

SENATE BILL NO. 389

BY SENATORS CLAITOR AND THOMPSON AND REPRESENTATIVE MARINO

1 AN ACT

2 To amend and reenact Section 3 of Act No. 260 of the 2017 Regular Session of the
3 Legislature, R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a),
4 Code of Criminal Procedure Article 894.4 as amended by Act No. 260 of the 2017
5 Regular Session of the Legislature, and Code of Criminal Procedure Articles 875.1,
6 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and 900(A)(5) and the introductory
7 paragraph of (6)(b) and (iv) and (d)(v) and to enact Code of Criminal Procedure
8 Articles 893(H) and 900(A)(6)(b)(v), relative to felony probation; to provide relative
9 to payment of restitution to the victim of a crime; to delay the effective date of Act
10 No. 260 of the 2017 Regular Session of the Legislature which provided relative to
11 the payment of fines, fees, costs, restitution, and other monetary obligations related
12 to an offender's conviction; to provide relative to earned compliance credits; to
13 provide a procedure by which the court determines whether a defendant has earned
14 compliance credits toward his probation period and whether his probation term may
15 be terminated early; to prohibit the extension or revocation of probation based solely
16 upon a defendant's inability to pay; to provide relative to administrative sanctions for
17 certain violations of probation; to remove the prohibition of incarceration under
18 certain circumstances; and to provide for related matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. Code of Criminal Procedure Article 894.4 as amended by Act No. 260 of
21 the 2017 Regular Session of the Legislature, and Code of Criminal Procedure Article 875.1
22 are hereby amended and reenacted to read as follows:

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

24 A. The purpose of imposing financial obligations on an offender who is
25 convicted of a criminal offense is to hold the offender accountable for his action, to
26 compensate victims for any actual pecuniary loss or costs incurred in connection

1 with a criminal prosecution, to defray the cost of court operations, and to provide
2 services to offenders and victims. These financial obligations should not create a
3 barrier to the offender's successful rehabilitation and reentry into society. Financial
4 obligations in excess of what an offender can reasonably pay undermine the primary
5 purpose of the justice system which is to deter criminal behavior and encourage
6 compliance with the law. Financial obligations that cause undue hardship on the
7 offender should be waived, modified, or forgiven. Creating a payment plan for the
8 offender that is based upon the ability to pay, results in financial obligations that the
9 offender is able to comply with and often results in more money collected. Offenders
10 who are consistent in their payments and in good faith try to fulfill their financial
11 obligations should be rewarded for their efforts.

12 B. For purposes of this Article, "financial obligations" shall include any fine,
13 fee, cost, restitution, or other monetary obligation authorized by this Code or by the
14 Louisiana Revised Statutes of 1950 and imposed upon the defendant as part of a
15 criminal sentence, incarceration, or as a condition of the defendant's release on
16 probation or parole.

17 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
18 the imposition or enforcement of any financial obligations as defined by this Article,
19 the court shall determine whether payment in full of the aggregate amount of all the
20 financial obligations to be imposed upon the defendant would cause substantial
21 financial hardship to the defendant or his dependents.

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

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

28 (a) Waive all or any portion of the financial obligations.

29 (b) Order a payment plan that requires the defendant to make a monthly
30 payment to fulfill the financial obligations.

1 (2)(a) The amount of each monthly payment for the payment plan ordered
2 pursuant to the provisions of Subsubparagraph (1)(b) of this Paragraph shall be equal
3 to the defendant's average gross daily income for an eight-hour work day.

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

6 (c) During any periods of unemployment, homelessness, or other
7 circumstances in which the defendant is unable to make the monthly payment, the
8 court or the defendant's probation and parole officer is authorized to impose a
9 payment alternative, including but not limited to any of the following: substance
10 abuse treatment, education, job training, or community service.

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

23 E. If a defendant is ordered to make monthly payments under a payment plan
24 established pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article,
25 the defendant's outstanding financial obligations resulting from his criminal
26 conviction are forgiven and considered paid-in-full if the defendant makes consistent
27 monthly payments for either twelve consecutive months or consistent monthly
28 payments for half of the defendant's term of supervision, whichever is longer.

