

# ACT No. 260

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

1 AN ACT

2 To amend and reenact R.S. 47:1676(B)(1) and Code of Criminal Procedure Articles  
3 883.2(D), 884, 885.1(A), (C), and (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E),  
4 and 895.5(C) and to enact Code of Criminal Procedure Article 875.1, relative to the  
5 financial obligations for criminal offenders; to provide relative to the payment of  
6 fines, fees, costs, restitution, and other monetary obligations related to an offender's  
7 conviction; to require the court to determine the offender's ability to pay the financial  
8 obligations imposed; to authorize the court to waive, modify, or create a payment  
9 plan for the offender's financial obligations; to provide relative to the court's  
10 authority to extend probation under certain circumstances; to provide relative to the  
11 recovery of uncollected monetary obligations at the end of a probation period; to  
12 provide for legislative intent; to provide relative to the disbursement of collected  
13 payments; to authorize the court to impose certain conditions in lieu of payment in  
14 certain situations; to provide relative to the penalties imposed when an offender fails  
15 to make certain payments or fails to appear for a hearing relative to missed  
16 payments; to require notice to an offender upon his failure to make certain payments;  
17 to provide for an effective date; and to provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

19 Section 1. Code of Criminal Procedure Articles 883.2(D), 884, 885.1(A), (C), and  
20 (D), 888, 894.4, 895.1(A)(1) and (2)(a) and (E), and 895.5(C) are hereby amended and  
21 reenacted and Code of Criminal Procedure Article 875.1 is hereby enacted to read as  
22 follows:

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

2           A. The purpose of imposing financial obligations on an offender who is  
3           convicted of a criminal offense is to hold the offender accountable for his action, to  
4           compensate victims for any actual pecuniary loss or costs incurred in connection  
5           with a criminal prosecution, to defray the cost of court operations, and to provide  
6           services to offenders and victims. These financial obligations should not create a  
7           barrier to the offender's successful rehabilitation and reentry into society. Financial  
8           obligations in excess of what an offender can reasonably pay undermine the primary  
9           purpose of the justice system which is to deter criminal behavior and encourage  
10           compliance with the law. Financial obligations that cause undue hardship on the  
11           offender should be waived, modified, or forgiven. Creating a payment plan for the  
12           offender that is based upon the ability to pay, results in financial obligations that the  
13           offender is able to comply with and often results in more money collected. Offenders  
14           who are consistent in their payments and in good faith try to fulfill their financial  
15           obligations should be rewarded for their efforts.

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

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

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

28           D.(1) If the court determines that payment in full of the aggregate amount  
29           of all financial obligations imposed upon the defendant would cause substantial

1 financial hardship to the defendant or his dependents, the court shall do either of the  
2 following:

3 (a) Waive all or any portion of the financial obligations.

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

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

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

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

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

28 E. If a defendant is ordered to make monthly payments under a payment plan  
29 established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,  
30 the defendant's outstanding financial obligations resulting from his criminal

1 conviction are forgiven and considered paid-in-full if the defendant makes consistent  
2 monthly payments for either twelve consecutive months or consistent monthly  
3 payments for half of the defendant's term of supervision, whichever is longer.

4 F. The provisions of this Article shall apply only to defendants convicted of  
5 offenses classified as felonies under applicable law.

6 \* \* \*

7 Art. 883.2. Restitution to victim

8 \* \* \*

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

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

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

20 B. The provisions of this Article do not apply if the court has determined,  
21 pursuant to the provisions of Article 875.1, that payment in full of the aggregate  
22 amount of all financial obligations imposed upon the defendant would cause  
23 substantial financial hardship to the defendant or his dependents. In such cases, the  
24 provisions of Article 875.1 shall apply.

25 \* \* \*

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

27 A. When a fine is levied against a person convicted of any felony criminal  
28 offense, ~~including any violation of the Louisiana Highway Regulatory Act or any~~  
29 ~~municipal or parish ordinance regulating traffic in any municipality or in any parish~~  
30 and the defendant is ~~granted an extension of time~~ is able but has willfully refused to

1 pay the fine, the judge of the court having jurisdiction may order the driver's license  
 2 to be surrendered to the sheriff or official of the court collecting fines for a period  
 3 of time not to exceed one hundred eighty days. ~~If, after expiration of one hundred~~  
 4 ~~eighty days, the defendant has not paid the fine, the sheriff or official of the court~~  
 5 ~~designated to collect fines shall forward the license to the Department of Public~~  
 6 ~~Safety and Corrections.~~

7 \* \* \*

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

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

21 \* \* \*

22 Art. 888. Costs and fines; payment

23 Costs and any fine imposed shall be payable immediately except as provided  
 24 in Article 875.1 relative to the determination of the defendant's ability to pay;  
 25 provided, however, that in cases involving the violation of any traffic law or  
 26 ordinance, the court having jurisdiction may grant the defendant five judicial days  
 27 after rendition of judgment to pay any costs and any fine imposed.

28 \* \* \*

1 Art. 894.4. Probation; extension

2 A. When a defendant has been sentenced to probation and has a monetary  
3 obligation, including but not limited to court costs, fines, costs of prosecution, and  
4 any other monetary costs associated with probation, the judge may not extend the  
5 period of probation ~~until the monetary obligation is extinguished~~ for the purpose of  
6 collecting any unpaid monetary obligation, except as provided in Paragraph B of this  
7 Article, but may refer the unpaid monetary obligation to the office of debt recovery  
8 pursuant to R.S. 47:1676.

