

2018 Regular Session

HOUSE BILL NO. 111

BY REPRESENTATIVES MACK, BAGNERIS, CARPENTER, CREWS, DWIGHT,
HAZEL, HODGES, HOWARD, MARCELLE, MARINO, MUSCARELLO,
NORTON, AND PYLANT

CRIMINAL/RESTITUTION: Provides relative to the payment of restitution to the victim
of a crime

1 AN ACT
2 To amend and reenact Section 3 of Act No. 260 of the 2017 Regular Session of the
3 Legislature and Code of Criminal Procedure Article 875.1, relative to restitution; to
4 provide relative to payment of restitution to the victim of a crime; to provide for the
5 recordation of a civil money judgment without cost to the person to whom restitution
6 is owed; to prohibit the waiver and forgiveness of a defendant's financial obligations
7 that are designated as restitution; to delay the effective date of Act No. 260 of the
8 2017 Regular Session of the Legislature which provided relative to the payment of
9 fines, fees, costs, restitution, and other monetary obligations related to an offender's
10 conviction; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Article 875.1 is hereby amended and
13 reenacted to read as follows:

14 Art. 875.1. Determination of substantial financial hardship to the defendant

15 A. The purpose of imposing financial obligations on an offender who is
16 convicted of a criminal offense is to hold the offender accountable for his action, to
17 compensate victims for any actual pecuniary loss or costs incurred in connection
18 with a criminal prosecution, to defray the cost of court operations, and to provide
19 services to offenders and victims. These financial obligations should not create a

1 barrier to the offender's successful rehabilitation and reentry into society. Financial
2 obligations in excess of what an offender can reasonably pay undermine the primary
3 purpose of the justice system which is to deter criminal behavior and encourage
4 compliance with the law. Financial obligations that cause undue hardship on the
5 offender should be waived, modified, or forgiven. Creating a payment plan for the
6 offender that is based upon the ability to pay, results in financial obligations that the
7 offender is able to comply with and often results in more money collected. Offenders
8 who are consistent in their payments and in good faith try to fulfill their financial
9 obligations should be rewarded for their efforts.

10 B. For purposes of this Article, "financial obligations" shall include any fine,
11 fee, cost, restitution, or other monetary obligation authorized by this Code or by the
12 Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a
13 criminal sentence, incarceration, or as a condition of the defendant's release on
14 probation or parole.

15 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
16 the imposition or enforcement of any financial obligations as defined by this Article,
17 the court shall determine whether payment in full of the aggregate amount of all the
18 financial obligations to be imposed upon the defendant would cause substantial
19 financial hardship to the defendant or his dependents.

20 (2) The defendant may not waive the judicial determination of a substantial
21 financial hardship required by the provisions of this Paragraph.

22 D.(1) If the court determines that payment in full of the aggregate amount
23 of all financial obligations imposed upon the defendant would cause substantial
24 financial hardship to the defendant or his dependents, the court shall do either of the
25 following:

26 (a) Waive all or any portion of the financial obligations, except for any
27 financial obligation designated as restitution due to a victim.

28 (b) Order a payment plan that requires the defendant to make a monthly
29 payment to fulfill the financial obligations.

1 (2)(a) The amount of each monthly payment for the payment plan ordered
2 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be equal
3 to the defendant's average gross daily income for an eight-hour work day.

4 (b) If the court has ordered restitution, half of the defendant's monthly
5 payment shall be distributed toward the defendant's restitution obligation.

6 (c) During any periods of unemployment, homelessness, or other
7 circumstances in which the defendant is unable to make the monthly payment, the
8 court or the defendant's probation and parole officer is authorized to impose a
9 payment alternative, including but not limited to any of the following: substance
10 abuse treatment, education, job training, or community service.

