

GREEN SHEET REDIGEST

HB 83

2017 Regular Session

Marino

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

**CRIMINAL/PROCEDURE: Authorizes an incarcerated defendant to appear at certain proceedings by way of simultaneous audio-visual transmission**

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DIGEST

With regard to a defendant charged with a misdemeanor offense, present law (C.Cr.P. Arts. 551 and 833) authorizes the court to allow the defendant to be arraigned, plead guilty, or be tried, in his absence, and further authorizes the court, by local rule, to allow for the defendant's appearance at his arraignment by way of simultaneous audio-visual transmission, except when the defense counsel requests the defendant's appearance in open court.

With regard to a defendant charged with a felony offense, present law (C.Cr.P. Art. 831) requires the defendant to be present at all of the following:

- (1) At arraignment.
- (2) When a plea of guilty, not guilty, or not guilty and not guilty by reason of insanity is made.
- (3) At the calling, examination, challenging, impaneling, and swearing of the jury, and at any subsequent proceedings for the discharge of the jury or of a juror.
- (4) At all times during the trial when the court is determining and ruling on the admissibility of evidence.
- (5) In trials by jury, at all proceedings when the jury is present, and in trials without a jury, at all times when evidence is being adduced.
- (6) At the rendition of the verdict or judgment, unless he voluntarily absents himself.

Present law (C.Cr.P. Arts. 553 and 831) requires a defendant in a felony case to plead in person, but authorizes the court, by local rule, to allow for the defendant's appearance at his arraignment by simultaneous audio-visual transmission, except when the defense counsel requests the defendant's appearance in open court.

Present law (C.Cr.P. Arts. 556 and 556.1) provides that the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, certain things including but not limited to the nature of the charges against him; the penalties for such offense; that he has a right to be represented by an attorney, to have a trial, to confront and cross-examine witnesses against him, and to not be compelled to incriminate himself; and that if he pleads guilty or nolo contendere, he waives his right to a trial.

Present law (C.Cr.P. Art. 900) provides that when a defendant is arrested for violating a condition of his probation, the matter shall be sent for hearing within a reasonable time.

Proposed law retains present law and authorizes the defendant to appear at the entry of his plea of guilty and at a probation violation hearing by way of simultaneous audio-visual transmission pursuant to proposed law.

Proposed law provides that only a defendant who is confined in jail, prison, or other detention facility in La. may appear, with the court's consent and the consent of the district attorney, at his arraignment, at the entry of his plea of guilty, or both, and at any revocation

hearing for a probation violation, including any hearing for contempt of court, by simultaneous audio-visual transmission.

Proposed law provides that the defendant may only appear in this manner if the defendant waives his right to be physically present at the proceeding.

Proposed law prohibits the defendant in a capital case from entering his plea by simultaneous audio-visual transmission.

If the defendant is represented by an attorney during the proceeding in which a simultaneous audio-visual transmission system is used, proposed law authorizes the attorney to elect to be present either in the courtroom with the presiding judicial officer or in the place where the defendant is confined. Proposed law requires the court to provide the opportunity for confidential communication between the defendant and the attorney representing him at any time prior to or during the proceeding.

Proposed law requires the defendant who elects to appear by simultaneous audio-visual transmission and enter a plea of guilty or nolo contendere to submit to the court a form signed by the defendant and, if represented by an attorney at the proceeding, by the defendant's attorney, stating that the defendant waives his right to be physically present at the proceeding and that he has been addressed by the court and informed of his rights pursuant to present law. Proposed law requires the court, by local rule, to provide a method by which a defendant may electronically sign the waiver of presence and the waiver of rights form.

Proposed law requires the law enforcement agency who has custody of the defendant at the time of the proceeding to obtain the fingerprints of the defendant for purposes of present law (C.Cr.P. Art. 871) which requires the sheriff, in every judgment of guilty of a felony and certain misdemeanors, to cause to be attached to the bill of information or indictment the fingerprints of the defendant against whom the judgment is rendered.

Present law authorizes the suspension of a sentence for offenders convicted a first or second time of noncapital felonies when the conviction is not for a crime of violence or a second conviction of computer fraud, pornography involving juveniles, or molestation of a juvenile or a person with a physical or mental disability.

Proposed law retains present law and adds eligibility for offenders convicted a third time of a noncapital felony and offenders convicted a first time for an offense with a maximum prison sentence of 10 years or less that was not committed against a family member, household member, or dating partner.

