

RÉSUMÉ DIGEST

ACT 8 (HB 11)

2024 Second Extraordinary Session

Villio

Existing law (C.Cr.P. Art. 893) provides relative to suspension and deferral of sentence and probation in felony cases.

Prior law (C.Cr.P. Art. 893(A)(1)(a)) provided that when it appeared that the best interest of the public and of the defendant would be served, the court, after a first, second, or third conviction of a noncapital felony, was authorized to suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension was allowed under the law, and in either or both cases was authorized to place the defendant on probation under the supervision of the division of probation and parole. Further provided that except as provided in existing law (C.Cr.P. Art. 893(G) and (H)), the period of probation was required to be specified and prohibited the period from being more than three years.

New law increases the maximum length of the probation period from three years to five years.

Prior law (C.Cr.P. Art. 893(A)(4)) prohibited supervised release of sex offenders as provided in existing law (Ch. 3-E of Title 15 of the La. Rev. Statutes of 1950) from being considered for probation and was not limited by the five-year or three-year period for probation provided by the provisions of existing law.

New law removes the reference to a three-year period of probation.

Prior law (C.Cr.P. Art. 893(B)(3)) required that when suspension was allowed under existing law, the defendant be placed on probation under the supervision of the division of probation and parole. Further provided that if the defendant had been sentenced to complete a specialty court program as provided in existing law, the defendant was allowed to be placed on probation under the supervision of a probation office, agency, or officer designated by the court, other than the division of probation and parole of the DPS&C. Further required that this period of probation be specified and not be more than three years, except as provided in existing law (C.Cr.P. Art. 893(G)).

New law increases the maximum term of probation from three years to five years.

Prior law (C.Cr.P. Art. 893(G)) provided that if the court, with the consent of the district attorney, ordered a defendant to enter and complete a program provided by the drug division of the district court pursuant to existing law (R.S. 13:5301), an established driving while intoxicated court or sobriety court program, a mental health court program established pursuant to existing law (R.S. 13:5351 et seq.), a Veterans Court program established pursuant to existing law (R.S. 13:5361 et seq.), a reentry court established pursuant to existing law (R.S. 13:5401), or the Swift and Certain Probation Pilot Program established pursuant to existing law (R.S. 13:5371), the court was authorized to place the defendant on probation for a period of not more than eight years if the court determined that successful completion of the program exceeded the three-year limit. Further prohibited the court from extending the duration of the probation period solely due to unpaid fees and fines.

New law increases the maximum term of probation from three years to five years. Further removes the provision that prohibits the court from extending the duration of the probation period solely due to unpaid fees and fines.

Prior law (C.Cr.P. Art. 893(H)(1)) required, if a defendant was placed on supervised probation, the division of probation and parole to submit to the court a compliance report when requested by the court, or when the division of probation and parole deemed it necessary to have the court make a determination with respect to "earned compliance credits", modification of terms or conditions of probation, termination of probation, revocation of probation, or other purpose proper under any provision of law.

New law removes the reference to "earned compliance credits".

Prior law (C.Cr.P. Art. 893(H)(2)) provided for the following definitions:

- (1) "Compliance" meant the full completion of the terms and conditions of probation as imposed by the sentencing judge, except for inability to pay fines, fees, or restitution.
- (2) "Compliance report" meant a report generated and signed by the division of probation and parole that contained clear and concise information relating to the defendant's performance relative to "earned compliance credits", and authorized the report to contain a recommendation as to early termination.

New law removes the reference to "inability to pay fines, fees, or restitution" and "earned compliance credits".

Prior law (C.Cr.P. Art. 893(H)(3)) provided that after a review of the compliance report, if it was the recommendation of the division of probation and parole that the defendant was in compliance with the conditions of probation, in accordance with the compliance report, the court was required to grant "earned compliance credit" for the time, absent a showing of cause for a denial.

New law removes the mandatory grant of an "earned compliance credit" and provides that the court may terminate probation at such time as "satisfactorily completed", absent a showing of cause for a denial.

