

2017 Regular Session

HOUSE BILL NO. 249

BY REPRESENTATIVE MAGEE

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 Code of Criminal Procedure Articles 883.2(D), 884, 885.1(A), (C),

3 and (D), 886(A), 888, 894.4, 895.1(A)(1) and (2)(a), (D), and (E), and 895.5(C), to

4 enact Code of Criminal Procedure Articles 875.1, 885.1(E), and 886(C), and to

5 repeal Code of Criminal Procedure Article 895.1(F), relative to the financial

6 obligations for criminal offenders; to provide relative to the payment of fines, fees,

7 costs, restitution, and other monetary obligations related to an offender's conviction;

8 to require the court to determine the offender's ability to pay the financial obligations

9 imposed; to authorize the court to waive, modify, or create a payment plan for the

10 offender's financial obligations; to provide for legislative intent; to provide relative

11 to the disbursement of collected payments; to authorize the court to impose certain

12 conditions in lieu of payment in certain situations; to provide relative to the penalties

13 imposed when an offender fails to make certain payments or fails to appear for a

14 hearing relative to missed payments; to require notice to an offender upon his failure

15 to make certain payments; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Code of Criminal Procedure Articles 883.2(D), 884, 885.1(A), (C), and

18 (D), 886(A), 888, 894.4, 895.1(A)(1) and (2)(a), (D), and (E), and 895.5(C) are hereby

19 amended and reenacted and Code of Criminal Procedure Articles 875.1, 885.1(E), and

20 886(C) are hereby enacted to read as follows:

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

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

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

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

26 (2) For purposes of this determination, "substantial financial hardship" has
27 the same meaning as set forth in R.S. 15:175, and shall be presumed if the defendant
28 has been deemed "indigent" for purposes of appointment of counsel pursuant to R.S.
29 15:175.

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

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

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

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

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

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

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

21 (3) If, after the initial determination of the defendant's ability to fulfill his
22 financial obligations, the defendant's circumstances and ability to pay his financial
23 obligations change, the defendant or his attorney may file a motion with the court to
24 reevaluate the defendant's circumstances and determine, in the same manner as the
25 initial determination, whether under the defendant's current circumstances payment
26 in full of the aggregate amount of all the financial obligations imposed upon the
27 defendant would cause substantial financial hardship to the defendant or his
28 dependents. Upon such motion, if the court determines that the defendant's current
29 circumstances would cause substantial financial hardship to the defendant or his

1 dependents, the court may either waive or modify the defendant's financial
2 obligation, or recalculate the amount of the monthly payment made by the defendant
3 under the payment plan set forth in Subsubparagraph (D)(1)(b) of this Article.

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

10 * * *

11 Art. 883.2. Restitution to victim

12 * * *

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

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

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

24 B. The provisions of this Article do not apply if the court has determined,
25 pursuant to the provisions of Article 875.1, that payment in full of the aggregate
26 amount of all financial obligations imposed upon the defendant would cause
27 substantial financial hardship to the defendant or his dependents. In such cases, the
28 provisions of Article 875.1 shall apply.

29 * * *

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

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

12 * * *

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

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

26 E. The provisions of this Article do not apply if the court has determined,
27 pursuant to the provisions of Article 875.1, that payment in full of the aggregate
28 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 Art. 886. Enforcement of fine by civil process; offset of tax refund

4 A. In the event of nonpayment of a fine, nonpayment of restitution to the
5 victim, or nonpayment of a fine and costs, within sixty days after the sentence was
6 imposed, and if no appeal is pending, the court which imposed the sentence may sign
7 a judgment against the defendant in a sum equal to the fine or restitution ~~plus judicial~~
8 ~~interest to begin sixty days after the sentence was imposed~~ plus all costs of the
9 criminal proceeding and subsequent proceedings necessary to enforce the judgment
10 in either civil or criminal court, or both. Collection of the judgment may be enforced
11 in either criminal or civil court, or both, in the same manner as a money judgment
12 in a civil case. In addition, particular courts may provide by court rule for
13 enforcement by the filing of an offset claim against the defendant, in accordance with
14 R.S. 47:299.1 through 299.20.

15 * * *

16 C. The provisions of this Article do not apply if the court has determined,
17 pursuant to the provisions of Article 875.1, that payment in full of the aggregate
18 amount of all financial obligations imposed upon the defendant would cause
19 substantial financial hardship to the defendant or his dependents. In such cases, the
20 provisions of Article 875.1 shall apply.

