

2017 Regular Session

HOUSE BILL NO. 249

BY REPRESENTATIVES MAGEE, BAGNERIS, BOUIE, CARPENTER, GARY CARTER, COX, DWIGHT, GAINES, GISCLAIR, GLOVER, HALL, JIMMY HARRIS, HUNTER, JACKSON, JAMES, JEFFERSON, JORDAN, TERRY LANDRY, LEGER, LYONS, MARCELLE, MARINO, MORENO, NORTON, REYNOLDS, AND SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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 R.S. 47:1676(B)(1) and Code of Criminal Procedure Articles

3 883.2(D), 884, 885.1(A), (C), and (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E),

4 and 895.5(C) and to enact Code of Criminal Procedure Article 875.1, relative to the

5 financial obligations for criminal offenders; to provide relative to the payment of

6 fines, fees, costs, restitution, and other monetary obligations related to an offender's

7 conviction; to require the court to determine the offender's ability to pay the financial

8 obligations imposed; to authorize the court to waive, modify, or create a payment

9 plan for the offender's financial obligations; to provide relative to the recovery of

10 uncollected monetary obligations at the end of a probation period; to provide for

11 legislative intent; to provide relative to the disbursement of collected payments; to

12 authorize the court to impose certain conditions in lieu of payment in certain

13 situations; to provide relative to the penalties imposed when an offender fails to

14 make certain payments or fails to appear for a hearing relative to missed payments;

15 to require notice to an offender upon his failure to make certain payments; to

16 provide for an effective date; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Code of Criminal Procedure Articles 883.2(D), 884, 885.1(A), (C), and  
3 (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E), and 895.5(C) are hereby amended and  
4 reenacted and Code of Criminal Procedure Article 875.1 is hereby enacted to read as  
5 follows:

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

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

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

26 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering  
27 the imposition or enforcement of any financial obligations as defined by this Article,  
28 the court shall determine whether payment in full of the aggregate amount of all the

1 financial obligations to be imposed upon the defendant would cause substantial  
2 financial hardship to the defendant or his dependents.

3 (2) For purposes of this determination, "substantial financial hardship" has  
4 the same meaning as set forth in R.S. 15:175.

5 (3) The defendant may not waive the judicial determination of a substantial  
6 financial hardship required by the provisions of this Paragraph.

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

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

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

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

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

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

24 (3) If, after the initial determination of the defendant's ability to fulfill his  
25 financial obligations, the defendant's circumstances and ability to pay his financial  
26 obligations change, the defendant or his attorney may file a motion with the court to  
27 reevaluate the defendant's circumstances and determine, in the same manner as the  
28 initial determination, whether under the defendant's current circumstances payment  
29 in full of the aggregate amount of all the financial obligations imposed upon the

1 defendant would cause substantial financial hardship to the defendant or his  
2 dependents. Upon such motion, if the court determines that the defendant's current  
3 circumstances would cause substantial financial hardship to the defendant or his  
4 dependents, the court may either waive or modify the defendant's financial  
5 obligation, or recalculate the amount of the monthly payment made by the defendant  
6 under the payment plan set forth in Subsubparagraph (1)(b) of this Paragraph.

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

13 \* \* \*

14 Art. 883.2. Restitution to victim

15 \* \* \*

16 D. Notwithstanding any other provision of law to the contrary, if the  
17 defendant is found to be indigent and therefore unable to make restitution in full at  
18 the time of conviction, the court may order a periodic payment plan ~~consistent with~~  
19 ~~the person's financial ability~~ pursuant to the provisions of Article 875.1.

20 Art. 884. Sentence of fine with imprisonment for default

21 A. If a sentence imposed includes a fine or costs, the sentence shall provide  
22 that in default of payment thereof the defendant shall be imprisoned for a specified  
23 period not to exceed one year; provided that where the maximum prison sentence  
24 which may be imposed as a penalty for a misdemeanor is six months or less, the total  
25 period of imprisonment upon conviction of the offense, including imprisonment for  
26 default in payment of a fine or costs, shall not exceed six months for that offense.

