

## HOUSE SUMMARY OF SENATE AMENDMENTS

HB 249

2017 Regular Session

Magee

CRIMINAL/PENALTIES: Provides relative to the payment of fines, fees, costs, restitution, and other monetary obligations related to an offender's conviction

### Synopsis of Senate Amendments

1. With regard to the court's determination of whether payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause a substantial financial hardship to the defendant or his dependants:
  - (a) Removes from proposed law the provision which states that "substantial financial hardship" has the same meaning as set forth in the present law Louisiana Public Defender Act.
  - (b) Provides that these proposed law provisions apply only to defendants convicted of felony offenses.
2. Limits the court's authority to order the surrender of the driver's license of a person who has wilfully refused to pay a fine to apply only to those persons convicted of a felony offense, and removes the court's authority to order the surrender of the driver's license of persons who violate the La. Highway Regulatory Act or any municipal or parish ordinance regulating traffic.
3. Authorizes the court to extend probation only one time and only by a period of six months for the purpose of monitoring the collection of unpaid victim restitution if the extension would ensure collection of the restitution more effectively than converting it to a civil money judgement, referring it to the office of debt recovery, or any other enforcement mechanism authorized by law.
4. Make technical corrections.

### Digest of Bill as Finally Passed by Senate

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 shall apply only to those defendants convicted of a felony offense and cannot be waived by the defendant.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 community service.

- (6) 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.
- (7) 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.
- (8) 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 imprisoned for failure to pay fines or costs imposed as part of the sentence.
- (9) Limits the court's present law authority to order the surrender of a driver's license to apply only those persons convicted of a felony offense who will willfully refuse to pay the fine.
- (10) Except with regard to unpaid victim restitution, 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).
- (11) With regard to unpaid victim restitution, authorizes the court to extend probation only one time and only by a period of six months for the purpose of monitoring the collection of unpaid victim restitution if the extension would ensure collection of the restitution more effectively than converting it to a civil money judgement, referring it to the office of debt recovery, or any other enforcement mechanism authorized by law
- (12) If a court authorizes a payment plan pursuant to proposed law and the defendant fails to make a payment, requires the court to serve the defendant with a citation for a rule to show cause why the defendant should not be found in contempt of court and provides the information that must be included in the notice.

Effective Aug. 1, 2018.

(Amends R.S. 47:1676(B)(1) and C.Cr.P. Arts. 883.2(D), 884, 885.1(A), (C), and (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E), and 895.5(C); Adds C.Cr.P. Art. 875.1)