
DIGEST

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HB 249 Engrossed

2017 Regular Session

Magee

Abstract: Provides relative to the payment of all monetary obligations related to an offender's conviction, and provides relative to the court's authority to modify or waive the obligation based on its determination of the offender's ability to pay.

When an offender is convicted of an offense, present law authorizes or requires the court to impose certain financial obligations upon the offender, including but not limited to fines, fees, court costs, and restitution.

Present law further provides for the following options for enforcement after nonpayment of these financial obligations:

- (1) If the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court may order a periodic payment plan consistent with the person's financial ability.
- (2) If the defendant defaults on the payment of fines or costs imposed as part of the sentence, the defendant shall be imprisoned for a specified period of time.
- (3) If the defendant fails to pay a fine, the court may order the driver's license to be surrendered for a period of up to 180 days.
- (4) If the defendant fails to pay a fine, restitution, or costs within sixty days after the sentence is imposed, the court is authorized to sign a judgment against the defendant in a sum equal to the fine or restitution, plus judicial interest, and any costs of the criminal proceeding and subsequent proceedings necessary to enforce the judgment in either civil or criminal court, or both.
- (5) Although present law requires all costs and fines to be paid immediately, in some cases that involve violations of traffic laws or ordinances, the court may grant the defendant five judicial days after rendition of judgment to pay any costs and any fine imposed.
- (6) If a defendant has been sentenced to probation and has a monetary obligation, the court may extend the period of probation until the monetary obligation is extinguished.
- (7) If the defendant is ordered to pay restitution as a condition of probation, the court may order that the restitution be paid in a lump sum or in monthly installments based on the earning

capacity and assets of the defendant.

- (8) Prior to the enforcement of any restitution order, the defendant shall be notified of the right to have a judicial determination of the amount of restitution, cost, or fine.
- (9) The court may, in lieu of a monthly probation supervision fee, require the defendant to perform a specified amount of community service work each month if the court finds that the defendant is unable to pay the supervision fee.

- (10) Each district attorney's office is authorized to establish a special division in the office designated as the "restitution recovery division" for the administration, collection, and enforcement of victim restitution, victim compensation assessments, probation fees, and payments in civil or criminal proceedings ordered by the court, judgments entered which have not been otherwise vacated, or judicial relief given from the operation of the order or judgment. The district attorney is authorized to take all lawful action necessary to require compliance with court-ordered payments.

Proposed law makes the following changes to present law:

- (1) Provides that notwithstanding any provision of present law, prior to ordering the imposition of any financial obligation, the court shall determine whether payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. This determination cannot be waived by the defendant.
- (2) Provides that "substantial financial hardship" has the same meaning as defined by present law (R.S. 15:175) relative to determinations of indigence for purposes of appointment of counsel.
- (3) Defines "financial obligation" as any fine, fee, cost, restitution, or other monetary obligation authorized by present law and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.
- (4) 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, requires the court to either waive all or any portion of the financial obligations or order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.
- (5) In cases where restitution has been ordered, provides that half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.
- (6) Provides that during any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to any of the following: substance abuse treatment, education, job training, or a maximum of 15 hours of community service.
- (7) If the defendant's circumstances and ability to pay change, authorizes the court, upon motion of the defendant or his attorney, to reevaluate the defendant's ability to continue the monthly payments and either waive or modify the defendant's financial obligation, or recalculate the amount of the monthly payment.
- (8) Provides that the defendant's outstanding financial obligations may be 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 further amends present law to provide that if it is determined, pursuant to proposed law, 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 defendant cannot be subject to the following penalties for failure to make payment:

- (1) Imprisonment for failure to pay fine or costs imposed as part of the sentence.
- (2) Suspension of driving privileges for failure to pay fines levied against him.
- (3) Enforcement of fines, restitution, or costs by civil process.

Finally, proposed law provides for the following:

- (1) Prohibits the court from extending a defendant's probation for the purpose of collecting any unpaid monetary obligation but allows the court to refer the unpaid monetary obligation to the office of debt recovery pursuant to present law (R.S. 47:1676). Further amends the present law definition of "agency" to include courts solely for the purpose of recovering unpaid monetary obligations that remain at the end of the defendant's probation period.
- (2) Prohibits the district attorney from filing a petition for revocation of probation, filing a petition for contempt of court, or instituting any other civil or criminal proceeding for the purpose of requiring a defendant to comply with his financial obligations.
- (3) Provides that prior to authorizing the issuance of a warrant for arrest for a missed payment or missed court appearance related to the defendant's failure to make payment, the court shall send notification to the defendant with information about the process for resolving missed payments, a statement that the defendant will not be jailed for inability to pay, and the date by which the defendant shall either make payment, request a payment alternative, or request a modification or waiver of his outstanding debt pursuant to the provisions of proposed law.

Effective Aug. 1, 2018.

(Amends R.S. 47:1767(B)(1) and C.Cr.P. Arts. 883.2(D), 884, 885.1(A), (C), and (D), 886(A), 888, 894.4, 895.1(A)(1) and (2)(a), (D), and (E), and 895.5(C); Adds C.Cr.P. Arts. 875.1, 885.1(E), and 886(C); Repeals C.Cr.P. Art. 895.1(F))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Remove the provision that presumes "substantial financial hardship" if the defendant has

been deemed "indigent" for purposes of appointment of counsel pursuant to present law.

2. Authorize the judge to refer any unpaid monetary obligation that remains at the end of the defendant's probation period to the office of debt recovery in the Dept. of Revenue pursuant to present law.
3. For the purpose of the provisions of present law regarding the recovery of unpaid debt by the office of debt recovery, amend the definition of "agency" to include courts only for the purpose of recovering unpaid monetary obligations that remain at the end of the defendant's probation period.