Prior law (C.Cr.P. Art. 899.1(A)) authorized the court at the time of sentencing for a crime of violence as defined by existing law (R.S. 14:2(B)) or a sex offense as defined by existing law (R.S. 15:541) to make a determination as to whether a defendant was eligible for the imposition of administrative sanctions as provided in existing law (C.Cr.P. Art. 899.1(A)).

New law expands the court's determination of eligibility for administrative sanctions for technical violations of probation to all offenses rather than only crimes of violence or sex offenses.

Existing law (C.Cr.P. Art. 900) provides for the violation hearing and sanctions when a defendant has been arrested for a violation of probation.

Prior law (C.Cr.P. Art. 900(A)(6)(b)) provided that any defendant who had been placed on probation by the court for the conviction of an offense other than a crime of violence as defined in existing law (R.S. 14:2(B)) or of a sex offense as defined by existing law (R.S. 15:541), and who had been determined by the court to have committed a technical violation of his probation, could have been required to serve, without diminution of sentence, as follows:

- (1) For a first technical violation, not more than 15 days.
- (2) For a second technical violation, not more than 30 days.
- (3) For a third or subsequent technical violation, not more than 45 days.
- (4) For a fourth or subsequent violation, the court may order that the probation be revoked, in accordance with existing law.
- (5) For custodial substance abuse treatment programs, not more than 90 days.

New law removes the tiered sentencing and provides that the sentence for a technical violation of probation may be not more than 90 days without diminution of sentence.

Existing law (C.Cr.P. Art. 900(A)(6)(c)) provides that the defendant shall be given credit for time served prior to the revocation hearing for time served in actual custody while being held for a technical violation in a local detention facility, state institution, or out-of-state institution pursuant to existing law (C.Cr.P. Art. 880). Further provides that the term of the revocation for a technical violation shall begin on the date the court orders the revocation and that upon completion of the imposed sentence for the technical revocation, the defendant shall return to active and supervised probation for a period equal to the remainder of the original period of probation subject to any additional conditions imposed by the court.

New law retains existing law and provides that the provisions of existing law (C.Cr.P. Art. 900(A)) shall apply only to the defendant's first revocation for a technical violation.

Prior law (C.Cr.P. Art. 900(A)(6)(d)) defined "technical violation".

New law changes this definition to mean any violation of a condition of probation that could be addressed by an administrative sanction authorized by the court pursuant to existing law (C.Cr.P. Art. 899.1).

Prior law (C.Cr.P. Art. 900(A)(6)(d)) further provided that a technical violation of probation did not include the following:

- (1) An allegation of a criminal act that was subsequently proven to be a felony.
- (2) An allegation of a criminal act that was subsequently proven to be an intentional misdemeanor directly affecting the person.
- (3) An allegation of a criminal act that was subsequently proven to be a violation of a protective order, pursuant to existing law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by existing law (R.S. 14:35.3), or dating partner as defined by existing law (R.S. 46:2151).
- (4) Possession of a firearm or other prohibited weapon.
- (5) Absconding from the jurisdiction of the court.

New law removes these provisions of prior law and provides that a technical violation of probation shall not include the following:

- (1) Being arrested, charged, or convicted of any of the following offenses:
 - (a) A felony.
 - (b) A violation of any provision of existing law (Title 40 of the La. Rev. Statutes of 1950), except for misdemeanor possession of marijuana or tetrahydrocannabinol, or chemical derivatives thereof, as provided in existing law (R.S. 40:966(C)(2)), which shall be considered a "technical violation".
 - (c) Any intentional misdemeanor directly affecting the person.
 - (d) Any criminal act that is a violation of a protective order, pursuant to existing law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by existing law (R.S. 14:35.3), or dating partner as defined by existing law (R.S. 46:2151).
 - (e) At the discretion of the court, any attempt to commit any intentional misdemeanor directly affecting the person.
 - (f) At the discretion of the court, any attempt to commit any other misdemeanor.
- (2) Being in possession of a firearm or other prohibited weapon.
- (3) At the discretion of the court, failing to appear at any court hearing.
- (4) Absconding from the jurisdiction of the court.
- (5) At the discretion of the court, failing to satisfactorily complete a drug court program if ordered to do so as a special condition of probation.
- (6) At the discretion of the court, failing to report to the probation officer for more than 120 consecutive days.

