

2018 Regular Session

SENATE BILL NO. 389

BY SENATOR CLAITOR

CRIME/PUNISHMENT. Provides relative to felony probation. (8/1/18)

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AN ACT

To amend and reenact Code of Criminal Procedure Art. 875.1(C), (D)(1)(a), (2), and (3), and (E) and the introductory paragraph of 894.4(B) and 894.4(C), as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, and 893(A)(1)(a) and (4), (B)(2), and (G), 895.6(A), and 900(A)(5) and to enact Code of Criminal Procedure Art. 893(H), relative to felony probation; to provide relative to termination of probation under certain circumstances; to provide relative to extensions of probation; to eliminate provisions allowing a defendant to earn "street credits" toward early termination of probation; to provide relative to financial hardship hearings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Art. 875.1(C), (D)(1)(a), (2), and (3), and (E) and the introductory paragraph of 894.4(B) and 894.4(C), as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, and 893(A)(1)(a) and (4), (B)(2), and (G), 895.6(A), and 900(A)(5) are hereby amended and reenacted and Code of Criminal Procedure Art. 893(H) is hereby enacted to read as follows:

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

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1

2 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering

3 the imposition or enforcement of any financial obligations as defined by this Article,

4 the court ~~shall~~, **upon motion of the defendant, may hold a hearing to** determine

5 whether payment in full of the aggregate amount of all the financial obligations to

6 be imposed upon the defendant would cause substantial financial hardship to the

7 defendant or his dependents. **The court may consider, among other factors,**

8 **whether any victim of the crime has incurred a substantial financial hardship**

9 **as a result of the criminal act or acts, whether the defendant is underemployed,**

10 **and whether the defendant has a history of avoiding financial obligations.**

11 (2) The defendant may ~~not~~ waive the judicial determination of a substantial

12 financial hardship required by the provisions of this Paragraph.

13 D.(1) If the court determines that payment in full of the aggregate amount of

14 all financial obligations imposed upon the defendant would cause substantial

15 financial hardship to the defendant or his dependents, the court shall do either of the

16 following:

17 (a) Waive all or any portion of the financial obligations, **except as provided**

18 **in Paragraph E of this Article.**

* * *

19

20 (2)(a) The amount of each monthly payment for the payment plan ordered

21 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be ~~equal~~

22 ~~to the defendant's average gross daily income for an eight-hour work day~~

23 **determined by the court after considering all relevant factors.**

24 (b) If the court has ordered restitution, ~~half~~ **a minimum of one-half** of the

25 defendant's monthly payment shall be distributed toward the defendant's restitution

26 obligation.

27 (c) ~~During~~ **Except as provided in Paragraph E of this Article,** any periods

28 of unemployment, homelessness, or other circumstances in which the defendant is

29 unable to make the monthly payment, the court or the defendant's probation and

1 parole officer is authorized to impose a payment alternative, including but not
2 limited to ~~any of the following~~: substance abuse treatment, education, job training,
3 or community service.

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

18 E. If a defendant is ordered to make monthly payments under a payment plan
19 established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,
20 ~~the defendant's outstanding financial obligations resulting from his criminal~~
21 ~~conviction are forgiven and considered paid-in-full if the defendant makes consistent~~
22 ~~monthly payments for either twelve consecutive months or consistent monthly~~
23 ~~payments for half of the defendant's term of supervision, whichever is longer.~~
24 **Notwithstanding any other provision of this Article or any other provision of**
25 **law to the contrary, a court may not waive nor forgive restitution due to a crime**
26 **victim.**

27 * * *

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

29 A.(1)(a) When it appears that the best interest of the public and of the

1 defendant will be served, the court, after a first, second, or third conviction of a
 2 noncapital felony, may suspend, in whole or in part, the imposition or execution of
 3 either or both sentences, where suspension is allowed under the law, and in either or
 4 both cases place the defendant on probation under the supervision of the division of
 5 probation and parole. The court shall not suspend the sentence of a second or third
 6 conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the
 7 period of probation shall be specified and shall not be more than ~~three~~ **five** years.

