
DIGEST

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SB 139 Reengrossed

2017 Regular Session

Martiny

Present law provides relative to probation, parole, diminution of sentence or "good time", medical parole, and duties of the Department of Public Safety and Corrections.

With regard to probation, proposed law does all of the following:

- (1) Authorizes the court to suspend the sentence of a third conviction of noncapital felony offense and provides that the period of probation shall be specified and shall not be more than three years.
- (2) Authorizes the court to suspend the sentence of a first conviction of an offense designated in the court minutes as a crime of violence pursuant to present law (C.Cr.P. Art. 890.3), if the offense has a maximum prison sentence of 10 years or less and was not committed against a family member, household member, or dating partner.
- (3) Retains the present law prohibition on suspension of sentence for a second or third conviction of computer fraud (R.S. 14:73.3), pornography involving juveniles (R.S. 14:81.1), or molestation of a juvenile or person with a physical or mental disability (R.S. 14:81.2), and, although they are noncapital felony offenses, provides that if the court suspends the sentence for a first conviction of pornography involving juveniles or molestation of a juvenile or person with a physical or mental disability, the period of probation shall be specified and shall not be more than five years.
- (4) Provides relative to the court's authority to suspend the sentence of a person convicted of a third or fourth offense DWI (R.S. 14:98) and provides relative to the conditions that must be met in order for the court to suspend the offender's sentence.
- (5) Authorizes the court, with the consent of the district attorney, to order a defendant, upon a third or fourth felony conviction, to enter and complete a program provided by the drug division of the district court, an established driving while intoxicated court or sobriety court program, a mental health court program, a Veterans Court program, a reentry court program, or the Swift and Certain Probation Pilot Program as provided by present law. Further authorizes the court to extend the probation period to up to eight years in order for the defendant to successfully complete the program.
- (6) Authorizes a person on felony probation, except for an offender convicted of a crime of violence or a sex offense, to receive "earned compliance credits" at a rate of 30 days for every calendar month of compliance with probation conditions. Provides relative to the procedure by which such credits may be rescinded as an administrative sanction and provides that when the defendant's total probation term is satisfied through a combination of time served and earned compliance credits, the Dept. of Public Safety and Corrections (DPS&C) shall order the termination of the defendant's probation.
- (7) Provides that provisions of present law relative to administrative sanctions imposed for technical violations of an offender's probation apply only to offenders convicted of a crime of violence or a sex offense.
- (8) Create a new system of administrative sanctions that are imposed for technical violations of an offender's probation that apply to offenders convicted of offenses other than a crime of violence or a sex offense. Provides the procedure by which

these proposed law administrative sanctions may be imposed, provides relative to the use of incarceration for certain violations, and defines "technical violation".

- (9) 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 suspended sentence with credit for time served while on probation.
- (10) Amends eligibility for the present law substance abuse probation program to include defendants charged with a violation of a statute of this state relating to the use of, possession of, or possession with the intent to distribute any narcotic drugs, coca 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. Further amends eligibility to no longer exclude persons convicted of a crime of violence if the offense is punishable by imprisonment of ten years or less and was not committed against a family member, household member, or dating partner.
- (11) Amends eligibility for the present law drug division probation program to no longer exclude persons convicted of a crime of violence if the offense is punishable by imprisonment of ten years or less and was not committed against a family member, household member, or dating partner.

With regard to diminution of sentence for good behavior or "good time", proposed law does all of the following:

- (1) Changes the rate by which an offender may earn good time for nonviolent offenses and non-sex offenses from one and one-half day for every one day to 13 days for every seven days in actual custody.
- (2) Changes the rate by which an offender may earn good time for a crime of violence, if the offender has no prior conviction for a crime of violence or for a sex offense, from three days for every 17 days to one day for every three days in actual custody. Provides that this rate does not apply to an offender convicted of a crime of violence if the offense is also defined as a sex offense. Further provides that this rate applies to those offenders who commit an offense or whose probation or parole is revoked on or after Nov. 1, 2017.
- (3) Prohibits a person convicted of a sex offense or second or subsequent conviction of a crime of violence from earning good time.

