

House File 861

H-1479

1 Amend House File 861 as follows:

2 1. Page 21, after line 30 by inserting:

3 <DIVISION ____

4 CRIMINAL CORRECTIONS — PROBATION

5 Sec. ____ . Section 907.1, Code 2021, is amended by adding the
6 following new subsections:

7 NEW SUBSECTION. 2A. "*Discharge credit*" means a fourteen-day
8 reduction from a defendant's term of probation for each full
9 calendar month the defendant is in compliance with the terms
10 of the defendant's probation.

11 NEW SUBSECTION. 2B. "*Educational credit*" means a ninety-day
12 reduction from a defendant's term of probation when a defendant
13 earns a high school diploma or high school equivalency
14 certificate or completes a certified vocational, technical, or
15 career education or training program.

16 NEW SUBSECTION. 4A. "*Technical violation*" means a violation
17 by the defendant of the terms and conditions of probation other
18 than a conviction of the defendant for a new crime.

19 Sec. ____ . Section 907.9, subsections 1 and 2, Code 2021, are
20 amended to read as follows:

21 1. At any time that the court determines that the purposes
22 of probation have been fulfilled and fees imposed under section
23 905.14 and court debt collected pursuant to [section 602.8107](#)
24 have been paid or are subject to a payment plan, the court may
25 order the discharge of a person from probation.

26 2. a. At any time that a probation officer determines
27 that the purposes of probation have been fulfilled and fees
28 imposed under [section 905.14](#) and court debt collected pursuant
29 to [section 602.8107](#) have been paid or are subject to a
30 payment plan, the officer may order the discharge of a person
31 from probation after approval of the district director and
32 notification of the sentencing court and the county attorney
33 who prosecuted the case.

34 b. Notwithstanding any earned discharge credit under
35 subsection 6 or any earned educational credit under subsection

1 7, a defendant's probation officer shall submit a report to the
2 court no later than halfway through the defendant's period of
3 probation describing the defendant's progress under supervision
4 and making one of the following recommendations:

5 (1) Terminate the defendant's probation early.

6 (2) Continue the defendant's probation with reduced terms
7 and conditions.

8 (3) Continue the defendant's probation as previously
9 ordered.

10 c. If the defendant's probation officer's recommendation
11 is to continue supervision as ordered under paragraph "b",
12 subparagraph (3), or to continue the defendant's probation with
13 reduced terms or conditions under paragraph "b", subparagraph
14 (2), the probation officer shall describe why continued
15 supervision or continued probation with reduced terms and
16 conditions is necessary and beneficial. If the recommendation
17 is against early termination of the defendant's probation, the
18 defendant may request a hearing on the matter. The requested
19 hearing shall be held no later than thirty days from the date
20 of the defendant's request. At the hearing, the court shall
21 review the probation officer's report; the defendant's progress
22 and conduct on probation, including whether the defendant has
23 attended court-ordered mandatory counseling or treatment and
24 whether the defendant is subject to a payment plan and has
25 been found able to afford payments but is purposely avoiding
26 making payments; the underlying offense and its relationship
27 to the conditions of probation imposed on the defendant;
28 the defendant's criminal record; and any mitigating factors
29 to determine whether to reduce the defendant's probation,
30 discharge the defendant from probation, or reduce the terms and
31 conditions of the defendant's probation.

32 d. Nothing in this subsection precludes the ability of a
33 probation officer or the court to terminate the defendant's
34 probation early at any time.

35 Sec. ____. Section 907.9, subsection 4, paragraphs a and b,

1 Code 2021, are amended to read as follows:

2 a. At the expiration of the period of probation, if the
3 fees imposed under ~~section 905.14~~ and court debt collected
4 pursuant to ~~section 602.8107~~ have been paid and court debt
5 have been paid or are subject to a payment plan, the court
6 shall order the discharge of the person from probation. If
7 portions of the court debt remain unpaid, the person shall
8 establish a payment plan with the clerk of the district court
9 or the county attorney prior to the discharge. The payment
10 plan shall be based on the defendant's ability to pay. The
11 court shall forward to the governor a recommendation for or
12 against restoration of citizenship rights to that person upon
13 discharge. If the court's recommendation to the governor
14 is against the restoration of the defendant's citizenship
15 rights, the court shall provide a written explanation of
16 its recommendation to the defendant and give notice to the
17 defendant of the defendant's right to appear at a hearing. A
18 person who has been discharged from probation shall no longer
19 be held to answer for the person's offense.

