
SENATE FLOOR AMENDMENTS

2018 Regular Session

Amendments proposed by Senator Claitor to Engrossed Senate Bill No. 389 by Senator Claitor

1 AMENDMENT NO. 1

2 Delete the set of Senate Floor Legislative Bureau amendments proposed by Senator Martiny
3 (designated as SFLBSB389 ELLISB 2839) and adopted by the Senate on April 18, 2018

4 AMENDMENT NO. 2

5 On page 1, delete lines 2 through 11 and insert the following:

6 "To amend and reenact Code of Criminal Procedure Art. 875.1(F) and 894.4, as enacted by
7 Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018,
8 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), the introductory
9 paragraph of (6)(b) and (6)(b)(iv), and (d)(v) and R.S. 15:574.6.1(B) and the
10 introductory paragraph of 574.9(H)(1)(a) and to enact Code of Criminal Procedure
11 Art. 875.1(G), 893(H), and 900(A)(6)(b)(v), relative to felony probation; to provide
12 relative to termination of probation under certain circumstances; to provide relative
13 to extensions of probation; to provide relative to financial hardship hearings; to
14 provide relative to administrative sanctions for certain violations of probation; to
15 remove the prohibition of incarceration under certain circumstances; and to provide
16 for related matters."

17 AMENDMENT NO. 3

18 On page 1, delete lines 13 through 17 and insert the following:

19 "Section 1. Code of Criminal Procedure Art. 875.1(F) and 894.4, as enacted by
20 Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, 893(A)(1)(a),
21 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), the introductory paragraph of (6)(b) and
22 (6)(b)(iv) and (d)(v) are hereby amended and reenacted and Code of Criminal Procedure Art.
23 875.1(G), 893(H), and 900(A)(6)(b)(v) are"

24 AMENDMENT NO. 4

25 On page 2, delete lines 4 through 29

26 AMENDMENT NO. 5

27 Delete page 3

28 AMENDMENT NO. 6

29 On page 4, delete lines 23 through 29 and insert the following:

30 **"H.(1) If a defendant is placed on supervised probation, the division of**
31 **probation and parole shall submit to the court a compliance report when**
32 **requested by the court, or when the division of probation and parole deems it**
33 **necessary to have the court make a determination with respect to "earned**
34 **compliance credits", modification of terms or conditions of probation,**
35 **termination of probation, revocation of probation, or other purpose proper**
36 **under any provision of law.**

37 **(2) For purposes of this Paragraph:**

38 **(a) "Compliance" means the full completion of the terms and conditions**
39 **of probation as imposed by the sentencing judge, except for inability to pay**
40 **finances, fees, and restitution.**

1 (b) "Compliance report" means a report generated and signed by the
2 division of probation and parole that contains clear and concise information
3 relating to the defendant's performance relative to "earned compliance
4 credits", and may contain a recommendation as to early termination.

5 (3) After a review of the compliance report, if it is the recommendation
6 of the division of probation and parole that the defendant is in compliance with
7 the conditions of probation, in accordance with the compliance report, the court
8 shall grant "earned compliance credit" for the time, absent a showing of cause
9 for a denial.

10 (4) The court may terminate probation at any time as "satisfactorily
11 completed" upon the final determination that the defendant is in compliance
12 with the terms and conditions of probation.

13 (5) If the court determines that the defendant has failed to successfully
14 complete the terms and conditions of probation, the court may extend the
15 probation for a period not to exceed two years, for the purpose of allowing the
16 defendant additional time to complete the terms of probation, additional
17 conditions, the extension of probation, or the revocation of probation.

18 (6) Absent extenuating circumstances, the court shall, within ten days of
19 receipt of the compliance report, make an initial determination as to the issues
20 presented and shall transmit the decision to the probation officer. The court
21 shall disseminate the decision to the defendant, the division of probation and
22 parole, and the prosecuting agency within ten days of receipt. The parties shall
23 have ten days from receipt of the initial determination of the court to seek an
24 expedited contradictory hearing for the purpose of challenging the court's
25 determination. If no challenge is made within ten days, the court's initial
26 determination shall become final and shall constitute a valid order of the court.

27 * * *

28 Art. 894.4. Probation; extension

29 A. ~~When a defendant has been sentenced to probation and has a monetary~~
30 ~~obligation, including but not limited to court costs, fines, costs of prosecution, and~~
31 ~~any other monetary costs associated with probation, the judge may not extend the~~
32 ~~period of probation for the purpose of collecting any unpaid monetary obligation,~~
33 ~~except as provided in Paragraph B of this Article, but may refer the unpaid monetary~~
34 ~~obligation to the office of debt recovery pursuant to R.S. 47:1676.~~

35 B. ~~The judge may extend probation only one time and only by a period of six~~
36 ~~months for the purpose of monitoring collection of unpaid victim restitution if the~~
37 ~~court finds on the record by clear and convincing evidence that the court's temporary~~
38 ~~ongoing monitoring would ensure collection of unpaid restitution more effectively~~
39 ~~than any of the following:~~

40 ~~(1) Converting the unpaid restitution to a civil money judgment pursuant to~~
41 ~~Article 886 or 895.1.~~

42 ~~(2) Referring the unpaid restitution to the office of debt recovery pursuant to~~
43 ~~R.S. 47:1676.~~

44 ~~(3) Any other enforcement mechanism for collection of unpaid restitution~~
45 ~~authorized by law.~~

46 C. ~~A six-month extension of probation as provided in Paragraph B shall apply~~
47 ~~only to the order of victim restitution. All other conditions of probation during the~~
48 ~~six-month extension shall be terminated.~~

49 Probation shall neither be revoked nor extended based solely upon the
50 defendant's inability to pay fines, fees, or restitution to the victim."

