

HOUSE SUMMARY OF SENATE AMENDMENTS**HB 83****2017 Regular Session****Marino**

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

Synopsis of Senate Amendments

1. Incorporates the Reengrossed version of Senate Bill No. 139 of the 2017 R.S. which does all of the following:
 - (a) Provides relative to eligibility for felony probation, eligibility for the substance abuse probation program and the drug division probation program, the duration of the probation period, the authority to extend the maximum term of probation for participation in certain programs, the authority to receive "earned compliance credits" while on probation, and the use of administrative sanctions and revocation for probation violations.
 - (b) Provides relative to the rate by which an offender may earn diminution of sentence for good behavior or "good time", the applicability of changes in the rate, and prohibitions on certain offenders from earning good time.
 - (c) Creates administrative parole, provides the requirements for eligibility, provides the procedure by which the victim and district attorney are notified, and provides relative to the duties of the Dept. of Public Safety and Corrections in this regard.
 - (d) Provides relative to parole eligibility; the applicability of changes in parole eligibility; the authority to receive "earned compliance credits" while on parole; and the use of detainers, administrative sanctions, and revocations for parole violations.
 - (e) Provides relative to medical parole; requires the committee on parole to establish the medical treatment furlough program; and provides for eligibility requirements.
2. Makes technical corrections to the Senate Committee Amendments proposed by Senate Committee on Judiciary C which incorporate the Reengrossed version of Senate Bill No. 139 of the 2017 R.S.

Digest of Bill as Finally Passed by Senate

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, 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 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, 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 and provides for the termination of a defendant's probation when the defendant's total probation term is satisfied through a combination of time served and earned compliance credits.
- (7) Creates 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".
- (8) 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.
- (9) 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.

- (10) 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.
- (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

- convicted of 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 convicted of 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 and provides for the person's discharge from parole when the person's total parole term is satisfied through a combination of time served and earned compliance credits.
 - (6) Creates 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 detainees and incarceration for certain violations, and defines "technical violation".
 - (7) 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) 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.

(Amends C.Cr.P. Arts. 551(B), 553(A) and (C), 831, 832, 833(A) and (C), 893(A) and (B), 899.1(A), 900(A)(intro. para.), (5) and (6), (B), and (C), 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. 556(E), 556.1(F), 562, 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))