* * *

9 (4) Supervised release as provided for by Chapter 3-E of Title 15 of the
 10 Louisiana Revised Statutes of 1950 shall not be considered probation and shall not
 11 be limited by the five-year ~~or three-year~~ period for probation provided for by the
 12 provisions of this Paragraph.

B.(1) * * *

14 (2)When suspension is allowed under this Paragraph, the defendant shall be
 15 placed on probation under the supervision of the division of probation and parole.
 16 The period of probation shall be specified and shall not be more than ~~three~~ **five** years,
 17 except as provided in Paragraph G of this Article. The suspended sentence shall be
 18 regarded as a sentence for the purpose of granting or denying a new trial or appeal.

* * *

20 G. If the court, with the consent of the district attorney, orders a defendant,
 21 upon a third conviction or fourth felony conviction, to enter and complete a program
 22 provided by the drug division of the district court pursuant to R.S. 13:5301, an
 23 established driving while intoxicated court or sobriety court program, a mental health
 24 court program established pursuant to R.S. 13:5351 et seq., a Veterans Court
 25 program established pursuant to R.S. 13:5361 et seq., a reentry court established
 26 pursuant to R.S. 13:5401, or the Swift and Certain Probation Pilot Program
 27 established pursuant to R.S. 13:5371, the court may place the defendant on probation
 28 for a period of not more than eight years if the court determines that successful
 29 completion of the program may require that period of probation to exceed the ~~three-~~

1 year five-year limit. The court may not extend the duration of the probation period
2 solely due to unpaid fees and fines. The period of probation as initially fixed or as
3 extended shall not exceed eight years.

4 H. In the event that any defendant is placed on supervised probation for
5 a period of two years or more, at the time of sentencing the court shall fix a
6 probation review within two years of the date of sentencing for the purpose of
7 determining whether:

8 (1) The defendant has complied with the terms and conditions of
9 probation and as such is entitled to receive "earned compliance credits". In
10 making such determination the court may consider all relevant factors,
11 including but not limited to the defendant's:

12 (a) Substantial compliance with the terms and conditions of probation
13 or lack thereof.

14 (b) Subsequent criminal conduct.

15 (c) Use or abuse of controlled dangerous substances or alcohol.

16 (d) Employment history while on probation.

17 (e) Compliance with all restitution orders.

18 (f) Pursuit of education or vocational training.

19 (g) Support of all family obligations.

20 (h) Earnest pursuit of all available treatment, including specialty
21 treatment court participation.

22 (2) The probation term of the defendant who has been determined to
23 have complied with the terms and conditions of probation may be terminated
24 early as satisfactorily completed.

25 (3) In the event that the court declines to authorize earned compliance
26 credits or to terminate the defendant's probation early as satisfactorily
27 completed, the court shall conduct a review at or near the completion of each
28 successive year until such time as the defendant is released from probation.

29 (4) The division of probation and parole shall submit written compliance

1 reports to the sentencing court, the prosecuting agency, and the defendant with
2 recommendations regarding all issues relevant to the defendant's probation
3 within ten days in advance of the probation review with complete and accurate
4 copies of same being forwarded to the prosecuting agency and the defense
5 counsel.

6 (5) Any party may request a contradictory hearing on the review.
7 However, if no contradictory hearing is requested the court may make an
8 extrajudicial determination and shall forward such to all parties within ten
9 days. Each party may then within ten days request a contradictory hearing for
10 the purpose of challenging the court's findings and ruling.