11 (3) If, after the initial determination of the defendant's ability to fulfill his
12 financial obligations, the defendant's circumstances and ability to pay his financial
13 obligations change, the defendant or his attorney may file a motion with the court to
14 reevaluate the defendant's circumstances and determine, in the same manner as the
15 initial determination, whether under the defendant's current circumstances payment
16 in full of the aggregate amount of all the financial obligations imposed upon the
17 defendant would cause substantial financial hardship to the defendant or his
18 dependents. Upon such motion, if the court determines that the defendant's current
19 circumstances would cause substantial financial hardship to the defendant or his
20 dependents, the court may either waive or modify the defendant's financial
21 obligation, or recalculate the amount of the monthly payment made by the defendant
22 under the payment plan set forth in Subsubparagraph (1)(b) of this Paragraph.

23 E. If a defendant is ordered to make monthly payments under a payment plan
24 established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,
25 the defendant's outstanding financial obligations, except for a financial obligation
26 designated as restitution, resulting from his criminal conviction are forgiven and
27 considered paid-in-full if the defendant makes consistent monthly payments for
28 either twelve consecutive months or consistent monthly payments for half of the
29 defendant's term of supervision, whichever is longer.

1 F. If restitution is ordered by the court as a condition of probation, the
2 amount of restitution shall be reduced to a civil money judgment in favor of the
3 person to whom restitution is owed that may be enforced in the same manner as
4 provided for the execution of judgments in the Louisiana Code of Civil Procedure.
5 A form for the judgment shall be submitted by the district attorney to the sentencing
6 judge for signature. For any civil money judgment ordered under this Article, the
7 clerk shall record the judgment without charge to the person to whom restitution is
8 to be paid and shall send notice of the judgment to the last known address of the
9 person to whom the restitution was ordered to be paid.

10 G. The provisions of this Article shall apply only to defendants convicted of
11 offenses classified as felonies under applicable law.

12 Section 2. Section 3 of Act No. 260 of the 2017 Regular Session of the Legislature
13 is hereby amended and reenacted to read as follows:

14 Section 3. The provisions of this Act shall become effective on August 1, ~~2018~~ 2019.

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 111 Reengrossed 2018 Regular Session Mack

Abstract: Provides relative to the defendant's payment of certain financial obligations designated as restitution.

Present law (C.Cr.P. Art. 875.1, as enacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) provides that, beginning Aug. 1, 2018, 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.

Present law further provides for the following in this regard:

- (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 either waive all or any portion of the financial obligation or order a payment plan that requires the defendant to make a monthly payment to fulfill the obligations.
- (2) 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 amends present law (C.Cr.P. Art. 875.1, as enacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) to provide that the portion of the defendant's financial obligations that is designated as restitution due to a victim shall not be waived or forgiven pursuant to present law.

Finally, proposed law provides if restitution is owed as a condition of probation, the amount owed shall be reduced to a civil money judgement that may be enforced in the same manner as provided for the execution of judgments in the La. Code of Civil Procedure. A form for the judgment shall be submitted by the district attorney to the sentencing judge for signature. The clerk shall record the judgment without charge to the person to whom the restitution is owed, and notice of the judgment shall be sent by the clerk to the last known address of the person to whom the restitution was ordered to be paid.

Proposed law delays the effective date of Act No. 260 of the 2017 R.S. until Aug. 1, 2019.

(Amends C.Cr.P. Art. 875.1)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Delay the effective date of Act No. 260 of the 2017 R.S. until Aug. 1, 2019.
2. Amend provisions relative to any outstanding balance of unpaid restitution to provide for the following:
 - (a) If restitution is ordered as a condition of probation, require the entire amount of restitution to be reduced to a civil money judgement in favor of the person to whom restitution is owed instead of reducing to a civil money judgment the balance owed at the end of the defendant's term of supervision.
 - (b) Require the district attorney to submit a form for the civil money judgment to the sentencing judge for signature.
 - (c) Require the clerk of court to record the judgment without charge to the person to whom restitution is to be paid.