9 B. The judge may extend probation only one time and only by a period of  
10 six months for the purpose of monitoring collection of unpaid victim restitution if the  
11 court finds on the record by clear and convincing evidence that the court's temporary  
12 ongoing monitoring would ensure collection of unpaid restitution more effectively  
13 than any of the following:

14 (1) Converting the unpaid restitution to a civil money judgment pursuant to  
15 Article 886 or 895.1.

16 (2) Referring the unpaid restitution to the office of debt recovery pursuant  
17 to R.S. 47:1676.

18 (3) Any other enforcement mechanism for collection of unpaid restitution  
19 authorized by law.

20 C. A six-month extension of probation as provided in Paragraph B shall  
21 apply only to the order of victim restitution. All other conditions of probation during  
22 the six-month extension shall be terminated.

23 \* \* \*

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

25 A.(1) When a court places the defendant on probation, it shall, as a condition  
26 of probation, order the payment of restitution in cases where the victim or his family  
27 has suffered any direct loss of actual cash, any monetary loss pursuant to damage to  
28 or loss of property, or medical expense. The court shall order restitution in a  
29 reasonable sum not to exceed the actual pecuniary loss to the victim in an amount  
30 certain. However, any additional or other damages sought by the victim and

1 available under the law shall be pursued in an action separate from the establishment  
 2 of the restitution order as a civil money judgment provided for in Subparagraph (2)  
 3 of this Paragraph. ~~The~~ If the court has determined, pursuant to the provisions of  
 4 Article 875.1, that payment in full of the aggregate amount of all financial  
 5 obligations imposed upon the defendant would cause substantial financial hardship  
 6 to the defendant or his dependents, restitution ~~payment~~ payments shall be made; in  
 7 discretion of the court, either in a lump sum or in monthly installments based on the  
 8 ~~earning capacity and assets of the defendant~~ pursuant to the provisions of Article  
 9 875.1.

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

23 \* \* \*

24 E. When the court places any defendant convicted of a violation of the  
 25 ~~controlled dangerous substances law~~ Uniform Controlled Dangerous Substances  
 26 Law, R.S. 40:966 through 1034, on any type of probation, it shall order as a  
 27 condition of probation a fee of not less than fifty nor more than one hundred dollars,

1 payable to the Louisiana Commission on Law Enforcement and Administration of  
2 Criminal Justice to be credited to the Drug Abuse Education and Treatment Fund and  
3 used for the purposes provided in R.S. 15:1224.

4 \* \* \*

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

6 \* \* \*

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

17 (2) If a court authorizes a payment plan to collect financial obligations  
18 associated with a criminal case and the defendant fails to make a payment, the court  
19 shall serve the defendant with a citation for a rule to show cause why the defendant  
20 should not be found in contempt of court for failure to comply with the payment  
21 plan. This citation shall include the following notice:

22 "If you make a payment toward the above listed fines and  
23 fees on or before \_\_\_\_\_, you will not have to come  
24 to court for this matter.

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

28 (a) At the rule to show cause hearing, the court will  
29 evaluate your ability to pay the fines and fees listed above.



1                   **(b) You are ordered to bring any documentation or**  
2                   **information that you want the court to consider in**  
3                   **determining your ability to pay.**

4                   **(c) Your failure to make a payment toward the**  
5                   **ordered financial obligation may result in your incarceration**  
6                   **only if the court finds, after a hearing, that you had the ability**  
7                   **to pay and willfully refused to do so.**

8                   **(d) You have the right to be represented by counsel**  
9                   **(attorney/lawyer) of your choice. If you cannot afford**  
10                   **counsel, you have the right to be represented by a court-**  
11                   **appointed lawyer at no cost to you. However, you must apply**  
12                   **for a court-appointed lawyer at least seven (7) days before**  
13                   **this court date by going to the public defender's office. There**  
14                   **is a forty-dollar (\$40) application fee.**

15                   **(e) If you are unable to make a payment toward the**  
16                   **ordered financial obligation, you may request payment**  
17                   **alternatives including but not limited to community service,**  
18                   **a reduction of the amount owed, or both.**

19                   **(f) During the hearing, you will have a meaningful**  
20                   **opportunity to explain why you have not paid the above-listed**  
21                   **amounts by presenting evidence and testimony."**

22                   **(3) If after the hearing provided for by Subparagraph (2) of this Paragraph,**  
23                   **the court continues to authorize a payment plan, the defendant shall be served with**  
24                   **the same notice provided for in Subparagraph (2) of this Paragraph regarding the**  
25                   **consequences and due process for the willful failure to pay.**

26                                   \*       \*       \*

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

28                   §1676. Debt recovery

29                                   \*       \*       \*

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1                   B. For purposes of this Section, the following words shall have the following  
2                   meanings unless the context clearly indicates otherwise:

3                   (1) "Agency" means any state office, department, board, commission,  
4                   institution, division officer or other person, or functional group, existing or created,  
5                   that is authorized to exercise, or that does exercise, any function of state government  
6                   in the executive branch. For purposes of this Section, "agency" shall also mean the  
7                   court only for the collection of unpaid monetary obligations as set forth in Code of  
8                   Criminal Procedure Article 894.4.

9   \*           \*           \*

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_