11 * * *

12 Art. 894.4. Probation; extension

13 * * *

14 B. The judge may extend probation ~~only one time and only by a period of six~~
15 ~~months~~ for periods not to exceed one year each with a maximum of three
16 consecutive extensions for the purpose of monitoring collection of unpaid victim
17 restitution if the court finds ~~on the record by clear and convincing evidence~~ that the
18 court's temporary ongoing monitoring would ~~ensure~~ likely aid in the collection of
19 unpaid restitution more effectively than any of the following:

20 * * *

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

24 * * *

25 Art. 895.6. Compliance credits; probation

26 A. Every defendant on felony probation pursuant to Article 893 for an
27 offense other than a crime of violence as defined in R.S. 14:2(B) or a sex offense as
28 defined in R.S. 15:541 shall be entitled to earn a diminution of probation term, to
29 be known as "earned compliance credits", by good behavior, in accordance with the

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 389 Original

2018 Regular Session

Claitor

Present law (effective 8/1/18) provides that prior to ordering the imposition or enforcement of any financial obligations on a defendant on probation as defined in present law, the court must 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. Present law provides that the defendant cannot waive the judicial determination of a substantial financial hardship required by present law.

Proposed law changes the holding of a hearing to determine financial hardship from mandatory to discretionary upon motion of the defendant. Proposed law further provides that in making its determination relative to financial hardship, the court may consider, among other factors, whether any victim of the crime has incurred a substantial financial hardship as a result of the criminal act or acts, whether the defendant is underemployed, and whether the defendant has a history of avoiding financial obligations.

Proposed law otherwise retains present law.

Present law (effective 8/1/18) provides that 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 must do either of the following:

- (1) Waive all or any portion of the financial obligations.
- (2) Order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

Proposed law retains present law except to add that the court may not waive nor forgive restitution due to a crime victim.

Present law (effective 8/1/18) provides that the amount of each monthly payment for the payment plan ordered pursuant to present law will be equal to the defendant's average gross daily income for an 8-hour work day. Present law further provides that if the court has ordered restitution, then ½ of the defendant's monthly payment is to be distributed toward the defendant's restitution obligation.

Proposed law deletes the 8-hour day wages cap on the monthly restitution amount. Proposed law further changes the maximum of ½ of the monthly obligation to a minimum and allows the court to determine the appropriate amount and percentage that may be attributed to restitution.

Proposed law otherwise retains present law.

Present law (effective 8/1/18) provides that 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 substance abuse treatment, education, job training, or community service.

Proposed law retains present law except to add that the court may not waive nor forgive restitution due to a crime victim.

Present law (effective 8/1/18) provides that if a defendant is ordered to make monthly payments under a payment plan established pursuant to present law, then 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 12 consecutive months or consistent monthly payments for ½ of the defendant's term of supervision, whichever is longer.

Proposed law deletes present law. Proposed law further provides that, notwithstanding any other provision of present law or proposed law to the contrary, a court may not waive nor forgive restitution due to a crime victim.

Present law provides that, when it appears that the best interest of the public and of the defendant will be served, the court, after a first, second, or third conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. Present law further provides that the court cannot suspend the sentence of a second or third conviction of the crime of computer fraud.

Proposed law retains present law.

Present law provides that the period of probation cannot be longer than three years.

Proposed law changes the maximum probation period allowed from three years to five years.

Present law provides that supervised release as provided for by present law cannot be considered probation and is not limited by the five-year or three-year period for probation provided for by the provisions of present law and proposed law.

Proposed law deletes the "three-year" reference from present law in conformity with proposed law and otherwise retains present law.

Present law provides that when suspension of sentence is allowed under present law, the defendant is to be placed on probation under the supervision of the division of probation and parole, and the period of probation must be specified and cannot be more than three years.

Proposed law changes the maximum probation period allowed from three years to five years and otherwise retains present law.

Present law provides that if the court, with the consent of the district attorney, orders a defendant, upon a third conviction or fourth felony conviction, to enter and complete a program provided by the drug division of the district court pursuant to present law, an established driving while intoxicated court or sobriety court program, a mental health court program established pursuant to present law, a Veterans Court program established pursuant to present law, a reentry court established pursuant to present law, or the Swift and Certain Probation Pilot Program established pursuant to present law, the court may place the defendant on probation for a period of not more than eight years if the court determines that successful completion of the program may require that period of probation to exceed the three-year limit. Present law further provides that the court may not extend the duration of the probation period solely due to unpaid fees and fines. Present law further provides that the period of probation as initially fixed or as extended shall not exceed eight years.

