

2017 Regular Session

HOUSE BILL NO. 316

BY REPRESENTATIVE MAGEE

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

CRIMINAL/SENTENCING: Provides relative to community supervision

1 AN ACT

2 To amend and reenact R.S. 15:571.3(B)(1)(a) and (b)(introductory paragraph), (2), (3), and

3 (4) and (D), 574.2(C)(1) and (2)(introductory paragraph) and (D)(9), 574.4(A)(1) and

4 (B)(1), 574.4.1(A)(1), 574.4.2(B), 574.4.3(A)(1), 574.7(B)(1)(introductory

5 paragraph) and (4), 574.9(D), (E), (F), and (G), and 828(B) and (C) and Code of

6 Criminal Procedure Articles 893(A) and (B), 899.1(A)(introductory paragraph) and

7 (D), and 900(A)(5), (6)(b), (c), and (d), (B), and (C), to enact R.S. 15:574.2(C)(4),

8 574.7(B)(2)(a)(ix), (h), and (5), 574.9(H), 827(A)(7), and 828(D) and Code of

9 Criminal Procedure Articles 893(G), 899.1(B)(1)(i) and (8) and (E), and

10 900(A)(6)(e) and (f), and to repeal Code of Criminal Procedure Article 900(A)(7),

11 relative to community supervision; to provide relative to the ways in which an

12 offender may serve a sentence through community supervision; to provide to

13 diminution of sentence for good behavior or "good time"; to provide relative to

14 parole; to provide relative to earned credits toward the projected good time parole

15 supervision date from participation in certified treatment and rehabilitation

16 programs; to provide relative to probation; to provide relative to the release of

17 offenders to community supervision through good time, probation, parole, and

18 earned certified treatment and rehabilitation program credits; to provide relative to

19 conditions of community supervision; to provide relative to violations of community

1 supervision conditions; to provide relative to revocation of an offender's release to
2 community supervision; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. R.S. 15:571.3(B)(1)(a) and (b)(introductory paragraph), (2), (3), and (4)
5 and (D), 574.2(C)(1) and (2)(introductory paragraph) and (D)(9), 574.4(A)(1) and (B)(1),
6 574.4.1(A)(1), 574.4.2(B), 574.4.3(A)(1), 574.7(B)(1)(introductory paragraph) and (4),
7 574.9(D), (E), (F), and (G), and 828(B) and (C) are hereby amended and reenacted and R.S.
8 15:574.2(C)(4), 574.7(B)(2)(a)(ix), (h), and (5), 574.9(H), 827(A)(7), and 828(D) are hereby
9 enacted to read as follows:

10 §571.3. Diminution of sentence for good behavior

11 * * *

12 B.(1)(a) Unless otherwise prohibited, every inmate in the custody of the
13 department who has been convicted of a felony, except an inmate convicted a second
14 time of a crime of violence as defined by R.S. 14:2(B), and sentenced to
15 imprisonment for a stated number of years or months, may earn, in lieu of incentive
16 wages, a diminution of sentence by good behavior and performance of work or
17 self-improvement activities, or both, to be known as "good time". Those inmates
18 serving life sentences will be credited with good time earned which will be applied
19 toward diminution of their sentences at such time as the life sentences might be
20 commuted to a specific number of years. The secretary shall establish regulations
21 for awarding and recording of good time and shall determine when good time has
22 been earned toward diminution of sentence. The amount of diminution of sentence
23 allowed under the provisions of this Section shall be at the following rates ~~rate of one~~
24 ~~and one half-day for every one day in actual custody served on the imposed sentence,~~
25 including time spent in custody with good behavior prior to sentencing for the
26 particular sentence imposed as authorized by the provisions of Code of Criminal
27 Procedure Article 880-;

- 1 ~~(g)~~(vii) Oral sexual battery (R.S. 14:43.3).
- 2 ~~(h)~~(viii) Intentional exposure to AIDS virus (R.S. 14:43.5).
- 3 ~~(i), (j) Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014.~~
- 4 ~~(k)~~(ix) Felony carnal knowledge of a juvenile (R.S. 14:80).
- 5 ~~(l)~~(x) Indecent behavior with juveniles (R.S. 14:81).
- 6 ~~(m)~~(xi) Pornography involving juvenile (R.S. 14:81.1).
- 7 ~~(n)~~(xii) Molestation of a juvenile or a person with a physical or mental
- 8 disability (R.S. 14:81.2).
- 9 ~~(o)~~(xiii) Computer-aided solicitation of a minor (R.S. 14:81.3).
- 10 ~~(p)~~(xiv) Crime against nature (R.S. 14:89).
- 11 ~~(q)~~(xv) Aggravated crime against nature (R.S. 14:89.1).
- 12 ~~(r)~~(xvi) Sexual battery of persons with infirmities (R.S. 14:93.5).
- 13 (b) The provisions of this Paragraph shall not apply to persons convicted of
- 14 an offense prior to July 1, 2017, or who have had their probation or parole revoked
- 15 prior to July 1, 2017.
- 16 (4)(a) Diminution of sentence shall not be allowed an inmate in the custody
- 17 of the Department of Public Safety and Corrections if the inmate has been convicted
- 18 one or more times under the laws of this state, any other state, or the federal
- 19 government of any one or more of the following crimes or attempts to commit any
- 20 of the following crimes:
- 21 ~~(a)~~(i) Felony carnal knowledge of a juvenile.
- 22 ~~(b)~~(ii) Indecent behavior with juveniles.
- 23 ~~(c)~~(iii) Molestation of a juvenile or a person with a physical or mental
- 24 disability.
- 25 ~~(d)~~(iv) Crime against nature as defined by R.S. 14:89(A)(2).
- 26 ~~(e)~~(v) Aggravated crime against nature as defined by R.S. 14:89.1(A)(2).

