

2017 Bill Text LA H.B. 249

Enacted, June 15, 2017

Reporter

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Notice

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THE STATE OF LOUISIANA BILL TEXT > LOUISIANA 2017 REGULAR LEGISLATIVE SESSION > HOUSE
BILL 249

Synopsis

AN ACT

To amend and reenact R.S. 47:1676(B)(1) and Code of Criminal Procedure Articles 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) and to enact Code of Criminal Procedure Article 875.1, relative to the financial obligations for criminal offenders; to provide relative to the payment of fines, fees, costs, restitution, and other monetary obligations related to an offender's conviction; to require the court to determine the offender's ability to pay the financial obligations imposed; to authorize the court to waive, modify, or create a payment plan for the offender's financial obligations; to provide relative to the court's authority to extend probation under certain circumstances; to provide relative to the recovery of uncollected monetary obligations at the end of a probation period; to provide for legislative intent; to provide relative to the disbursement of collected payments; to authorize the court to impose certain conditions in lieu of payment in certain situations; to provide relative to the penalties imposed when an offender fails to make certain payments or fails to appear for a hearing relative to missed payments; to require notice to an offender upon his failure to make certain payments; to provide for an effective date; and to provide for related matters.

Text

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 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) are hereby amended and reenacted and Code of Criminal Procedure Article 875.1 is hereby enacted to read as follows:

ART. 875.1. DETERMINATION OF SUBSTANTIAL FINANCIAL HARDSHIP TO THE DEFENDANT

- A. THE PURPOSE OF IMPOSING FINANCIAL OBLIGATIONS ON AN OFFENDER WHO IS CONVICTED OF A CRIMINAL OFFENSE IS TO HOLD THE OFFENDER ACCOUNTABLE FOR HIS ACTION, TO COMPENSATE VICTIMS FOR ANY ACTUAL PECUNIARY LOSS OR COSTS INCURRED IN CONNECTION WITH A CRIMINAL PROSECUTION, TO DEFRAY THE COST OF COURT OPERATIONS, AND TO PROVIDE SERVICES TO OFFENDERS AND VICTIMS. THESE FINANCIAL OBLIGATIONS SHOULD NOT CREATE A BARRIER TO THE OFFENDER'S SUCCESSFUL REHABILITATION AND REENTRY INTO SOCIETY. FINANCIAL OBLIGATIONS IN EXCESS OF WHAT AN OFFENDER CAN REASONABLY PAY UNDERMINE THE PRIMARY**

PURPOSE OF THE JUSTICE SYSTEM WHICH IS TO DETER CRIMINAL BEHAVIOR AND ENCOURAGE COMPLIANCE WITH THE LAW. FINANCIAL OBLIGATIONS THAT CAUSE UNDUE HARDSHIP ON THE OFFENDER SHOULD BE WAIVED, MODIFIED, OR FORGIVEN. CREATING A PAYMENT PLAN FOR THE OFFENDER THAT IS BASED UPON THE ABILITY TO PAY, RESULTS IN FINANCIAL OBLIGATIONS THAT THE OFFENDER IS ABLE TO COMPLY WITH AND OFTEN RESULTS IN MORE MONEY COLLECTED. OFFENDERS WHO ARE CONSISTENT IN THEIR PAYMENTS AND IN GOOD FAITH TRY TO FULFILL THEIR FINANCIAL OBLIGATIONS SHOULD BE REWARDED FOR THEIR EFFORTS.

- B. FOR PURPOSES OF THIS ARTICLE, "FINANCIAL OBLIGATIONS" SHALL INCLUDE ANY FINE, FEE, COST, RESTITUTION, OR OTHER MONETARY OBLIGATION AUTHORIZED BY THIS CODE OR BY THE LOUISIANA REVISED STATUTES OF 1950 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.

C.(1) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, PRIOR TO ORDERING THE IMPOSITION OR ENFORCEMENT OF ANY FINANCIAL OBLIGATIONS AS DEFINED BY THIS ARTICLE, THE COURT SHALL DETERMINE WHETHER PAYMENT IN FULL OF THE AGGREGATE AMOUNT OF ALL THE FINANCIAL OBLIGATIONS TO BE IMPOSED UPON THE DEFENDANT WOULD CAUSE SUBSTANTIAL FINANCIAL HARDSHIP TO THE DEFENDANT OR HIS DEPENDENTS.