Proposed law provides that the court may place the defendant on probation for up to eight years if successful completion of one of the enumerated present law programs requires the period of probation to exceed the proposed law five-year period rather than the present law three-year limit.

Proposed law otherwise retains present law.

Proposed law provides that in the event that any defendant is placed on supervised probation for a period of two years or more, at the time of sentencing the court is to fix a probation review within two years of the date of sentencing for the purpose of determining whether:

- (1) The defendant has complied with the terms and conditions of probation and as such is entitled to receive "earned compliance credits". In making such determination the court may consider all relevant factors, including but not limited to the defendant's:
 - (a) Substantial compliance with the terms and conditions of probation or lack thereof.
 - (b) Subsequent criminal conduct.
 - (c) Use or abuse of controlled dangerous substances or alcohol.
 - (d) Employment history while on probation.
 - (e) Compliance with all restitution orders.
 - (f) Pursuit of education or vocational training.
 - (g) Support of all family obligations.
 - (h) Earnest pursuit of all available treatment, including specialty treatment court participation.
- (2) The probation term of the defendant who has been determined to have complied with the terms and conditions of probation may be terminated early as satisfactorily completed.
- (3) In the event that the court declines to authorize earned compliance credits or to terminate the defendant's probation early as satisfactorily completed, the court is to conduct a review at or near the completion of each successive year until such time as the defendant is released from probation.
- (4) The division of probation and parole is to submit written compliance reports to the sentencing court, the prosecuting agency, and the defendant with recommendations regarding all issues relevant to the defendant's probation within 10 days in advance of the probation review with complete and accurate copies of same being forwarded to the prosecuting agency and the defense counsel.
- (5) Any party may request a contradictory hearing on the review. However, if no contradictory hearing is requested the court may make an extrajudicial determination and forward such to all parties within 10 days. Each party may then within 10 days request a contradictory hearing for the purpose of challenging the court's findings and ruling.

Present law (effective 8/1/18) provides that 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 certain other methods enumerated in present law. Present law further provides that a six-month extension of probation as provided in present law applies only to the order of victim restitution, and all other conditions of probation during the six-month extension are terminated.

Proposed law changes the period of time for which the judge may extend probation for the purposes of monitoring collection of unpaid restitution from six months to three consecutive

extensions for periods not to exceed one year each. Proposed law further changes the purpose of monitoring from ensuring collection of unpaid restitution to being likely to aid in the collection of unpaid restitution.

Proposed law otherwise retains present law.

Present law provides that every defendant on felony probation pursuant to present law for an offense other than a crime of violence or a sex offense will earn a diminution of probation term, to "earned compliance credits" ("good time") by good behavior. Present law further provides that the amount of diminution of probation term allowed under present law is to be at the rate of 30 days for every full calendar month on probation.

Proposed law retains present law.

Present law provides that if the court decides that the defendant has violated, or was about to violate, a condition of his probation it may do one of several things, including order that the probation be revoked. Present law further provides that in the event of revocation the defendant must serve the sentence suspended, with or without credit for the time served on probation at the discretion of the court. Present law further provides that if the imposition of sentence was suspended, the defendant must serve the sentence imposed by the court at the revocation hearing.

Proposed law retains present law.

Present law provides that in the event of revocation for a defendant placed on probation for the conviction of an offense, other than a crime of violence or a sex offense, the defendant will serve the sentence suspended with credit for time served on probation ("street credit").

Proposed law deletes present law.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 875.1(C), (D)(1)(a), (2), and (3), and (E), 893(A)(1)(a) and (4), (B)(2), and (G), 894.4(B)(intro para) and (C), 895.6(A), and 900(A)(5); adds C.Cr.P. Art. 893(H))