

2018 Regular Session

SENATE BILL NO. 213

BY SENATOR GATTI

PROBATION/PAROLE. Provides relative to felony probation. (8/1/18)

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AN ACT

To amend and reenact Code of Criminal Procedure Art. 875.1(C), (D)(1)(a) and (2)(c), and (E) as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, the introductory paragraph of 894.4(B) and (C), as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, and the introductory paragraph of 897(A), and 900(A)(5), to enact Code of Criminal Procedure Art. 897(C), and to repeal Code of Criminal Procedure Art. 895.6, relative to felony probation; to provide relative to termination of probation under certain circumstances; to provide relative to extensions of probation; to eliminate provisions allowing a defendant to earn "good time" or "street credits" toward early termination of probation; to provide relative to financial hardship hearings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Art. 875.1(C), (D)(1)(a) and (2)(c), and (E) as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, the introductory paragraph of 894.4(B) and (C), as enacted by Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, and the introductory paragraph of 897(A),

1 and 900(A)(5) are hereby amended and reenacted and Code of Criminal Procedure Art.
2 897(C) is hereby enacted to read as follows:

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

4 * * *

5 C.(1) Notwithstanding any provision of law to the contrary, prior to ordering
6 the imposition or enforcement of any financial obligations as defined by this Article,
7 the court ~~shall~~, **upon motion of the defendant, may hold a hearing to** determine
8 whether payment in full of the aggregate amount of all the financial obligations to
9 be imposed upon the defendant would cause substantial financial hardship to the
10 defendant or his dependents. **The court may consider, among other factors,**
11 **whether any victim of the crime has incurred a substantial financial hardship**
12 **as a result of the criminal act or acts, whether the defendant is underemployed,**
13 **and whether the defendant has a history of avoiding financial obligations.**

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

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

20 (a) Waive all or any portion of the financial obligations, **except as provided**
21 **in Paragraph E of this Article.**

22 * * *

23 (2) * * *

24 * * *

25 (c) ~~During~~ **Except as provided in Paragraph E of this Article,** any periods
26 of unemployment, homelessness, or other circumstances in which the defendant is
27 unable to make the monthly payment, the court or the defendant's probation and
28 parole officer is authorized to impose a payment alternative, including but not
29 limited to ~~any of the following:~~ substance abuse treatment, education, job training,

1 or community service.

2 * * *

3 E. If **(1) Except as provided in Subparagraph (2) of this Paragraph, if** a
4 defendant is ordered to make monthly payments under a payment plan established
5 pursuant to the provisions of Subsubparagraph (D)(1)(b) of this Article, the
6 defendant's outstanding financial obligations resulting from his criminal conviction
7 are forgiven and considered paid-in-full if the defendant makes consistent monthly
8 payments for either twelve consecutive months or consistent monthly payments for
9 half of the defendant's term of supervision, whichever is longer.

10 **(2) Notwithstanding any other provision of this Article or any other**
11 **provision of law to the contrary, a court may not waive nor forgive restitution**
12 **due to a crime victim.**

13 * * *

14 Art. 894.4. Probation; extension

15 * * *

16 B. The judge may extend probation only one time ~~and only by a period of six~~
17 ~~months~~ **for a period not to exceed the original term of probation** for the purpose
18 of monitoring collection of unpaid victim restitution if the court finds ~~on the record~~
19 ~~by clear and convincing evidence~~ that the court's temporary ongoing monitoring
20 would ~~ensure~~ **likely aid in the** collection of unpaid restitution more effectively than
21 any of the following:

22 * * *

23 C. ~~A six-month extension of probation as provided in~~ **Any extension of**
24 **probation ordered pursuant to** Paragraph B **of this Article** shall apply only to the
25 order of victim restitution. All other conditions of probation during the ~~six-month~~
26 extension shall be terminated.

27 * * *

28 Art. 897. Termination of probation or suspended sentence; discharge of defendant

29 A. ~~In~~ **Except as provided in Paragraph C of this Article, in** a felony case,

1 the court may terminate the defendant's probation, early or as unsatisfactory, and
2 discharge him at any time after the expiration of one year of probation when either
3 of the following occur:

4 * * *

5 **C. Notwithstanding any provision of this Article or any other provision**
6 **of law to the contrary, for a defendant on felony probation:**

7 **(1) For an offense other than a crime of violence as defined in R.S.**
8 **14:2(B) or a sex offense as defined in R.S. 15:541, the court shall terminate the**
9 **defendant's probation and discharge him after the expiration of one year of**
10 **probation provided that all conditions of probation have been completed and**
11 **any restitution order has been paid in full.**

12 **(2) For an offense that is a crime of violence as defined in R.S. 14:2(B)**
13 **or a sex offense as defined in R.S. 15:541, or an offense for which probation has**
14 **not been terminated after one year due to failure to complete all conditions of**
15 **probation as required by Subparagraph (1) of this Paragraph, the court may in**
16 **its discretion terminate the defendant's probation and discharge him provided**
17 **that there has been substantial completion of the conditions of probation and**
18 **any restitution order has been paid in full.**

19 * * *

20 Art. 900. Violation hearing; sanctions

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

* * *

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

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

* * *

Section 2. Code of Criminal Procedure Art. 895.6 is hereby repealed in its entirety.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 213 Original

2018 Regular Session

Gatti

Present law (effective 8/1/18) provides that prior to ordering the imposition or enforcement of any financial obligations on a defendant on probation as defined in present law, the court must determine whether payment in full of the aggregate amount of all the financial obligations to be imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. Present law provides that the defendant cannot waive the judicial determination of a substantial financial hardship required by the present law.

