
DIGEST

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HB 443 Original

2022 Regular Session

Magee

Abstract: Provides relative to the financial obligations of criminal offenders and the consideration of financial hardship in establishing the method of payment of the defendant's obligations.

Present law provides that 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.

Present law further provides that these financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society, that financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven, and that creating a payment plan for the offender that is based upon the ability to pay, results in financial obligations that the offender is able to comply with and often results in more money collected.

Present law provides a definition for "financial obligations".

Present law provides that prior to ordering the imposition or enforcement of any financial obligations, the court shall determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.

Proposed law retains present law but also requires the court to conduct a hearing to determine if the financial obligation would cause a substantial financial hardship on the defendant.

Present law provides that the defendant may not waive the judicial determination of a substantial financial hardship.

Proposed law authorizes the defendant or the court to waive the judicial determination, and also provides that if the court waives the hearing on its own motion, the court shall provide reasons, entered upon the record, for its determination.

Present law provides that if the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the court shall either waive all or a portion of the financial obligations or order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

Proposed law retains present law and provides an exception by requiring the consent of the victim before waiving any award of restitution owed to the victim.

Present law provides that if, after the initial determination of the defendant's ability to fulfill his financial obligations, the defendant's circumstances and ability to pay his financial obligations change, the defendant or his attorney may file a motion with the court to reevaluate the defendant's circumstances, and authorizes the court to waive or modify the defendant's obligation.

Proposed law retains present law and also authorizes the state to file a motion to reevaluate the defendant's ability to fulfill his financial obligations.

Present law provides that if a defendant is ordered to make monthly payments under a payment plan established pursuant to present law, the defendant's outstanding financial obligations resulting from his criminal conviction are forgiven and considered paid-in-full if the defendant makes consistent monthly payments for either 12 consecutive months or consistent monthly payments for half of the defendant's term of supervision, whichever is longer.

Proposed law repeals present law.

Present law provides that if, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, and provides that the obligation may be enforced in the same manner as provided for the execution of judgments pursuant to the Code of Civil Procedure.

Proposed law specifies that the defendant's obligation may be enforced in the same manner as provided for the execution of judgments in the Code of Civil Procedure.

(Amends C.Cr.P. Art. 875.1)