

## RÉSUMÉ DIGEST

ACT 260 (HB 249)

2017 Regular Session

Magee

When an offender is convicted of an offense, existing 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.

New law, prior to ordering the imposition of any financial obligation, requires the court to 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 shall apply only to those defendants convicted of a felony offense and cannot be waived by the defendant. In this regard, new law does all of the following:

- (1) Defines "financial obligation" as any fine, fee, cost, restitution, or other monetary obligation authorized by existing 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

With regard to existing and prior law provisions relative to the enforcement after nonpayment of these financial obligations, new law provides as follows:

- (1) If the defendant is found to be indigent and therefore unable to make restitution in full at the time of conviction, amends prior law to provide that the court may order a periodic payment plan pursuant to new law instead of a payment plan consistent with the person's financial ability.
- (2) Retains the existing law provision which provides that 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. However, new law provides that if it is determined, pursuant to new 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.
- (3) With regard to the court's existing law authority to order the surrender of a driver's license for up to 180 days, new law limits this authority to apply only those persons convicted of a felony offense who willfully refuse to pay the fine.

- (4) Existing law requires all costs and fines to be paid immediately, but provides that 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. New law retains existing law, but provides that it shall be subject to the provisions of new law relative to the determination of the defendant's ability to pay.
- (5) Prior law provided that 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. New law amends prior law to provide that except with regard to unpaid victim restitution, the court is prohibited from extending a defendant's probation for the purpose of collecting any unpaid monetary obligation. New law instead allows the court to refer the unpaid monetary obligation to the office of debt recovery pursuant to existing law (R.S. 47:1676).
- (6) With regard to unpaid victim restitution, new law authorizes the court to extend probation only one time and only by a period of six months for the purpose of monitoring the collection of unpaid victim restitution if the extension would ensure collection of the restitution more effectively than converting it to a civil money judgment, referring it to the office of debt recovery, or any other enforcement mechanism authorized by law.
- (7) If the defendant is ordered to pay restitution as a condition of probation and the court orders, amends prior law to provide that restitution payments shall be made pursuant to new law relative to the determination of the defendant's ability to pay instead of payment in a lump sum or in monthly installments pursuant to prior law.
- (8) Retains the existing law provision which provides that 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, but removes the prior law provision which allowed the enforcement of any restitution order if the defendant waived the hearing or stipulated to the amount of the restitution, cost, or fine ordered.
- (9) Retains the existing law provision which authorized the court to require the defendant, in lieu of a monthly probation supervision fee, 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) Retains the existing law authority of each district attorney to establish a special division in the office designated as the "restitution recovery division" and to take all lawful action necessary to require compliance with court-ordered payments.
- (11) New law provides that if a court authorizes a payment plan pursuant to new law and the defendant fails to make a payment, the court is required 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 August 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)