Present law provides that when an offender's sentence is suspended, he is to be placed on probation for not less than one year and not more than five years.

Proposed law decreases the period of probation for a suspended sentence of a first, second, or third noncapital and for a second or third conviction of computer fraud to not more than three years and removes mandatory minimum.

Proposed law provides that the period of probation for a first conviction of a crime of violence with a maximum prison sentence of ten years or less if the crime was not domestic violence related and for a second or third conviction of pornography involving juveniles and molestation of a juvenile or person with a physical or mental disability is not more than five years.

Proposed law retains present law and allows for suspension of a sentence for a fourth conviction of operating a vehicle while intoxicated if the offender was not offered such alternatives prior to his fourth conviction, the district attorney consents, and the court orders the offender to do any of the following:

- (1) Enter and complete a program provided by the drug division court of the district court.

- (2) Enter and complete an established driving while intoxicated court or sobriety court program.
- (3) Reside for at least one year in a facility which conforms to the Judicial Agency Referral Residential Facility Regulatory Act.
- (4) Enter and complete the Swift and Certain Probation Pilot Program.

Present law allows the period of probation for any offender to be extended to no more than eight years if the court deems it necessary to ensure completion of a drug court program, a sobriety court program, or the Swift and Certain Probation Pilot Program.

Proposed law removes the ability of the court to extend the duration of the probation period of cases assigned to such programs if it is the offender's first or second conviction.

Proposed law allows the probation period for an offender ordered to complete a drug court program, a sobriety court program, or the Swift and Certain Probation Pilot Program to be extended to no more than eight years only if it is the offender's third conviction or fourth felony conviction.

Proposed law provides that every offender on felony probation for an offense other than a crime of violence or sex offense is to earn discharge credits for compliance with the terms of his probation at a rate of 30 days per full calendar month of compliance, beginning after the first full month of compliance. Proposed law further provides that, notwithstanding any other provision of present law or proposed law to the contrary, discharge credits may not be earned in conjunction with any other credits received toward a defendant's term of probation, and if a defendant receives credit toward his term of probation for any other reason, he cannot receive discharge credits for that period of time.

Proposed law provides that if the chief probation and parole officer has reasonable cause to believe an offender on felony probation has not been compliant, he must notify the sentencing judge within five business days of learning of the incident of noncompliance and, unless a judge rules otherwise, 30 days of credits will be rescinded from the offender.

Proposed law provides that credits may only be rescinded from a defendant for noncompliance.

Proposed law provides that DPSC is to develop policies and procedures for the implementation of discharge credits for probation offenders and is to collect data on the discharge credits including the names of offenders that earned credits, how many credits are applied to each offender, and reductions to supervision periods at the time of discharge.

Proposed law requires DPSC to notify each offender every six months from the date the offender is placed on probation of the offender's current discharge date and the offender's overall sentence.

Proposed law requires DPSC to notify the court no less than 60 days prior to the expected discharge date and allows DPSC to request that the court terminate the probation supervision prior to the discharge date.

Proposed law provides that the court shall order the termination of the probation when a defendant's total probation is satisfied through a combination of time served and earned discharge credits.

Proposed law defines "calendar month of compliance" as any one of the 12 periods of time into which the calendar year is divided in which no violation report submitted by an offender's probation officer, no administrative sanctions are issued by an offender's probation officer, and the offender does not abscond from supervision.

Proposed law provides that an offender can abscond from supervision by failing to report within five business days after release from custody, failing to report for a scheduled meeting

with a probation officer, failing to make contact with a probation officer within 30 days of a missed meeting, or serving a term of imprisonment for a violation of a condition of probation.

Proposed law provides that every offender on parole for an offense other than a crime of violence or sex offense is to earn discharge credits for compliance with the terms of his parole at a rate of 30 days per full calendar month of compliance beginning after the first full month of compliance. Proposed law further provides that, notwithstanding any other provision of present law or proposed law to the contrary, discharge credits may not be earned in conjunction with any other credits received toward a defendant's term of probation, and if a defendant receives credit toward his term of probation for any other reason, he cannot receive discharge credits for that period of time.

Proposed law provides that if the chief probation and parole officer has reasonable cause to believe an offender on parole has not been compliant, he must notify the committee on parole within five business days of learning of the incident of noncompliance and, unless the committee rules otherwise, 30 days of credits will be rescinded from the offender.