27 B. The provisions of this Article do not apply if the court has determined,  
28 pursuant to the provisions of Article 875.1, that payment in full of the aggregate  
29 amount of all financial obligations imposed upon the defendant would cause

1 substantial financial hardship to the defendant or his dependents. In such cases, the  
2 provisions of Article 875.1 shall apply.

3 \* \* \*

4 Art. 885.1. Suspension of driving privileges; failure to pay criminal fines

5 A. When a fine is levied against a person convicted of any criminal offense,  
6 including any violation of the Louisiana Highway Regulatory Act or any municipal  
7 or parish ordinance regulating traffic in any municipality or in any parish and the  
8 defendant ~~is granted an extension of time~~ is able but has willfully refused to pay the  
9 fine, the judge of the court having jurisdiction may order the driver's license to be  
10 surrendered to the sheriff or official of the court collecting fines for a period of time  
11 not to exceed one hundred eighty days. ~~If, after expiration of one hundred eighty~~  
12 ~~days, the defendant has not paid the fine, the sheriff or official of the court~~  
13 ~~designated to collect fines shall forward the license to the Department of Public~~  
14 ~~Safety and Corrections.~~

15 \* \* \*

16 C. If, after expiration of one hundred eighty days, the court finds that the  
17 ~~defendant has not paid~~ remains able but has willfully refused to pay the fine, the  
18 sheriff or official of the court designated to collect fines shall forward the license to  
19 the Department of Public Safety and Corrections. Upon receipt of the defendant's  
20 surrendered driver's license, the department shall suspend the driver's license of the  
21 defendant. The suspension shall begin when the department receives written  
22 notification from the court, and the department shall send immediate written  
23 notification to the defendant informing him of the suspension of driving privileges.

24 D. The department shall ~~not~~ reinstate, return, reissue, or renew a driver's  
25 license in its possession pursuant to this Section ~~until~~ upon payment of the fine and  
26 any additional administrative cost, fee, or penalty required by the judge having the  
27 jurisdiction and any other cost, fee, or penalty required by the department in  
28 accordance with R.S. 32:414(H) or other applicable cost, fee, or penalty provision.

29 \* \* \*

1 Art. 888. Costs and fines; payment

2 Costs and any fine imposed shall be payable immediately except as provided  
3 in Article 875.1 relative to the determination of the defendant's ability to pay;  
4 provided, however, that in cases involving the violation of any traffic law or  
5 ordinance, the court having jurisdiction may grant the defendant five judicial days  
6 after rendition of judgment to pay any costs and any fine imposed.

7 \* \* \*

8 Art. 894.4. Probation; extension

9 When a defendant has been sentenced to probation and has a monetary  
10 obligation, including but not limited to court costs, fines, costs of prosecution, and  
11 any other monetary costs associated with probation, the judge may not extend the  
12 period of probation ~~until the monetary obligation is extinguished~~ for the purpose of  
13 collecting any unpaid monetary obligation but may refer the unpaid monetary  
14 obligation to the office of debt recovery pursuant to R.S. 47:1676.

15 \* \* \*

16 Art. 895.1. Probation; restitution; judgment for restitution; fees

17 A.(1) When a court places the defendant on probation, it shall, as a condition  
18 of probation, order the payment of restitution in cases where the victim or his family  
19 has suffered any direct loss of actual cash, any monetary loss pursuant to damage to  
20 or loss of property, or medical expense. The court shall order restitution in a  
21 reasonable sum not to exceed the actual pecuniary loss to the victim in an amount  
22 certain. However, any additional or other damages sought by the victim and  
23 available under the law shall be pursued in an action separate from the establishment  
24 of the restitution order as a civil money judgment provided for in Subparagraph (2)  
25 of this Paragraph. ~~The~~ If the court has determined, pursuant to the provisions of  
26 Article 875.1, that payment in full of the aggregate amount of all financial  
27 obligations imposed upon the defendant would cause substantial financial hardship  
28 to the defendant or his dependents, restitution ~~payment~~ payments shall be made, in  
29 ~~discretion of the court, either in a lump sum or in monthly installments based on the~~

1 ~~earning capacity and assets of the defendant~~ pursuant to the provisions of Article  
2 875.1.

