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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.

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SB 389 Reengrossed

DIGEST  
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.