- (2) THE DEFENDANT MAY NOT WAIVE THE JUDICIAL DETERMINATION OF A SUBSTANTIAL FINANCIAL HARDSHIP REQUIRED BY THE PROVISIONS OF THIS PARAGRAPH.

D.(1) 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, THE COURT SHALL DO EITHER OF THE FOLLOWING:

- (A) WAIVE ALL OR ANY PORTION OF THE FINANCIAL OBLIGATIONS.
(B) ORDER A PAYMENT PLAN THAT REQUIRES THE DEFENDANT TO MAKE A MONTHLY PAYMENT TO FULFILL THE FINANCIAL OBLIGATIONS.

(2)

(A) THE AMOUNT OF EACH MONTHLY PAYMENT FOR THE PAYMENT PLAN ORDERED PURSUANT TO THE PROVISIONS OF SUBSUBPARAGRAPH (1)(B) OF THIS PARAGRAPH SHALL BE EQUAL TO THE DEFENDANT'S AVERAGE GROSS DAILY INCOME FOR AN EIGHT-HOUR WORK DAY.

(B) IF THE COURT HAS ORDERED RESTITUTION, HALF OF THE DEFENDANT'S MONTHLY PAYMENT SHALL BE DISTRIBUTED TOWARD THE DEFENDANT'S RESTITUTION OBLIGATION.

(C) 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.

- (3) IF, AFTER THE INITIAL DETERMINATION OF THE DEFENDANT'S ABILITY TO FULFILL HIS FINANCIAL OBLIGATIONS, THE DEFENDANT'S CIRCUMSTANCES AND ABILITY TO PAY HIS FINANCIAL OBLIGATIONS CHANGE, THE DEFENDANT OR HIS ATTORNEY MAY FILE A MOTION WITH THE COURT TO REEVALUATE THE DEFENDANT'S CIRCUMSTANCES AND DETERMINE, IN THE SAME MANNER AS THE INITIAL

DETERMINATION, WHETHER UNDER THE DEFENDANT'S CURRENT CIRCUMSTANCES 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. UPON SUCH MOTION, IF THE COURT DETERMINES THAT THE DEFENDANT'S CURRENT CIRCUMSTANCES WOULD CAUSE SUBSTANTIAL FINANCIAL HARDSHIP TO THE DEFENDANT OR HIS DEPENDENTS, THE COURT MAY EITHER WAIVE OR MODIFY THE DEFENDANT'S FINANCIAL OBLIGATION, OR RECALCULATE THE AMOUNT OF THE MONTHLY PAYMENT MADE BY THE DEFENDANT UNDER THE PAYMENT PLAN SET FORTH IN SUBSUBPARAGRAPH (1)(B) OF THIS PARAGRAPH.

- E. IF A DEFENDANT IS ORDERED TO MAKE MONTHLY PAYMENTS UNDER A PAYMENT PLAN ESTABLISHED PURSUANT TO THE PROVISIONS OF SUBSUBPARAGRAPH (D)(1)(B) OF THIS ARTICLE, THE DEFENDANT'S OUTSTANDING FINANCIAL OBLIGATIONS RESULTING FROM HIS CRIMINAL CONVICTION ARE FORGIVEN AND CONSIDERED PAID-IN-FULL IF THE DEFENDANT MAKES CONSISTENT MONTHLY PAYMENTS FOR EITHER TWELVE CONSECUTIVE MONTHS OR CONSISTENT MONTHLY PAYMENTS FOR HALF OF THE DEFENDANT'S TERM OF SUPERVISION, WHICHEVER IS LONGER.
- F. THE PROVISIONS OF THIS ARTICLE SHALL APPLY ONLY TO DEFENDANTS CONVICTED OF OFFENSES CLASSIFIED AS FELONIES UNDER APPLICABLE LAW.

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Art. 883.2. Restitution to victim

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- D. Notwithstanding any other provision of law to the contrary, 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~~ PURSUANT TO THE PROVISIONS OF ARTICLE 875.1 .

