

2022 Regular Session

HOUSE BILL NO. 443

BY REPRESENTATIVE MAGEE

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

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 require the court to determine the offender's ability to pay the financial obligations
6 imposed; to authorize the court to waive, modify, or create a payment plan for the
7 offender's financial obligations; to provide relative to the recovery of uncollected
8 monetary obligations at the end of a probation period; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

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

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

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

1 purpose of the justice system which is to deter criminal behavior and encourage
2 compliance with the law. Financial obligations that cause undue hardship on the
3 offender should be waived, modified, or forgiven. Creating a payment plan for the
4 offender that is based upon the ability to pay, results in financial obligations that the
5 offender is able to comply with and often results in more money collected.
6 Offenders who are consistent in their payments and in good faith try to fulfill their
7 financial obligations should be rewarded for their efforts.

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

13 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
14 the imposition or enforcement of any financial obligations as defined by this Article,
15 the court shall conduct a hearing to determine whether payment in full of the
16 aggregate amount of all the financial obligations to be imposed upon the defendant
17 would cause substantial financial hardship to the defendant or his dependents. The
18 court may consider, among other factors, whether any victim of the crime has
19 incurred a substantial financial hardship as a result of the criminal act or acts and
20 whether the defendant is employed.

21 (2) The defendant or the court may ~~not~~ waive the judicial determination of
22 a substantial financial hardship required by the provisions of this Paragraph. If the
23 court waives the hearing on its own motion, the court shall provide reasons, entered
24 upon the record, for its determination that the defendant is capable of paying the
25 finances, fees, and penalties imposed without causing a substantial financial hardship.

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

1 (a) Waive all or any portion of the financial obligations, except as provided
2 in Paragraph E of this Article.

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

5 (2)(a) The amount of each monthly payment for the payment plan ordered
6 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be ~~equal~~
7 to the defendant's average gross daily income for an eight-hour work day determined
8 by the court after considering all relevant factors.

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

11 (c) ~~During~~ Except as provided in Paragraph E of this Article, during any
12 periods of unemployment, homelessness, or other circumstances in which the
13 defendant is unable to make the monthly payment, the court or the defendant's
14 probation and parole officer is authorized to impose a payment alternative, including
15 but not limited to ~~any of the following~~: substance abuse treatment, education, job
16 training, or community service.

17 (3) If, after the initial determination of the defendant's ability to fulfill his
18 financial obligations, the defendant's circumstances and ability to pay his financial
19 obligations change, the state, the defendant or his the defendant's attorney may file
20 a motion with the court to reevaluate the defendant's circumstances and determine,
21 in the same manner as the initial determination, whether ~~under the defendant's~~
22 ~~current circumstances payment in full of the aggregate amount of all the financial~~
23 ~~obligations imposed upon the defendant would cause substantial financial hardship~~
24 ~~to the defendant or his dependents. Upon such motion, if the court determines that~~
25 ~~the defendant's current circumstances would cause substantial financial hardship to~~
26 ~~the defendant or his dependents, the court may either waive or modify the~~
27 ~~defendant's financial obligation, or recalculate the amount of the monthly payment~~
28 ~~made by the defendant under the payment plan set forth in Subsubparagraph (1)(b)~~

1 ~~of this Paragraph~~ a modification of the monthly financial obligation imposed
2 pursuant to this Section is appropriate under the circumstances.

3 E. ~~If a defendant is ordered to make monthly payments under a payment plan~~
4 ~~established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,~~
5 ~~the defendant's outstanding financial obligations resulting from his criminal~~
6 ~~conviction are forgiven and considered paid-in-full if the defendant makes consistent~~
7 ~~monthly payments for either twelve consecutive months or consistent monthly~~
8 ~~payments for half of the defendant's term of supervision, whichever is longer~~
9 Notwithstanding any other provision of this Article or any other provision of law to
10 the contrary, a court may not waive nor forgive restitution due to a crime victim
11 unless the victim to whom restitution is due consents to such an action.

12 F. If, at the termination or end of the defendant's term of supervision, any
13 restitution ordered by the court remains outstanding, the balance of the unpaid
14 restitution shall be reduced to a civil money judgment in favor of the person to whom
15 restitution is owed, ~~which may be enforced in the same manner as provided for the~~
16 ~~execution of judgments pursuant to the Code of Civil Procedure~~ which may be
17 enforced in the same manner as provided for the execution of judgments in the
18 Louisiana Code of Civil Procedure. For any civil money judgment ordered under
19 this Article, the clerk shall send notice of the judgment to the last known address of
20 the person to whom the restitution is ordered to be paid.

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

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

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 443 Original

2022 Regular Session

Magee

Abstract: Provides relative to the financial obligations of criminal offenders and the consideration of financial hardship in establishing the method of payment of the defendant's obligations.

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.

Proposed law retains present law but also requires the court to conduct a hearing to determine if the financial obligation would cause a substantial financial hardship on the defendant.

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

Proposed law authorizes the defendant or the court to waive the judicial determination, and also provides that if the court waives the hearing on its own motion, the court shall provide reasons, entered upon the record, for its determination.

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 and provides an exception by requiring the consent of the victim before waiving any award of restitution owed to the victim.

Present law provides that if, after the initial determination of the defendant's ability to fulfill his financial obligations, the defendant's circumstances and ability to pay his financial obligations change, the defendant or his attorney may file a motion with the court to reevaluate the defendant's circumstances, and authorizes the court to waive or modify the defendant's obligation.

Proposed law retains present law and also authorizes the state to file a motion to reevaluate the defendant's ability to fulfill his financial obligations.

Present law provides that if a defendant is ordered to make monthly payments under a payment plan established pursuant to present law, the defendant's outstanding financial obligations resulting from his criminal conviction are 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 repeals present law.

Present law provides that if, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution shall be reduced to a civil money judgment in favor of the person to whom restitution is owed, and provides that the obligation may be enforced in the same manner as provided for the execution of judgments pursuant to the Code of Civil Procedure.

Proposed law specifies that the defendant's obligation may be enforced in the same manner as provided for the execution of judgments in the Code of Civil Procedure.

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