1 panel, or, if the number exceeds a three-member panel, a majority vote of those
2 present if all of the following conditions are met:

3 * * *

4 (4)(a) Notwithstanding any other provision of this Section, each offender
5 eligible for parole pursuant to R.S. 15:574.4(A), except for offenders sentenced as
6 a habitual offender pursuant to R.S. 15:529.1, shall be released on administrative
7 parole on the offender's parole eligibility date, without a hearing before the
8 committee on parole, if all of the following conditions are met:

9 (i) The offender has completed his case plan pursuant to R.S. 15:827(A)(7),
10 except as provided in Subparagraph (b) of this Paragraph.

11 (ii) The victim of the offender has been notified pursuant to Paragraph (D)(9)
12 of this Section and has not requested a committee on parole hearing.

13 (iii) The offender has not committed any major disciplinary offenses in the
14 twelve consecutive months prior to the parole hearing date. A major disciplinary
15 offense is an offense identified as a Schedule B offense by the Department of Public
16 Safety and Corrections in the Disciplinary Rules and Procedures for Adult Offenders.

17 (iv) The offender has agreed to the conditions of supervision.

18 (v) For an offender convicted of a sex offense as defined by R.S. 15:541, the
19 committee on parole and the offender have completed the requirements set forth in
20 R.S. 15:574.4.3.

21 (b) If the offender has met the conditions provided in Items (a)(ii) through
22 (iv) of this Paragraph, the inmate shall be released on administrative parole if the
23 case plan has not been completed due to no fault of the offender, or if a case plan
24 was never created for the inmate.

25 D. In accordance with the provisions of this Part, the committee on parole
26 shall have the following powers and duties:

27 * * *

28 (9) To notify the victim, or the spouse or next of kin of a deceased victim,
29 when the offender is scheduled for a parole hearing, or for offenders eligible for

1 release pursuant to Paragraph (C)(4) of this Section, the offender's administrative
 2 parole eligibility release date. The notification shall be in writing and sent no less
 3 than thirty days prior to the hearing date, or for offenders eligible for release
 4 pursuant to Paragraph (C)(4) of this Section, no less than forty-five days prior to the
 5 offender's administrative parole eligibility release date. The notice shall advise the
 6 victim, or the spouse or next of kin of a deceased victim, of their rights with regard
 7 to the hearing. The notice is not required when the victim, or the spouse or next of
 8 kin of a deceased victim, advises the committee in writing that such notification is
 9 not desired. The victim, or the spouse or next of kin of a deceased victim, shall be
 10 allowed to testify at the hearing. The victim, or the spouse or next of kin of a
 11 deceased victim, shall be allowed to testify directly, or in rebuttal to testimony or
 12 evidence offered by or on behalf of the offender, or both.

13 * * *

14 §574.4. Parole; eligibility

15 A.(1)(a) Unless eligible at an earlier date ~~and except as provided for in~~
 16 ~~Subparagraph (b) of this Paragraph and Subsection B of this Section,~~ a person,
 17 otherwise eligible for parole, ~~convicted of a first felony offense~~ shall be eligible for
 18 parole consideration upon serving ~~thirty-three and one-third~~ twenty-five percent of
 19 the sentence imposed. ~~Upon conviction of a second felony offense, such person shall~~
 20 ~~be eligible for parole consideration upon serving fifty percent of the sentence~~
 21 ~~imposed. A person convicted of a third or subsequent felony offense shall not be~~
 22 ~~eligible for parole.~~ The provisions of this Subparagraph shall not apply to any
 23 person whose instant offense is a crime of violence as defined by R.S. 14:2(B), a sex
 24 offense as defined by R.S. 15:541, or any offense which would constitute a crime of
 25 violence as defined by R.S. 14:2(B) or a sex offense as defined by R.S. 15:541,
 26 regardless of the date of conviction.

27 (b)(i) ~~Notwithstanding the provisions of Subparagraph (a) of this Paragraph,~~
 28 ~~a~~ A person, otherwise eligible for parole, ~~convicted of a first felony offense whose~~
 29 instant offense is a first or second offense crime of violence as defined by R.S.