Proposed law provides that credits may only be rescinded from an offender for noncompliance.

Proposed law provides that DPSC is to develop policies and procedures for the implementation of discharge credits for parole offenders and is to collect data on the discharge credits including the names of offenders that earned credits, how many credits are applied to each offender, and reductions to supervision periods at the time of discharge.

Proposed law requires DPSC to notify each offender within six months from the date the offender is released on parole, of the offender's current discharge date, and the offender's overall sentence.

Proposed law requires DPSC to notify the committee on parole no less than 60 days prior to the expected discharge date and allows DPSC to request that the committee terminate parole supervision prior to the discharge date.

Proposed law provides that DPSC is to discharge the offender, without order by the committee on parole, when the offender's total sentence is satisfied through a combination of time served and earned discharge credits.

Proposed law defines "calendar month of compliance" as any one of the 12 periods of time into which the calendar year is divided in which no violation report submitted by an offender's probation officer, no administrative sanctions are issued by an offender's probation officer, and the offender does not abscond from supervision.

Proposed law provides that an offender can abscond from supervision by failing to report within five business days after release from custody, failing to report for a scheduled meeting with a parole officer, failing to make contact with a parole officer within 30 days of a missed meeting, or serving a term of imprisonment for a violation of a condition of parole.

Present law provides that at the time of sentencing, the court may make a determination as to whether an offender is eligible for the imposition of administrative sanctions.

Proposed law retains present law for offenders convicted of a crime of violence or sex offense.

Proposed law provides that only for offenders on probation for crimes other than crimes of violence and sex offenses, the probation agency is authorized to use administrative sanctions to address technical violations of probation without a court determination.

Present law provides that DPSC is to promulgate rules to implement the provisions of administrative sanctions for technical violations.

Proposed law retains present law and adds that DPSC is to promulgate rules to implement the provisions of administrative sanctions with the following additional considerations only for offenders convicted of offenses other than a crime of violence or a sex offense:

- (1) Incarceration not to be used for first or second lowest-level violations.
- (2) Incarceration not to be used for first or second violations of alcohol use or admission, except for offenders convicted of operating a vehicle while intoxicated or certain convictions of domestic abuse battery or violation of a protective order.

Present law defines "technical violation", as it pertains to administrative sanctions for technical violations of probation, as any violation of a condition of probation, except for an allegation of a subsequent criminal act unless the allegation is a violation of possession of marijuana or tetrahydrocannabinol or chemical derivatives thereof.

Proposed law retains present law for offenders convicted of a crime of violence or sex offense.

Proposed law defines "technical violation", as it pertains to administrative sanctions for technical violations of probation for offenders convicted of a crime other than a crime of violence or sex offense, as any violation of a condition of probation, except:

- (1) A new felony conviction.
- (2) A conviction for an intentional misdemeanor directly affecting the person.
- (3) An allegation of a subsequent criminal act that if proven would be a crime of violence.
- (4) An allegation of a subsequent criminal act that if proven would be a sex offense.
- (5) An allegation of domestic abuse battery that if proven would be a violation committed by one family member, household member, or dating partner against another.
- (6) An allegation of violation of a protective order that if proven would be a violation committed by one family member, household member, or dating partner against another.

Present law provides that after an arrest for violation of probation, the court is to conduct a hearing within 30 days to determine if an offender violated or was about to violate his probation and may impose sanctions.

Present law provides that the court may revoke an offender's probation. In the event of revocation, the offender must serve the sentence suspended, with or without credit for the time served on probation at the discretion of the court.

Proposed law retains present law for offenders convicted of a crime of violence or a sex offense.

Proposed law provides that if an offender convicted of a crime of violence or a sex offense has his probation revoked, the offender shall serve the sentence suspended with credit for time served on probation.

Present law provides that an offender who has been placed on probation for a conviction other than a crime of violence or sex offense and who has had his probation revoked for his first technical violation is required to serve a sentence of not more than 90 days without diminution of sentence.

Proposed law deletes present law and decreases the sentences that offenders on probation for a conviction of an offense other than a crime of violence or a sex offense who have their

probation revoked for a technical violation must serve, without diminution of sentence, to the following terms:

- (1) For the first technical violation, not more than 15 days.
- (2) For the second technical violation, not more than 30 days.
- (3) For the third technical violation, not more than 45 days.

