

GREEN SHEET REDIGEST

HB 11

2024 Second Extraordinary Session

Villio

CRIMINAL/SENTENCING: Provides relative to sanctions for violation of probation or parole conditions (Item #3)

DIGEST

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

Present law (C.Cr.P. Art. 893(A)(1)(a)) provides that when it appears that the best interest of the public and of the defendant will be served, the court, after a first, second, or third conviction of a noncapital felony, may suspend, in whole or in part, the imposition or execution of either or both sentences, where suspension is allowed under the law, and in either or both cases place the defendant on probation under the supervision of the division of probation and parole. Further provides that except as provided in present law (C.Cr.P. Art. 893(G) and (H)), the period of probation shall be specified and shall not be more than three years.

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

Present law (C.Cr.P. Art. 893(A)(4)) provides that supervised release of sex offenders as provided in present law (Ch. 3-E of Title 15 of the La Rev. Statutes of 1950) shall not be considered probation and shall not be limited by the five-year or three-year period for probation provided for by the provisions of present law.

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

Present law (C.Cr.P. Art. 893(B)(3)) provides that when suspension is allowed under present law, the defendant shall be placed on probation under the supervision of the division of probation and parole. Further provides that if the defendant has been sentenced to complete a specialty court program as provided in present law, the defendant may 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 provides that this period of probation shall be specified and shall not be more than three years, except as provided in present law (C.Cr.P. Art. 893(G)).

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

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

Proposed 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.

Present law (C.Cr.P. Art. 893(H)(1)) provides that 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.

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

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

- (1) "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, or restitution.
- (2) "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.

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

Present law (C.Cr.P. Art. 893(H)(3)) provides that 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.

Proposed 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.

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

Proposed 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.

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

Present law (C.Cr.P. Art. 900(A)(6)(b)) provides that 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 present law (R.S. 14:2(B)) or of a sex offense as defined by present law (R.S. 15:541), and who has been determined by the court to have committed a technical violation of his probation, may be 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 present law.
- (5) For custodial substance abuse treatment programs, not more than 90 days.

Proposed 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.

Present 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 present 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.

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

Present law (C.Cr.P. Art. 900(A)(6)(d)(i)) provides that a technical violation of probation shall not include an allegation of a criminal act that is subsequently proven to be a felony.

Proposed law changes present law to provide that a technical violation of probation shall not include being arrested, charged, or convicted of any of the following offenses:

- (1) A felony.
- (2) A violation of any provision of present 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 present law (R.S. 40:966(C)(2)), which shall be considered a "technical violation".
- (3) Any intentional misdemeanor directly affecting the person.
- (4) Any criminal act that is a violation of a protective order, pursuant to present law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by present law (R.S. 14:35.3), or dating partner as defined by present law (R.S. 46:2151).
- (5) At the discretion of the court, any attempt to commit any intentional misdemeanor directly affecting the person.
- (6) At the discretion of the court, any attempt to commit any other misdemeanor.

Present law (C.Cr.P. Art. 900(A)(6)(d)(ii)) provides that a technical violation of probation shall not include an allegation of a criminal act that is subsequently proven to be an intentional misdemeanor directly affecting the person.

Proposed law changes present law to provide that a technical violation of probation shall not include being in possession of a firearm or other prohibited weapon.

Present law (C.Cr.P. Art. 900(A)(6)(d)(iii)) provides that a technical violation of probation shall not include an allegation of a criminal act that is subsequently proven to be a violation of a protective order, pursuant to present law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by present law (R.S. 14:35.3), or dating partner as defined by present law (R.S. 46:2151).

Proposed law changes present law to provide that a technical violation of probation shall not include failing to appear at any court hearing.

Present law (C.Cr.P. Art. 900(A)(6)(d)(iv)) provides that a technical violation of probation shall not include being in possession of a firearm or other prohibited weapon.

Present law (C.Cr.P. Art. 900(A)(6)(d)(v)) provides that a technical violation of probation shall not include absconding from the jurisdiction of the court. Proposed law provides that,

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 shall not be considered a technical violation of probation.

Proposed law provides that at the discretion of the court, failing to report to the probation officer for more than 120 consecutive days shall not be considered a technical violation of probation.

Present law (R.S. 15:574.7(B)(1)) provides that at the time a defendant is released on parole for a crime of violence as defined in present law (R.S. 14:2(B)) or a sex offense as defined in present law (R.S. 15:541), the committee on parole may make a determination as to whether a defendant is eligible for the imposition of administrative sanctions as provided in present law (R.S. 15:574.7).

Proposed law amends present law to expand the court's determination of eligibility for administrative sanctions for technical violations of parole to all offenses rather than only crimes of violence or sex offenses.