1 14:2(B) or a first or second sex offense as defined by R.S. 15:541 shall be eligible
2 for parole consideration upon serving ~~twenty-five~~ seventy-five percent of the
3 sentence imposed. A person convicted of a third or subsequent offense crime of
4 violence as defined by R.S. 14:2(B) or a third or subsequent sex offense as defined
5 by R.S. 15:541 is not eligible for parole. ~~The provisions of this Subparagraph shall~~
6 ~~not apply to any person who has been convicted of a crime of violence as defined in~~
7 ~~R.S. 14:2(B), has been convicted of a sex offense as defined in R.S. 15:541, has been~~
8 ~~sentenced as a habitual offender pursuant to R.S. 15:529.1, or is otherwise ineligible~~
9 ~~for parole.~~

10 (ii) Notwithstanding the provisions of ~~Subparagraph (a)~~ Item (i) of this
11 ~~Paragraph~~ Subparagraph, a person, otherwise eligible for parole, convicted of a
12 ~~second felony offense~~ crime of violence as defined by R.S. 14:2(B), except for any
13 person convicted of a sex offense as defined by R.S. 15:541, who does not have a
14 prior felony conviction for a crime of violence as defined by R.S. 14:2(B) nor a prior
15 felony conviction of a sex offense as defined by R.S. 15:541, shall be eligible for
16 parole consideration upon serving ~~thirty-three and one-third~~ fifty-five percent of the
17 sentence imposed. ~~The current offense shall not be counted as a second or~~
18 ~~subsequent offense if more than ten years have lapsed between the date of the~~
19 ~~commission of the current offense or offenses and the expiration of the person's~~
20 ~~maximum sentence or sentences of the previous conviction or convictions, or~~
21 ~~between the expiration of his maximum sentence or sentences of each preceding~~
22 ~~conviction and the date of the commission of the following offense or offenses. In~~
23 ~~computing the intervals of time, any period of parole, probation, or incarceration by~~
24 ~~a person in a penal institution, within or without the state shall not be included in the~~
25 ~~computation of any of the ten-year periods between the expiration of the person's~~
26 ~~maximum sentence or sentences and the next succeeding offense or offenses. The~~
27 ~~provisions of this Item shall not apply to any person who has been convicted of a~~
28 ~~crime of violence as defined in R.S. 14:2(B), has been convicted of a sex offense as~~

1 §574.4.1. Parole consideration and hearings

2 A.(1) The parole hearings shall be conducted in a formal manner in
3 accordance with the rules formulated by the committee and with the provisions of
4 this Part. ~~Before~~ Except as provided in R.S. 15:574.2(C)(4), before the parole of any
5 prisoner is ordered, such prisoner shall appear before and be interviewed by the
6 committee, except those incarcerated in parish prisons or parish correctional centers,
7 in which case one committee member may conduct the interview. The committee
8 may order a reconsideration of the case or a rehearing at any time.

9 * * *

10 §574.4.2. Decisions of committee on parole; nature, order, and conditions of parole;
11 rules of conduct; infectious disease testing

12 * * *

13 B. At the time these written conditions are given, the committee shall notify
14 the parolee that:

15 ~~(1) If he is arrested while on parole, the committee has the authority to place~~
16 ~~a detainer against him which will in effect prevent him from making bail pending~~
17 ~~any new charges against him; and~~

18 ~~(2) Should~~ if his parole ~~be~~ is revoked for any reason, good time earned prior
19 to parole and good time that would have been earned if parole had not been granted
20 will be forfeited, as required by R.S. 15:571.4.

21 * * *

22 §574.4.3. Parole requirements for certain sex offenders

23 A.(1) ~~Before having a parole hearing~~ Parole shall not be granted for any
24 offender who has been convicted of a violation of a sex offense as defined in R.S.
25 15:541, when the law permits parole consideration for that offense, and when
26 according to law an offender convicted of one of those offenses is otherwise eligible
27 for parole, unless the committee ~~shall give written notice of the date and time of the~~
28 ~~parole hearing at least three days prior to the hearing to the victim or the victim's~~
29 ~~parent or guardian, unless the victim, parent, or guardian has advised the committee~~

1 ~~on parole in writing that such notification is not desired~~ has given sufficient notice
2 to the victim or the victim's parent or guardian pursuant to R.S. 15:574.2(D)(9).

3 * * *

4 §574.7. Custody and supervision of parolees; modification or suspension of
5 supervision; violation of conditions of parole; sanctions; alternative
6 conditions; administrative sanctions

7 * * *

8 B.(1) ~~At the time a defendant is released on parole, the committee on parole~~
9 ~~may make a determination as to whether a defendant is eligible for the imposition~~
10 ~~of administrative sanctions as provided for in this Section. If authorized to do so by~~
11 ~~the committee, each~~ Each time a parolee violates a condition of parole, a parole
12 officer ~~may~~ is authorized to use administrative sanctions to address a technical
13 violation committed by a parolee when all of the following occur:

14 * * *

15 (2) The department shall promulgate rules to implement the provisions of
16 this Subsection to establish the following:

17 (a) A system of structured, administrative sanctions which shall be imposed
18 for technical violations of parole and which shall take into consideration the
19 following factors:

20 * * *

21 (ix) The legislature's intent to limit the use of incarceration.