Present law provides that, only for the first revocation for a technical violation, the offender is to be given credit for time served prior to the revocation hearing for time served in actual custody while being held for a technical violation.

Present law provides that the term of the revocation is to begin on the date the court orders the revocation and upon completion of the imposed sentence for the technical revocation, the offender must return to 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 removes the applicability of present law only to an offender's first revocation for a technical violation and otherwise retains present law.

Proposed law provides that if an offender completes 90 days of court-recommended substance abuse treatment, he will receive 90 days credit toward his term of probation.

Present law defines "technical violation", as it pertains to a defendant who has been placed on probation for any offense other than a crime of violence or sex offense and who has had his probation revoked for his first technical violation, as any violation except the following:

- (1) Being arrested, charged, or convicted of any of the following:
  - (a) A felony.
  - (b) A violation of certain provisions of present law (Title 40 of the Louisiana Revised Statutes of 1950), except for misdemeanor possession of marijuana or tetrahydrocannabinol, or chemical derivatives thereof, which is considered a "technical violation".
  - (c) Any intentional misdemeanor directly affecting the person.
  - (d) At the discretion of the court, any attempt to commit any intentional misdemeanor directly affecting the person.
  - (e) At the discretion of the court, any attempt to commit any other misdemeanor.
- (2) Being in possession of a firearm or other prohibited weapon.
- (3) Failing to appear at any court hearing.
- (4) Absconding from the jurisdiction of the court.
- (5) Failing to satisfactorily complete a drug court program if ordered to do so as a special condition of probation.
- (6) At the discretion of the court, failing to report to the probation officer for more than 120 consecutive days.

Proposed law defines "technical violation", as it pertains to a defendant who has been placed on probation for any offense other than a crime of violence or sex offense and who has had his probation revoked for his first technical violation, as any violation except a felony conviction.

Present law allows the court to extend the period of probation as a sanction for violation of probation.

Proposed law deletes present law.

Present law provides that in order to be eligible for the substance abuse probation program within DPSC, an offender cannot be convicted of a crime of violence or sex offense, cannot have participated in or declined to participate in a drug division probation program, and must be charged with felony possession of a controlled dangerous substance, possession with intent to distribute a controlled dangerous substance where the offense involves less than 28 grams, possession with intent to distribute marijuana or synthetic cannabinoids where the offense involves less than one pound.

Proposed law provides that to be eligible for the substance abuse program within DPSC an offender must be charged with a violation of a statute relating to the use and possession of or possession with intent to distribute any narcotic drugs, coco leaves, marijuana, stimulants, depressants, or hallucinogenic drugs or where there is a significant relationship between the use of alcohol or drugs and the crime before the court.

Proposed law provides that an offender convicted a first time for an offense with a maximum prison sentence of 10 years or less that was not committed against a family member, household member, or dating partner is eligible to participate in the substance abuse probation program within DPSC.

Proposed law otherwise retains present law.

Present law provides that each district court may designate as a drug division one or more divisions to which alcohol or drug related offenses are assigned and may establish a probation program.

Present law provides that in order to be eligible for the drug division probation program, an offender must satisfy certain criteria, including that the crime before the court cannot be a crime of violence or an offense of domestic abuse battery which is punishable at hard labor and that no other criminal proceedings alleging commission of a crime of violence are pending against the offender.

Proposed law retains present law and adds that offenders may be eligible for the drug division probation program if the crime before the court is a first conviction of an offense with a maximum prison sentence of 10 years or less that was not committed against a family member, household member, or dating partner.

Present law provides that every offender in a parish prison convicted of an offense and sentenced to imprisonment without hard labor, except those convicted a second time of a crime of violence, may earn a diminution of sentence to be known as "good time". Good time is to be earned at the rate of three days for every 17 days in actual custody.

Proposed law retains present law.

Present law provides that every offender in the custody of DPSC who has been convicted of a felony, except those convicted a second time of a crime of violence, and sentenced to imprisonment for a stated number of years or months, may earn good time diminution of sentence at the rate of 1.5 days for every one day in actual custody.

Proposed law retains present law and changes the rates at which offenders convicted of a felony, except those convicted a second time of a crime of violence, may earn good time at a rate of 13 days for every seven days served.

