

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 (6)(b)(iv) and (d)(v) and to enact Code of Criminal Procedure Art. 875.1(G), 893(H), and 900(A)(6)(b)(v) and (d)(vi), 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) and (6)(b)(iv) and (d)(v) are hereby amended and reenacted and Code of Criminal Procedure Art. 875.1(G), 893(H), and 900(A)(6)(b)(v) and (d)(vi) are

1 hereby enacted to read as follows:

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

3 * * *

4 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
5 the imposition or enforcement of any financial obligations as defined by this Article,
6 **and upon motion of the defendant that establishes a prima facie case of**
7 **substantial financial hardship to the defendant,** the court shall **conduct a hearing**
8 **to** determine whether payment in full of the aggregate amount of all the financial
9 obligations to be imposed upon the defendant would cause substantial financial
10 hardship to the defendant or his dependents. **The court may consider, among other**
11 **factors, whether any victim of the crime has incurred a substantial financial**
12 **hardship as a result of the criminal act or acts, whether the defendant is**
13 **employed, and whether the defendant has a history of avoiding financial**
14 **obligations.**

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

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

21 (a) Waive all or any portion of the financial obligations, **except as provided**
22 **in Paragraph E of this Article.**

23 * * *

24 (2)(a) The amount of each monthly payment for the payment plan ordered
25 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be ~~equal~~
26 ~~to the defendant's average gross daily income for an eight-hour work day~~
27 **determined by the court after considering all relevant factors.**

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

1 (c) ~~During~~ **Except as provided in Paragraph E of this Article**, any periods
2 of unemployment, homelessness, or other circumstances in which the defendant is
3 unable to make the monthly payment, the court or the defendant's probation and
4 parole officer is authorized to impose a payment alternative, including but not
5 limited to ~~any of the following~~: substance abuse treatment, education, job training,
6 or community service.

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

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

1 The period of probation shall be specified and shall not be more than three years,
2 except as provided in Paragraph G of this Article. The suspended sentence shall be
3 regarded as a sentence for the purpose of granting or denying a new trial or appeal.

4 * * *

5 G. If the court, with the consent of the district attorney, orders a defendant,
6 upon a third conviction or fourth felony conviction, to enter and complete a program
7 provided by the drug division of the district court pursuant to R.S. 13:5301, an
8 established driving while intoxicated court or sobriety court program, a mental health
9 court program established pursuant to R.S. 13:5351 et seq., a Veterans Court
10 program established pursuant to R.S. 13:5361 et seq., a reentry court established
11 pursuant to R.S. 13:5401, or the Swift and Certain Probation Pilot Program
12 established pursuant to R.S. 13:5371, the court may place the defendant on probation
13 for a period of not more than eight years if the court determines that successful
14 completion of the program may require that period of probation to exceed the three-
15 year limit. The court may not extend the duration of the probation period solely due
16 to unpaid fees and fines. The period of probation as initially fixed or as extended
17 shall not exceed eight years.

18 **H.(1) If any defendant is placed on supervised probation, the supervising**
19 **probation officer shall submit to the court a compliance report whenever**
20 **requested by the court, or when it appears necessary to have the court make a**
21 **determination with respect to "earned compliance credits", modification of any**
22 **terms or conditions of probation, termination of probation, revocation of**
23 **probation, or any other purpose proper under the law.**

24 **(2) Absent extenuating circumstances, the court shall, within ten days of**
25 **receipt of the compliance report, make an initial determination as to the issues**
26 **presented and shall transmit the decision to the probation officer. The**
27 **probation officer shall disseminate the decision to the defendant and the**
28 **prosecuting agency within ten days of receipt. The parties shall have ten days**
29 **from receipt of the initial determination of the court to seek an expedited**

1 contradictory hearing for the purpose of challenging the court's initial
 2 determination. If no timely challenge is made, the court's initial determination
 3 shall become final and shall constitute a valid order of the court.

4 (3) After a review of the compliance report, if it is the recommendation
 5 of the supervising probation officer that the defendant is in compliance with the
 6 conditions of probation in accordance with the compliance report, the court
 7 shall grant "earned compliance credit" for the time, absent a showing of cause
 8 for a denial.

9 (4) The court may terminate probation at any time as "satisfactorily
 10 completed" upon the final determination that the defendant is in compliance
 11 with the terms and conditions of probation.

12 (5) If the court determines that the defendant has failed to successfully
 13 complete the terms and conditions of probation, the court may extend the
 14 probation period for a period not to exceed two years, for the purpose of
 15 allowing the defendant additional time to complete the terms of probation.

16 (6) For purposes of this Paragraph:

17 (a) "Compliance" means the full completion of the terms and conditions
 18 of probation as imposed by the sentencing judge.

19 (b) "Compliance report" means a report generated and signed by the
 20 probation officer that contains clear and concise information relating to the
 21 defendant's performance relative to "earned compliance credits" and may
 22 contain a recommendation as to early termination, additional conditions, the
 23 extension of probation, or the revocation of probation.

