

2021 Regular Session

HOUSE BILL NO. 288

BY REPRESENTATIVE MAGEE

1 AN ACT

2 To enact Code of Criminal Procedure Article 875.2 and to repeal Code of Criminal
3 Procedure Article 875.1, relative to the financial obligations for criminal offenders;
4 to provide relative to the payment of fines, fees, costs, restitution, and other
5 monetary obligations related to an offender's conviction; to require the court to
6 determine the offender's ability to pay the financial obligations imposed; to authorize
7 the court to waive, modify, or create a payment plan for the offender's financial
8 obligations; to provide relative to the recovery of uncollected monetary obligations
9 at the end of a probation period; to provide for effective dates; to provide for
10 legislative intent; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Article 875.2 is hereby enacted to read as
13 follows:

14 Art. 875.2. Determination of substantial financial hardship to the defendant

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

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

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

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

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

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

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

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.

29 (c) During any periods of unemployment, homelessness, or other
30 circumstances in which the defendant is unable to make the monthly payment, the

1 court or the defendant's probation and parole officer is authorized to impose a
2 payment alternative, including but not limited to any of the following: substance
3 abuse treatment, education, job training, or community service.

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

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

22 F. If at the termination or end of the defendant's term of supervision, any
23 restitution ordered by the court remains outstanding, the balance of the unpaid
24 restitution shall be reduced to a civil money judgment in favor of the person to whom
25 restitution is owed, which may be enforced in the same manner as provided for the
26 execution of judgments pursuant to the Code of Civil Procedure. For any civil
27 money judgment ordered under this Article, the clerk shall send notice of the
28 judgment to the last known address of the person to whom the restitution is ordered
29 to be paid.

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

3 Section 2. Code of Criminal Procedure Article 875.1 is hereby repealed in its
4 entirety.

5 Section 3.(A) Notwithstanding Section 3 of Act No. 260 of the 2017 Regular Session
6 or any other Act to the contrary, the provisions of Act No. 260 of the 2017 Regular Session
7 shall become effective on August 1, 2022, except as provided by Subsection B of this
8 Section.

9 (B) It is the intent of the legislature that the provisions of Act No. 260 of the 2017
10 Regular Session that enacted Code of Criminal Procedure Article 875.1 and that amended
11 and reenacted Code of Criminal Procedure Article 885.1(A), (C), and (D) and 894.4 shall
12 never become effective.

13 Section 4. The legislature recognizes that the provisions of Act No. 668 of the 2018
14 Regular Session which amended and reenacted Code of Criminal Procedure Article 894.4
15 and which became effective on August 1, 2019, are in effect, and that the provisions of Act
16 No. 253 of the 2019 Regular Session amending and reenacting Code of Criminal Procedure
17 Article 885.1 and which became effective on August 1, 2019, are in effect.

18 Section 5.(A) The provisions of Sections 1 and 2 of this Act shall become effective
19 on August 1, 2022.

20 (B) The provisions of Sections 3, 4, and this Section of this Act shall become
21 effective on August 1, 2021.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____