

2018 Regular Session

HOUSE BILL NO. 195

BY REPRESENTATIVE MACK

PROBATION: Provides relative to probation and the defendant's eligibility to earn compliance credits or early termination

1 AN ACT  
2 To amend and reenact Code of Criminal Procedure Articles 893(A)(1)(a) and (4), (B)(2),  
3 and (G) and 895.6(A) and to enact Code of Criminal Procedure Article 893(H),  
4 relative to probation; to provide relative to the maximum duration of probation for  
5 defendants convicted of certain offenses; to provide relative to earned compliance  
6 credits; to provide a procedure by which the court determines whether a defendant  
7 has earned compliance credits toward his probation period and whether his probation  
8 term may be terminated early; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 893(A)(1)(a) and (4), (B)(2), and (G)  
11 and 895.6(A) are hereby amended and reenacted and Code of Criminal Procedure Article  
12 893(H) is hereby enacted to read as follows:

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

14 A.(1)(a) When it appears that the best interest of the public and of the  
15 defendant will be served, the court, after a first, second, or third conviction of a  
16 noncapital felony, may suspend, in whole or in part, the imposition or execution of  
17 either or both sentences, where suspension is allowed under the law, and in either or  
18 both cases place the defendant on probation under the supervision of the division of

1 probation and parole. The court shall not suspend the sentence of a second or third  
2 conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the  
3 period of probation shall be specified and shall not be more than ~~three~~ five years.

4 \* \* \*

5 (4) Supervised release as provided for by Chapter 3-E of Title 15 of the  
6 Louisiana Revised Statutes of 1950 shall not be considered probation and shall not  
7 be limited by the five-year ~~or three-year~~ period for probation provided for by the  
8 provisions of this Paragraph.

9 B.

10 \* \* \*

11 (2) When suspension is allowed under this Paragraph, the defendant shall be  
12 placed on probation under the supervision of the division of probation and parole.  
13 The period of probation shall be specified and shall not be more than ~~three~~ five years,  
14 except as provided in Paragraph G of this Article. The suspended sentence shall be  
15 regarded as a sentence for the purpose of granting or denying a new trial or appeal.

16 \* \* \*

17 G. If the court, with the consent of the district attorney, orders a defendant,  
18 upon a third conviction or fourth felony conviction, to enter and complete a program  
19 provided by the drug division of the district court pursuant to R.S. 13:5301, an  
20 established driving while intoxicated court or sobriety court program, a mental health  
21 court program established pursuant to R.S. 13:5351 et seq., a Veterans Court  
22 program established pursuant to R.S. 13:5361 et seq., a reentry court established  
23 pursuant to R.S. 13:5401, or the Swift and Certain Probation Pilot Program  
24 established pursuant to R.S. 13:5371, the court may place the defendant on probation  
25 for a period of not more than eight years if the court determines that successful  
26 completion of the program may require that period of probation to exceed the ~~three~~  
27 five-year limit. The court may not extend the duration of the probation period solely  
28 due to unpaid fees and fines. The period of probation as initially fixed or as extended  
29 shall not exceed eight years.

1           H.(1) If any defendant is placed on supervised probation for a period of two  
2           years or more, upon the defendant's having served eighteen months of his probation  
3           term, the Department of Public Safety and Corrections, division of probation and  
4           parole shall submit a written compliance report to the court, the prosecuting agency,  
5           and to the defendant and his attorney with recommendations regarding all issues  
6           relevant to the defendant's probation. The court shall review the report to determine  
7           whether the defendant has earned compliance credits pursuant to Article 895.6 and  
8           to determine whether the defendant's probation term may be terminated early as  
9           "satisfactorily completed" pursuant to the provisions of this Paragraph.

10           (2) In making these determinations, the court shall consider all of the  
11           following with respect to the defendant's behavior and actions during the probation  
12           term:

13           (a) Substantial compliance with the terms and conditions of probation or lack  
14           thereof.

15           (b) Commission of subsequent criminal conduct.

16           (c) Use or abuse of controlled dangerous substances or alcohol.

17           (d) Employment history while on probation.

18           (e) Compliance with all restitution orders.

19           (f) Pursuit of education or vocational training.

20           (g) Support of all family obligations.

21           (h) Earnest pursuit of all available treatment, including specialty treatment  
22           court participation.

23           (3) Upon review of the report and the factors set forth in Subparagraph (2)  
24           of this Paragraph, the court shall issue an interim order with its findings and rulings  
25           and shall provide notice of such interim order to the prosecuting agency and to the  
26           defendant and his attorney.