22 * * *

23 (h) A system of structured, administrative rewards for compliance with
24 conditions and positive behavior that exceeds conditions, including reducing
25 community service hours and reducing fines owed.

26 * * *

27 (4)(a) Incarceration shall not be used for the first or second lowest-level
28 violations including but not limited to the following: first positive drug test;
29 association with known felons or persons involved in criminal activity; changing

1 residence without permission; failure to initially report as required; failure to pay
2 restitution for up to three months; failure to report as instructed; travel without
3 permission; and unemployment and failure to seek employment within ninety days.

4 (b) Incarceration shall not be used for a first or second violation of alcohol
5 use or admission, except for defendants convicted of operating a vehicle while
6 intoxicated (R.S. 14:98), domestic abuse battery (R.S. 14:35.3), or violation of a
7 protective order (R.S. 14:79) issued to protect one family member, household
8 member, or dating partner from another family member, household member, or
9 dating partner.

10 ~~(4)~~(5) For purposes of this Subsection, "technical violation" means any
11 violation of a condition of parole ~~as defined in R.S. 15:574.9(G)(2)~~ that does not
12 include any of the following:

- 13 (a) A new felony conviction.
- 14 (b) A conviction for an intentional misdemeanor directly affecting the
15 person.
- 16 (c) An allegation of a subsequent criminal act defined or enumerated as a
17 crime of violence pursuant to R.S. 14:2(B).
- 18 (d) An allegation of a subsequent criminal act defined as a sex offense
19 pursuant to R.S. 15:541.
- 20 (e) An allegation of a subsequent criminal act defined as domestic abuse
21 battery pursuant to R.S. 14:35.3.
- 22 (f) An allegation of a violation of a protective order, as defined by R.S.
23 14:79, issued to protect one family member, household member, or dating partner,
24 from another family member, household member, or dating partner.

25 * * *
26 §574.9. Revocation of parole for violation of condition; committee panels; return
27 to custody hearing; duration of reimprisonment and reparole after revocation;
28 credit for time served; revocation for a technical violation

29 * * *

1 D. When a detainer is issued by the parole officer for the commission of a
2 new crime, it is enforceable until a bond is set by the sentencing judge. Once the
3 bond is set, the detainer is no longer enforceable, and the parolee may be released on
4 bond if the sentencing judge has set it.

5 E. Parole revocation shall require two votes of a three-member panel of
6 parole committee members or, if the number of members present exceeds a three-
7 member panel, a majority vote of those members present and voting, and the order
8 of revocation shall be reduced to writing and preserved.

9 E.F. When the parole of a parolee has been revoked by the committee for
10 violation of the conditions of parole, the parolee shall be returned to the physical
11 custody of the Department of Public Safety and Corrections, corrections services,
12 and serve the remainder of his sentence as of the date of his release on parole, and
13 any credit for time served ~~for good behavior~~ while on parole. The parolee shall be
14 given credit for time served prior to the revocation hearing for time served in actual
15 custody while being held for a parole violation in a local detention facility, state
16 institution, or out-of-state institution pursuant to Code of Criminal Procedure Article
17 880.

18 F.G. Any such prisoner whose parole has been revoked may be considered
19 by the committee for reparole in accordance with the provisions of this Part.

20 G.H.(1)(a)(i) ~~Except as provided in Subparagraph (b) of this Paragraph, any~~
21 Any offender who has been released on parole and whose parole supervision is being
22 revoked pursuant to the provisions of this Subsection for a technical violation of the
23 conditions of parole as determined by the committee on parole, shall be required to
24 serve the following sentences:

25 ~~(aa)~~(i) For the first technical violation, the offender shall serve not more than
26 ninety fifteen days.

27 ~~(bb)~~(ii) For a second technical violation, the offender shall serve not more
28 than ~~one hundred twenty~~ thirty days.

1 ~~(cc)~~(iii) For a third or subsequent technical violation, the offender shall serve
2 not more than ~~one hundred eighty~~ forty-five days.

3 ~~(ii)~~(b) The sentences imposed pursuant to ~~Item (i) of this Subparagraph (a)~~
4 of this Paragraph shall be served without diminution of sentence or credit for time
5 served prior to the revocation for a technical violation. The term of the revocation
6 for the technical violation shall begin on the date the committee on parole orders the
7 revocation. Upon completion of the imposed technical revocation sentence, the
8 offender shall return to active parole supervision for the remainder of the original
9 term of supervision.