Art. 884. Sentence of fine with imprisonment for default

- A. If a sentence imposed includes a fine or costs, the sentence shall provide that in default of payment thereof the defendant shall be imprisoned for a specified period not to exceed one year; provided that where the maximum prison sentence which may be imposed as a penalty for a misdemeanor is six months or less, the total period of imprisonment upon conviction of the offense, including imprisonment for default in payment of a fine or costs, shall not exceed six months for that offense.
- B. THE PROVISIONS OF THIS ARTICLE DO NOT APPLY IF THE COURT HAS DETERMINED, PURSUANT TO THE PROVISIONS OF ARTICLE 875.1, 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. IN SUCH CASES, THE PROVISIONS OF ARTICLE 875.1 SHALL APPLY.

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

- A. When a fine is levied against a person convicted of any **FELONY** criminal offense ~~, including any violation of the Louisiana 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~~ **IS ABLE BUT HAS WILLFULLY REFUSED** 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 one hundred eighty days. ~~If, after expiration of one hundred~~

~~eighty days, the defendant has not paid the fine, the sheriff or official of the court designated to collect fines shall forward the license to the Department of Public Safety and Corrections.~~

* * *

- C. If, after expiration of one hundred eighty days, **THE COURT FINDS THAT** the defendant ~~has not paid~~ **REMAINS ABLE BUT HAS WILLFULLY REFUSED TO PAY** the fine, the sheriff or official of the court designated to collect fines shall forward the license to the Department of Public Safety and Corrections. Upon receipt of the defendant's surrendered driver's license, the department shall suspend the driver's license of the defendant. The suspension shall begin when the department receives written notification from the court, and the department shall send immediate written notification to the defendant informing him of the suspension of driving privileges.
- D. The department shall ~~not~~ reinstate, return, reissue, or renew a driver's license in its possession pursuant to this Section ~~until~~ **UPON** payment of the fine and any additional administrative cost, fee, or penalty required by the judge having the jurisdiction and any other cost, fee, or penalty required by the department in accordance with R.S. 32:414(H) or other applicable cost, fee, or penalty provision.

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Art. 888. Costs and fines; payment

Costs and any fine imposed shall be payable immediately **EXCEPT AS PROVIDED IN ARTICLE 875.1 RELATIVE TO THE DETERMINATION OF THE DEFENDANT'S ABILITY TO PAY** ; provided, however, that in cases involving the violation of any traffic law or ordinance, the court having jurisdiction may grant the defendant five judicial days after rendition of judgment to pay any costs and any fine imposed.

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Art. 894.4. Probation; extension

- A. When a defendant has been sentenced to probation and has a monetary obligation, including but not limited to court costs, fines, costs of prosecution, and any other monetary costs associated with probation, the judge may **NOT** extend the period of probation ~~until the monetary obligation is extinguished~~ **FOR THE PURPOSE OF COLLECTING ANY UNPAID MONETARY OBLIGATION, EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS ARTICLE, BUT MAY REFER THE UNPAID MONETARY OBLIGATION TO THE OFFICE OF DEBT RECOVERY PURSUANT TO R.S. 47:1676 .**
- B. **THE JUDGE MAY EXTEND PROBATION ONLY ONE TIME AND ONLY BY A PERIOD OF SIX MONTHS FOR THE PURPOSE OF MONITORING COLLECTION OF UNPAID VICTIM RESTITUTION IF THE COURT FINDS ON THE RECORD BY CLEAR AND CONVINCING EVIDENCE THAT THE COURT'S TEMPORARY ONGOING MONITORING WOULD ENSURE COLLECTION OF UNPAID RESTITUTION MORE EFFECTIVELY THAN ANY OF THE FOLLOWING:**
- (1) **CONVERTING THE UNPAID RESTITUTION TO A CIVIL MONEY JUDGMENT PURSUANT TO ARTICLE 886 OR 895.1 .**
 - (2) **REFERRING THE UNPAID RESTITUTION TO THE OFFICE OF DEBT RECOVERY PURSUANT TO R.S. 47:1676 .**
 - (3) **ANY OTHER ENFORCEMENT MECHANISM FOR COLLECTION OF UNPAID RESTITUTION AUTHORIZED BY LAW .**
- C. **A SIX-MONTH EXTENSION OF PROBATION AS PROVIDED IN PARAGRAPH B SHALL APPLY ONLY TO THE ORDER OF VICTIM RESTITUTION. ALL OTHER CONDITIONS OF PROBATION DURING THE SIX-MONTH EXTENSION SHALL BE TERMINATED .**