20 b. Upon discharge from probation, if judgment has been
21 deferred under ~~section 907.3~~, the court's criminal record with
22 reference to the deferred judgment, any counts dismissed by the
23 court, which were contained in the indictment, information,
24 or complaint that resulted in the deferred judgment, and
25 any other related charges that were not contained in the
26 indictment, information, or complaint but were dismissed, shall
27 be expunged. However, the court's record shall not be expunged
28 until the person has paid, or is subject to a payment plan,
29 for the restitution, civil penalties, court costs, fees, or
30 other financial obligations ordered by the court or assessed
31 by the clerk of the district court in the case that includes
32 the deferred judgment. The expunged record is a confidential
33 record exempt from public access under ~~section 22.7~~ but shall
34 be made available by the clerk of the district court, upon
35 request and without court order, to an agency or person granted

1 access to the deferred judgment docket under section 907.4,
2 subsection 2. The court's record shall not be expunged in any
3 other circumstances unless authorized by law.

4 Sec. _____. Section 907.9, Code 2021, is amended by adding the
5 following new subsections:

6 NEW SUBSECTION. 6. *a.* A defendant on probation shall
7 be eligible to earn a discharge credit from the defendant's
8 term of probation for each full calendar month in which the
9 defendant is in compliance with the terms of the defendant's
10 probation.

11 *b.* A defendant shall not earn a discharge credit for a
12 calendar month in which a violation has occurred, the defendant
13 has absconded from probation, or the defendant is incarcerated.

14 *c.* A defendant shall not earn a discharge credit for a
15 partial calendar month or the last full calendar month of
16 probation.

17 *d.* A discharge credit shall be applied to the termination
18 date of the defendant's probation within thirty days of the end
19 of the calendar month in which the discharge credit was earned.

20 NEW SUBSECTION. 7. A defendant on probation shall be
21 eligible to earn an educational credit from the defendant's
22 term of probation for each full calendar month in which the
23 defendant is in compliance with the terms of the defendant's
24 probation.

25 NEW SUBSECTION. 8. A defendant's probation officer shall
26 notify the court when a defendant earns a discharge credit
27 or educational credit pursuant to subsection 6 or 7. Upon
28 receipt of a notice from the defendant's probation officer,
29 the court shall conduct a review of the defendant's probation
30 to determine if the defendant is eligible for a reduction or
31 termination of probation, taking into account any discharge
32 credit and educational credit the defendant has earned. A
33 defendant may earn both a discharge credit and an educational
34 credit to be applied toward the completion of the defendant's
35 probation in accordance with this subsection.

1 Sec. ____ . NEW SECTION. 907.12 Probation revocation —
2 **resentencing.**

3 1. *a.* The court shall not impose a sentence of imprisonment
4 upon revoking probation unless the court finds any of the
5 following:

6 (1) The defendant has been convicted of a new felony or
7 misdemeanor.

8 (2) The defendant's conduct creates an identifiable,
9 significant, and imminent danger to the community and no
10 other condition of supervision or treatment would decrease
11 this likelihood based upon the testimony of the defendant's
12 probation officer.

13 *b.* If the court finds any of the factors in paragraph "a",
14 the court shall follow the following sentencing guidelines:

15 (1) The court shall not sentence the defendant to
16 imprisonment on a first or second technical violation.

17 (2) The court may impose a sentence of up to seven days of
18 imprisonment upon a third technical violation.

19 (3) The court may impose a sentence of up to fifteen days of
20 imprisonment upon a fourth technical violation.