Proposed law changes the holding of a hearing to determine financial hardship from mandatory to discretionary upon motion of the defendant. Proposed law further provides that in making its determination relative to financial hardship, the court may consider, among other factors, whether any victim of the crime has incurred a substantial financial hardship as a result of the criminal act or acts, whether the defendant is underemployed, and whether the defendant has a history of avoiding financial obligations.

Proposed law otherwise retains present law.

Present law (effective 8/1/18) provides that if the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the court must do either of the following:

- (1) Waive all or any portion of the financial obligations.
- (2) Order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.

Proposed law retains present law except to add that the court may not waive nor forgive restitution due to a crime victim.

Present law provides that any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to substance abuse treatment, education, job training, or community service.

Proposed law retains present law except to add that the court may not waive nor forgive restitution due to a crime victim.

Present law provides that if a defendant is ordered to make monthly payments under a payment plan established pursuant to present law, then defendant's outstanding financial obligations resulting from his criminal conviction are forgiven and considered paid-in-full if the defendant makes consistent monthly payments for either 12 consecutive months or consistent monthly payments for ½ of the defendant's term of supervision, whichever is longer.

Proposed law retains present law except to add that, notwithstanding any other provision present law or proposed law to the contrary, a court may not waive nor forgive restitution due to a crime victim.

Present law (effective 8/1/18) provides that 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 certain other methods. Present law further provides that a six-month extension of probation as provided in present law applies only to the order of victim restitution, and all other conditions of probation during the six-month extension are terminated.

Proposed law changes the period of time for which the judge may extend probation from six months to a period not to exceed the original term of probation for the purpose of monitoring collection of unpaid victim restitution if the court finds that the court's temporary ongoing monitoring would likely aid in the collection of unpaid restitution more effectively than any of the methods enumerated in present law.

Proposed law otherwise retains present law.

Present law provides that every defendant on felony probation pursuant to present law for an offense other than a crime of violence or a sex offense will earn a diminution of probation term, to "earned compliance credits" ("good time") by good behavior. Present law further provides that the amount of diminution of probation term allowed under present law is to be at the rate of 30 days for every full calendar month on probation.

Proposed law deletes present law.

Present law provides that in a felony case, the court may terminate the defendant's probation, early or as unsatisfactory, and discharge him at any time after the expiration of one year of probation when either of the following occur:

- (1) The state has previously provided written verification that it has no opposition to the termination of the probation.
- (2) A contradictory hearing with the state, set by the court, has been held, and the court must provide notice of the hearing to the state at least 15 days prior to the hearing date.

Proposed law retains present law and adds that, notwithstanding any provision of present law to the contrary, for a defendant on felony probation:

- (1) For an offense other than a crime of violence or a sex offense, the court must terminate the defendant's probation and discharge him after the expiration of one year of probation provided that all conditions of probation have been completed and any restitution order has been paid in full.
- (2) For an offense that is a crime of violence or a sex offense, or an offense for which probation has not been terminated after one year due to failure to complete conditions of probation, the court may in its discretion terminate the defendant's probation and discharge him provided that there has been substantial completion of the conditions of probation and any restitution order has been paid in full.

Present law provides that after an arrest for a violation of probation pursuant to present law, the court is to bring the defendant who continues to be held in before it within 30 days for a hearing. Present law further provides that if a summons is issued pursuant to present law, or if the defendant has been admitted to bail, the court is to set the matter for a violation hearing within a reasonable time, which hearing may be informal or summary. Present law further provides that the defendant may choose, with the court's consent, to appear at the violation hearing and stipulate the revocation by simultaneous audio-visual transmission in accordance with present law. Present law further provides that if the court decides that the defendant has violated, or was about to violate, a condition of his probation it may do one of several things, including order that the probation be revoked. Present law further provides that in the event of revocation the defendant must serve the sentence suspended, with or without credit for the time served on probation at the discretion of the court. Present law further provides that if the imposition of sentence was suspended, the defendant must serve the sentence imposed by the court at the revocation hearing.

Proposed law retains present law.

Present law provides that in the event of revocation for a defendant placed on probation for the conviction of an offense other than a crime of violence or a sex offense, the defendant will serve the sentence suspended with credit for time served on probation ("street credit").

Proposed law deletes present law.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 875.1(C), (D)(1)(a) and (2)(c), and (E), 894.4(B)(intro para) and (C), 897(A)(intro para), and 900(A)(5); adds C.Cr.P. Art. 897(C); repeals C.Cr.P. Art. 895.6)