

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 196

2018 Regular Session

Marino

CRIMINAL/PROCEDURE: Amends criminal procedures affecting expungement, probation, and parole

Synopsis of Senate Amendments

1. Adds provisions relative to any outstanding balance on unpaid victim restitution at the end of a defendant's term of imprisonment.
2. Adds provisions relative to the procedure by which a court may award a defendant "earned compliance credits", may terminate the defendant's probation early as "satisfactorily completed", or may extend the period of probation for up to two years.
3. Removes provisions relative to the extension of a defendant's probation for the purposes of unpaid victim restitution and adds that probation shall neither be revoked or extended based solely upon a defendant's inability to pay fines, fees, or restitution.
4. Provides that the requirement that a defendant agree to imposition of administrative sanctions as part of release on probation or parole pursuant to present law does not apply to the rescinding of earned compliance credits as an administrative sanction.
5. Removes provisions which prohibit the use of incarceration for certain violations of a defendant's probation.
6. Adds that upon a fourth or subsequent technical violation, the court may order that the defendant's probation be revoked.
7. Amends the definition of "technical violation" to provide that the term shall not include the defendant's absconding from the jurisdiction of the court, regardless of whether the defendant does so by leaving the state without prior approval.
8. Makes technical corrections to proposed law and amendments.

Digest of Bill as Finally Passed by Senate

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.

Present law (C.Cr.P. Art. 875.1, as enacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) provides that, beginning Aug. 1, 2018, prior to ordering the imposition of any financial obligation, the court shall determine whether payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents.

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 shall 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. For any civil money judgment ordered, proposed law requires the clerk 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 (C.Cr.P. Art. 894.4, as amended and reenacted by Act No. 260 of the 2017 R.S., effective Aug. 1, 2018) prohibits the court from extending the period of probation for the purpose of collecting any unpaid court costs, fines, costs of prosecution, and other monetary costs associated with probation. If there is unpaid victim restitution, present law authorizes the court to extend probation 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 other collection methods provided in present law.

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

Present law (C.Cr.P. Art. 893) provides that when a defendant is placed on probation for a first, second, or third conviction of a noncapital felony or for a fourth DWI conviction when certain conditions are met, the period of probation shall be specified and shall not be more than three years.

Proposed law amends present law to provide that the period of probation shall not be more than three years, except as provided by certain provisions of proposed law which provide as follows:

- (1) Requires the supervising probation officer to submit to the court a compliance report whenever requested by the court or when it appears necessary to have the court make a determination with respect to "earned compliance credits", modification of any terms or conditions of probation, termination of probation, revocation of probation, or any other purpose proper under present or proposed law.
- (2) 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.
- (3) Authorizes the court to 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.
- (4) 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.

- (5) Provides that, absent extenuating circumstances, the court shall, within 10 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 and shall disseminate the decision to the defendant, the division of probation and parole, and the prosecuting agency within 10 days of receipt.
- (6) Provides that the parties shall 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. If no challenge is made within 10 days, the court's initial determination shall become final and shall constitute a valid order of the court.

Present law provides for a system of structured, administrative sanctions that are imposed for technical violations of probation and parole.

With regard to probation, proposed law removes both of the following from present law:

- (1) The provision which prohibits incarceration for lowest-tier violations including the first positive drug test and the first or second violation for the following:
 - (a) Association with known felons or persons involved in criminal activity.
 - (b) Changing residence without permission.
 - (c) Failure to initially report as required.
 - (d) Failure to pay restitution for up to three months.
 - (e) Failure to report as instructed.
 - (f) Traveling without permission.
 - (g) Occasion of unemployment and failure to seek employment within ninety days.
- (2) The provision which 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 (C.Cr.P. Art. 895.6 and R.S. 15:574.6.1) further provides that the present law requirement that a defendant consent to the imposition of administrative sanctions for probation or parole violations does not apply to the rescinding of earned compliance credits as an administrative sanction.

Present law (C.Cr.P. Art. 900) provides that when a defendant's sentence is suspended and the defendant is placed on probation, if the defendant's probation is subsequently revoked, the defendant shall 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 in the event of revocation for a defendant placed on probation for the conviction of an offense other than a crime of violence or a sex offense, the defendant shall serve the sentence suspended with credit for time served on probation.

Proposed law removes this provision of present law which required a defendant, whose probation has been revoked, to receive credit for time served while on probation for a non-violent, non-sex offense, and instead authorizes the court to determine whether the defendant shall receive such credit.

Present law (C.Cr.P. Art. 900) 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 commits 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 for a definition of "technical violation" but provides that it does not include absconding from the jurisdiction of the court by leaving the state without the prior approval of the court or the probation and parole officer.

Proposed law amends present law to provide that the definition of "technical violation" does not include absconding from the jurisdiction of the court regardless of whether the defendant does so by leaving the state without prior approval.

(Amends C.Cr.P. Arts. 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. Arts. 875.1(G), 893(H), and 900(A)(6)(b)(v))