

2022 Regular Session

HOUSE BILL NO. 442

BY REPRESENTATIVE DUBUISSON

CRIMINAL/PENALTIES: Provides relative to the payment of fines, fees, costs, restitution, and the waiver of certain obligations

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 875.1, relative to the financial
3 obligations for criminal offenders; to provide relative to the payment of fines, fees,
4 costs, restitution, and other monetary obligations related to an offender's conviction;
5 to prohibit the waiver of an award of restitution; to provide for an effective date; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

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

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

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

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 obligation~~
16 any financial obligation other than restitution, or recalculate the amount of the
17 monthly payment made by the defendant under the payment plan set forth in
18 Subsubparagraph (1)(b) of this Paragraph.

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

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

1 execution of judgments pursuant to the Code of Civil Procedure. For any civil
2 money judgment ordered under this Article, the clerk shall send notice of the
3 judgment to the last known address of the person to whom the restitution is ordered
4 to be paid.

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

7 Section 2. Notwithstanding Section 5(A) of Act No. 313 of the 2021 Regular Session
8 of the Legislature, Sections 1 and 2 of that Act shall not become effective.

9 Section 3. This Act shall become effective upon signature by the governor or, if not
10 signed by the governor, upon expiration of the time for bills to become law without signature
11 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
12 vetoed by the governor and subsequently approved by the legislature, this Act shall become
13 effective on the day following such approval.

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 442 Original

2022 Regular Session

DuBuisson

Abstract: Provides relative to the financial obligations of criminal offenders; prohibits the waiver of payment of restitution.

Present law provides that the purpose of imposing financial obligations on an offender who is convicted of a criminal offense is to hold the offender accountable for his action, to compensate victims for any actual pecuniary loss or costs incurred in connection with a criminal prosecution, to defray the cost of court operations, and to provide services to offenders and victims.

Present law further provides that these financial obligations should not create a barrier to the offender's successful rehabilitation and reentry into society, that financial obligations that cause undue hardship on the offender should be waived, modified, or forgiven, and that creating a payment plan for the offender that is based upon the ability to pay, results in financial obligations that the offender is able to comply with and often results in more money collected.

Present law provides a definition for "financial obligations".

Present law provides that prior to ordering the imposition or enforcement of any financial obligations, the court shall determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.

Present law provides that the defendant may not waive the judicial determination of a substantial financial hardship.

Present law provides that 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 a portion of the financial obligations or order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

Proposed law retains present law but prohibits waiving any award of restitution.

Effective upon signature of governor or lapse of time for gubernatorial action.

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