

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

19 probation and parole. The court shall not suspend the sentence of a second or third

1 conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the
2 period of probation shall be specified and shall not be more than ~~three~~ five years.

3 * * *

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

8 B.

9 * * *

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

15 * * *

16 G. If the court, with the consent of the district attorney, orders a defendant,
17 upon a third conviction or fourth felony conviction, to enter and complete a program
18 provided by the drug division of the district court pursuant to R.S. 13:5301, an
19 established driving while intoxicated court or sobriety court program, a mental health
20 court program established pursuant to R.S. 13:5351 et seq., a Veterans Court
21 program established pursuant to R.S. 13:5361 et seq., a reentry court established
22 pursuant to R.S. 13:5401, or the Swift and Certain Probation Pilot Program
23 established pursuant to R.S. 13:5371, the court may place the defendant on probation
24 for a period of not more than eight years if the court determines that successful
25 completion of the program may require that period of probation to exceed the ~~three~~
26 five-year limit. The court may not extend the duration of the probation period solely
27 due to unpaid fees and fines. The period of probation as initially fixed or as extended
28 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, at the time of sentencing the court shall set a date, within two years
3 of the date of sentencing, for a review of the defendant's probation to determine
4 whether the defendant has earned compliance credits pursuant to Article 895.6 and
5 to determine whether the defendant's probation term may be terminated early as
6 "satisfactorily completed" pursuant to the provisions of this Subsection. In making
7 these determinations, the court shall consider all of the following with respect to the
8 defendant's behavior and actions during the probation term:

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

11 (b) Commission of subsequent criminal conduct.

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

13 (d) Employment history while on probation.

14 (e) Compliance with all restitution orders.

15 (f) Pursuit of education or vocational training.

16 (g) Support of all family obligations.

17 (h) Earnest pursuit of all available treatment, including specialty treatment
18 court participation.

19 (2) If at the review of the defendant's probation, the court determines that the
20 defendant has complied with the terms and conditions of probation, the defendant's
21 probation term may be terminated early as "satisfactorily completed".

22 (3) If the court declines to authorize "earned compliance credits" or to
23 terminate the defendant's probation early as "satisfactorily completed", the court
24 shall conduct an annual review of the defendant's probation until such time as the
25 defendant is released from probation.

26 (4) The Department of Public Safety and Corrections, division of probation
27 and parole shall submit written compliance reports to the sentencing court, the
28 prosecuting agency, and to the defendant and his attorney with recommendations

1 regarding all issues relevant to the defendant's probation within ten days prior to the
2 probation review.

3 (5) Any party may request that a contradictory hearing be held as part of the
4 court's review of the defendant's probation. If no contradictory hearing is requested,
5 the court may make its determination without such hearing and shall forward its
6 findings and rulings to all parties within ten days. Upon issuance of the court's
7 ruling, each party may request within ten days a contradictory hearing for the
8 purpose of challenging the court's findings and ruling.

9 * * *

10 Art. 895.6. Compliance credits; probation

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

18 * * *

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 195 Original

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.

Proposed law further provides that for any defendant placed on probation for a period of two years or more, at the time of sentencing, the court is required to set a date, within two years of sentencing, for a review of the defendant's probation to determine whether the defendant has earned compliance credits and whether the defendant's probation term may be terminated early as "satisfactorily completed".

Proposed law provides for the list of factors that the court is required to consider in this regard including factors relative to the defendant's compliance with conditions of probation, employment history, use or abuse of alcohol or drugs, support of family obligations, pursuit of education or training, and pursuit of treatment.

If at the review of the defendant's probation, the court determines that the defendant has complied with the terms and conditions of probation, proposed law provides that the defendant's probation term may be terminated early as "satisfactorily completed".

If the court declines to authorize "earned compliance credits" or to terminate the defendant's probation early as "satisfactorily completed", proposed law requires the court to conduct an annual review of the defendant's probation until such time as the defendant is released from probation.

Proposed law requires the Dept. of Public Safety and Corrections, division of probation and parole to submit written compliance reports to the sentencing court, the prosecuting agency, and to the defendant and his attorney with recommendations regarding all issues relevant to the defendant's probation within ten days prior to the probation review.

Proposed law provides that any party may request that a contradictory hearing be held as part of the court's review of the defendant's probation or upon issuance of the court's ruling, if no hearing is held prior to the court's decision, for the purpose of challenging the court's findings and ruling.

(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))