21 * * *

22 Art. 888. Costs and fines; payment

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

28 * * *

1 Art. 894.4. Probation; extension

2 When a defendant has been sentenced to probation and has a monetary
3 obligation, including but not limited to court costs, fines, costs of prosecution, and
4 any other monetary costs associated with probation, the judge may not extend the
5 period of probation ~~until the monetary obligation is extinguished~~ for the purpose of
6 collecting any unpaid monetary obligation.

7 * * *

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

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

24 (2)(a) The order to pay restitution together with any order to pay costs or
25 fines, as provided in this Article, is deemed a civil money judgment in favor of the
26 person to whom restitution, costs, or fines is owed, if the defendant is informed of
27 his right to have a judicial determination of the amount and is provided with a
28 hearing, ~~waived a hearing, or stipulated to the amount of the restitution, cost, or fine~~
29 ~~ordered.~~ In addition to proceedings ~~had~~ by the court which orders the restitution,

1 cost, or fine, the judgment may be enforced in the same manner as a money
 2 judgment in a civil case. Likewise, the judgment may be filed as a lien as provided
 3 by law for judgment creditors. Prior to the enforcement of the restitution order, or
 4 order for costs or fines, the defendant shall be notified of his right to have a judicial
 5 determination of the amount of restitution, cost, or fine and a determination pursuant
 6 to Article 875.1 of whether payment in full of the aggregate amount of all financial
 7 obligations imposed upon the defendant would cause substantial financial hardship
 8 to the defendant or his dependents. Such notice shall be served personally by the
 9 district attorney's office of the respective judicial district in which the restitution,
 10 cost, or fine is ordered.

11 * * *

12 D. ~~The court may, in lieu of the monthly supervision fee provided for in~~
 13 ~~Paragraph C of this Article, require the defendant to perform a specified amount of~~
 14 ~~community service work each month if the court finds the defendant is unable to pay~~
 15 ~~the minimum supervision fee provided for in Paragraph C of this Article.~~

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

23 F.E. When the court places the defendant on supervised probation, it shall
 24 order as a condition of probation the payment of a monthly fee of eleven dollars.
 25 The monthly fee established in this Paragraph shall be in addition to the fee
 26 established in Paragraph C of this Article and shall be collected by the Department
 27 of Public Safety and Corrections and shall be transmitted, deposited, appropriated,
 28 and used in accordance with the following provisions:

1 (1) The monthly fee established in this Paragraph shall be deposited
2 immediately upon receipt in the state treasury.

3 (2) After compliance with the requirements of Article VII, Section 9(B) of
4 the Constitution of Louisiana relative to the Bond Security and Redemption Fund,
5 and prior to monies being placed in the state general fund, an amount equal to that
6 deposited as required by Subparagraph (1) of this Paragraph shall be credited to a
7 special fund which is hereby created in the state treasury to be known as the "Sex
8 Offender Registry Technology Fund". The monies in this fund shall be used solely
9 as provided in Subparagraph (3) of this Paragraph and only in the amounts
10 appropriated by the legislature.

11 (3) The monies in the Sex Offender Registry Technology Fund shall be
12 appropriated as follows:

13 (a) For Fiscal Year 2006-2007, the amount of one hundred ninety thousand
14 dollars to the Department of Public Safety and Corrections, office of state police, to
15 be used in the administration of programs for the registration of sex offenders in
16 compliance with federal and state laws, and support of community notification
17 efforts by local law enforcement agencies. For Fiscal Years 2007-2008 through
18 2009-2010, the amount to be appropriated under this Subparagraph shall be twenty-
19 five thousand dollars. For Fiscal Years 2010-2011, and thereafter, the amount to be
20 appropriated to the Department of Public Safety and Corrections, office of state
21 police, shall be twenty-five thousand dollars for the purposes of maintaining and
22 administering the programs for the registration of sex offenders pursuant to this
23 Subparagraph and special law enforcement initiatives.

24 (b) For Fiscal Year 2010-2011 and each year thereafter, an amount equal to
25 fifteen percent of the total residual monies available for appropriation from the fund
26 shall be appropriated to the Department of Public Safety and Corrections, office of
27 adult services, division of probation and parole.

28 (c) For Fiscal Year 2010-2011 through Fiscal Year 2013-2014, residual
29 monies available for appropriation after satisfying the requirements of

1 Subsubparagraphs (a) and (b) of this Subparagraph shall be appropriated to the
2 Department of Justice, office of the attorney general. Of that residual amount, one
3 hundred fifty thousand dollars shall be allocated to the office of the attorney general
4 of which fifty thousand dollars shall be allocated for personnel and other costs to
5 assist and monitor sheriff participation in utilization of the computer system, and one
6 hundred thousand dollars of which shall be allocated to the cost of maintenance of
7 the computer system which shall interface with the computer systems of the sheriffs
8 of the parishes for registration of sex offenders and child predators.

