
DIGEST

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HB 249 Reengrossed

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

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.
- (9) 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.
- (10) 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.
- (11) 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.

Effective Aug. 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)

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.

The House Floor Amendments to the engrossed bill:

1. Remove the limit of fifteen hours as the maximum amount of hours of community service authorized as a payment alternative when a defendant is unable to make a monthly payment.
2. Remove the proposed prohibition on suspending the driving privileges of a defendant who fails to pay a criminal fine if the court has 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.
3. Restore present law relative to the court's authority to order the defendant to pay judicial interest on any fine, cost, or restitution to the victim that the defendant has failed to pay.
4. Remove the proposed prohibition on enforcing through civil process an unpaid fine, cost, or restitution to the victim if the court has 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.
5. Remove the proposed law requirement that a determination be made pursuant to proposed law of whether 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 prior to enforcing an order for restitution, fines, or costs through a civil money judgement in favor of the person to whom restitution, costs, or fines is owed.
6. Restore present law which authorizes the court to require the defendant to perform a certain amount of community service work each month in lieu of a monthly probation supervision fee.
7. Restore the district attorney's present law authority to file a petition for revocation of probation, to file a petition to show cause for contempt of court, or institute any other civil or criminal proceedings authorized by law to require compliance with court-ordered payments.
8. Remove the proposed law provision which required the court to send a notice to the defendant containing certain information prior to authorizing the issuance of a warrant of arrest for a missed payment or missed court appearance related to the defendant's failure to make certain payments.

9. If a court authorizes a payment plan pursuant to proposed law and the defendant fails to make a payment, require 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 provide the information that must be included in the notice.