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

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

Present law further provides that DPS&C shall promulgate rules to implement the provisions of present law to establish the following:

- (1) A system of structured, administrative sanctions which shall be imposed for technical violations of parole and which shall take into consideration the following factors:
 - (a) The severity of the violation behavior.
 - (b) The prior violation history.
 - (c) The severity of the underlying criminal conviction.
 - (d) The criminal history of the parolee.
 - (e) Any special circumstances, characteristics, or resources of the parolee.
 - (f) Protection of the community.
 - (g) Deterrence.
 - (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.
 - (i) 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.
 - (iv) Failure to pay restitution for up to three months.
 - (v) Failure to report as instructed.
 - (vi) Traveling without permission.
 - (vii) Occasion of unemployment and failure to seek employment within 90 days.
- (j) 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 a 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.
- (2) Procedures to provide a parolee with written notice of the right to a parole violation hearing to determine whether the parolee violated the conditions of parole alleged in the violation report and the right to be represented by counsel at state expense at that hearing if financially eligible.
 - (3) Procedures for a parolee to provide written waiver of the right to a parole violation hearing, to admit to the violation or affirmatively choose not to contest the violation alleged in the parole violation report, and to consent to the imposition of administrative sanctions by the department.
 - (4) The level and type of sanctions that may be imposed by parole officers and other supervisory personnel.
 - (5) The level and type of violation behavior that warrants a recommendation to the board that parole be revoked.
 - (6) Procedures notifying the parolee and the committee on parole of a violation admitted by the parolee and the administrative sanctions imposed.
 - (7) Such other policies and procedures as are necessary to implement the provisions of present law and to provide adequate parole supervision.

Present law provides that if the administrative sanction imposed pursuant to present law is jail confinement, the confinement shall not exceed 10 days per violation and shall not exceed a total of 60 days per year.

Present law provides that "technical violation" means any violation of a condition of probation that may be addressed by an administrative sanction authorized by the court pursuant to present law (C.Cr.P. Art. 899.1).

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

- (1) An allegation of a criminal act that is subsequently proven to be a felony.

- (2) An allegation of a criminal act that is subsequently proven to be an intentional misdemeanor directly affecting the person.
- (3) An allegation of a criminal act that if proven would be a crime of violence as defined in present law (R.S. 14:2(B)).
- (4) An allegation of a criminal act that if proven would be a sex offense as defined in present law (R.S. 15:541).
- (5) An allegation of domestic abuse battery pursuant to present 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 present law (R.S. 46:2151) against another.
- (6) An allegation of violation of a protective order, pursuant to present law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by present law (R.S. 14:35.3), or a dating partner as defined by present 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.

Proposed law removes these provisions of present law.

Present law (R.S. 15:574.7(E)) provides 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 may be reduced after the parolee has served a minimum of three years without a violation of the terms and conditions of parole for a crime that is not a crime of violence as defined by present 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 is a crime of violence as defined by present law (R.S. 14:2(B)).

Proposed law amends present law to provide that the three-year minimum period shall not include a crime that is a sex offense as defined by present law (R.S. 15:541).

Present law (R.S. 15:574.9(H)) provides that any offender who has been released on parole and who has been determined by the committee on parole to have committed a technical violation of the conditions of parole, shall be required 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.

Present law provides that the sentences imposed pursuant to present law shall be served without diminution of sentence. 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 that 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.

Present law provides that the offender shall 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.

Present law does not apply to the following offenders:

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

Present law provides that a "technical violation", as used in present law, means any violation except it shall not include any of the following:

- (1) An allegation of a criminal act that is subsequently proven to be a felony.
- (2) An allegation of a criminal act that is subsequently proven to be an intentional misdemeanor directly affecting the person.
- (3) An allegation of a criminal act that is subsequently proven to be a violation of a protective order, pursuant to present law (R.S. 14:79), issued against the offender to protect a household member or family member as defined by present law (R.S. 14:35.3), or dating partner as defined by present law (R.S. 46:2151).
- (4) Being in possession of a firearm or other prohibited weapon.
- (5) Absconding from the jurisdiction of the committee on parole by leaving the state without the prior approval of the probation and parole officer.

Proposed law amends present law to provide that any offender who has been released on parole and whose parole supervision is being revoked pursuant to proposed 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.

Proposed law provides that any sentence imposed pursuant to proposed 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.

Proposed law provides that the provisions of proposed 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 present law (R.S. 14:2(B)).
- (2) Any offender released on parole for the conviction of a sex offense as defined in present law (R.S. 15:541).
- (3) Any offender released on parole who is subject to the sex offender registration and notification requirements of present law (R.S. 15:541 et seq).

Proposed law provides that a "technical violation", as used in proposed 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 present law (R.S. 15:547.7).

Proposed 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 present law (R.S. 14:79), issued against the offender to protect a family member or household member as defined by present law (R.S. 14:35.3), or dating partner as defined by present 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.

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

Proposed law repeals present law.

Proposed law shall only apply to offenses committed on or after Aug. 1, 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)(introductory paragraph), (C), and (D) and 574.9(H); repeals C.Cr.P. Art. 899.2 and R.S. 15:574.7 (E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Make technical changes.
2. Relative to probation, clarify what is and is not a technical violation that may be addressed by an administrative sanction authorized by the court pursuant to present law.
3. Relative to parole, clarify what is and is not a technical violation that may be addressed by an administrative sanction authorized by the committee on parole pursuant to present law.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the
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1. Make technical changes.