

**ACT No. 199**

2015 Regular Session

HOUSE BILL NO. 271

BY REPRESENTATIVE BILLIOT

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and  
3 (bb), and (B)(1)(b), 894(A)(6) and (7), (B)(1), and (D)(1), and Section 4 of Act No.  
4 389 of the 2013 Regular Session of the Legislature, relative to probation; to provide  
5 relative to the duration of probation for a defendant participating in a drug division  
6 probation program or a driving while intoxicated or sobriety court program; to  
7 increase the maximum duration of the probation period for these defendants to eight  
8 years; to provide relative to substance abuse probation programs provided by the  
9 Department of Public Safety and Corrections; to provide relative to the termination  
10 of such programs; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and (bb),  
13 and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1) are hereby amended and reenacted  
14 to read as follows:

15 Art. 893. Suspension and deferral of sentence and probation in felony cases

16 A. When it appears that the best interest of the public and of the defendant  
17 will be served, the court, after a first or second conviction of a noncapital felony,  
18 may suspend, in whole or in part, the imposition or execution of either or both  
19 sentences, where suspension is allowed under the law, and in either or both cases  
20 place the defendant on probation under the supervision of the division of probation  
21 and parole. The court shall not suspend the sentence of a conviction for a crime of  
22 violence as defined in R.S. 14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13),  
23 (14), (15), (16), (18), (20), (21), (22), (26), (27), or (28), or of a second conviction  
24 if the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2. ~~The~~ Except  
25 as provided in Subitems (B)(1)(a)(iv)(aa) and (bb) of this Article, the period of

1           probation shall be specified and shall not be less than one year nor more than five  
 2           years. The suspended sentence shall be regarded as a sentence for the purpose of  
 3           granting or denying a new trial or appeal. Supervised release as provided for by  
 4           Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be  
 5           considered probation and shall not be limited by the five-year period for probation  
 6           provided for by the provisions of this Paragraph.

7                   B.(1)(a) The court may suspend, in whole or in part, the imposition or  
 8           execution of the sentence when the following conditions exist:

9   \*       \*       \*

10                   (iv) The court orders the defendant to do any of the following:

11                           (aa) Enter and complete a program provided by the drug division of the  
 12           district court pursuant to R.S. 13:5301; et seq. When a case is assigned to the drug  
 13           division probation program pursuant to the provisions of R.S. 13:5301 et seq., with  
 14           the consent of the district attorney, the court may place the defendant on probation  
 15           for a period of not more than eight years if the court determines that successful  
 16           completion of the program may require that period of probation to exceed the five-  
 17           year limit. If necessary to assure successful completion of the drug division  
 18           probation program, the court may extend the duration of the probation period. The  
 19           period of probation as initially fixed or as extended shall not exceed eight years.

20                           (bb) Enter and complete an established ~~DWI~~ driving while intoxicated court  
 21           or sobriety court program, as agreed upon by the trial court and the district attorney.  
 22           When a case is assigned to an established driving while intoxicated court or sobriety  
 23           court program, with the consent of the district attorney, the court may place the  
 24           defendant on probation for a period of not more than eight years if the court  
 25           determines that successful completion of the program may require that period of  
 26           probation to exceed the five-year limit. If necessary to assure successful completion  
 27           of the drug division probation program, the court may extend the duration of the  
 28           probation period. The period of probation as initially fixed or as extended shall not  
 29           exceed eight years.

30   \*       \*       \*

1 (b) When suspension is allowed under this Paragraph, the defendant shall be  
 2 placed on probation under the supervision of the division of probation and parole.  
 3 The period of probation shall be specified and shall not be less than two years nor  
 4 more than five years, except as provided in Subitems (a)(iv)(aa) and (bb) of this  
 5 Subparagraph. The suspended sentence shall be regarded as a sentence for the  
 6 purpose of granting or denying a new trial or appeal.

7 \* \* \*

8 Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

9 A.

10 \* \* \*

11 (6) When a case is assigned to the drug division probation program pursuant  
 12 to the provisions of R.S. 13:5304, with the consent of the district attorney, the court  
 13 may place the defendant on probation for a period of not more than ~~four~~ eight years  
 14 if the court determines that successful completion of the program may require that  
 15 the period of probation exceed the two-year limit. If necessary to assure successful  
 16 completion of the drug division probation program, the court may extend the  
 17 duration of the probation period. The period of probation as initially fixed or as  
 18 extended shall not exceed ~~four~~ eight years.

19 (7) When a case is assigned to an established driving while intoxicated court  
 20 or sobriety court program certified by the Louisiana Supreme Court Drug Court  
 21 Office, the National Highway Traffic Safety Administration, or the Louisiana  
 22 Highway Safety Commission, with the consent of the district attorney, the court may  
 23 place the defendant on probation for a period of not more than ~~four~~ eight years if the  
 24 court determines that the successful completion of the program may require that the  
 25 period of probation exceed the two-year limit. If necessary to assure successful  
 26 completion of the driving while intoxicated court or sobriety court program, the court  
 27 may extend the duration of the probation period. The period of probation as initially  
 28 fixed or as extended shall not exceed ~~four~~ eight years.

29 B.(1) When the imposition of sentence has been deferred by the court, as  
 30 authorized by this Article, and the court finds at the conclusion of the period of

1           deferral that the defendant has not been convicted of any other offense during the  
2           period of the deferred sentence, and that no criminal charge is pending against him,  
3           the court may set the conviction aside and dismiss the prosecution. However, prior  
4           to setting aside any conviction and dismissing the prosecution for any charge for  
5           operating a vehicle while intoxicated, the court shall require proof in the form of a  
6           certified letter from the Department of Public Safety and Corrections, office of motor  
7           vehicles, that the requirements of ~~Paragraph~~ Subparagraph A(5) (A)(5) of this Article  
8           have been complied with.

\* \* \*

10           D.(1) The Department of Public Safety and Corrections, office of motor  
11           vehicles, shall serve as a repository for the records referred to in ~~Paragraph~~  
12           Subparagraph A(5) (A)(5) of this Article for any plea for operating a vehicle while  
13           intoxicated entered pursuant to the provisions of this Article. The department shall  
14           maintain records for a period of ten years. The department shall respond by certified  
15           mail to a request by any court, prosecuting agency, or defendant seeking certified  
16           copies of the records or verification that the records are in the possession of the  
17           department.

\* \* \*

19           Section 2. Section 4 of Act No. 389 of the 2013 Regular Session of the Legislature  
20           is hereby amended and reenacted to read as follows:

21           Section 4. The provisions of Section 1 of this Act shall become null, void,  
22           and have no effect on August 1, ~~2016~~ 2020, and thereafter.

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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: \_\_\_\_\_