

2015 Regular Session

HOUSE BILL NO. 271

BY REPRESENTATIVE BILLIOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROBATION: Extends the length of probation for defendants participating in drug court or sobriety court

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and
3 (bb), and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1), relative to probation;
4 to provide relative to the duration of probation for a defendant participating in a drug
5 division probation program or a driving while intoxicated or sobriety court program;
6 to increase the maximum duration of the probation period for these defendants to
7 eight years; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Articles 893(A), (B)(1)(a)(iv)(aa) and (bb),
10 and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1) are hereby amended and reenacted
11 to read as follows:

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

13 A. When it appears that the best interest of the public and of the defendant
14 will be served, the court, after a first or second conviction of a noncapital felony,
15 may suspend, in whole or in part, the imposition or execution of either or both
16 sentences, where suspension is allowed under the law, and in either or both cases
17 place the defendant on probation under the supervision of the division of probation
18 and parole. The court shall not suspend the sentence of a conviction for a crime of

1 violence as defined in R.S. 14:2(B)(1), (2), (3), (4), (5), (9), (10), (11), (12), (13),
 2 (14), (15), (16), (18), (20), (21), (22), (26), (27), or (28), or of a second conviction
 3 if the second conviction is for a violation of R.S. 14:73.5, 81.1, or 81.2. ~~The~~ Except
 4 as provided in Subitems (B)(1)(a)(iv)(aa) and (bb) of this Article, the period of
 5 probation shall be specified and shall not be less than one year nor more than five
 6 years. The suspended sentence shall be regarded as a sentence for the purpose of
 7 granting or denying a new trial or appeal. Supervised release as provided for by
 8 Chapter 3-E of Title 15 of the Louisiana Revised Statutes of 1950 shall not be
 9 considered probation and shall not be limited by the five-year period for probation
 10 provided for by the provisions of this Paragraph.

11 B.(1)(a) The court may suspend, in whole or in part, the imposition or
 12 execution of the sentence when the following conditions exist:

13 * * *

14 (iv) The court orders the defendant to do any of the following:

15 (aa) Enter and complete a program provided by the drug division of the
 16 district court pursuant to R.S. 13:5301; et seq. When a case is assigned to the drug
 17 division probation program pursuant to the provisions of R.S. 13:5301 et seq., with
 18 the consent of the district attorney, the court may place the defendant on probation
 19 for a period of not more than eight years if the court determines that successful
 20 completion of the program may require that period of probation to exceed the five-
 21 year limit. If necessary to assure successful completion of the drug division
 22 probation program, the court may extend the duration of the probation period. The
 23 period of probation as initially fixed or as extended shall not exceed eight years.

24 (bb) Enter and complete an established ~~DWI~~ driving while intoxicated court
 25 or sobriety court program, as agreed upon by the trial court and the district attorney.
 26 When a case is assigned to an established driving while intoxicated court or sobriety
 27 court program, with the consent of the district attorney, the court may place the
 28 defendant on probation for a period of not more than eight years if the court
 29 determines that successful completion of the program may require that period of

1 probation to exceed the five-year limit. If necessary to assure successful completion
2 of the drug division probation program, the court may extend the duration of the
3 probation period. The period of probation as initially fixed or as extended shall not
4 exceed eight years.

5 * * *

6 (b) When suspension is allowed under this Paragraph, the defendant shall be
7 placed on probation under the supervision of the division of probation and parole.
8 The period of probation shall be specified and shall not be less than two years nor
9 more than five years, except as provided in Subitems (a)(iv)(aa) and (bb) of this
10 Subparagraph. The suspended sentence shall be regarded as a sentence for the
11 purpose of granting or denying a new trial or appeal.

12 * * *

13 Art. 894. Suspension and deferral of sentence; probation in misdemeanor cases

14 A.

15 * * *

16 (6) When a case is assigned to the drug division probation program pursuant
17 to the provisions of R.S. 13:5304, with the consent of the district attorney, the court
18 may place the defendant on probation for a period of not more than ~~four~~ eight years
19 if the court determines that successful completion of the program may require that
20 the period of probation exceed the two-year limit. If necessary to assure successful
21 completion of the drug division probation program, the court may extend the
22 duration of the probation period. The period of probation as initially fixed or as
23 extended shall not exceed ~~four~~ eight years.

