

2018 Regular Session

HOUSE BILL NO. 613

BY REPRESENTATIVE GAINES

CRIMINAL/PROCEDURE: Provides relative to the determination of financial hardship from financial obligations imposed upon a defendant

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 875.1, relative to financial
3 obligations of criminal defendants; to provide relative to the payment of fines, fees,
4 costs, restitution, and other monetary obligations related to an offender's conviction;
5 to authorize the court to waive, modify, or create a payment plan for the offender's
6 financial obligations; to provide for applicability to persons convicted of certain
7 offenses; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

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

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

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

1 offender should be waived, modified, or forgiven. Creating a payment plan for the
2 offender that is based upon the ability to pay, results in financial obligations that the
3 offender is able to comply with and often results in more money collected. Offenders
4 who are consistent in their payments and in good faith try to fulfill their financial
5 obligations should be rewarded for their efforts.

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

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

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

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

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

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

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

28 (b) If the court has ordered restitution, half of the defendant's monthly
29 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 resulting from his criminal
21 conviction are forgiven and considered paid-in-full if the defendant makes consistent
22 monthly payments for either twelve consecutive months or consistent monthly
23 payments for half of the defendant's term of supervision, whichever is longer.

24 ~~F. The provisions of this Article shall apply only to defendants convicted of~~
25 ~~offenses classified as felonies under applicable law.~~

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)]

HB 613 Original

2018 Regular Session

Gaines

Abstract: Provides relative to the defendant's payment of financial obligations resulting from a conviction, and provides for application to defendants convicted of any crime.

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.

Present law provides for application only to defendants convicted of offenses classified as felonies under applicable law.

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 for application to defendants convicted of any crime.

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