10 ~~(c)~~ Notwithstanding any provision of law to the contrary, if the committee
11 on parole recommends ninety days of substance abuse treatment, and the offender
12 agrees and completes it, the offender will receive ninety days credit toward his term
13 of parole.

14 ~~(d)~~ The parolee shall be given credit toward service of his sentence for time
15 spent in actual custody prior to the revocation hearing while being held for a
16 technical violation in a local detention facility, state institution, or out-of-state
17 institution.

18 ~~(b)~~ The provisions of Subparagraph (a) of this Paragraph shall not apply to
19 the following offenders:

20 ~~(i)~~ Any offender released on parole for the conviction of a crime of violence
21 as defined in R.S. 14:2(B).

22 ~~(ii)~~ Any offender released on parole for the conviction of a sex offense as
23 defined in R.S. 15:541.

24 ~~(iii)~~ Any offender released on parole who is subject to the sex offender
25 registration and notification requirements of R.S. 15:541 et seq.

26 (2) A "technical violation", as used in this Subsection, means any violation
27 except a new felony conviction. ~~it shall not include any of the following:~~

28 ~~(a)~~ Being arrested, charged, or convicted of any of the following:

29 ~~(i)~~ A felony.

- 1 (ii) ~~Repealed by Acts 2010, No. 510, §1.~~
- 2 (iii) ~~Any intentional misdemeanor directly affecting the person.~~
- 3 (iv) ~~At the discretion of the committee on parole, any attempt to commit any~~
- 4 ~~intentional misdemeanor directly affecting the person.~~
- 5 (v) ~~At the discretion of the committee on parole, any attempt to commit any~~
- 6 ~~other misdemeanor.~~
- 7 (b) ~~Being in possession of a firearm or other prohibited weapon.~~
- 8 (c) ~~Failing to appear at any court hearing.~~
- 9 (d) ~~Absconding from the jurisdiction of the committee on parole.~~

* * *

§827. Duties of Department of Public Safety and Corrections

A. In addition to other duties imposed upon the department it shall be the duty of the department to:

* * *

(7) Establish a procedure that provides each offender required to serve an active term of imprisonment of one hundred eighty days or more with a written case plan based on the results of an assessment of the offender's risk and needs and includes participation in programming that addresses the needs identified in that assessment. For offenders eligible for administrative parole pursuant to R.S. 15:574.2(C)(4), the department shall notify the committee on parole in writing of an offender's compliance or noncompliance with the case plan not less than sixty days before an offender's administrative parole release date.

* * *

§828. Classification and treatment programs; qualified sex offender programs; reports; earned credits

* * *

B. The secretary shall adopt rules and regulations for local jail facilities and state correctional institutions to encourage voluntary participation by inmates in certified treatment and rehabilitation programs, including but not limited to basic

1 education, job skills training, values development and faith-based initiatives,
2 therapeutic programs, and treatment programs. When funds are provided, such
3 educational programs shall be available at each penal or correctional institution
4 under the jurisdiction of the department. The rules and regulations may include
5 provisions for furloughs or the awarding of earned credits toward the reduction of
6 the projected good time parole supervision date. Offenders may be awarded up to
7 ~~ninety days toward the reduction of the projected good time parole supervision date~~
8 ~~for satisfactory participation in each approved program pursuant to the provisions of~~
9 ~~this Subsection, but no offender shall receive more than~~ three hundred sixty days
10 total earned credits toward the reduction of the projected good time parole
11 supervision date for program participation.

12 C. Notwithstanding any other provision of law to the contrary, any offender
13 in the custody of the Department of Public Safety and Corrections who has been
14 sentenced as an habitual offender pursuant to the provisions of R.S. 15:529.1 may
15 earn additional good time for participation in certified treatment and rehabilitation
16 programs as provided for in Subsection B of this Section, unless the ~~offender~~
17 ~~offender's instant offense~~ was convicted of a sex offense as defined by R.S. 15:541
18 ~~or a crime of violence as defined by R.S. 14:2(B)~~ one of the following:

19 (1) A sex offense as defined by R.S. 15:541.

20 (2) A crime of violence as defined by R.S. 14:2(B), and the inmate has one
21 or more prior convictions of either a crime of violence as defined by R.S. 14:2(B) or
22 a sex offense as defined by R.S. 15:541.

23 D. Inmates who are otherwise eligible to participate in programs and earn
24 credits pursuant to the provisions of this Section and who are participating in the
25 inmate rehabilitation and workforce development program pursuant to R.S.
26 15:1199.9 shall be eligible to earn an additional one hundred eighty days of credit
27 toward the reduction of the projected good time parole supervision date.