24 (7) When a case is assigned to an established driving while intoxicated court
25 or sobriety court program certified by the Louisiana Supreme Court Drug Court
26 Office, the National Highway Traffic Safety Administration, or the Louisiana
27 Highway Safety Commission, with the consent of the district attorney, the court may
28 place the defendant on probation for a period of not more than ~~four~~ eight years if the
29 court determines that the successful completion of the program may require that the

1 period of probation exceed the two-year limit. If necessary to assure successful
2 completion of the driving while intoxicated court or sobriety court program, the court
3 may extend the duration of the probation period. The period of probation as initially
4 fixed or as extended shall not exceed ~~four~~ eight years.

5 B.(1) When the imposition of sentence has been deferred by the court, as
6 authorized by this Article, and the court finds at the conclusion of the period of
7 deferral that the defendant has not been convicted of any other offense during the
8 period of the deferred sentence, and that no criminal charge is pending against him,
9 the court may set the conviction aside and dismiss the prosecution. However, prior
10 to setting aside any conviction and dismissing the prosecution for any charge for
11 operating a vehicle while intoxicated, the court shall require proof in the form of a
12 certified letter from the Department of Public Safety and Corrections, office of motor
13 vehicles, that the requirements of ~~Paragraph~~ Subparagraph A(5) (A)(5) of this Article
14 have been complied with.

15 * * *

16 D.(1) The Department of Public Safety and Corrections, office of motor
17 vehicles, shall serve as a repository for the records referred to in ~~Paragraph~~
18 Subparagraph A(5) (A)(5) of this Article for any plea for operating a vehicle while
19 intoxicated entered pursuant to the provisions of this Article. The department shall
20 maintain records for a period of ten years. The department shall respond by certified
21 mail to a request by any court, prosecuting agency, or defendant seeking certified
22 copies of the records or verification that the records are in the possession of the
23 department.

24 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 271 Reengrossed

2015 Regular Session

Billiot

Abstract: Increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program to eight years.

Present law (C.Cr.P. Art. 893(A) and (B)) authorizes the court to suspend the imposition or execution of a sentence for a defendant convicted of certain felony offenses and place the defendant on probation for a period not to exceed five years.

Present law (C.Cr.P. Art. 894(A)(1)) authorizes the court to suspend the imposition or execution of a sentence for a defendant convicted of certain misdemeanor offenses and place the defendant on probation for a period not to exceed two years.

Present law (C.Cr.P. Art. 894(A)(6) and (7)) provides if a case is assigned to a drug division probation program or to an established driving while intoxicated or sobriety court program for a misdemeanor offense, with the consent of the district attorney, the court may place the defendant on supervised probation for a maximum of four years if the court determines that successful completion of the program may require that the period of probation exceed the two-year limit.

Present law (R.S. 13:5304) authorizes defendants who commit certain alcohol- or drug-related offenses to participate in a drug division probation program or a driving while intoxicated or sobriety court program when certain eligibility requirements are met. If accepted into the program, the defendant must enter a plea of guilty to the charge, the defendant's sentence is suspended, and the defendant is placed on supervised probation under the usual conditions of probation and under special conditions of probation related to the completion of such substance abuse treatment programs as are ordered by the court.

Present law (R.S. 13:5304) further provides that if the defendant successfully completes the probation program, the court may set aside the conviction and the prosecution may be dismissed in accordance with the provisions of present law.

Proposed law (C.Cr.P. Art. 893(A) and (B)) increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program for a felony offense from five years to eight years.

Proposed law (C.Cr.P. Art. 894(A)(6) and (7)) increases the maximum duration of the probation period for a person participating in a drug division probation program or a driving while intoxicated or sobriety court program for a misdemeanor offense from four years to eight years.

(Amends C.Cr.P. Arts. 893(A), (B)(1)(a)(iv)(aa) and (bb), and (B)(1)(b) and 894(A)(6) and (7), (B)(1), and (D)(1))