

**SENATE COMMITTEE AMENDMENTS**

2018 Regular Session

Amendments proposed by Senate Committee on Judiciary C to Engrossed House Bill No. 196 by Representative Marino

1 AMENDMENT NO. 1

2 On page 1, line 2, after "Article" delete the remainder of the line and insert the following:

3 "875.1(F) and 894.4, as enacted by Section 1 of Act 260 of the 2017 Regular  
 4 Session, effective August 1, 2018, 893(A)(1)(a), 895.6(A) and (B), 899.2(B)(1), and  
 5 900(A)(5), the introductory paragraph of (6)(b) and (6)(b)(iv), and (d)(v), and 978(D)  
 6 and R.S. 15:574.6.1(B) and the introductory paragraph of 574.9(H)(1)(a) and to enact  
 7 Code of Criminal Procedure Article 875.1(G), 893(H), and 900(A)(6)(b)(v), relative  
 8 to criminal procedure; to provide relative to termination of probation under certain  
 9 circumstances; to provide relative to extensions of probation; to provide relative to  
 10 financial hardship hearings; to provide relative to administrative sanctions for certain  
 11 violations of probation; to remove the prohibition of incarceration under certain  
 12 circumstances; to provide relative to the limit"

13 AMENDMENT NO. 2

14 On page 1, delete line 3

15 AMENDMENT NO. 3

16 On page 1, delete lines 8 and 9 and insert the following:

17 "Section 1. Code of Criminal Procedure Article 875.1(F) and 894.4, as enacted by  
 18 Section 1 of Act 260 of the 2017 Regular Session, effective August 1, 2018, 893(A)(1)(a),  
 19 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), the introductory paragraph of (6)(b) and  
 20 (6)(b)(iv) and (d)(v), and 978(D) are hereby amended and reenacted and Code of Criminal  
 21 Procedure Article 875.1(G), 893(H), and 900(A)(6)(b)(v) are hereby enacted to read as  
 22 follows:"

23 AMENDMENT NO. 4

24 On page 1, between lines 9 and 10, insert the following:

25 "Art. 875.1. Determination of substantial financial hardship to the defendant

26 \* \* \*

27 **F. If, at the termination or end of the defendant's term of supervision,**  
 28 **any restitution ordered by the court remains outstanding, the balance of the**  
 29 **unpaid restitution shall be reduced to a civil money judgment in favor of the**  
 30 **person to whom restitution is owed, which may be enforced in the same manner**  
 31 **as provided for the execution of judgments pursuant to the Code of Civil**  
 32 **Procedure. For any civil money judgment ordered under this Article, the clerk**  
 33 **shall send notice of the judgment to the last known address of the person to**  
 34 **whom the restitution is ordered to be paid.**

35 **G.** The provisions of this Article shall apply only to defendants convicted of  
 36 offenses classified as felonies under applicable law.

37 \* \* \*

38 Art. 893. Suspension and deferral of sentence and probation in felony cases  
 39 A.(1)(a) When it appears that the best interest of the public and of the  
 40 defendant will be served, the court, after a first, second, or third conviction of a  
 41 noncapital felony, may suspend, in whole or in part, the imposition or execution of  
 42 either or both sentences, where suspension is allowed under the law, and in either or  
 43 both cases place the defendant on probation under the supervision of the division of  
 44 probation and parole. The court shall not suspend the sentence of a second or third

conviction of R.S. 14:73.5. Except as provided in Paragraph G of this Article, the period of probation shall be specified and shall not be more than three years, **except as provided by Paragraph H of this Article.**

\* \* \*

**H.(1) If a defendant is placed on supervised probation, the division of probation and parole shall submit to the court a compliance report when requested by the court, or when the division of probation and parole deems 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.**

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

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

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

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

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

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

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

\* \* \*

Art. 894.4. Probation; extension

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

~~B. 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 any of the following:~~

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

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

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

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

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

\* \* \*

Art. 895.6. Compliance credits; probation

A. Every defendant on felony probation pursuant to Article 893 for 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 shall **be eligible to** earn a diminution of probation term, to be known as "earned compliance credits", by good behavior, **in accordance with the procedure provided in Article 893**. The amount of diminution of probation term allowed under this Article shall be at the rate of thirty days for every full calendar month on probation.

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

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

\* \* \*

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

\* \* \*

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

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

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

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

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

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

\* \* \*

Art. 900. Violation hearing; sanctions

\* \* \*

A. After an arrest pursuant to Article 899, the court shall cause a defendant who continues to be held in custody to be brought before it within thirty days for a hearing. If a summons is issued pursuant to Article 899, or if the defendant has been admitted to bail, the court shall set the matter for a violation hearing within a reasonable time. The hearing may be informal or summary. 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 the provisions of Article 562. If the court decides that the defendant has violated, or was 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.~~

(6)(a)

\* \* \*

(b) Notwithstanding the provisions of ~~Subparagraph (A)(5) of this Article~~ **Subparagraph (5) of this Paragraph**, any defendant who has been placed on probation by the court for the conviction of an offense other than a crime of violence as defined in R.S. 14:2(B) or of a sex offense as defined by R.S. 15:541, and who has ~~had his probation revoked under the provisions of this Article for~~ **been determined by the court to have committed** a technical violation of his probation as ~~determined by the court~~, shall be required to serve, without diminution of sentence, as follows:

\* \* \*

(iv) For **a fourth or subsequent violation may order that the probation be revoked, in accordance with Subparagraph (5) of this Paragraph.**

**(v) For** custodial substance abuse treatment programs, not more than ninety days.

\* \* \*

(d) A "technical violation", as used in this Paragraph, means any violation except it shall not include any of the following:

\* \* \*

(v) Absconding from the jurisdiction of the court ~~by leaving the state without the prior approval of the court or the probation and parole officer.~~

\* \* \*

AMENDMENT NO. 5

On page 1, after line 17, insert the following:

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

§574.6.1. Compliance credits; parole

\* \* \*

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

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

10 \* \* \*

11 §574.9. Revocation of parole for violation of condition; committee panels; return to  
12 custody hearing; duration of reimprisonment and reparole after  
13 revocation; credit for time served; revocation for a technical violation

14 \* \* \*

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

20 \* \* \*"