29 **F. If, at the termination or end of the defendant's term of supervision,**
30 **any restitution ordered by the court remains outstanding, the balance of the**

unpaid restitution shall 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 the Code of Civil Procedure. For any civil money judgment ordered under this Article, the clerk shall send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

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

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Art. 894.4. Probation; extension

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

~~B.~~ 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 any of the following:

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

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

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

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

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

3 Section 2. Code of Criminal Procedure Articles 893(A)(1)(a), 895.6(A) and
4 (B), 899.2(B)(1), and 900(A)(5) and the introductory paragraph of (6)(b) and (iv) and
5 (d)(v) are hereby amended and reenacted and Code of Criminal Procedure Article
6 893(H) and 900(A)(6)(b)(v) are hereby enacted to read as follows:

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

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

17 * * *

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

25 **(2) For purposes of this Paragraph:**

26 **(a) "Compliance" means the full completion of the terms and conditions**
27 **of probation as imposed by the sentencing judge, except for inability to pay**
28 **fines, fees, or restitution.**

29 **(b) "Compliance report" means a report generated and signed by the**
30 **division of probation and parole that contains clear and concise information**

1 relating to the defendant's performance relative to "earned compliance
 2 credits", and may contain a recommendation as to early termination.

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

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

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

16 (6) Absent extenuating circumstances, the court shall, within ten days of
 17 receipt of the compliance report, make an initial determination as to the issues
 18 presented and shall transmit the decision to the probation officer. The court
 19 shall disseminate the decision to the defendant, the division of probation and
 20 parole, and the prosecuting agency within ten days of receipt. The parties shall
 21 have ten days from receipt of the initial determination of the court to seek an
 22 expedited contradictory hearing for the purpose of challenging the court's
 23 determination. If no challenge is made within ten days, the court's initial
 24 determination shall become final and shall constitute a valid order of the court.

25 * * *

26 Art. 895.6. Compliance credits; probation

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

1 **procedure provided in Article 893.** The amount of diminution of probation term
2 allowed under this Article shall be at the rate of thirty days for every full calendar
3 month on probation.

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

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

14 * * *

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

17 * * *

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

20 (1)~~(a)~~ A system of structured, administrative sanctions which shall be
21 imposed for technical violations of probation and which shall take into consideration
22 the following factors:

23 ~~(i)~~**(a)** The severity of the violation behavior.

24 ~~(ii)~~**(b)** The prior violation history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(c)~~ Incarceration shall not be used for first or second violations of alcohol
 22 use or admission, except for defendants convicted of operating a vehicle while
 23 intoxicated pursuant to R.S. 14:98; defendants convicted of domestic abuse battery
 24 pursuant to R.S. 14:35.3 committed by one family member or household member
 25 against another; defendants convicted of battery by one dating partner as defined by
 26 R.S. 46:2151 against another; or defendants convicted of violation of a protective
 27 order, pursuant to R.S. 14:79, issued against the defendant to protect a family
 28 member or household member as defined by R.S. 14:35.3, or a dating partner as
 29 defined by R.S. 46:2151.

30 * * *

1 Art. 900. Violation hearing; sanctions

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

12 * * *

13 (5)(a) Order that the probation be revoked. In the event of revocation the
14 defendant shall serve the sentence suspended, with or without credit for the time
15 served on probation at the discretion of the court. If the imposition of sentence was
16 suspended, the defendant shall serve the sentence imposed by the court at the
17 revocation hearing.

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

23 (6)(a) * * *

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

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

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

* * *

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

* * *

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

* * *

Section 3. R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a) are hereby amended and reenacted to read as follows:

§574.6.1. Compliance credits; parole

* * *

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

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

* * *

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

* * *

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

* * *

7 Section 4. Section 3 of Act No. 260 of the 2017 Regular Session of the Legislature
 8 is hereby amended and reenacted to read as follows:

9 Section 3. The provisions of this Act shall become effective on August 1,
 10 ~~2018~~ **2019**.

11 Section 5. The provisions of Sections 2, 3, and 4 of this Act and this Section shall
 12 become effective on August 1, 2018.

13 Section 6. The provisions of Section 1 of this Act shall become effective on August
 14 1, 2019.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____