

2018 Regular Session

SENATE BILL NO. 389

BY SENATORS CLAITOR AND THOMPSON

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(F) and 894.4, as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), the introductory paragraph of (6)(b) and (6)(b)(iv), and (d)(v) and R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a) and to enact Code of Criminal Procedure Art. 875.1(G), 893(H), and 900(A)(6)(b)(v), relative to felony probation; to provide relative to termination of probation under certain circumstances; to provide relative to extensions of probation; to provide relative to financial hardship hearings; to provide relative to administrative sanctions for certain violations of probation; to remove the prohibition of incarceration under certain circumstances; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Art. 875.1(F) and 894.4, as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), the introductory paragraph of (6)(b) and (6)(b)(iv) and (d)(v) are hereby amended and reenacted and Code of Criminal Procedure Art.

1 875.1(G), 893(H), and 900(A)(6)(b)(v) are hereby enacted to read as follows:

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

3 * * *

4 **F. If, at the termination or end of the defendant's term of supervision,**
5 **any restitution ordered by the court remains outstanding, the balance of the**
6 **unpaid restitution shall be reduced to a civil money judgment in favor of the**
7 **person to whom restitution is owed, which may be enforced in the same manner**
8 **as provided for the execution of judgments pursuant to the Code of Civil**
9 **Procedure. For any civil money judgment ordered under this Article, the clerk**
10 **shall send notice of the judgment to the last known address of the person to**
11 **whom the restitution is ordered to be paid.**

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

14 * * *

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

16 A.(1)(a) When it appears that the best interest of the public and of the
17 defendant will be served, the court, after a first, second, or third conviction of a
18 noncapital felony, may suspend, in whole or in part, the imposition or execution of
19 either or both sentences, where suspension is allowed under the law, and in either or
20 both cases place the defendant on probation under the supervision of the division of
21 probation and parole. The court shall not suspend the sentence of a second or third
22 conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the
23 period of probation shall be specified and shall not be more than three years, **except**
24 **as provided by Paragraph H of this Article.**

25 * * *

26 **H.(1) If a defendant is placed on supervised probation, the division of**
27 **probation and parole shall submit to the court a compliance report when**
28 **requested by the court, or when the division of probation and parole deems it**
29 **necessary to have the court make a determination with respect to "earned**

1 compliance credits", modification of terms or conditions of probation,
2 termination of probation, revocation of probation, or other purpose proper
3 under any provision of law.

4 (2) For purposes of this Paragraph:

5 (a) "Compliance" means the full completion of the terms and conditions
6 of probation as imposed by the sentencing judge, except for inability to pay
7 finances, fees, and restitution.

8 (b) "Compliance report" means a report generated and signed by the
9 division of probation and parole that contains clear and concise information
10 relating to the defendant's performance relative to "earned compliance
11 credits", and may contain a recommendation as to early termination.

12 (3) After a review of the compliance report, if it is the recommendation
13 of the division of probation and parole that the defendant is in compliance with
14 the conditions of probation, in accordance with the compliance report, the court
15 shall grant "earned compliance credit" for the time, absent a showing of cause
16 for a denial.

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

20 (5) If the court determines that the defendant has failed to successfully
21 complete the terms and conditions of probation, the court may extend the
22 probation for a period not to exceed two years, for the purpose of allowing the
23 defendant additional time to complete the terms of probation, additional
24 conditions, the extension of probation, or the revocation of probation.

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

1 **have ten days from receipt of the initial determination of the court to seek an**
 2 **expedited contradictory hearing for the purpose of challenging the court's**
 3 **determination. If no challenge is made within ten days, the court's initial**
 4 **determination shall become final and shall constitute a valid order of the court.**

* * *

6 Art. 894.4. Probation; extension

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

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

18 ~~(1) Converting the unpaid restitution to a civil money judgment pursuant to~~
 19 ~~Article 886 or 895.1.~~

20 ~~(2) Referring the unpaid restitution to the office of debt recovery pursuant to~~
 21 ~~R.S. 47:1676.~~

22 ~~(3) Any other enforcement mechanism for collection of unpaid restitution~~
 23 ~~authorized by law.~~

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

27 **Probation shall neither be revoked nor extended based solely upon the**
 28 **defendant's inability to pay fines, fees, or restitution to the victim.**

* * *

1 Art. 895.6. Compliance credits; probation

2 A. Every defendant on felony probation pursuant to Article 893 for an
3 offense other than a crime of violence as defined in R.S. 14:2(B) or a sex offense as
4 defined in R.S. 15:541 shall **be eligible to** earn a diminution of probation term, to be
5 known as "earned compliance credits", by good behavior, **in accordance with the**
6 **procedure provided in Article 893.** The amount of diminution of probation term
7 allowed under this Article shall be at the rate of thirty days for every full calendar
8 month on probation.