3 (2)(a) The order to pay restitution together with any order to pay costs or  
4 fines, as provided in this Article, is deemed a civil money judgment in favor of the  
5 person to whom restitution, costs, or fines is owed, if the defendant is informed of  
6 his right to have a judicial determination of the amount and is provided with a  
7 hearing, ~~waived a hearing, or stipulated to the amount of the restitution, cost, or fine~~  
8 ~~ordered.~~ In addition to proceedings ~~had~~ by the court which orders the restitution,  
9 cost, or fine, the judgment may be enforced in the same manner as a money  
10 judgment in a civil case. Likewise, the judgment may be filed as a lien as provided  
11 by law for judgment creditors. Prior to the enforcement of the restitution order, or  
12 order for costs or fines, the defendant shall be notified of his right to have a judicial  
13 determination of the amount of restitution, cost, or fine. Such notice shall be served  
14 personally by the district attorney's office of the respective judicial district in which  
15 the restitution, cost, or fine is ordered.

16 \* \* \*

17 E. When the court places any defendant convicted of a violation of the  
18 ~~controlled dangerous substances law~~ Uniform Controlled Dangerous Substances  
19 Law, R.S. 40:966 through 1034, on any type of probation, it shall order as a  
20 condition of probation a fee of not less than fifty nor more than one hundred dollars,  
21 payable to the Louisiana Commission on Law Enforcement and Administration of  
22 Criminal Justice to be credited to the Drug Abuse Education and Treatment Fund and  
23 used for the purposes provided in R.S. 15:1224.

24 \* \* \*

25 Art. 895.5. Restitution recovery division; district attorneys; establishment

26 \* \* \*

27 C. Compliance enforcement. ~~The~~ (1) Except as provided in Subparagraph  
28 (2) of this Paragraph, the district attorney may take all lawful action necessary to  
29 require compliance with court-ordered payments, including filing a petition for

1 revocation of probation, filing a petition to show cause for contempt of court, or  
2 institution of any other civil or criminal proceedings which may be authorized by law  
3 or by rule of court. In addition, the district attorney may issue appropriate notices  
4 to inform the defendant of his noncompliance and of the penalty for noncompliance.  
5 In the event that the district attorney institutes any other civil or criminal proceedings  
6 pursuant to this Paragraph, the defendant shall be charged costs of court and such  
7 costs shall be added to the amount due.

8 (2) If a court authorizes a payment plan to collect financial obligations  
9 associated with a criminal case and the defendant fails to make a payment, the court  
10 shall serve the defendant with a citation for a rule to show cause why the defendant  
11 should not be found in contempt of court for failure to comply with the payment  
12 plan. This citation shall include the following notice:

13 "If you make a payment toward the above listed fines and  
14 fees on or before \_\_\_\_\_, you will not have to come  
15 to court for this matter.

16 IMPORTANT NOTICE REGARDING THE HEARING ON  
17 THE RULE TO SHOW CAUSE FOR PROOF OF  
18 SATISFACTION OF FINANCIAL OBLIGATION:

19 (a) At the rule to show cause hearing, the court will  
20 evaluate your ability to pay the fines and fees listed above.

21 (b) You are ordered to bring any documentation or  
22 information that you want the court to consider in  
23 determining your ability to pay.

24 (c) Your failure to make a payment toward the  
25 ordered financial obligation may result in your incarceration  
26 only if the court finds, after a hearing, that you had the ability  
27 to pay and willfully refused to do so.

28 (d) You have the right to be represented by counsel  
29 (attorney/lawyer) of your choice. If you cannot afford



1 counsel, you have the right to be represented by a court-  
2 appointed lawyer at no cost to you. However, you must apply  
3 for a court-appointed lawyer at least seven (7) days before  
4 this court date by going to the public defender's office. There  
5 is a forty-dollar (\$40) application fee.

