

2018 Regular Session

HOUSE BILL NO. 111

BY REPRESENTATIVE MACK

CRIMINAL/RESTITUTION: Provides relative to the payment of restitution to the victim of a crime

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 875.1, relative to restitution; to  
3 provide relative to payment of restitution to the victim of a crime; to prohibit the  
4 waiver and forgiveness of a defendant's financial obligations that are designated as  
5 restitution; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Code of Criminal Procedure Article 875.1 is hereby amended and  
8 reenacted to read as follows:

9 Art. 875.1. Determination of substantial financial hardship to the defendant

10 A. The purpose of imposing financial obligations on an offender who is  
11 convicted of a criminal offense is to hold the offender accountable for his action, to  
12 compensate victims for any actual pecuniary loss or costs incurred in connection  
13 with a criminal prosecution, to defray the cost of court operations, and to provide  
14 services to offenders and victims. These financial obligations should not create a  
15 barrier to the offender's successful rehabilitation and reentry into society. Financial  
16 obligations in excess of what an offender can reasonably pay undermine the primary  
17 purpose of the justice system which is to deter criminal behavior and encourage  
18 compliance with the law. Financial obligations that cause undue hardship on the  
19 offender should be waived, modified, or forgiven. Creating a payment plan for the  
20 offender that is based upon the ability to pay, results in financial obligations that the

1 offender is able to comply with and often results in more money collected. Offenders  
2 who are consistent in their payments and in good faith try to fulfill their financial  
3 obligations should be rewarded for their efforts.

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

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

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

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

20 (a) Waive all or any portion of the financial obligations, except for any  
21 financial obligation designated as restitution due to a victim.

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

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

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

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

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

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

25 F. If, at the termination or end of the defendant's term of supervision, any  
26 restitution ordered by the court remains outstanding, the balance of the unpaid  
27 restitution shall be reduced to a civil money judgment in favor of the person to whom  
28 restitution is owed that may be enforced in the same manner as provided for the  
29 execution of judgments in the Louisiana Code of Civil Procedure. For any civil

1 money judgment ordered under this Article, the clerk shall send notice of the  
2 judgment to the last known address of the person to whom the restitution was  
3 ordered to be paid.

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

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#### 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)]

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HB 111 Original

2018 Regular Session

Mack

**Abstract:** Provides relative to the defendant's payment of certain financial obligations designated as restitution.

Present law (C.Cr.P. Art. 875.1, as enacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) provides that, beginning Aug. 1, 2018, 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.

Present law further provides for the following in this regard:

- (1) 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 any portion of the financial obligation or order a payment plan that requires the defendant to make a monthly payment to fulfill the obligations.
- (2) 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 amends present law (C.Cr.P. Art. 875.1, as enacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) to provide that the portion of the defendant's financial obligations that is designated as restitution due to a victim shall not be waived or forgiven pursuant to present law.

Finally, proposed law provides that any outstanding balance of unpaid restitution at the end of a defendant's term of supervision shall be reduced to a civil money judgement that may be enforced in the same manner as provided for the execution of judgments in the La. Code of Civil Procedure. Notice of the judgment shall be sent by the clerk to the last known address of the person to whom the restitution was ordered to be paid.

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