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 eligible to** earn a diminution of probation term, to be
 29 known as "earned compliance credits", by good behavior, **in accordance with the**

1 an offense other than a crime of violence as defined in R.S. 14:2(B) or of a sex
 2 offense as defined by R.S. 15:541, and who has had his probation revoked under the
 3 provisions of this Article for a technical violation of his probation as determined by
 4 the court, shall be required to serve, without diminution of sentence, as follows:

* * *

6 (iv) For **a fourth or subsequent violation may order that the probation**
 7 **be revoked, in accordance with Subsubparagraph (5)(a) of this Subparagraph.**

8 **(v) For** custodial substance abuse treatment programs, not more than ninety
 9 days.

* * *

11 (d) A "technical violation", as used in this Paragraph, means any violation
 12 except it shall not include any of the following:

* * *

14 (v) ~~Absconding from the jurisdiction of the court by leaving the state without~~
 15 ~~the prior approval of the court or the probation and parole officer.~~

16 **(vi) Probation shall neither be revoked nor extended based solely upon**
 17 **the defendant's inability to pay fines, costs, or restitution to the victim.**

* * *

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 Engrossed

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 provides that the court is to hold a hearing upon motion of the defendant that establishes a prima facie case of substantial financial hardship to 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 employed, 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 and 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.

Proposed law provides that if, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution is to be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to present law (Code of Civil Procedure). Proposed law further provides that for any civil money judgment ordered under proposed law, the clerk is to send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

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 provides that if, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution is to be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to present law (Code of Civil Procedure). Proposed law further provides that for any civil money judgment ordered under proposed law, the clerk is to send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

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 retains present law except as provided for in proposed law.

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 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 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 retains present law.

Proposed law provides that if any defendant is placed on supervised probation, the supervising probation officer is to submit to the court a compliance report whenever requested by the court, or when it appears necessary to have the court make a determination with respect to "earned compliance credits," modification of any terms or conditions of probation, termination of probation, revocation of probation, or any other purpose proper under present law or proposed law.

Proposed law provides that, absent extenuating circumstances, the court must, within 10 days of receipt of the compliance report, make an initial determination as to the issues presented and transmit the decision to the probation officer. Proposed law further provides that the probation officer is to disseminate the decision to the defendant and the prosecuting agency within 10 days of receipt. Proposed law further provides that the parties have 10 days from receipt of the initial determination of the court to seek an expedited contradictory hearing for the purpose of challenging the court's initial determination. Proposed law further provides that if no timely challenge is made, the court's initial determination will become final and constitute a valid order of the court.

Proposed law provides that, after a review of the compliance report, if it is the recommendation of the supervising probation officer that the defendant is in compliance

with the conditions of probation in accordance with the compliance report, the court is to grant "earned compliance credit" for the time, absent a showing of cause for a denial.

Proposed law provides that the court may terminate probation at any time as "satisfactorily completed" upon the final determination that the defendant is in compliance with the terms and conditions of probation.

Proposed law provides that if the court determines that the defendant has failed to successfully complete the terms and conditions of probation, the court may extend the probation period for a period not to exceed two years, for the purpose of allowing the defendant additional time to complete the terms of probation.

Proposed law provides that, for purposes of proposed law:

- (1) "Compliance" means the full completion of the terms and conditions of probation as imposed by the sentencing judge.
- (2) "Compliance report" means a report generated and signed by the probation officer that contains clear and concise information relating to the defendant's performance relative to "earned compliance credits" and may contain a recommendation as to early termination, additional conditions, the extension of probation, or the revocation of probation.

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.

Present law provides that any defendant who has been placed on probation by the court for the conviction of an offense that is other than a crime of violence or a sex offense, and who has had his probation revoked under the provisions of present law for a technical violation of his probation as determined by the court, will be required to serve certain specified amounts of time without diminution of sentence.

Proposed law retains present law and adds that for a fourth or subsequent violation the court may order that the probation be revoked, in accordance with certain provisions of present law.

Present law provides that a "technical violation" of probation excludes certain specified acts.

Proposed law retains present law and adds that probation can neither be revoked nor extended based solely upon the defendant's inability to pay fines, costs, or restitution to the victim.

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) and (6)(b)(iv) and (d)(v); adds C.Cr.P. Art. 875.1(G), 893(H), and 900(A)(6)(b)(v) and (d)(vi))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds provisions relative to termination of defendant's probation.
2. Adds provisions relative to defendant's substantial financial hardship hearing.
3. Adds Dept. of Public Safety and Corrections reporting requirements relative to a defendant on probation.
4. Deletes and add proposed law provisions relative to "earned compliance credits" (good time) and "satisfactorily completed" probation.
5. Adds provisions relative to probation violation and "technical violations".