6 (e) If you are unable to make a payment toward the  
7 ordered financial obligation, you may request payment  
8 alternatives including but not limited to community service,  
9 a reduction of the amount owed, or both.

10 (f) During the hearing, you will have a meaningful  
11 opportunity to explain why you have not paid the above-listed  
12 amounts by presenting evidence and testimony."

13 (3) If after the hearing provided for by Subparagraph (2) of this Paragraph,  
14 the court continues to authorize a payment plan, the defendant shall be served with  
15 the same notice provided for in Subparagraph (2) of this Paragraph regarding the  
16 consequences and due process for the willful failure to pay.

17 \* \* \*

18 Section 2. R.S. 47:1676(B)(1) is hereby amended and reenacted to read as follows:

19 §1676. Debt recovery

20 \* \* \*

21 B. For purposes of this Section, the following words shall have the following  
22 meanings unless the context clearly indicates otherwise:

23 (1) "Agency" means any state office, department, board, commission,  
24 institution, division officer or other person, or functional group, existing or created,  
25 that is authorized to exercise, or that does exercise, any function of state government  
26 in the executive branch. For purposes of this Section, "agency" shall also mean the  
27 court only for the collection of unpaid monetary obligations as set forth in Code of  
28 Criminal Procedure Article 894.4.

29 \* \* \*

1 Section 3. The provisions of this Act shall become effective on August 1, 2018.

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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 249 Reengrossed

2017 Regular Session

Magee

**Abstract:** Provides relative to the payment of all monetary obligations related to an offender's conviction, and provides relative to the court's authority to modify or waive the obligation based on its determination of the offender's ability to pay.

When an offender is convicted of an offense, present law authorizes or requires the court to impose certain financial obligations upon the offender, including but not limited to fines, fees, court costs, and restitution.

Present law further provides for the following options for enforcement after nonpayment of these financial obligations:

- (1) If the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, the court may order a periodic payment plan consistent with the person's financial ability.
- (2) If the defendant defaults on the payment of fines or costs imposed as part of the sentence, the defendant shall be imprisoned for a specified period of time.
- (3) If the defendant fails to pay a fine, the court may order the driver's license to be surrendered for a period of up to 180 days.
- (4) If the defendant fails to pay a fine, restitution, or costs within sixty days after the sentence is imposed, the court is authorized to sign a judgment against the defendant in a sum equal to the fine or restitution, plus judicial interest, and any costs of the criminal proceeding and subsequent proceedings necessary to enforce the judgment in either civil or criminal court, or both.
- (5) Although present law requires all costs and fines to be paid immediately, in some cases that involve violations of traffic laws or ordinances, the court may grant the defendant five judicial days after rendition of judgment to pay any costs and any fine imposed.
- (6) If a defendant has been sentenced to probation and has a monetary obligation, the court may extend the period of probation until the monetary obligation is extinguished.
- (7) If the defendant is ordered to pay restitution as a condition of probation, the court may order that the restitution be paid in a lump sum or in monthly installments based on the earning capacity and assets of the defendant.
- (8) Prior to the enforcement of any restitution order, the defendant shall be notified of the right to have a judicial determination of the amount of restitution, cost, or fine.
- (9) The court may, in lieu of a monthly probation supervision fee, require the defendant to perform a specified amount of community service work each month if the court finds that the defendant is unable to pay the supervision fee.

- (10) Each district attorney's office is authorized to establish a special division in the office designated as the "restitution recovery division" for the administration, collection, and enforcement of victim restitution, victim compensation assessments, probation fees, and payments in civil or criminal proceedings ordered by the court, judgments entered which have not been otherwise vacated, or judicial relief given from the operation of the order or judgment. The district attorney is authorized to take all lawful action necessary to require compliance with court-ordered payments.