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

A.(1) When a court places the defendant on probation, it shall, as a condition of probation, order the payment of restitution in cases where the victim or his family has suffered any direct loss of actual cash, any monetary loss pursuant to damage to or loss of property, or medical expense. The court shall order restitution in a reasonable sum not to exceed the actual pecuniary loss to the victim in an amount certain. However, any additional or other damages sought by the victim and available under the law shall be pursued in an action separate from the establishment of the restitution order as a civil money judgment provided for in Subparagraph (2) of this Paragraph. ~~The~~ IF THE COURT HAS DETERMINED, PURSUANT TO THE PROVISIONS OF ARTICLE 875.1, 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, restitution ~~payment~~ PAYMENTS shall be made ~~, in discretion of the court, either in a lump sum or in monthly installments based on the earning capacity and assets of the defendant~~ PURSUANT TO THE PROVISIONS OF ARTICLE 875.1 .

(2)

- (a) The order to pay restitution together with any order to pay costs or fines, as provided in this Article, is deemed a civil money judgment in favor of the person to whom restitution, costs, or fines is owed, if the defendant is informed of his right to have a judicial determination of the amount and is provided with a hearing ~~, waived a hearing, or stipulated to the amount of the restitution, cost, or fine ordered~~ . In addition to proceedings ~~had~~ by the court which orders the restitution, cost, or fine, the judgment may be enforced in the same manner as a money judgment in a civil case. Likewise, the judgment may be filed as a lien as provided by law for judgment creditors. Prior to the enforcement of the restitution order, or order for costs or fines, the defendant shall be notified of his right to have a judicial determination of the amount of restitution, cost, or fine. Such notice shall be served personally by the district attorney's office of the respective judicial district in which the restitution, cost, or fine is ordered.

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- E. When the court places any defendant convicted of a violation of the ~~controlled dangerous substances law~~ UNIFORM CONTROLLED DANGEROUS SUBSTANCES LAW , R.S. 40:966 through 1034, on any type of probation, it shall order as a condition of probation a fee of not less than fifty nor more than one hundred dollars, payable to the Louisiana Commission on Law Enforcement AND ADMINISTRATION OF CRIMINAL JUSTICE to be credited to the Drug Abuse Education and Treatment Fund and used for the purposes provided in R.S. 15:1224.

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

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- C. Compliance enforcement. ~~The~~ (1) EXCEPT AS PROVIDED IN SUBPARAGRAPH (2) OF THIS PARAGRAPH, THE district attorney may take all lawful action necessary to require compliance with court-ordered payments, including filing a petition for revocation of probation, filing a petition to show cause for contempt of court, or institution of any other civil or criminal proceedings which may be authorized by law or by rule of court. In addition, the district attorney may issue appropriate notices to inform the defendant of his noncompliance and of the penalty for noncompliance. In the event that the district attorney institutes any other civil or criminal proceedings pursuant to this Paragraph, the defendant shall be charged costs of court and such costs shall be added to the amount due.

- (2) IF A COURT AUTHORIZES A PAYMENT PLAN TO COLLECT FINANCIAL OBLIGATIONS ASSOCIATED WITH A CRIMINAL CASE AND THE DEFENDANT FAILS TO MAKE A PAYMENT, THE COURT SHALL SERVE THE DEFENDANT WITH A CITATION FOR A

RULE TO SHOW CAUSE WHY THE DEFENDANT SHOULD NOT BE FOUND IN CONTEMPT OF COURT FOR FAILURE TO COMPLY WITH THE PAYMENT PLAN. THIS CITATION SHALL INCLUDE THE FOLLOWING NOTICE:

"IF YOU MAKE A PAYMENT TOWARD THE ABOVE LISTED FINES AND FEES ON OR BEFORE _____, YOU WILL NOT HAVE TO COME TO COURT FOR THIS MATTER.