9 (d) For Fiscal Year 2014-2015, and thereafter, residual monies available for
10 appropriation after satisfying the requirements of Subsubparagraphs (a) and (b) of
11 this Subparagraph shall be appropriated to the Department of Justice, office of the
12 attorney general. Of that residual amount, two hundred and fifty thousand dollars
13 shall be allocated to the office of the attorney general of which one hundred and fifty
14 thousand dollars shall be allocated for personnel and other costs to assist and monitor
15 sheriff participation in utilization of the computer system and the administration of
16 the sex offender and child predator registration and notification laws as set forth in
17 R.S. 15:540 et seq., and one hundred thousand dollars of which shall be allocated to
18 the cost of maintenance of the computer system of the sheriffs of the parishes for
19 registration of sex offenders and child predators.

20 (e) After providing for the allocations in Subsubparagraphs (a), (b), (c), and
21 (d) of this Subparagraph, the remainder of the residual monies in the Sex Offender
22 Registry Technology Fund shall, pursuant to an appropriation to the office of the
23 attorney general, be distributed to the sheriff of each parish, based on the population
24 of convicted sex offenders, sexually violent predators, and child predators who are
25 residing in the parish and who are active sex offender registrants or active child
26 predator registrants in the respective parishes according to the State Sex Offender
27 and Child Predator Registry. These funds shall be used to cover the costs associated
28 with sex offender registration and compliance. Population data necessary to
29 implement the provisions of this Subparagraph shall be as compiled and certified by

1 the undersecretary of the Department of Public Safety and Corrections on the first
2 day of June of each year. No later than thirty days after the Revenue Estimating
3 Conference recognizes the prior year fund balance, the office of the attorney general
4 shall make these distributions, which are based on the data certified by the
5 undersecretary of the Department of Public Safety and Corrections, to the recipient
6 sheriffs who are actively registering offenders pursuant to this Paragraph.

7 * * *

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

9 * * *

10 C. Compliance enforcement. ~~The (1) Except as provided in Subparagraph~~
11 ~~(2) of this Paragraph, the~~ district attorney may take all lawful action necessary to
12 require compliance with court-ordered payments, ~~including filing a petition for~~
13 ~~revocation of probation, filing a petition to show cause for contempt of court, or~~
14 ~~institution of any other civil or criminal proceedings which may be authorized by law~~
15 ~~or by rule of court.~~ In addition, the district attorney may issue appropriate notices
16 to inform the defendant of his noncompliance and of the penalty for noncompliance.
17 In the event that the district attorney institutes any other civil or criminal proceedings
18 pursuant to this Paragraph, the defendant shall be charged costs of court and such
19 costs shall be added to the amount due.

20 (2) Prior to authorizing the issuance of a warrant of arrest for a missed
21 payment or missed court appearance related to a defendant's failure to pay victim
22 restitution, victim compensation assessments, probation fees, and orders for payment
23 from any civil or criminal proceedings, the court shall, at a minimum, send
24 notification to the defendant's last known address containing all of the following:

25 (a) Information about the process for resolving the missed payment or
26 appearance.

27 (b) A clear statement that the defendant will not be jailed for inability to pay.

- (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) 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.
- (3) 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.
- (4) 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.
- (5) 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 a maximum of 15 hours of community service.
- (6) 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.
- (7) 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.

Proposed law further 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 subject to the following penalties for failure to make payment:

- (1) Imprisonment for failure to pay fine or costs imposed as part of the sentence.
- (2) Suspension of driving privileges for failure to pay fines levied against him.
- (3) Enforcement of fines, restitution, or costs by civil process.

Finally, proposed law provides for the following:

- (1) Prohibits the court from extending a defendant's probation for the purpose of collecting any unpaid monetary obligation.
- (2) Prohibits the district attorney from filing a petition for revocation of probation, filing a petition for contempt of court, or instituting any other civil or criminal proceeding for the purpose of requiring a defendant to comply with his financial obligations.
- (3) Provides that prior to authorizing the issuance of a warrant for arrest for a missed payment or missed court appearance related to the defendant's failure to make payment, the court shall send notification to the defendant with information about the process for resolving missed payments, a statement that the defendant will not be jailed for inability to pay, and the date by which the defendant shall either make payment, request a payment alternative, or request a modification or waiver of his outstanding debt pursuant to the provisions of proposed law.

(Amends C.Cr.P. Arts. 883.2(D), 884, 885.1(A), (C), and (D), 886(A), 888, 894.4, 895.1(A)(1) and (2)(a), (D), and (E), and 895.5(C); Adds C.Cr.P. Arts. 875.1, 885.1(E), and 886(C); Repeals C.Cr.P. Art. 895.1(F))