Proposed law makes the following changes to present law:

- (1) Provides that notwithstanding any provision of present law, 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. This determination cannot be waived by the defendant.
- (2) Provides that "substantial financial hardship" has the same meaning as defined by present law (R.S. 15:175) relative to determinations of indigence for purposes of appointment of counsel.
- (3) Defines "financial obligation" as any fine, fee, cost, restitution, or other monetary obligation authorized by present law and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.
- (4) 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, requires the court to either waive all or any portion of the financial obligations or order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.
- (5) In cases where restitution has been ordered, provides that half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.
- (6) Provides that during any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to any of the following: substance abuse treatment, education, job training, or community service.
- (7) If the defendant's circumstances and ability to pay change, authorizes the court, upon motion of the defendant or his attorney, to reevaluate the defendant's ability to continue the monthly payments and either waive or modify the defendant's financial obligation, or recalculate the amount of the monthly payment.
- (8) 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.
- (9) Amends present law to provide that if it is determined, pursuant to proposed law, 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 defendant cannot be imprisoned for failure to pay fines or costs imposed as part of the sentence.
- (10) Prohibits the court from extending a defendant's probation for the purpose of collecting any unpaid monetary obligation but allows the court to refer the unpaid

monetary obligation to the office of debt recovery pursuant to present law (R.S. 47:1676). Further amends the present law definition of "agency" to include courts solely for the purpose of recovering unpaid monetary obligations that remain at the end of the defendant's probation period.

- (11) If a court authorizes a payment plan pursuant to proposed law and the defendant fails to make a payment, requires the court to serve the defendant with a citation for a rule to show cause why the defendant should not be found in contempt of court and provides the information that must be included in the notice.

Effective Aug. 1, 2018.

(Amends R.S. 47:1676(B)(1) and C.Cr.P. Arts. 883.2(D), 884, 885.1(A), (C), and (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E), and 895.5(C); Adds C.Cr.P. Art. 875.1)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Remove the provision that presumes "substantial financial hardship" if the defendant has been deemed "indigent" for purposes of appointment of counsel pursuant to present law.
2. Authorize the judge to refer any unpaid monetary obligation that remains at the end of the defendant's probation period to the office of debt recovery in the Dept. of Revenue pursuant to present law.
3. For the purpose of the provisions of present law regarding the recovery of unpaid debt by the office of debt recovery, amend the definition of "agency" to include courts only for the purpose of recovering unpaid monetary obligations that remain at the end of the defendant's probation period.

#### The House Floor Amendments to the engrossed bill:

1. Remove the limit of fifteen hours as the maximum amount of hours of community service authorized as a payment alternative when a defendant is unable to make a monthly payment.
2. Remove the proposed prohibition on suspending the driving privileges of a defendant who fails to pay a criminal fine if the court has determined pursuant to proposed law 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.
3. Restore present law relative to the court's authority to order the defendant to pay judicial interest on any fine, cost, or restitution to the victim that the defendant has failed to pay.
4. Remove the proposed prohibition on enforcing through civil process an unpaid fine, cost, or restitution to the victim if the court has determined pursuant to proposed law 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.
5. Remove the proposed law requirement that a determination be made pursuant to proposed law of whether 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 prior to enforcing an order for restitution, fines, or costs through a civil money judgement in favor of the person to whom restitution, costs, or fines is owed.

6. Restore present law which authorizes the court to require the defendant to perform a certain amount of community service work each month in lieu of a monthly probation supervision fee.
7. Restore the district attorney's present law authority to file a petition for revocation of probation, to file a petition to show cause for contempt of court, or institute any other civil or criminal proceedings authorized by law to require compliance with court-ordered payments.
8. Remove the proposed law provision which required the court to send a notice to the defendant containing certain information prior to authorizing the issuance of a warrant of arrest for a missed payment or missed court appearance related to the defendant's failure to make certain payments.
9. If a court authorizes a payment plan pursuant to proposed law and the defendant fails to make a payment, require the court to serve the defendant with a citation for a rule to show cause why the defendant should not be found in contempt of court and provide the information that must be included in the notice.