

GREEN SHEET REDIGEST

HB 196

2018 Regular Session

Marino

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

CRIMINAL/RECORDS: Provides relative to criminal procedure

DIGEST

Present law (effective 8/1/18) provides relative to victim restitution and financial hardship of the defendant.

Proposed law provides that if, at the termination or end of the defendant's term of supervision, any restitution ordered by the court remains outstanding, the balance of the unpaid restitution is to be reduced to a civil money judgment in favor of the person to whom restitution is owed, which may be enforced in the same manner as provided for the execution of judgments pursuant to present law (Code of Civil Procedure). Proposed law further provides that for any civil money judgment ordered under proposed law, the clerk is to send notice of the judgment to the last known address of the person to whom the restitution is ordered to be paid.

Present law provides that present law only applies to defendants convicted of offenses classified as felonies.

Proposed law retains present law.

Proposed law provides that if a defendant is placed on supervised probation, the division of probation and parole is to 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 defines "compliance" as 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.

Proposed law defines "compliance report" as 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 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 is to grant "earned compliance credit" for the time, absent a showing of cause for a denial.

Proposed law provides that 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.

Proposed law provides that 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.

Proposed law provides that, absent extenuating circumstances, the court must, within 10 days of receipt of the compliance report, make an initial determination as to the issues presented and transmit the decision to the probation officer. Proposed law further provides that the court is to disseminate the decision to the defendant, the division of probation and parole, and the prosecuting agency within 10 days of receipt. Proposed law further provides that the parties have 10 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. Proposed law further provides that if no challenge is made within 10 days, the court's initial determination becomes final and constitutes a valid order of the court.

Present law provides that every defendant on felony probation pursuant to present law for an offense other than a crime of violence or a sex offense will earn a diminution of probation term, to "earned compliance credits" ("good time") by good behavior. Present law further provides that the amount of diminution of probation term allowed under present law is to be at the rate of 30 days for every full calendar month on probation.

Proposed law retains present law.

Present law provides that if the court decides that the defendant has violated, or was about to violate, a condition of his probation it may do one of several things, including order that the probation be revoked. Present law further provides that in the event of revocation the defendant must serve the sentence suspended, with or without credit for the time served on probation at the discretion of the court. Present law further provides that if the imposition of sentence was suspended, the defendant must serve the sentence imposed by the court at the revocation hearing.

Proposed law retains present law.

Present law provides that any defendant who has been placed on probation by the court for the conviction of an offense that is other than a crime of violence or a sex offense, and who has had his probation revoked under the provisions of present law for a technical violation of his probation as determined by the court, will be required to serve certain specified amounts of time without diminution of sentence.

Proposed law retains present law and adds that for a fourth or subsequent violation the court may order that the probation be revoked, in accordance with certain provisions of present law.

Present law provides that a "technical violation" of probation excludes certain specified acts.

Proposed law retains present law and adds that probation can neither be revoked nor extended based solely upon the defendant's inability to pay fines, costs, or restitution to the victim.

Proposed law provides that probation shall neither be revoked nor extended based solely upon the defendant's inability to pay fines, fees, or restitution to the victim.

Present law provides that 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 30 days of earned compliance credits as an administrative sanction pursuant to present law. Present law further provides that credits may be rescinded only for a month in which the defendant is found not to be in compliance.

Proposed law retains present law and deletes present law that provides that the consent of the defendant is required to rescind earned compliance credits as an administrative sanction under present law.

Proposed law provides that the Dept. of Public Safety and Corrections is to promulgate rules to implement the provisions of present law relative to administrative sanctions for technical violations of probation.

Proposed law deletes certain enumerated items from present law.

Present law authorizes a person to file a motion to expunge his record of arrest and conviction of certain felony offenses if either of the following apply:

- (1) The conviction was set aside and the prosecution was dismissed pursuant to present law (C.Cr.P. Art. 893).
- (2) More than ten years have elapsed since the person completed any sentence, deferred adjudication, or period of probation or parole based on the felony conviction, and the person has not been convicted of any other criminal offense during the ten-year period, and has no criminal charge pending against him.

Present law provides that the expungement of a record of arrest and conviction of a felony offense shall occur only once with respect to any person during a 15-year period.

Proposed law amends present law to provide that this limitation on the number of expungements a person may receive during a 15-year period does not apply to persons who seek the expungement of a record of arrest and conviction for a conviction that was set aside and the prosecution dismissed pursuant to present law.

Effective August 1, 2018.

(Amends C.Cr.P. Art. 875.1(F), 893(A)(1)(a), 894.4, 895.6(A) and (B), 899.2(B)(1), and 900(A)(5), (6)(b)(intro para) and (6)(b)(iv), and (d)(v), and 978(D) and R.S. 15:574.6.1(B) and 574.9(H)(1)(a)(intro para); adds C.Cr.P. Art. 875.1(G), 893(H), and 900(A)(6)(b)(v))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the engrossed bill

1. Add provisions relative to termination of defendant's probation.
2. Add provisions relative to defendant's substantial financial hardship hearing.
3. Add Dept. of Public Safety and Corrections reporting requirements relative to a defendant on probation.
4. Delete and add proposed law provisions relative to "earned compliance credits" (good time) and "satisfactorily completed" probation.
5. Add provisions relative to probation violation and "technical violations."