51 AMENDMENT NO. 7

52 Delete page 5

53 AMENDMENT NO. 8

54 On page 6, delete lines 1 through 23

1 AMENDMENT NO. 9

2 On page 7, line 1, after "**provided in**" delete "**Code of Criminal Procedure**"

3 AMENDMENT NO. 10

4 On page 7, between lines 3 and 4, insert the following:

5 "B.(1) If the defendant's probation and parole officer has reasonable cause to
6 believe that a defendant on felony probation has not been compliant with the
7 conditions of his probation in a given calendar month, he may rescind thirty days of
8 earned compliance credits as an administrative sanction pursuant to Article 899.2.
9 Credits may be rescinded only for a month in which the defendant is found not to be
10 in compliance.

11 **(2) Notwithstanding any other provision of law to the contrary, the**
12 **provisions of Article 899.2(A)(3) requiring consent of the defendant shall not**
13 **apply to the rescinding of earned compliance credits as an administrative**
14 **sanction under Article 899.2.**"

15 AMENDMENT NO. 11

16 On page 7, between lines 4 and 5, insert the following:

17 "Art. 899.2. Administrative sanctions for technical violations; offenses other than
18 crimes of violence or sex offenses

19 * * *

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

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

- 25 (i)(a) The severity of the violation behavior.
- 26 (ii)(b) The prior violation history.
- 27 (iii)(c) The severity of the underlying criminal conviction.
- 28 (iv)(d) The criminal history of the probationer.
- 29 (v)(e) Any special circumstances, characteristics, or resources of the
30 probationer.
- 31 (vi)(f) Protection of the community.
- 32 (vii)(g) Deterrence.
- 33 (viii)(h) The availability of appropriate local sanctions, including but not
34 limited to jail, treatment, community service work, house arrest, electronic
35 surveillance, restitution centers, work release centers, day reporting centers, or other
36 local sanctions.

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

- 39 (i) Association with known felons or persons involved in criminal activity.
- 40 (ii) Changing residence without permission.
- 41 (iii) Failure to initially report as required. However, incarceration may be
42 used if the court, after a contradictory hearing, finds that the probationer wilfully
43 failed to report as required and instructed for the purpose of permanently avoiding
44 probation supervision.
- 45 (iv) Failure to pay restitution for up to three months.
- 46 (v) Failure to report as instructed. However, incarceration may be used if the
47 court, after a contradictory hearing, finds that the probationer wilfully failed to report
48 as required and instructed for the purpose of permanently avoiding probation
49 supervision.
- 50 (vi) Traveling without permission.
- 51 (vii) Occasion of unemployment and failure to seek employment within
52 ninety days.

53 (c) Incarceration shall not be used for first or second violations of alcohol
54 use or admission, except for defendants convicted of operating a vehicle while

1 ~~intoxicated pursuant to R.S. 14:98; defendants convicted of domestic abuse battery~~
2 ~~pursuant to R.S. 14:35.3 committed by one family member or household member~~
3 ~~against another; defendants convicted of battery by one dating partner as defined by~~
4 ~~R.S. 46:2151 against another; or defendants convicted of violation of a protective~~
5 ~~order, pursuant to R.S. 14:79, issued against the defendant to protect a family~~
6 ~~member or household member as defined by R.S. 14:35.3, or a dating partner as~~
7 ~~defined by R.S. 46:2151.~~

8 * * *

9 AMENDMENT NO. 12

10 On page 7, line 28, delete "Subparagraph (A)(5) of this Article" and insert "**Subparagraph**
11 **(5) of this Paragraph**"

12 AMENDMENT NO. 13

13 On page 8, delete lines 1 through 4 and insert the following:

14 "an offense other than a crime of violence as defined in R.S. 14:2(B) or of a sex
15 offense as defined by R.S. 15:541, and who has ~~had his probation revoked under the~~
16 ~~provisions of this Article for~~ **been determined by the court to have committed** a
17 technical violation of his probation ~~as determined by the court~~, shall be required to
18 serve, without diminution of sentence, as follows:"

19 AMENDMENT NO. 14

20 On page 8, line 7, after "**in accordance with**" delete "**Subsubparagraph (5)(a) of this**
21 **Subparagraph**" and insert "**Subparagraph (5) of this Paragraph**"

22 AMENDMENT NO. 15

23 On page 8, delete lines 16 and 17

24 AMENDMENT NO. 16

25 On page 8, after line 18, insert the following:

26 "Section 2. R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a) are
27 hereby amended and reenacted to read as follows:

28 §574.6.1. Compliance credits; parole

29 * * *

30 B.(1) If the probation and parole officer has reasonable cause to believe that
31 an offender on parole has not been compliant with the conditions of his parole in a
32 given calendar month, he may rescind thirty days of earned compliance credits as an
33 administrative sanction under R.S. 15:574.7. Credits may be rescinded only for a
34 month in which the offender is found not to be in compliance.

35 **(2) Notwithstanding any other provision of law to the contrary, the**
36 **provisions of R.S. 15:574.7(B)(1)(c) requiring consent of the parolee shall not**
37 **apply to the rescinding of earned compliance credits as an administrative**
38 **sanction under R.S. 15:574.7.**

39 * * *

40 §574.9. Revocation of parole for violation of condition; committee panels; return to
41 custody hearing; duration of reimprisonment and reparole after
42 revocation; credit for time served; revocation for a technical violation

43 * * *

44 H.(1)(a) Any offender who has been released on parole and ~~whose parole~~
45 ~~supervision is being revoked pursuant to the provisions of this Subsection for~~ **who**
46 **has been determined to have committed** a technical violation of the conditions of
47 parole as determined by the committee on parole, shall be required to serve the
48 following sentences:

49 * * *