1 Section 2. Code of Criminal Procedure Articles 893(A) and (B),
2 899.1(A)(introductory paragraph) and (D), and 900(A)(5), (6)(b), (c), and (d), (B), and (C),
3 are hereby amended and reenacted and Code of Criminal Procedure Articles 893(G),
4 899.1(B)(1)(i) and (8) and (E), and 900(A)(6)(e) and (f) are hereby enacted to read as
5 follows:

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

7 A. When it appears that the best interest of the public and of the defendant
8 will be served, the court, after a first, ~~or second,~~ or third conviction of a noncapital
9 felony, may suspend, in whole or in part, the imposition or execution of either or
10 both sentences, where suspension is allowed under the law, and in either or both
11 cases place the defendant on probation under the supervision of the division of
12 probation and parole. The court shall not suspend the sentence of a conviction for
13 an offense that is designated in the court minutes as a crime of violence pursuant to
14 Article 890.3, or of a second conviction if the second conviction is for a violation of
15 R.S. 14:73.5, 81.1, or 81.2. The period of probation shall be specified and shall not
16 be ~~less than one year nor~~ more than ~~five~~ three years. The suspended sentence shall
17 be regarded as a sentence for the purpose of granting or denying a new trial or
18 appeal. Supervised release as provided for by Chapter 3-E of Title 15 of the
19 Louisiana Revised Statutes of 1950 shall not be considered probation and shall not
20 be limited by the ~~five-year~~ three-year period for probation provided for by the
21 provisions of this Paragraph.

22 B.(1)(a) ~~The court~~ Notwithstanding any other provision of law to the
23 contrary, when it appears that the best interest of the public and of the defendant will
24 be served, the court, after a fourth offense violation of operating a vehicle while
25 intoxicated pursuant to R.S. 14:98, may suspend, in whole or in part, the imposition
26 or execution of the sentence only if the defendant had not been offered such
27 alternatives prior to his fourth conviction of operating a vehicle while intoxicated
28 when the following conditions exist:

29 (i) ~~The sentence is for a third conviction of any of the following:~~

1 ~~(aa) A noncapital felony for which a defendant could have his sentence~~
2 ~~suspended under Paragraph A of this Article had the conviction been for a first or~~
3 ~~second offense.~~

4 ~~(bb) A violation of the Uniform Controlled Dangerous Substances Law.~~

5 ~~(cc) A third conviction of operating a vehicle while intoxicated in violation~~
6 ~~of R.S. 14:98.~~

7 ~~(ii) It appears that suspending the sentence is in the best interest of the public~~
8 ~~and the defendant.~~

9 ~~(iii)(a) The district attorney consents to the suspension of the sentence.~~

10 ~~(iv)(b) The court orders the defendant to do any of the following:~~

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

20 ~~(bb)(ii) Enter and complete an established driving while intoxicated court or~~
21 ~~sobriety court program, as agreed upon by the trial court and the district attorney.~~
22 ~~When a case is assigned to an established driving while intoxicated court or sobriety~~
23 ~~court program, with the consent of the district attorney, the court may place the~~
24 ~~defendant on probation for a period of not more than eight years if the court~~
25 ~~determines that successful completion of the program may require that period of~~
26 ~~probation to exceed the five-year limit. If necessary to assure successful completion~~
27 ~~of the drug division probation program, the court may extend the duration of the~~
28 ~~probation period. The period of probation as initially fixed or as extended shall not~~
29 ~~exceed eight years.~~

1 established pursuant to R.S. 13:5371, with the consent of the district attorney, the
 2 court may place the defendant on probation for a period of not more than eight years
 3 if the court determines that successful completion of the program may require that
 4 period of probation to exceed the three-year limit. If necessary to assure successful
 5 completion of one of the sentencing alternatives noted in this subparagraph, the court
 6 may extend the duration of the probation period. The court may not extend the
 7 duration of the probation period solely due to unpaid fees or fines. The period of
 8 probation is initially fixed or as extended shall not exceed eight years.

9 * * *

10 Art. 899.1. Administrative sanctions for technical violations

11 A. ~~At the time of sentencing, the court may make a determination as to~~
 12 ~~whether a defendant is eligible for the imposition of administrative sanctions as~~
 13 ~~provided for in this Article. If authorized to do so by the sentencing court, each~~ Each
 14 time a defendant violates a condition of his probation, a probation agency may is
 15 authorized to use administrative sanctions to address a technical violation committed
 16 by a defendant when all of the following occur:

17 * * *

18 B. The department shall promulgate rules to implement the provisions of this
 19 Article to establish the following:

20 (1) A system of structured, administrative sanctions which shall be imposed
 21 for technical violations of probation and which shall take into consideration the
 22 following factors:

23 * * *

24 (i) The legislature's intent to limit the use of incarceration.

25 * * *

26 (8) A system of structured, administrative rewards for compliance with
 27 conditions and positive behavior that exceeds conditions, including reducing
 28 community service hours and reducing fines owed.

29 * * *

1 D.(1) Incarceration shall not be used for the first or second lowest-level
2 violations including but not limited to the following: first positive drug test;
3 association with known felons or persons involved in criminal activity; changing
4 residence without permission; failure to initially report as required; failure to pay
5 restitution for up to three months; failure to report as instructed; travel without
6 permission; and unemployment and failure to seek employment within ninety days.