9 B.(1) If the defendant's probation and parole officer has reasonable cause to
10 believe that a defendant on felony probation has not been compliant with the
11 conditions of his probation in a given calendar month, he may rescind thirty days of
12 earned compliance credits as an administrative sanction pursuant to Article 899.2.
13 Credits may be rescinded only for a month in which the defendant is found not to be
14 in compliance.

15 **(2) Notwithstanding any other provision of law to the contrary, the**
16 **provisions of Article 899.2(A)(3) requiring consent of the defendant shall not**
17 **apply to the rescinding of earned compliance credits as an administrative**
18 **sanction under Article 899.2.**

19 * * *

20 Art. 899.2. Administrative sanctions for technical violations; offenses other than
21 crimes of violence or sex offenses

22 * * *

23 B. The department shall promulgate rules to implement the provisions of this
24 Article to establish the following:

25 (1)(a) A system of structured, administrative sanctions which shall be
26 imposed for technical violations of probation and which shall take into consideration
27 the following factors:

28 (i)(a) The severity of the violation behavior.

29 (ii)(b) The prior violation history.

1 ~~(iii)~~**(c)** The severity of the underlying criminal conviction.

2 ~~(iv)~~**(d)** The criminal history of the probationer.

3 ~~(v)~~**(e)** Any special circumstances, characteristics, or resources of the
4 probationer.

5 ~~(vi)~~**(f)** Protection of the community.

6 ~~(vii)~~**(g)** Deterrence.

7 ~~(viii)~~**(h)** The availability of appropriate local sanctions, including but not
8 limited to jail, treatment, community service work, house arrest, electronic
9 surveillance, restitution centers, work release centers, day reporting centers, or other
10 local sanctions.

11 ~~(b) Incarceration shall not be used for the lowest-tier violations including the~~
12 ~~first positive drug test and the first or second violation for the following:~~

13 ~~(i) Association with known felons or persons involved in criminal activity.~~

14 ~~(ii) Changing residence without permission.~~

15 ~~(iii) Failure to initially report as required. However, incarceration may be~~
16 ~~used if the court, after a contradictory hearing, finds that the probationer wilfully~~
17 ~~failed to report as required and instructed for the purpose of permanently avoiding~~
18 ~~probation supervision.~~

19 ~~(iv) Failure to pay restitution for up to three months.~~

20 ~~(v) Failure to report as instructed. However, incarceration may be used if the~~
21 ~~court, after a contradictory hearing, finds that the probationer wilfully failed to report~~
22 ~~as required and instructed for the purpose of permanently avoiding probation~~
23 ~~supervision.~~

24 ~~(vi) Traveling without permission.~~

25 ~~(vii) Occasion of unemployment and failure to seek employment within~~
26 ~~ninety days.~~

27 ~~(c) Incarceration shall not be used for first or second violations of alcohol~~
28 ~~use or admission, except for defendants convicted of operating a vehicle while~~
29 ~~intoxicated pursuant to R.S. 14:98; defendants convicted of domestic abuse battery~~

1 ~~pursuant to R.S. 14:35.3 committed by one family member or household member~~
 2 ~~against another; defendants convicted of battery by one dating partner as defined by~~
 3 ~~R.S. 46:2151 against another; or defendants convicted of violation of a protective~~
 4 ~~order, pursuant to R.S. 14:79, issued against the defendant to protect a family~~
 5 ~~member or household member as defined by R.S. 14:35.3, or a dating partner as~~
 6 ~~defined by R.S. 46:2151.~~

7 * * *

8 Art. 900. Violation hearing; sanctions

9 * * *

10 A. After an arrest pursuant to Article 899, the court shall cause a defendant
 11 who continues to be held in custody to be brought before it within thirty days for a
 12 hearing. If a summons is issued pursuant to Article 899, or if the defendant has been
 13 admitted to bail, the court shall set the matter for a violation hearing within a
 14 reasonable time. The hearing may be informal or summary. The defendant may
 15 choose, with the court's consent, to appear at the violation hearing and stipulate the
 16 revocation by simultaneous audio-visual transmission in accordance with the
 17 provisions of Article 562. If the court decides that the defendant has violated, or was
 18 about to violate, a condition of his probation it may:

19 * * *

20 (5)(a) Order that the probation be revoked. In the event of revocation the
 21 defendant shall serve the sentence suspended, with or without credit for the time
 22 served on probation at the discretion of the court. If the imposition of sentence was
 23 suspended, the defendant shall serve the sentence imposed by the court at the
 24 revocation hearing.

25 ~~(b) Notwithstanding the provisions of Subsubparagraph (a) of this~~
 26 ~~Subparagraph, in the event of revocation for a defendant placed on probation for the~~
 27 ~~conviction of an offense other than a crime of violence as defined in R.S. 14:2(B) or~~
 28 ~~a sex offense as defined in R.S. 15:541, the defendant shall serve the sentence~~
 29 ~~suspended with credit for time served on probation.~~

1 (6)(a) * * *

2 (b) Notwithstanding the provisions of Subparagraph ~~(A)~~(5) of this ~~Article~~
3 **Paragraph**, any defendant who has been placed on probation by the court for the
4 conviction of an offense other than a crime of violence as defined in R.S. 14:2(B) or
5 of a sex offense as defined by R.S. 15:541, and who has ~~had his probation revoked~~
6 ~~under the provisions of this Article for~~ **been determined by the court to have**
7 **committed** a technical violation of his probation ~~as determined by the court~~, shall
8 be required to serve, without diminution of sentence, as follows:

9 * * *

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

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

14 * * *

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

17 * * *

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

20 * * *

21 Section 2. R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a) are
22 hereby amended and reenacted to read as follows:

23 §574.6.1. Compliance credits; parole

24 * * *

25 B.**(1)** If the probation and parole officer has reasonable cause to believe that
26 an offender on parole has not been compliant with the conditions of his parole in a
27 given calendar month, he may rescind thirty days of earned compliance credits as an
28 administrative sanction under R.S. 15:574.7. Credits may be rescinded only for a
29 month in which the offender is found not to be in compliance.

1 (2) Notwithstanding any other provision of law to the contrary, the
 2 provisions of R.S. 15:574.7(B)(1)(c) requiring consent of the parolee shall not
 3 apply to the rescinding of earned compliance credits as an administrative
 4 sanction under R.S. 15:574.7.

* * *

6 §574.9. Revocation of parole for violation of condition; committee panels; return to
 7 custody hearing; duration of reimprisonment and reparole after
 8 revocation; credit for time served; revocation for a technical violation

* * *

10 H.(1)(a) Any offender who has been released on parole and ~~whose parole~~
 11 ~~supervision is being revoked pursuant to the provisions of this Subsection for~~ who
 12 has been determined to have committed a technical violation of the conditions of
 13 parole as determined by the committee on parole, shall be required to serve the
 14 following sentences:

* * *

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

SB 389 Reengrossed

2018 Regular Session

Claitor

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 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.

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, except for inability to pay fines, fees, and restitution.
- (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.

Proposed law excepts the provisions of present law (CCRP Art. 899.2(A)(3)) requiring the consent of the defendant is not applicable to the rescinding of earned compliance credits, as an administrative sanction under present law (CCRP Art. 899.2).

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 R.S. 15:574.6.1(B), 574.9(H)(1)(a)(intro para), C.Cr.P. Art. 875.1(F), 893(A)(1)(a), 894.4, 895.6(A), 895.6(B), 899.2(B)(1), and 900(A)(5), (6)(b)(intro para), and (6)(b)(iv)(intro para), and (d)(v); adds C.Cr.P. Art. 875.1(G), 893(H), and 900(A)(6)(b)(v))

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 adds proposed law provisions relative to "earned compliance credits" (good time) and "satisfactorily completed" probation.
5. Adds provisions relative to probation violation and "technical violations".

Senate Floor Amendments to engrossed bill

1. Amends the definitions of "compliance" and "compliance reports".
2. Provides that consent of defendant is not applicable to the rescinding of earned compliance credits as an administrative sanction.
3. Provides that defendant's inability to pay fines, costs, or restitution shall not affect probation revocation or extension.