21 (4) The court may impose a sentence of up to thirty days of
22 imprisonment for a technical violation of certain conditions of
23 probation specified at the beginning of the defendant's period
24 of probation.

25 2. There shall be no revocation of probation, imprisonment,
26 or increase in the terms and conditions of probation under this
27 section except upon the conclusion of a technical violation
28 revocation hearing in accordance with this subsection.

29 *a.* Upon an allegation of a technical violation of a
30 defendant by the defendant's probation officer, a written
31 request for a technical violation revocation hearing shall be
32 filed with the court.

33 *b.* The court shall schedule a technical violation revocation
34 hearing within a reasonable time after receiving a written
35 request for a hearing.

1 *c.* The technical violation revocation hearing shall be held
2 before the defendant's sentencing judge, if available.

3 *d.* The court shall hold a technical violation revocation
4 hearing to determine whether the facts warrant revocation of
5 a defendant's probation and whether probation is still an
6 effective vehicle to accomplish rehabilitation of the defendant
7 and a sufficient deterrent against future criminal conduct.

8 *e.* The defendant shall have the right to confront and
9 cross-examine witnesses.

10 3. *a.* Following a technical violation revocation hearing,
11 and prior to resentencing, the court shall give the defendant
12 the opportunity to be heard and the defendant shall be entitled
13 to representation by an attorney. If the defendant is indigent
14 or incapable of requesting an attorney, the court shall appoint
15 an attorney to represent the defendant.

16 *b.* The court shall state on the record the reasons for the
17 sentence imposed.

18 *c.* The court shall advise the defendant on the record of
19 the right to file a motion to modify the sentence, the right to
20 file a petition for postconviction relief, and of the right to
21 the assistance of an attorney in the preparation of the motion
22 and the petition. The court shall also advise the defendant of
23 the time within which the defendant must exercise the rights
24 in this paragraph.

25 *d.* The court shall require that a record of the resentencing
26 proceeding be made and preserved to allow the record to be
27 transcribed including the record of any stipulation made
28 between the parties at any presentence hearing.

29 4. A motion to modify a sentence imposed after a technical
30 violation revocation hearing shall be filed within ten days
31 of the sentencing order. The filing of a motion to modify a
32 sentence shall not toll the thirty-day appeal period.

33 5. The court may revoke an order of probation upon proof
34 of a violation of any of the following specified conditions of
35 probation:

1 a. If a defendant has been convicted of a new felony, the
2 sentencing alternatives available to the court shall be the
3 same as were available at the time of a defendant's initial
4 sentencing, and consideration shall be given to the defendant's
5 time spent serving the order of probation.

6 b. If a defendant has been convicted of a new misdemeanor,
7 the sentencing alternatives available to the court shall be the
8 same as were available at the time of the defendant's initial
9 sentencing; however, the defendant's sentence may include a
10 term of imprisonment of up to ninety days.

11 Sec. ____ . NEW SECTION. 907.15 **Payment of fines and fees.**

12 1. The court shall direct that a defendant pay fines and
13 fees in conjunction with a term of probation, and shall create
14 a payment plan based upon the defendant's ability to pay.

15 2. The court, upon the receipt of a petition from a
16 probation officer for termination of a defendant's probation,
17 shall not consider the defendant's lack of payment of fines and
18 fees as a disqualifying factor for early termination of the
19 defendant's probation unless the defendant has been found to
20 be able to afford payments but has purposely avoided making
21 payments.

22 3. A defendant who is compliant with the conditions of
23 probation shall not be precluded from obtaining a driver's
24 license due to lack of payment of fines and fees, unless a
25 defendant has been found to be able to afford payments but has
26 purposely avoided making payments.

27 4. A determination of a defendant's ability to pay shall
28 include the factors set forth in the court's financial
29 affidavit under sections 815.9 and 908.2A. A defendant may
30 petition the court for review of the defendant's financial
31 status pursuant to section 910.7.>

32 2. Title page, line 1, after <system> by inserting <, and
33 including certain probation matters>

34 3. By renumbering as necessary.

SMITH of Black Hawk