7 (2) Incarceration shall not be used for a first or second violation of alcohol
8 use or admission, except for defendants convicted of operating a vehicle while
9 intoxicated (R.S. 14:98), domestic abuse battery (R.S. 14:35.3), or violation of a
10 protective order (R.S. 14:79) issued to protect one family member, household
11 member, or dating partner from another family member, household member, or
12 dating partner.

13 D.E. For purposes of this Article, "technical violation" means any violation
14 of a condition of probation, ~~except for an allegation of a subsequent criminal act.~~
15 ~~Notwithstanding any provision of law to the contrary, if the subsequent alleged~~
16 ~~criminal act is misdemeanor possession of marijuana or tetrahydrocannabinol, or~~
17 ~~chemical derivatives thereof, as provided in R.S. 40:966(E)(1), it shall be considered~~
18 a "technical violation". that it does not include any of the following:

- 19 (1) A new felony conviction.
- 20 (2) A conviction for an intentional misdemeanor directly affecting the
21 person.
- 22 (3) An allegation of a subsequent criminal act defined or enumerated as a
23 crime of violence pursuant to R.S. 14:2(B).
- 24 (4) An allegation of a subsequent criminal act defined as a sex offense
25 pursuant to R.S. 15:541.
- 26 (5) An allegation of a subsequent criminal act defined as domestic abuse
27 battery pursuant to R.S. 14:35.3.

1 ~~technical violation shall begin on the date the court orders the revocation. Upon~~
2 ~~completion of the imposed sentence for the technical revocation, the defendant shall~~
3 ~~return to active and supervised probation for a period equal to the remainder of the~~
4 ~~original period of probation subject to any additional conditions imposed by the~~
5 ~~court. The provisions of this Paragraph shall apply only to the defendant's first~~
6 ~~revocation for a technical violation. the following sentences:~~

7 (i) For the first technical violation, the offender shall serve not more than
8 fifteen days.

9 (ii) For a second technical violation, the offender shall serve not more than
10 thirty days.

11 (iii) For a third or subsequent technical violation, the offender shall serve not
12 more than forty-five days.

13 (c) The defendant shall be given credit for time served prior to the revocation
14 hearing for time served in actual custody while being held for a technical violation
15 in a local detention facility, state institution, or out-of-state institution pursuant to
16 Article 880. The term of the revocation for a technical violation shall begin on the
17 date the court orders the revocation. Upon completion of the imposed sentence for
18 the technical revocation, the defendant shall return to active and supervised probation
19 for a period equal to the remainder of the original period of probation subject to any
20 additional conditions imposed by the court.

21 (d) Notwithstanding any other provisions of law to the contrary, if the judge
22 recommends ninety days of substance abuse treatment, and the defendant agrees and
23 completes the treatment, the defendant will receive ninety days credit toward his
24 term of probation.

25 ~~(e)~~(e) A "technical violation", as used in this Paragraph, means any violation
26 ~~except it shall not include any of the following:~~ a felony conviction.

27 ~~(i) Being arrested, charged, or convicted of any of the following:~~

28 ~~(aa) A felony.~~

1 ~~(bb) A violation of any provision of Title 40 of the Louisiana Revised~~
2 ~~Statutes of 1950, except for misdemeanor possession of marijuana or~~
3 ~~tetrahydrocannabinol, or chemical derivatives thereof, as provided in R.S.~~
4 ~~40:966(E)(1), which shall be considered a "technical violation".~~

5 ~~(cc) Any intentional misdemeanor directly affecting the person.~~

6 ~~(dd) At the discretion of the court, any attempt to commit any intentional~~
7 ~~misdemeanor directly affecting the person.~~

8 ~~(ee) At the discretion of the court, any attempt to commit any other~~
9 ~~misdemeanor.~~

10 ~~(ii) Being in possession of a firearm or other prohibited weapon.~~

11 ~~(iii) Failing to appear at any court hearing.~~

12 ~~(iv) Absconding from the jurisdiction of the court.~~

13 ~~(v) Failing to satisfactorily complete a drug court program if ordered to do~~
14 ~~so as a special condition of probation.~~

15 ~~(vi) At the discretion of the court, failing to report to the probation officer~~
16 ~~for more than one hundred twenty consecutive days.~~

17 ~~(f) The sentence imposed pursuant to Subparagraph (6)(b) of this Paragraph~~
18 ~~shall be served without diminution of sentence.~~

19 ~~(7) Extend the period of probation, provided the total amount of time served~~
20 ~~by the defendant on probation for any one offense shall not exceed the maximum~~
21 ~~period of probation provided by law.~~

22 B. When a defendant has been committed to a community rehabilitation
23 center pursuant to Subparagraph (A)(4) of Paragraph A of this Article, upon written
24 request of the department that an offender be removed for violating the rules or
25 regulations of the community rehabilitation center, the court shall cause the
26 defendant to be brought before it and order that probation be revoked with credit for
27 the time served in the community rehabilitation center.