Present law provides that only offenders convicted on or after 1/1/1992 who are not serving a sentence for a sex offense, crime of violence, or any offense which would constitute a sex offense or crime of violence are eligible to receive good time diminution of sentence.

Proposed law retains present law and provides that offenders convicted of offenses or revoked on probation or parole on or after 1/1/1992 who are not serving a sentence for a sex offense, crime of violence, or any offense which would constitute a sex offense or crime of violence are eligible to receive good time diminution of sentence.

Present law provides that an offender convicted a first time of a crime of violence is to earn good time at a rate of three days for every 17 served in actual custody.

Proposed law provides that an offender convicted of a crime of violence without a prior conviction of a crime of violence or a prior conviction of a sex offense is to earn good time at a rate of one day for every three in actual custody. Proposed law further provides that this provision applies only to offenders convicted of offenses or revoked on probation or parole on or after 11/1/2017. Proposed law further provides that this provision does not apply to an offender if his instant conviction is for a crime of violence that is a crime of violence and a sex offense.

Present law provides that good time is not allowed an offender if the instant offense is a second offense crime of violence.

Proposed law deletes present law and allows good time for an offender if the instant offense is a crime of violence unless the offender has two or more prior convictions for a crime of violence or a sex offense.

Proposed law provides that good time is not allowed to an offender if the instant offense is a sex offense.

Present law provides that there is a committee on parole which is to enforce the rules, regulations, and orders of parole.

Present law requires the parole committee to meet in a minimum of three person panels and requires a unanimous vote for parole to be granted. Present law provides that the committee may grant parole with two votes of a three member panel, or a majority vote if the number exceeds a three member panel, if certain conditions are met.

Proposed law retains present law.

Proposed law creates administrative parole for offenders who are eligible for parole, except offenders convicted of a crime of violence, offenders convicted of a sex offense, and offenders sentenced under the Habitual Offender Law.

Proposed law provides that an offender is to be released on administrative parole, without a hearing before the committee, if all the following conditions are met:

- (1) Beginning January 1, 2021, the offender has completed a case plan.
- (2) The offender's charge or amended charge on the bill of information was a crime of violence or a sex offense and the neither the district attorney nor the victim requested a hearing of the committee on parole.
- (3) The offender has not committed any major disciplinary offenses in the 12 consecutive months prior to the administrative parole eligibility date. A major disciplinary offense is an offense identified as a Schedule B offense by the DPSC in the Disciplinary Rules and Procedures for Adult Offenders.
- (4) The offender has agreed to the conditions of supervision.
- (5) For any offender convicted of a sex offense the committee and the offender have completed the requirements of parole for sex offenders.

Proposed law provides that if the offender has met all the conditions for administrative parole except the completion of a case plan, he cannot be prohibited from release on administrative



parole if the case plan was not created for him or the case plan is incomplete through no fault of the offender.

Present law provides that the committee is to notify, in writing, the district attorney of the parish where the conviction occurred at least 30 days prior to a hearing.

Proposed law retains present law and adds that for offenders eligible for release on administrative parole the committee is to notify, in writing, the district attorney of the parish where the conviction occurred at least 90 days prior to the offender's administrative parole eligibility date.

Proposed law further provides that the district attorney of the parish in which the conviction occurred can object within 30 days of receipt of notification to the release of a defender on administrative parole and request a hearing of the committee on parole if the offender's charge or amended charge was a crime of violence or sex offense.

Present law provides that the committee is to notify, in writing, the victim or spouse or next of kin of a deceased victim no less than 30 days prior to an offender's scheduled hearing date and advise the victim of their rights with regard to the hearing.

Proposed law retains present law and adds that for offenders eligible for release on administrative parole the committee is to notify, in writing, the victim or spouse or next of kin of a deceased victim no less than 60 days prior to the offender's administrative parole eligibility date.

Proposed law further provides that the victim, or the spouse or next of kin of a deceased victim can object within 30 days of receipt of notification to the release of a defender on administrative parole and request a hearing of the committee on parole if the offender's charge or amended charge was a crime of violence or sex offense.

Present law provides that an offender convicted of a first felony offense is eligible for parole upon serving 33 1/3% of the sentence imposed, an offender convicted of a second felony offense is eligible upon serving 50% of the sentence imposed, and an offender convicted of a third or subsequent felony offense is not eligible for parole.