IMPORTANT NOTICE REGARDING THE HEARING ON THE RULE TO SHOW CAUSE FOR PROOF OF SATISFACTION OF FINANCIAL OBLIGATION:

- (A) AT THE RULE TO SHOW CAUSE HEARING, THE COURT WILL EVALUATE YOUR ABILITY TO PAY THE FINES AND FEES LISTED ABOVE.
 - (B) YOU ARE ORDERED TO BRING ANY DOCUMENTATION OR INFORMATION THAT YOU WANT THE COURT TO CONSIDER IN DETERMINING YOUR ABILITY TO PAY.
 - (C) YOUR FAILURE TO MAKE A PAYMENT TOWARD THE ORDERED FINANCIAL OBLIGATION MAY RESULT IN YOUR INCARCERATION ONLY IF THE COURT FINDS, AFTER A HEARING, THAT YOU HAD THE ABILITY TO PAY AND WILLFULLY REFUSED TO DO SO.
 - (D) YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL (ATTORNEY/LAWYER) OF YOUR CHOICE. IF YOU CANNOT AFFORD COUNSEL, YOU HAVE THE RIGHT TO BE REPRESENTED BY A COURT- APPOINTED LAWYER AT NO COST TO YOU. HOWEVER, YOU MUST APPLY FOR A COURT-APPOINTED LAWYER AT LEAST SEVEN (7) DAYS BEFORE THIS COURT DATE BY GOING TO THE PUBLIC DEFENDER'S OFFICE. THERE IS A FORTY-DOLLAR (\$ 40) APPLICATION FEE.
 - (E) IF YOU ARE UNABLE TO MAKE A PAYMENT TOWARD THE ORDERED FINANCIAL OBLIGATION, YOU MAY REQUEST PAYMENT ALTERNATIVES INCLUDING BUT NOT LIMITED TO COMMUNITY SERVICE, A REDUCTION OF THE AMOUNT OWED, OR BOTH.
 - (F) DURING THE HEARING, YOU WILL HAVE A MEANINGFUL OPPORTUNITY TO EXPLAIN WHY YOU HAVE NOT PAID THE ABOVE-LISTED AMOUNTS BY PRESENTING EVIDENCE AND TESTIMONY."
- (3) IF AFTER THE HEARING PROVIDED FOR BY SUBPARAGRAPH (2) OF THIS PARAGRAPH, THE COURT CONTINUES TO AUTHORIZE A PAYMENT PLAN, THE DEFENDANT SHALL BE SERVED WITH THE SAME NOTICE PROVIDED FOR IN SUBPARAGRAPH (2) OF THIS PARAGRAPH REGARDING THE CONSEQUENCES AND DUE PROCESS FOR THE WILLFUL FAILURE TO PAY.

* * *

Section 2. R.S. 47:1676(B)(1) is hereby amended and reenacted to read as follows:

Section 1676. Debt recovery

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- B. For purposes of this Section, the following words shall have the following meanings unless the context clearly indicates otherwise:
- (1) "Agency" means any state office, department, board, commission, institution, division officer or other person, or functional group, existing or created, that is authorized to exercise, or that does exercise, any function of state government in the executive branch. FOR PURPOSES OF THIS SECTION, "AGENCY" SHALL ALSO MEAN THE COURT ONLY FOR THE COLLECTION OF UNPAID MONETARY OBLIGATIONS AS SET FORTH IN CODE OF CRIMINAL PROCEDURE ARTICLE 894.4.

* * *

Section 3. The provisions of this Act shall become effective on August 1, 2018.

History

ENROLLED

ACT NO 260

2017 REGULAR SESSION

HOUSE BILL NO. 249

BY REPRESENTATIVES MAGEE, BAGNERIS, BOUIE, CARPENTER, GARY CARTER, COX, DWIGHT, GAINES, GISCLAIR, GLOVER, HALL, JIMMY HARRIS, HUNTER, JACKSON, JAMES, JEFFERSON, JORDAN, TERRY LANDRY, LEGER, LYONS, MARCELLE, MARINO, MORENO, NORTON, REYNOLDS, AND SMITH

Sponsor(s)

Magee

Load-Date: June 20, 2017

THE STATE OF LOUISIANA BILL TEXT
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