1 C. The department may pay a per diem for offenders placed in a community
2 rehabilitation center pursuant to the provisions of Subparagraph (A)(4) of ~~Paragraph~~
3 ~~A~~ of this Article.

4 * * *

5 Section 3. Code of Criminal Procedure Article 900(A)(7) is hereby repealed in its
6 entirety.

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 316 Original 2017 Regular Session Magee

Abstract: Provides relative to community supervision and the ways in which an offender may serve his sentence through community supervision.

Present law (R.S. 15:571.3) authorizes certain prisoners to earn a diminution of sentence, or "good time", by good behavior and performance of work or self-improvement activities, or both. Further provides the rate at which an offender earns good time based on the type of offense for which the offender was convicted and prohibits certain offenders from being eligible to earn good time. Present law (R.S. 15:571.5) provides that when a prisoner is released because of diminution of sentence, he shall be released as if released on parole and supervised in the same manner as persons released on parole.

Proposed law amends the rates at which offenders earn good time based on the offense for which the offender was convicted and the date of the conviction and expands eligibility to earn good time to certain offenders who are prohibited from earning good time under present law.

Present law (R.S. 15:574.2 et seq.) provides relative to parole, including powers and duties of the committee on parole, parole eligibility, parole considerations and hearings, decisions of the committee on parole, procedures for release on parole, conditions of release on parole, supervision while released on parole, use of administrative sanctions, and parole revocations.

Proposed law does all of the following relative to parole:

- (1) Provides for the administrative release of an offender on the offender's parole eligibility date when the victim of the offense has not requested a hearing before the committee on parole and certain conditions are met including completion of a written case plan developed for the offender by the Dept. of Public Safety and Corrections.
- (2) Amends the amount of time a person is required to serve before becoming parole eligible for certain offenders, and provides parole eligibility for certain offenders who do not have parole eligibility under present law.
- (3) Amends procedures for parole hearings and the granting of parole for certain sex offenders relative to the notice given to the victim of the offense.

- (4) Amends present law to authorize the department to use administrative sanctions for all persons released on parole and to reward those persons who comply with conditions of their release and for positive behavior that exceeds those conditions.
- (5) Relative to parole revocations, prohibits the use of incarceration for certain "lowest-level" violations of release conditions, expands the definition of "technical violation", provides relative to the length of incarceration for technical violations, and provides relative to the issuance of a detainer for the commission of a new crime.

Present law (R.S. 15:828) authorizes the Dept. of Public Safety and Corrections to establish a program whereby certain prisoners may earn credits toward the reduction of their projected good time parole supervision date by participating in certain certified treatment and rehabilitation programs. Further provides for the amount of credits that may be earned by the prisoner for each program and the total amount of credits that may be earned. Present law prohibits prisoners convicted of certain offenses from earning credits under this program.

Proposed law removes the limit on the amount that the prisoner may earn per program and expands eligibility to earn credits under this program to certain offenders, and authorizes offenders to receive credits for participating in the inmate rehabilitation and workforce development program established in present law.

Present law (C.Cr.P. Art. 893) authorizes the court to suspend or defer the sentence of a person who is convicted of certain offenses and place the offender on probation. Further provides relative to conditions of probation, probation supervision, violations of probation conditions, use of administrative sanctions for persons on probation, and probation revocations.

Proposed law does all of the following:

- (1) Authorizes the court to suspend the sentence of offenders after a third conviction of a noncapital felony.
- (2) Amends eligibility and conditions of probation for certain offenders convicted of DWI offenses.
- (3) Decreases the amount of time a person can be on probation to three years.
- (4) Amends present law to authorize the department to use administrative sanctions for all persons on probation and to reward those persons who comply with conditions of their release and for positive behavior that exceeds those conditions.
- (5) Relative to probation revocations and violations, prohibits the use of incarceration for certain "lowest-level" violations of release conditions, expands the definition of "technical violation", and provides relative to the length of incarceration for technical violations.

(Amends R.S. 15:571.3(B)(1)(a) and (b)(intro. para.), (2), (3), and (4) and (D), 574.2(C)(1) and (2)(intro. para.) and (D)(9), 574.4(A)(1) and (B)(1), 574.4.1(A)(1), 574.4.2(B), 574.4.3(A)(1), 574.7(B)(1)(intro. para.) and (4), 574.9(D), (E), (F), and (G), and 828(B) and (C) and C.Cr.P. Arts. 893(A) and (B), 899.1(A)(intro. para.) and (D), and 900(A)(5), (6)(b), (c), and (d), (B), and (C); Adds R.S. 15:574.2(C)(4), 574.7(B)(2)(a)(ix), (h), and (5), 574.9(H), 827(A)(7), and 828(D) and C.Cr.P. Arts. 893(G), 899.1(B)(1)(i) and (8) and (E), and 900(A)(6)(e) and (f); Repeals C.Cr.P. Art. 900(A)(7))