Present law further provides that an offender convicted of a first felony offense is eligible for parole upon serving 25% of the sentence imposed if the conviction is not for a crime of violence, a sex offense, or the offender was sentenced as a habitual offender.

Proposed law deletes present law and provides that an offender is eligible for parole upon serving 25% of the sentence imposed if the instant conviction is not for a crime of violence, sex offense, or any offense which would constitute a crime of violence or sex offense, regardless of the date of conviction. Proposed law further provides that applicability of these provisions is both retroactive and prospective.

Proposed law provides that an offender whose instant offense is a second conviction of a crime of violence or a first or second conviction of a sex offense is eligible for parole upon serving 75% of the sentence imposed. Proposed law further provides that this provision applies to offenders convicted or revoked of probation or parole on or after 11/1/17.

Proposed law provides that an offender convicted a third or subsequent time of a crime of violence or third or subsequent time of a sex offense is not eligible for parole. Proposed law further provides that this applies to offenders convicted or revoked of probation or parole on or after 11/1/17.

Proposed law provides that an offender convicted of a crime of violence who does not have a prior felony conviction for a crime of violence or sex offense is eligible for parole consideration upon serving 65% of the sentence imposed. Proposed law further provides that this applies to offenders convicted or revoked of probation or parole on or after 11/1/17.

Present law provides that an offender sentenced for a term or terms with or without benefit of parole for 30 years or more is eligible for parole upon serving at least 20 years of the term in actual custody and upon reaching the age of 45 except when:

- (1) The offender is serving a life sentence that has not been commuted to a fixed term of years.
- (2) The offender has been convicted of armed robbery.
- (3) The offender has been convicted of a crime of violence.
- (4) The offender has been convicted of a sex offense.

Present law provides that, except in certain instances, an offender serving a life sentence is not eligible for parole until his life sentence has been commuted to a fixed term of years.

Proposed law decreases the time an offender convicted of a crime of violence must serve before being eligible for parole from at least 75% to at least 65% of the sentence imposed.

Proposed law provides that an offender serving a life sentence for second degree murder shall be eligible for parole consideration if the offense was committed after 7/2/73 and prior to 6/29/79, the offender has served at least 40 years of the sentence, and the committee on parole grants parole by unanimous vote.

Present law provides that before the parole of any offender is ordered, the offender must appear before and be interviewed by the committee.

Proposed law provides that offenders eligible for administrative parole are not required to appear before and be interviewed by the committee prior to release on administrative parole.

Present law provides that the parole term, when the committee orders an offender released on parole, is to be for the remainder of offender's sentence without diminution of sentence for good behavior.

Proposed law provides that the parole term, when the committee orders an offender released on parole, is to be for the remainder of the offender's sentence with earned discharge credits for compliance.

Present law provides that when an offender is released on parole, the committee may make a determination as to whether an offender is eligible for the imposition of administrative sanctions to be used to address technical violations.

Proposed law retains present law for offenders convicted of a crime of violence or sex offense.

Proposed law provides that each time an offender on parole for a crime other than a crime of violence or a sex offense violates a condition of parole, a parole officer is authorized to use administrative sanctions without a prior determination by the committee, if certain conditions exist.

Present law provides that DPSC is to promulgate rules to implement a system of structured, administrative sanctions for technical violations of parole that take into consideration the following:

- (1) The severity of the violation behavior.
- (2) The prior violation history.
- (3) The severity of the underlying criminal conviction.
- (4) The criminal history of the parolee.

- (5) Any special circumstances, characteristics, or resources of the parolee.
- (6) Protection of the community.
- (7) Deterrence.
- (8) The availability of appropriate local sanctions.

Proposed law retains present law for offenders convicted of a crime of violence or a sex offense. Proposed law, for offenders convicted of a crime other than a crime of violence or a sex offense, adds the following parameters for DPSC when promulgating rules to implement a system of structured administrative sanctions for technical violations of parole:

- (1) Incarceration must not be used for the first or second lowest-level violations.
- (2) Incarceration must not be used for first or second violations of alcohol use or admission, except for defendants convicted of operating a vehicle while intoxicated; convicted of domestic abuse battery committed by one family member, household member, or dating partner against another; or convicted of violation of protective order committed by one family member, household member, or dating partner against another.