Prior law (R.S. 15:574.7(B)(1)) provided that at the time a defendant was released on parole for a crime of violence as defined in existing law (R.S. 14:2(B)) or a sex offense as defined

in existing law (R.S. 15:541), the committee on parole was authorized to make a determination as to whether a defendant was eligible for the imposition of administrative sanctions as provided in existing law (R.S. 15:574.7).

New law expands the committee's determination of eligibility for administrative sanctions for technical violations of parole to all offenses rather than only crimes of violence or sex offenses.

Prior law (R.S. 15:574.7(C)) provided that each time a parolee who was on parole for a crime other than a crime of violence as defined in existing law (R.S. 14:2(B)) or a sex offense as defined in existing law (R.S. 15:541) violated a condition of parole, a parole officer was authorized to use administrative sanctions to address a technical violation committed by a parolee when all of the following occurred:

- (1) The parolee, after receiving written notification of his right to a hearing before a court and right to counsel, provided a written waiver of a parole violation hearing.
- (2) The parolee admitted to the violation or affirmatively chose not to contest the violation alleged in the parole violation report.
- (3) The parolee consented to the imposition of administrative sanctions by the DPS&C.

Prior law further required DPS&C to promulgate rules to implement the provisions of prior law that established certain criteria, policies, and guidelines.

Prior law prohibited confinement from exceeding 10 days per violation or a total of 60 days per year if the administrative sanction imposed pursuant to existing law was jail confinement.

Prior law provided that a "technical violation", as used in prior law, meant any violation, except it did not include any of the following:

- (1) An allegation of a criminal act that was subsequently proven to be a felony.
- (2) An allegation of a criminal act that was subsequently proven to be an intentional misdemeanor directly affecting the person.
- (3) An allegation of a criminal act that if proven would have been a crime of violence as defined in existing law (R.S. 14:2(B)).
- (4) An allegation of a criminal act that if proven would have been a sex offense as defined in existing law (R.S. 15:541).
- (5) An allegation of domestic abuse battery pursuant to existing law (R.S. 14:35.3) committed by one family member or household member against another, or an allegation of battery committed by one dating partner as defined by existing law (R.S. 46:2151) against another.
- (6) An allegation of violation of a protective order, pursuant to existing law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by existing law (R.S. 14:35.3), or a dating partner as defined by existing law (R.S. 46:2151).
- (7) Being in possession of a firearm or other prohibited weapon.
- (8) Absconding from the jurisdiction of the court by leaving the state without the prior approval of the committee on parole or the probation and parole officer.

New law removes these provisions of existing law.

Prior law (R.S. 15:574.7(E)) provided that, upon recommendation of the supervising parole officer and approval of the committee on parole, the level of supervision and the fees associated with the supervision of a parolee were authorized to be reduced after the parolee had served a minimum of three years without a violation of the terms and conditions of parole for a crime that was not a crime of violence as defined by existing law (R.S. 14:2(B))

and a minimum of seven years without a violation of the terms and conditions of parole for a crime that was a crime of violence as defined by existing law (R.S. 14:2(B)).

New law provides that the three-year minimum period shall not include a crime that is a sex offense as defined by existing law (R.S. 15:541).

Prior law (R.S. 15:574.9(H)) required any offender who had been released on parole and who had been determined by the committee on parole to have committed a technical violation of the conditions of parole to serve the following sentences:

- (1) For the first technical violation, not more than 15 days.
- (2) For a second technical violation, not more than 30 days.
- (3) For a third technical violation, not more than 45 days.
- (4) For a fourth or subsequent technical violation, not more than 90 days.
- (5) For custodial substance abuse treatment programs, not more than 90 days.

