services to offenders and victims. These financial
 36 obligations should not create a barrier to the offender's successful
 37 rehabilitation and reentry into society. Financial obligations in excess of
 38 what an offender can reasonably pay undermine the primary purpose of the
 39 justice system which is to deter criminal behavior and encourage compliance
 40 with the law. Financial obligations that cause undue hardship on the offender
 41 should be waived, modified, or forgiven. Creating a payment plan for the
 42 offender that is based upon the ability to pay, results in financial obligations
 43 that the offender is able to comply with and often results in more money

1 collected. Offenders who are consistent in their payments and in good faith
 2 try to fulfill their financial obligations should be rewarded for their efforts.

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

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

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

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

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

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

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

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

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

36 (3) If, after the initial determination of the defendant's ability to
 37 fulfill his financial obligations, the defendant's circumstances and ability to
 38 pay his financial obligations change, the defendant or his attorney may file
 39 a motion with the court to reevaluate the defendant's circumstances and
 40 determine, in the same manner as the initial determination, whether under the
 41 defendant's current circumstances payment in full of the aggregate amount
 42 of all the financial obligations imposed upon the defendant would cause
 43 substantial financial hardship to the defendant or his dependents. Upon such
 44 motion, if the court determines that the defendant's current circumstances
 45 would cause substantial financial hardship to the defendant or his
 46 dependents, the court may either waive or modify the defendant's financial
 47 obligation, or recalculate the amount of the monthly payment made by the
 48 defendant under the payment plan set forth in Subsubparagraph (1)(b) of this
 49 Paragraph.

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

57 F. If restitution is ordered by the court as a condition of probation,
 58 the amount of restitution shall be reduced to a civil money judgment in favor
 59 of the person to whom restitution is owed that may be enforced in the same

1 manner as provided for the execution of judgments in the Louisiana Code of
2 Civil Procedure. A form for the judgment shall be submitted by the district
3 attorney to the sentencing judge for signature. For any civil money judgment
4 ordered under this Article, the clerk shall record the judgment without charge
5 to the person to whom restitution is to be paid and shall send notice of the
6 judgment to the last known address of the person to whom the restitution was
7 ordered to be paid."

8 AMENDMENT NO. 4

9 On page 2, between lines 14 and 15, insert the following:

10 "Art. 894.4. Probation; extension

11 ~~A. When a defendant has been sentenced to probation and has a~~
12 ~~monetary obligation, including but not limited to court costs, fines, costs of~~
13 ~~prosecution, and any other monetary costs associated with probation, the~~
14 ~~judge may not extend the period of probation for the purpose of collecting~~
15 ~~any unpaid monetary obligation, except as provided in Paragraph B of this~~
16 ~~Article, but may refer the unpaid monetary obligation to the office of debt~~
17 ~~recovery pursuant to R.S. 47:1676.~~

18 ~~B. The judge may extend probation only one time and only by a~~
19 ~~period of six months for the purpose of monitoring collection of unpaid~~
20 ~~victim restitution if the court finds on the record by clear and convincing~~
21 ~~evidence that the court's temporary ongoing monitoring would ensure~~
22 ~~collection of unpaid restitution more effectively than any of the following:~~

23 ~~(1) Converting the unpaid restitution to a civil money judgment~~
24 ~~pursuant to Article 886 or 895.1.~~

25 ~~(2) Referring the unpaid restitution to the office of debt recovery~~
26 ~~pursuant to R.S. 47:1676.~~

27 ~~(3) Any other enforcement mechanism for collection of unpaid~~
28 ~~restitution authorized by law.~~

29 ~~C. A six-month extension of probation as provided in Paragraph B~~
30 ~~shall apply only to the order of victim restitution. All other conditions of~~
31 ~~probation during the six-month extension shall be terminated.~~

32 **Probation shall neither be revoked nor extended based solely**
33 **upon the defendant's inability to pay fines, fees, or restitution to the**
34 **victim.**

35 Section 2. Code of Criminal Procedure Articles 893(A)(1)(a),
36 895.6(A) and (B), 899.2(B)(1), and 900(A)(5) and (6)(b)(introductory
37 paragraph) and (iv) and (d)(v) are hereby amended and reenacted and Code
38 of Criminal Procedure Article 893(H) and 900(A)(6)(b)(v) are hereby
39 enacted to read as follows:"

40 AMENDMENT NO. 5

41 On page 4, delete lines 6 through 29 in their entirety

42 AMENDMENT NO. 6

43 On page 8, line 21, change "Section 2." to "Section 3."

44 AMENDMENT NO. 7

45 On page 9, after line 15, add the following:

46 "Section 4. Section 3 of Act No. 260 of the 2017 Regular Session of
47 the Legislature is hereby amended and reenacted to read as follows:

48 Section 3. The provisions of this Act shall become effective
49 on August 1, ~~2018~~ 2019.

1 Section 5. The provisions of Sections 2, 3, and 4 of this Section and
2 this Section shall become effective on August 1, 2018.
3 Section 6. The provisions of Section 1 of this Act shall become
4 effective on August 1, 2019."