Present law defines "technical violation", as it pertains to the use of administrative sanctions to address a technical violation of parole, as any violation except the following:

- (1) Being arrested, charged, or convicted of any of the following:
  - (a) A felony.
  - (b) Any intentional misdemeanor directly affecting the person.
  - (c) At the discretion of the court, any attempt to commit any intentional misdemeanor directly affecting the person.
  - (d) 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) Failing to appear at any court hearing.
- (4) Absconding from the jurisdiction of the committee on parole.

Proposed law retains present law for offenders convicted of a crime of violence or a sex offense.

Proposed law defines "technical violation", as it pertains to the use of administrative sanctions to address a technical violation of parole for offenders convicted of a crime other than a crime of violence or a sex offense, as any violation of a condition of parole except the following:

- (1) A new felony conviction.
- (2) A conviction for an intentional misdemeanor directly affecting the person.
- (3) An allegation of a subsequent criminal act that if proven would be a crime of violence.
- (4) An allegation of a subsequent criminal act that if proven would be a sex offense.

- (5) An allegation of domestic abuse battery committed by one family member, household member, or dating partner against another.
- (6) An allegation of violation of protective order committed by one family member, household member, or dating partner against another.

Present law provides that when a detainer is issued by a parole officer, the running of the period of parole ceases as of the time the detainer is issued.

Proposed law retains present law and provides that when a detainer is issued by the parole officer for an allegation of the commission of another crime, it is enforceable until bond is set by the judge for the new crime. Proposed law further provides that when the bond is set, the detainer expires and the parolee may be released upon the posting of the bond.

Present law provides that any offender who has been released on parole and whose parole supervision is being revoked for a technical violation is required to serve a sentence without diminution of sentence or credit for time served prior to the technical violation.

Proposed law retains present law for offenders convicted of a crime of violence or a sex offense.

Proposed law decreases the length of sentence any offender who has been released on parole and whose parole supervision is being revoked for a technical violation is required to serve without diminution of sentence as follows:

- (1) For the first technical violation, from not more than 90 days to not more than 15 days.
- (2) For a second technical violation, from not more than 120 days to not more than 30 days.
- (3) For a third or subsequent technical violation, from not more than 180 days to not more than 45 days.

Proposed law provides that if an offender that completes 90 days of committee-recommended substance abuse treatment, he will receive 90 days of credit towards his term of parole.

Proposed law provides that an offender is to 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.

Proposed law provides for applicability only to offenders not on parole for a conviction of a crime of violence, a sex offense, or an offender subject to the sex offender registration and notification requirements.

Present law defines "technical violation", as it pertains to revocation of parole for a technical violation, as any violation except the following:

- (1) Being arrested, charged, or convicted of any of the following:
  - (a) A felony.
  - (b) Any intentional misdemeanor directly affecting the person.
  - (c) At the discretion of the court, any attempt to commit any intentional misdemeanor directly affecting the person.
  - (d) 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) Failing to appear at any court hearing.
- (4) Absconding from the jurisdiction of the committee on parole.

Proposed law deletes present law and defines "technical violation", as it pertains to revocation of parole for a technical violation, as any violation except a new felony conviction.

Present law provides for medical parole eligibility for offenders who are permanently disabled or terminally ill and not serving a sentence for first degree murder, second degree murder, or awaiting execution.

Proposed law retains present law.

Proposed law creates the medical treatment furlough program to be administered by DPSC. Offenders who are ineligible for medical parole, not awaiting execution, and determined by DPSC to be a limited mobility offender or a terminally ill offender is eligible for medical treatment furlough.

Proposed law provides that the committee on parole is to establish the medical treatment furlough program to be administered by DPSC for the purpose of utilizing off-site medical facilities for an eligible offender's medical treatment. Proposed law further provides that medical treatment furlough is not to be available to any offender who is awaiting execution.

Proposed law provides that an offender eligible for consideration for release under the medical treatment furlough program is any offender who is ineligible for release on medical parole pursuant to proposed law and is determined by the department to be a limited mobility offender.

Proposed law defines a "limited mobility offender" as any offender who is unable to perform activities of daily living without help or is confined to a bed or chair, including but not limited to prolonged coma and medical ventilation.

Proposed law provides that, notwithstanding any provision of present law or proposed law to the contrary, the committee on parole may authorize the release of an eligible offender on medical treatment furlough when all of the following conditions are met:

- (1) Placement in an acute care hospital, nursing home, or other appropriate medical facility able to meet the offender's medical and treatment needs is secured.
- (2) All monitoring, security, and supervision requirements that the committee deems necessary are secured by the division of probation and parole.
- (3) The committee determines that the offender does not present a substantial flight risk.

