

GREEN SHEET REDIGEST

HB 611

2019 Regular Session

Magee

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

DIGEST

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.

Present law (C.Cr.P. Art. 885.1) provides that when a fine is levied against a person convicted of any criminal offense, including any violation of the La. Highway Regulatory Act or any municipal or parish ordinance regulating traffic and the defendant is granted an extension of time to pay the fine, the judge of the court having jurisdiction may order the driver's license to be surrendered to the sheriff or official of the court collecting fines for a period of time not to exceed 180 days.

In this regard, present law (C.Cr.P. Art. 885.1) does the following:

- (1) Provides that if, after expiration of 180 days, the defendant has not paid the fine, for certain present law vehicular offenses, the sheriff or official of the court designated to collect fines shall forward the license to the Dept. of Public Safety and Corrections and shall issue a temporary permit for a period not to exceed 180 days or for a period of time set forth by the judge having jurisdiction.
- (2) Provides that upon receipt of the defendant's surrendered driver's license, the Dept. of Public Safety and Corrections shall suspend the driver's license of the defendant, and further provides that the department shall not reinstate, return, reissue, or renew a driver's license in its possession until payment of the fine and other applicable costs, fees, or penalties.

Proposed law does all of the following:

- (1) Amends present law to provide that upon a showing by the defendant that he is financially unable to pay at the expiration of the extended period granted by the court under present law, the court shall grant the person an extension of time, not to exceed 180 days, in which to pay the fine, or offer the person, in lieu of paying the fine, the alternative of performing community service as set by the judge.
- (2) Amends present law to provide that if, at the expiration of the 180-day period granted by the judge, the judge determines that the defendant has either willfully not paid the fine or has not performed the community service, the judge may do either of the following:
 - (a) For certain present law vehicular offenses, order the person's driver's license to be surrendered to the sheriff or official of the court collecting fines.
 - (b) Grant the person an extension of time to either pay the fine or perform the community service.
- (3) Retains the present law provisions regarding the duties of the Dept. of Public Safety and Corrections, the sheriff, and the official of the court designated to collect fines.

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

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Provide that the court's authority to suspend the driver's license of the defendant or to grant an extension of time to pay the fine is dependent upon a showing by the defendant of his financial ability to pay, regardless of whether the defendant was convicted of a criminal offense or of a violation of a traffic law or ordinance.
2. Authorize the court to grant a defendant who is financially unable pay an extension of time to pay the fine or offer the defendant the alternative of performing community service.
3. At the expiration of the extended period of time to pay the fine or perform the community service, authorize the judge to grant additional time or order the defendant's driver's license to be surrendered if the judge determines that the defendant has either willfully not paid the fine or has not performed the community service.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the reengrossed bill

1. Make certain provisions of proposed law applicable only to certain present law vehicular offenses.