27           (4) Upon issuance of the interim order, any party may request within ten  
28           days a contradictory hearing for the purpose of challenging the court's findings and  
29           rulings. The hearing shall be held no later than thirty days from the date the request

1 was made for the hearing. If no contradictory hearing is requested within the ten-day  
2 period, the court's findings and rulings shall stand and the court's interim order shall  
3 become final.

4 (5) If at the review of the defendant's probation, or after a contradictory  
5 hearing requested and held pursuant to Subparagraph (4) of this Paragraph, the court  
6 determines that the defendant has substantially complied with all terms and  
7 conditions of probation, the court's order shall award the defendant the compliance  
8 credits earned pursuant to Article 895.6 and may order that the probation term of the  
9 defendant be terminated early as "satisfactorily completed".

10 (6) If the court declines to authorize "earned compliance credits" or to  
11 terminate the defendant's probation early as "satisfactorily completed", the court  
12 shall conduct an annual review of the defendant's probation until such time as the  
13 defendant is released from probation.

14 \* \* \*

15 Art. 895.6. Compliance credits; probation

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

23 \* \* \*

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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)]

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HB 195 Engrossed

2018 Regular Session

Mack

**Abstract:** Provides relative to the duration of probation for defendant's convicted of certain offenses, the defendant's eligibility to earn compliance credits, and the court's

determination as to whether the defendant has earned compliance credits or early termination.

Present law provides that when a defendant is placed on probation for a first, second, or third conviction of a noncapital felony or for a fourth DWI conviction when certain conditions are met, the period of probation shall be specified and shall not be more than three years.

Proposed law amends present law to extend the duration from up to three years to up to five years.

Present law provides that every defendant on felony probation for an offense other than a crime of violence or a sex offense shall earn diminution of probation term, to be known as "earned compliance credits", by good behavior.

Proposed law amends present law to remove the mandate that such defendants earn compliance credits and provide that such defendants are eligible to earn compliance credits which may be awarded pursuant to a procedure provided by proposed law as follows:

- (1) If any defendant is placed on supervised probation for a period of two years or more, upon the defendant's having served 18 months of his probation, the division of probation and parole shall submit a written compliance report to the court, the prosecuting agency, and to the defendant and his attorney, with recommendations regarding all issues relevant to the defendant's probation.
- (2) The court shall review the report to determine whether the defendant has earned compliance credits and to determine whether the defendant's probation term may be terminated early as "satisfactorily completed".
- (3) Upon making its determination, the court shall issue an interim order which shall be provided to all parties who then will have ten days to request a contradictory hearing challenging the court's interim ruling.
- (4) Any contradictory hearing requested shall be held no later than thirty days from the date of the request. If no contradictory hearing is requested within the ten-day period, the court's findings and rulings shall stand and the court's interim order shall become final.
- (5) If at the review or after the contradictory hearing the court determines that the defendant substantially complied with all terms and conditions of probation, proposed law requires the court to award the defendant his earned compliance credits and may order that the defendant's probation be terminated early as "satisfactorily completed".
- (6) If the court declines to authorize "earned compliance credits" or to terminate the defendant's probation early as "satisfactorily completed", the court shall conduct an annual review of the defendant's probation until such time as the defendant is released from probation.

(Amends C.Cr.P. Arts. 893(A)(1)(a) and (4), (B)(2), and (G) and 895.6(A); Adds C.Cr.P. Art. 893(H))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Amend the procedure provided in proposed law by which a defendant is awarded earned compliance credits as follows:

- (a) Upon the defendant's having served 18 months of probation, the division of probation and parole shall submit a written compliance report to the court, the prosecuting agency, and to the defendant and his attorney, with recommendations regarding all issues relevant to the defendant's probation.
- (b) The court shall review the report, make its determination, and issue an interim order which shall be provided to all parties who then will have ten days to request a contradictory hearing challenging the court's interim ruling.
- (c) Requires any contradictory hearing requested to be held no later than thirty days from the date of the request. If no contradictory hearing is requested within the ten-day period, the court's findings and rulings shall stand and the court's interim order shall become final.
- (d) If at the review or after the contradictory hearing the court determines that the defendant substantially complied with all terms and conditions of probation, the bill requires the court to award the defendant his earned compliance credits and may order that the defendant's probation be terminated early as "satisfactorily completed".