Prior law required the sentences imposed pursuant to prior law to be served without diminution of sentence. Further required the term of the revocation for the technical violation to begin on the date the committee on parole ordered the revocation and that, upon completion of the imposed technical revocation sentence, the offender be returned to active parole supervision for the remainder of the original term of supervision.

Prior law required the offender to be given credit toward service of his sentence for time spent in actual custody prior to the revocation hearing while being held for a technical violation in a local detention facility, state institution, or out-of-state institution.

Prior law did not apply to the following offenders:

- (1) Any offender released on parole for the conviction of a crime of violence as defined in existing law (R.S. 14:2(B)).
- (2) Any offender released on parole for the conviction of a sex offense as defined in existing law (R.S. 15:541).
- (3) Any offender released on parole who was subject to the sex offender registration and notification requirements of existing law (R.S. 15:541 et seq).

New law changes prior law to provide that any offender who has been released on parole and whose parole supervision is being revoked pursuant to new law for a technical violation of the conditions of parole as determined by the committee on parole shall be required to serve the following sentences:

- (1) For the first technical violation, the offender shall serve not more than 90 days.
- (2) For a second technical violation, the offender shall serve not more than 120 days.
- (3) For a third or subsequent technical violation, the offender shall serve not more than 180 days.

New law provides that any sentence imposed pursuant to new law shall be served without diminution of sentence or credit for time served prior to the revocation for a technical violation. Further provides that the term of the revocation for the technical violation shall begin on the date the committee on parole orders the revocation and upon completion of the imposed technical revocation sentence, the offender shall return to active parole supervision for the remainder of the original term of supervision.

New law provides that the provisions of new law shall not apply to the following offenders:

- (1) Any offender released on parole for the conviction of a crime of violence as defined in existing law (R.S. 14:2(B)).

- (2) Any offender released on parole for the conviction of a sex offense as defined in existing law (R.S. 15:541).
- (3) Any offender released on parole who is subject to the sex offender registration and notification requirements of existing law (R.S. 15:541 et seq).

New law provides that a "technical violation", as used in new law, means any violation of a condition of parole that may be addressed by an administrative sanction authorized by the committee on parole pursuant to existing law (R.S. 15:547.7).

New law provides that, unless deemed by the committee on parole when its discretion is permitted, none of the following shall be considered a technical violation nor addressed by administrative sanctions:

- (1) Being arrested, charged, or convicted of any of the following:
 - (a) A felony.
 - (b) Any intentional misdemeanor directly affecting the person.
 - (c) Any criminal act that is a violation of a protective order, pursuant to existing law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by existing law (R.S. 14:35.3), or dating partner as defined by existing law (R.S. 46:2151).
 - (d) At the discretion of the committee on parole, any attempt to commit any intentional misdemeanor directly affecting the person.
 - (e) At the discretion of the committee on parole, any attempt to commit any other misdemeanor.
- (2) Being in possession of a firearm or other prohibited weapon.
- (3) At the discretion of the committee on parole, failing to appear at any court hearing.
- (4) Absconding from the jurisdiction of the committee on parole.

Prior law (C.Cr.P. Art. 899.2) provided for administrative sanctions for technical violations of probation for offenses other than crimes of violence or sex offenses.

New law repeals prior law.

New law shall only apply to offenses committed on or after Aug. 1, 2024.

Effective April 29, 2024.

(Amends C.Cr.P. Arts. 893(A)(1)(a) and (4), (B)(3), (G), and (H)(1)-(3), 899.1(A), and 900(A)(6)(b)-(d) and R.S. 15:574.7(B)(1)(intro. para.), (C), and (D) and 574.9(H); Repeals C.Cr.P. Art. 899.2 and R.S. 15:574.7 (E))