

2018 Regular Session

HOUSE BILL NO. 452

BY REPRESENTATIVE DWIGHT

PROBATION: Provides relative to administrative sanctions

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 899.2(B)(1), relative to
3 administrative sanctions for certain violations of probation; to remove the prohibition
4 of incarceration under certain circumstances; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Criminal Procedure Article 899.2(B)(1) is hereby amended and
7 reenacted to read as follows:

8 Art. 899.2. Administrative sanctions for technical violations; offenses other than
9 crimes of violence or sex offenses

10 * * *

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

13 (1)~~(a)~~ A system of structured, administrative sanctions which shall be
14 imposed for technical violations of probation and which shall take into consideration
15 the following factors:

16 ~~(i)~~(a) The severity of the violation behavior.

17 ~~(ii)~~(b) The prior violation history.

18 ~~(iii)~~(c) The severity of the underlying criminal conviction.

19 ~~(iv)~~(d) The criminal history of the probationer.

20 ~~(v)~~(e) Any special circumstances, characteristics, or resources of the
21 probationer.

1 ~~(vi)~~(f) Protection of the community.

2 ~~(vii)~~(g) Deterrence.

3 ~~(viii)~~(h) The availability of appropriate local sanctions, including but not
4 limited to jail, treatment, community service work, house arrest, electronic
5 surveillance, restitution centers, work release centers, day reporting centers, or other
6 local sanctions.

7 ~~(b) Incarceration shall not be used for the lowest-tier violations including the~~
8 ~~first positive drug test and the first or second violation for the following:~~

9 ~~(i) Association with known felons or persons involved in criminal activity.~~

10 ~~(ii) Changing residence without permission.~~

11 ~~(iii) Failure to initially report as required. However, incarceration may be~~
12 ~~used if the court, after a contradictory hearing, finds that the probationer wilfully~~
13 ~~failed to report as required and instructed for the purpose of permanently avoiding~~
14 ~~probation supervision.~~

15 ~~(iv) Failure to pay restitution for up to three months.~~

16 ~~(v) Failure to report as instructed. However, incarceration may be used if the~~
17 ~~court, after a contradictory hearing, finds that the probationer wilfully failed to report~~
18 ~~as required and instructed for the purpose of permanently avoiding probation~~
19 ~~supervision.~~

20 ~~(vi) Traveling without permission.~~

21 ~~(vii) Occasion of unemployment and failure to seek employment within~~
22 ~~ninety days.~~

23 ~~(c) Incarceration shall not be used for first or second violations of alcohol~~
24 ~~use or admission, except for defendants convicted of operating a vehicle while~~
25 ~~intoxicated pursuant to R.S. 14:98; defendants convicted of domestic abuse battery~~
26 ~~pursuant to R.S. 14:35.3 committed by one family member or household member~~
27 ~~against another; defendants convicted of battery by one dating partner as defined by~~
28 ~~R.S. 46:2151 against another; or defendants convicted of violation of a protective~~
29 ~~order, pursuant to R.S. 14:79, issued against the defendant to protect a family~~

1 ~~member or household member as defined by R.S. 14:35.3, or a dating partner as~~
2 ~~defined by R.S. 46:2151.~~

3 * * *

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 452 Original

2018 Regular Session

Dwight

Abstract: Removes the prohibition against incarceration of a defendant on probation for the lowest tier violations of probation.

Present law provides that each time a defendant on probation for a crime other than a crime of violence or a sex offense violates a condition of his probation, a probation agency is authorized to use administrative sanctions to address a technical violation committed by the defendant.

Present law authorizes the Dept. of Public Safety and Corrections to conduct administrative hearings for the enforcement of sanctions, but such sanctions shall not include incarceration for the lowest-tier violations, including the first positive drug test and the first or second violation for the following:

- (1) Association with known felons or persons involved in criminal activity.
- (2) Changing residence without permission.
- (3) Failure to initially report as required, with certain exceptions.
- (4) Failure to pay restitution for up to three months.
- (5) Failure to report as instructed, with certain exceptions.
- (6) Traveling without permission.
- (7) Occasion of unemployment and failure to seek employment within 90 days.

Proposed law repeals the present law prohibition of incarceration for these lowest-tier violations.

Present law prohibits incarceration for first or second violations of alcohol use or admission, except for defendants convicted of operating a vehicle while intoxicated; defendants convicted of domestic abuse battery committed by one family member or household member against another; defendants convicted of battery by one dating partner against another; or defendants convicted of violation of a protective order issued against the defendant to protect a family member, household member or a dating partner.

Proposed law repeals the present law prohibition of incarceration for these lowest-tier violations.

(Amends C.Cr.P. Art. 899.2(B)(1))