Present law provides that no offender is to be recommended for medical parole by DPSC until full consideration has been given to the offender's criminal history, length of time served in custody, institutional conduct, and a medical assessment of the offender's condition.

Proposed law retains present law and requires the same consideration be given before an offender is recommended for medical treatment furlough by DPSC.

Present law provides that the authority to grant medical parole lies solely with the committee on parole and the committee may require additional evidence or that additional medical examinations be conducted.

Proposed law provides that present law also applies to medical treatment furlough.

Present law provides that the parole term of an offender released on medical parole is to be for the remainder of the offender's sentence without diminution of sentence for good behavior.

Proposed law provides that present law also applies to medical treatment furlough.

Present law provides that if the medical parolee's condition has improved such that he would no longer be eligible for medical parole, the committee may order that the offender be returned to the custody of DPSC to await a hearing to determine if his parole is to be revoked.

Proposed law provides that present law also applies to medical treatment furlough.

Present law provides that any offender whose medical parole is revoked due to an improvement in his condition is to resume serving the balance of his sentence with credit given for the duration of the medical parole.

Proposed law provides that present law also applies to medical treatment furlough.

Present law provides that medical parole may be revoked for violation of any condition of the parole as established by the committee on parole.

Proposed law provides that present law also applies to medical treatment furlough.

Present law provides that the committee is to promulgate rules necessary for the implementation of medical parole.

Proposed law provides that present law also applies to medical treatment furlough.

Proposed law provides that, in addition to other duties, DPSC is to establish a procedure that provides for each offender sentenced to 180 days or more in the custody of DPSC, a written case plan based on the results of an assessment of the offender's risk and needs. Proposed law further provides that implementation of such a procedure will only be to the extent funds are appropriated for this purpose and resources are available.

Proposed law provides that for offender's eligible for administrative parole, DPSC is to notify the committee in writing of the offender's compliance or noncompliance with the case plan not less than 60 days before an offender's administrative parole release date. Proposed law further provides that implementation of such a procedure will only be to the extent funds are appropriated for this purpose and resources are available.

Present law provides that, when funds are provided, educational, job skills training, values development, and other programs are to be made available at each institution under DPSC and offenders may be awarded up to 90 days toward the reduction the projected good time parole supervision date for satisfactory participation, but no offender is to receive more than 360 days total credit.

Present law provides that any offender sentenced as a habitual offender may earn additional good time credit for participation in programs provided for in present law unless the offender was convicted of a sex offense or a crime of violence.

Proposed law provides that any offender sentenced as a habitual offender may earn additional good time credit for participation in programs provided for in present law unless the offender's instant offense is one of the following:

- (1) A sex offense.
- (2) A crime of violence and the offender has two or more prior convictions of a crime of violence or a sex offense.

Proposed law provides that offenders who are eligible to participate in the work release program are eligible to earn an additional 180 days of credit towards the reduction of the projected good time parole supervision date.

Effective November 1, 2017.

(Amends C.Cr.P. Arts. 551(B), 553(A) and (C), 831, 832, 833(A) and (C), 893(A) and (B), 900(A)(intro. para.), (A)(5) and (6), (B), and (C), and 903.1, R.S. 13:5304(B)(10)(b), and R.S. 15:571.3(B) and (D), 574.2(C)(1) and (2) and (D)(1), (6)(intro. para.), (8)(a), and (9), 574.4(A)(1), (B)(1) and (C)(2), 574.4.1(A)(1), 574.6, 574.7(B)(1)(intro. para.) and (C), 574.9(D), (E), (F) and (G), 574.20, and 828(B) and (C); Adds C.Cr.P. Arts. 556(E), 556.1(F), 562, 893(G), 895.6, 895.7 and 899.2, R.S. 15:574.2(C)(4), 574.4(F), 574.7(D), 574.9(H), 827(A)(7) and 828(D); Repeals C.Cr.P. Art. 900(A)(7))

Summary of Amendments Adopted by Senate

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

1. Add requirement that the district attorney consent to the defendant's appearance by simultaneous audio-visual transmission at his arraignment or entry of guilty plea, and at any revocation hearing for a probation violation.
2. Add provisions relative to probation, parole, and medical treatment furlough.