
DIGEST

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HB 611 Original

2019 Regular Session

Magee

Abstract: Provides relative to the court's authority to suspend a defendant's driver's license for failure to pay a criminal fine and delays the effective date of certain provisions of Act No. 260 of the 2017 R.S., relative to the financial obligations for criminal offenders, to August 1, 2021.

Act No. 260 of the 2017 R.S. makes changes to present law relative to the financial obligations of criminal offenders, including but not limited to the following:

- (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 and 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 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.
- (8) 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.
- (9) 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.
- (10) 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.

Act No. 260 of the 2017 R.S. further provided that these changes to present law shall be effective Aug. 1, 2018.

In the 2018 R.S., Act Nos. 137 and 668 delayed the effective date of these changes from Aug. 1, 2018, to Aug. 1, 2019.

Proposed law delays the effective date of these provisions for two additional years from Aug. 1, 2019, to Aug. 1, 2021, except for certain changes made to present law (C.Cr.P. Art. 885.1) provisions regarding to the court's authority to suspend the driver's license of the defendant which shall be effective, pursuant to proposed law, on Aug. 1, 2019.

Proposed law amends present law provisions regarding the court's authority to suspend the driver's license of the defendant to provide relative to the procedure by which a defendant's driver's license may be suspended under the following circumstances:

- (1) When a fine is levied against a person convicted of any violation of the La. Highway Regulatory Act or any municipal or parish ordinance regulating traffic in any municipality or in any parish, and the defendant is granted an extension of time to pay the fine.

- (2) When a fine is levied against a person convicted of any misdemeanor or felony criminal offense, except for a conviction of any violation of the La. Highway Regulatory Act or any municipal or parish ordinance regulating traffic in any municipality or in any parish, and the defendant is granted an extension of time to pay the fine and is able but has wilfully refused to pay the fine. Further provides that the court's determination of whether the defendant is able but willfully refuses to pay the fine shall be upon motion of the defendant.

(Amends C.Cr.P. Art. 885.1 and Act No. 260 of the 2017 R.S., §3, as amended by Act No. 137 and 668 of the 2018 R.S.)