

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), 886(A), 888, 894.4, 895.1(A)(1) and (2)(a), (D), and (E), and 895.5(C) are hereby
4 amended and reenacted and Code of Criminal Procedure Articles 875.1, 885.1(E), and
5 886(C) are hereby enacted to read as 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 (D)(1)(b) of this Article 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 a maximum of fifteen hours of
24 community service.

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

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

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

14 * * *

15 Art. 883.2. Restitution to victim

16 * * *

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

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

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

28 B. The provisions of this Article do not apply if the court has determined,
29 pursuant to the provisions of Article 875.1, that payment in full of the aggregate

1 amount of all financial obligations imposed upon the defendant would cause
2 substantial financial hardship to the defendant or his dependents. In such cases, the
3 provisions of Article 875.1 shall apply.

4 * * *

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

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

16 * * *

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

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

1 ordinance, the court having jurisdiction may grant the defendant five judicial days
2 after rendition of judgment to pay any costs and any fine imposed.

3 * * *

4 Art. 894.4. Probation; extension

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

11 * * *

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

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

28 (2)(a) The order to pay restitution together with any order to pay costs or
29 fines, as provided in this Article, is deemed a civil money judgment in favor of the

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

* * *

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

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

27 F.E. When the court places the defendant on supervised probation, it shall
 28 order as a condition of probation the payment of a monthly fee of eleven dollars.
 29 The monthly fee established in this Paragraph shall be in addition to the fee

1 established in Paragraph C of this Article and shall be collected by the Department
2 of Public Safety and Corrections and shall be transmitted, deposited, appropriated,
3 and used in accordance with the following provisions:

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

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

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

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

27 (b) For Fiscal Year 2010-2011 and each year thereafter, an amount equal to
28 fifteen percent of the total residual monies available for appropriation from the fund

1 shall be appropriated to the Department of Public Safety and Corrections, office of
2 adult services, division of probation and parole.

3 (c) For Fiscal Year 2010-2011 through Fiscal Year 2013-2014, residual
4 monies available for appropriation after satisfying the requirements of
5 Subsubparagraphs (a) and (b) of this Subparagraph shall be appropriated to the
6 Department of Justice, office of the attorney general. Of that residual amount, one
7 hundred fifty thousand dollars shall be allocated to the office of the attorney general
8 of which fifty thousand dollars shall be allocated for personnel and other costs to
9 assist and monitor sheriff participation in utilization of the computer system, and one
10 hundred thousand dollars of which shall be allocated to the cost of maintenance of
11 the computer system which shall interface with the computer systems of the sheriffs
12 of the parishes for registration of sex offenders and child predators.

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

24 (e) After providing for the allocations in Subsubparagraphs (a), (b), (c), and
25 (d) of this Subparagraph, the remainder of the residual monies in the Sex Offender
26 Registry Technology Fund shall, pursuant to an appropriation to the office of the
27 attorney general, be distributed to the sheriff of each parish, based on the population
28 of convicted sex offenders, sexually violent predators, and child predators who are
29 residing in the parish and who are active sex offender registrants or active child

1 predator registrants in the respective parishes according to the State Sex Offender
 2 and Child Predator Registry. These funds shall be used to cover the costs associated
 3 with sex offender registration and compliance. Population data necessary to
 4 implement the provisions of this Subparagraph shall be as compiled and certified by
 5 the undersecretary of the Department of Public Safety and Corrections on the first
 6 day of June of each year. No later than thirty days after the Revenue Estimating
 7 Conference recognizes the prior year fund balance, the office of the attorney general
 8 shall make these distributions, which are based on the data certified by the
 9 undersecretary of the Department of Public Safety and Corrections, to the recipient
 10 sheriffs who are actively registering offenders pursuant to this Paragraph.

11 * * *

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

13 * * *

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

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

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)]

HB 249 Engrossed

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 a maximum of 15 hours of 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.

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 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.
- (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.

Effective Aug. 1, 2018.

(Amends R.S. 47:1767(B)(1) and 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))

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.