Proposed law creates "administrative parole" for offenders who are otherwise eligible for parole and who commits an offense on or after Nov. 1, 2017, other than a crime of violence or a sex offense. Administrative parole allows the offender to be released on the date of his parole eligibility without a hearing before the committee on parole if certain requirements are met including the following:

- (1) The completion of a case plan developed by DPS&C for the offender. In this regard, proposed law requires DPS&C to develop a case plan for each offender in its custody who is sentenced to 180 days or more. Requires the case plan to be based on the assessment of the offender's risk and needs and provides that it should be reasonably achievable prior to the offender's parole eligibility date.
- (2) No major disciplinary offenses prior to the administrative parole eligibility date.
- (3) The victim and the district attorney are notified and have not requested that the committee on parole conduct a hearing in order for the offender to be released on administrative parole.

With regard to parole, proposed law does all of the following:

- (1) Provides that a person convicted of a nonviolent and non-sex offense shall be eligible for parole consideration upon serving 25% of the sentence imposed. Further provides that this shall apply to persons convicted of offenses prior to and on or after Nov. 1, 2017.
- (2) Provides that a person convicted of a crime of violence, with no prior conviction for a crime of violence or a sex offense, shall be eligible for parole upon serving 65% of the sentence imposed. Further provides that this shall apply only to those persons who commit an offense or whose probation or parole is revoked on or after Nov. 1, 2017.
- (3) Provides that a person convicted of a second offense crime of violence or a first or second conviction of a sex offense, shall be eligible for parole upon serving 75% of the sentence imposed. Further provides that this shall apply only to those persons who commit an offense or whose probation or parole is revoked on or after Nov. 1, 2017.
- (4) Provides parole eligibility for persons serving a life sentence for second degree murder (R.S. 14:30.1) if the offense was committed after July 2, 1973, and before June 29, 1979, the offender has served at least 40 years of the sentence imposed, and the committee on parole grants parole with a unanimous vote.
- (5) Authorizes a person on parole for an offense other than a crime of violence or a sex offense to receive "earned compliance credits" at a rate of 30 days for every full calendar month on parole. Provides relative to the procedure by which such credits may be rescinded as an administrative sanction and provides that when the person's total parole term is satisfied through a combination of time served and earned compliance credits, the Dept. of Public Safety and Corrections (DPS&C) shall order the discharge of the offender from parole.
- (6) Provides that provisions of present law relative to administrative sanctions imposed for technical violations of an offender's parole apply only to offenders convicted of a crime of violence or a sex offense.
- (7) Create a new system of administrative sanctions that are imposed for technical violations of an offender's parole that apply to offenders convicted of offenses other than a crime of violence or a sex offense. Provides the procedure by which these proposed law administrative sanctions may be imposed, provides relative to the use of incarceration for certain violations, and defines "technical violation".
- (8) Provides that when a judge sets bond on allegations of a new felony offense for a person released on parole, the division of probation and parole of DPS&C and the committee on parole must be notified within three business days. Further provides that the detainer will expire 10 days after the bond has been set unless the division of probation and parole seeks to maintain the detainer.
- (9) Provides that in the event of revocation for a person who is on parole, the person 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.

Proposed law requires the committee on parole to establish the medical treatment furlough program to be administered by DPS&C for the purpose of utilizing off-site medical facilities for an eligible offender's medical treatment. Proposed law further provides for the following in this regard:

- (1) Provides for the eligibility requirements for the program and provides that persons who are awaiting execution are not eligible.
- (2) Defines "off-site medical facility" and provides that placement of an offender released on medical treatment program shall be in an acute care hospital, nursing home, or other appropriate medical facility.

- (3) Provides that provisions of present law relative to medical parole, including but not limited to the following, also apply to the medical treatment furlough:
- (a) Requires DPS&C to fully consider the offender's crime and criminal history, time served in custody, institutional conduct, and whether the offender presents a risk to himself or society.
 - (b) Requires the committee on parole to establish additional conditions for persons released on medical parole or medical treatment furlough.
 - (c) Authorizes the committee to request medical evidence or medical examinations.
 - (d) Provides that if it is determined that the offender's condition has improved such that he would no longer be eligible for medical parole or medical treatment furlough, the committee on parole may order that the offender be returned to the custody of DP&C.

Finally, proposed law provides that the release of protected health information to DPS&C or the committee on parole for purposes of medical parole and medical treatment furlough shall be in accordance with all state and federal laws and regulations.

(Amends C.Cr.P. Arts. 893(A) and (B), 899.1(A), 900(A)(5) and (6), and 903.1, R.S. 13:5304(B)(10)(b), R.S. 15:571.3(B) and (D), 574.2(C)(1) and (2)(intro. para.) and (D)(1), (6)(intro. para.), (8)(a), and (9), 574.4(A)(1), (B)(1), and (C)(2)(a)(intro.para.) and (b), 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. 893(G), 895.6, and 899.2 and R.S. 15:574.2(C)(4), 574.4(F), 574.6.1, 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 original bill

1. Deletes proposed law references to a felony class system.
2. Adds that 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.
3. Adds that an offender serving a life sentence for second degree murder is eligible for parole consideration under certain circumstances.
4. Changes proposed law references from "medical furlough" to "medical treatment furlough".
5. Makes changes to specific provisions of the medical treatment furlough program provided for by proposed law.
6. Adds system of structured administrative rewards for compliance with conditions and positive behavior that exceeds the conditions of parole.
7. Changes certain proposed law references and proposed law effective date from 7/1/17 to 11/1/17.
8. Deletes provision relative to effective contingent on other proposed law.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.

2. Makes changes to length of suspension of sentence for certain crimes.
3. Excludes certain offenders from earning discharge credits for probation and parole.
4. Makes changes to eligibility conditions for imposition of administrative sanctions for probation.
5. Changes what offenders are eligible to receive credit for time served in the event of probation revocation.
6. Changes what offenders are eligible to serve certain sentences in the event of probation revocation.
7. Makes changes to eligibility conditions for administrative parole.
8. Makes changes to conditions for release on administrative parole.
9. Makes changes to the administrative parole notification requirements of the committee on parole.
10. Makes changes to parole eligibility provisions for offenders convicted a second or subsequent time of a crime of violence or sex offense.
11. Changes parole eligibility requirements of an offender serving a life sentence for second degree murder.
12. Removes amendments to present law provision regarding parole requirements for sex offenders.
13. Makes changes to eligibility conditions for imposition of administrative sanctions for parole.
14. Changes what offenders are eligible to serve certain sentences in the event of parole revocation.
15. Makes changes to conditions of release on medical treatment furlough.

Summary of Amendments Adopted by House

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

1. Provide that the terms household member, family member, dating partner, as used throughout proposed law, are defined by present law, clarifies proposed law language regarding battery committed by one household member, family member, or dating partner against another, and clarifies proposed law language regarding a violation of protective order issued against the defendant for the protection of a household member, family member, or dating partner.
2. With regard to probation:
 - (a) Provide that if the court suspends a first conviction for pornography involving juveniles (R.S. 14:81.1) or molestation of a juvenile (R.S. 14:81.2), the period of probation shall be specified and shall not be more than five years.
 - (b) Add mental health court programs, Veterans Court programs, and reentry court programs to the list of programs for which the court may extend an offender's probation period beyond three or five years.
3. With regard to proposed law provisions regarding earned compliance credits:

- (a) Authorize an offender to receive earned compliance credits in conjunction with any other credits the offender may receive toward a defendant's term of probation or parole.
 - (b) Remove proposed law provision that prohibits the defendant from receiving credits for any partial calendar month of felony probation.
 - (c) Amend the procedure by which earned compliance credits are rescinded authorizing the probation and parole officer to rescind credits as an administrative sanction without a ruling from the court.
 - (d) Remove the requirement that the department notify the defendant of his earned compliance discharge date every six months.
 - (e) Remove the requirement that the department notify the court in cases of probation, or the committee on parole in cases of parole, no less than 60 days prior to the offender's expected discharge date. Also remove the department's authority to request the termination of the defendant's period of probation or parole prior to the expected discharge date.
 - (f) Remove the definition of "calendar month of compliance".
 - (g) Provide that when the defendant's total term of probation or parole is satisfied through a combination of time served and earned compliance credits, the department shall order the termination of the defendant's probation or parole.
 - (h) Move the provisions relative to earned compliance credits for parole from the Code of Criminal Procedure to Title 15.
4. Provide that present law administrative sanctions applies only to persons convicted of a crime of violence or a sex offense, and retain administrative sanctions provided for by proposed law which applies only to those persons convicted of offenses other than a crime of violence or a sex offense.
5. With regard to parole and probation violations:
- (a) Amend proposed law relative to the use of incarceration for probation or parole violations to provide that incarceration shall not be used for the lowest tier violations and certain other violations including the failure to initially report or report as instructed. Provide that for probation violations, incarceration may be used if, after a contradictory hearing, the court finds that the person wilfully failed to report to avoid supervision.
 - (b) Amends the definition of and list of exceptions to the definition of "technical violation". Further add two exceptions to the definition of "technical violation" including being in possession of a firearm or other prohibited weapon and absconding from the jurisdiction of the court.
 - (c) Authorize the court to order a defendant whose probation or parole has been revoked to serve up to 90 days for custodial substance abuse treatment programs.
 - (d) Remove the proposed law provision providing that the defendant could receive 90 days credit toward his term of probation for completion of a 90-day court-recommended substance abuse treatment program.
6. With regard to diminution of sentence for good behavior or "good time":
- (a) Amend applicability relative to the good time rate of 13 days for every seven days in actual custody to remove applicability based on a person's parole or probation revocation date.

- (b) Amend applicability relative to the change in the good time rate for offenders convicted of a first crime of violence to be based on the date of commission of the offense rather than the date of conviction.
 - (c) Clarify that good time shall not be allowed an offender whose instant offense is a sex offense or a second offense crime of violence.
7. With regard to administrative parole as provided by proposed law:
- (a) Amend applicability regarding administrative parole to be based on the date of the commission of the offense rather than the date of conviction.
 - (b) Exclude persons who are sentenced in a reentry division of court and sentencing program from being eligible for administrative parole.
 - (c) Remove the delayed effective date of Jan. 1, 2021, for the requirement that the defendant complete a case plan in order to be released on administrative parole, and provide that the exception which allows an offender to be released on administrative parole without a case plan (because one was never created for him at no fault of the offender) shall no longer apply on and after Jan. 1, 2021.
 - (d) Require a victim and the district attorney to be notified and not have requested that the committee on parole conduct a hearing in order for an offender to be released on administrative parole.
8. Amend applicability relative to the proposed reduction in parole eligibility for persons convicted of a first time crime of violence from 75% to 65% of the sentence imposed to be based on the date of the commission of the offense rather than the date of conviction.
9. With regard to the issuance of detainers:
- (a) Provide that when a judge sets bond on allegations of a new felony offense for a parolee, the division of probation and parole of the Dept. of Public Safety and Corrections and the committee on parole must be notified within three business days.
 - (b) Provide that the detainer will expire 10 days after the bond has been set unless the division of probation and parole seeks to maintain the detainer.
10. With regard to medical parole and proposed law medical treatment furlough:
- (a) Define "off-site medical facility".
 - (b) Provide that release of protected health information to the Dept. of Public Safety and Corrections or the committee on parole for purposes of medical treatment furlough shall be in accordance with all state and federal laws and regulations.
 - (c) Provide that the case plan developed by the Dept. of Public Safety and Corrections for the purpose of an offender's administrative parole should be reasonably achievable prior to the offender's administrative parole eligibility date.