

House File 678 - Introduced

HOUSE FILE 678

BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 6)

A BILL FOR

1 An Act relating to probation.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 907.1, Code 2021, is amended by adding
2 the following new subsections:

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

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

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

15 Sec. 2. Section 907.9, subsections 1 and 2, Code 2021, are
16 amended to read as follows:

17 1. At any time that the court determines that the purposes
18 of probation have been fulfilled and fees imposed under section
19 905.14 and court debt collected pursuant to [section 602.8107](#)
20 have been paid or are subject to a payment plan, the court may
21 order the discharge of a person from probation.

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

30 b. Notwithstanding any earned discharge credit under
31 subsection 6 or any earned educational credit under subsection
32 7, a defendant's probation officer shall submit a report to the
33 court no later than halfway through the defendant's period of
34 probation describing the defendant's progress under supervision
35 and making one of the following recommendations:

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

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

4 (3) Continue the defendant's probation as previously
5 ordered.

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

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

31 Sec. 3. Section 907.9, subsection 4, paragraphs a and b,
32 Code 2021, are amended to read as follows:

33 a. At the expiration of the period of probation, if the
34 ~~fees imposed under section 905.14 and court debt collected~~
35 ~~pursuant to section 602.8107 have been paid and court debt~~

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

16 *b.* Upon discharge from probation, if judgment has been
17 deferred under [section 907.3](#), the court's criminal record with
18 reference to the deferred judgment, any counts dismissed by the
19 court, which were contained in the indictment, information,
20 or complaint that resulted in the deferred judgment, and
21 any other related charges that were not contained in the
22 indictment, information, or complaint but were dismissed, shall
23 be expunged. However, the court's record shall not be expunged
24 until the person has paid, or is subject to a payment plan,
25 for the restitution, civil penalties, court costs, fees, or
26 other financial obligations ordered by the court or assessed
27 by the clerk of the district court in the case that includes
28 the deferred judgment. The expunged record is a confidential
29 record exempt from public access under [section 22.7](#) but shall
30 be made available by the clerk of the district court, upon
31 request and without court order, to an agency or person granted
32 access to the deferred judgment docket under [section 907.4](#),
33 subsection 2. The court's record shall not be expunged in any
34 other circumstances unless authorized by law.

35 Sec. 4. Section 907.9, Code 2021, is amended by adding the

1 following new subsections:

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

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

10 *c.* A defendant shall not earn a discharge credit for a
11 partial calendar month or the last full calendar month of
12 probation.

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

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

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

32 **Sec. 5. NEW SECTION. 907.12 Probation revocation —**
33 **resentencing.**

34 1. *a.* The court shall not impose a sentence of imprisonment
35 upon revoking probation unless the court finds any of the

1 following:

2 (1) The defendant has been convicted of a new felony or
3 misdemeanor.

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

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

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

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

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

17 (4) The court may impose a sentence of up to thirty days of
18 imprisonment for a technical violation of certain conditions of
19 probation specified at the beginning of the defendant's period
20 of probation.

21 2. There shall be no revocation of probation, imprisonment,
22 or increase in the terms and conditions of probation under this
23 section except upon the conclusion of a technical violation
24 revocation hearing in accordance with this subsection.

25 *a.* Upon an allegation of a technical violation of a
26 defendant by the defendant's probation officer, a written
27 request for a technical violation revocation hearing shall be
28 filed with the court.

29 *b.* The court shall schedule a technical violation revocation
30 hearing within a reasonable time after receiving a written
31 request for a hearing.

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

34 *d.* The court shall hold a technical violation revocation
35 hearing to determine whether the facts warrant revocation of

1 a defendant's probation and whether probation is still an
2 effective vehicle to accomplish rehabilitation of the defendant
3 and a sufficient deterrent against future criminal conduct.

4 e. The defendant shall have the right to confront and
5 cross-examine witnesses.

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

12 b. The court shall state on the record the reasons for the
13 sentence imposed.

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

21 d. The court shall require that a record of the resentencing
22 proceeding be made and preserved to allow the record to be
23 transcribed including the record of any stipulation made
24 between the parties at any presentence hearing.

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

29 5. The court may revoke an order of probation upon proof
30 of a violation of any of the following specified conditions of
31 probation:

32 a. If a defendant has been convicted of a new felony, the
33 sentencing alternatives available to the court shall be the
34 same as were available at the time of a defendant's initial
35 sentencing, and consideration shall be given to the defendant's

1 it may require, defer the sentence and assign the defendant
2 to a judicial district department of correctional service,
3 or suspend the sentence and place the defendant on probation
4 upon such terms and conditions as it may require including
5 commitment to an alternate jail facility or a community
6 correctional residential treatment facility to be followed by
7 a period of probation.

8 DISCHARGE FROM PROBATION. Current law requires fees and
9 court debt to be paid before a defendant can be discharged from
10 probation.

11 The bill provides that at any time that a probation officer
12 determines that the purposes of probation have been fulfilled
13 and fees imposed and court debt collected have been paid or
14 are subject to a payment plan, the officer may order the
15 discharge of a person from probation after approval of the
16 district director and notification of the sentencing court and
17 the county attorney who prosecuted the case. A defendant's
18 probation officer shall submit a report to the court no later
19 than halfway through the defendant's period of probation
20 describing the defendant's progress under supervision and
21 making a recommendation to either terminate the defendant's
22 probation early, continue the defendant's probation with
23 reduced terms and conditions, or continue the defendant's
24 probation as previously ordered. If the defendant's probation
25 officer's recommendation is to continue supervision as ordered
26 or to continue the defendant's probation with reduced terms or
27 conditions, the probation officer shall describe why continued
28 supervision or continued probation with reduced terms and
29 conditions is necessary and beneficial. If the recommendation
30 is against early termination of the defendant's probation, the
31 defendant may request a hearing on the matter. The requested
32 hearing shall be held no later than 30 days from the date of the
33 defendant's request. At the hearing, the court shall review
34 the probation officer's report; the defendant's progress and
35 conduct on probation, including whether the defendant has

1 attended court-ordered mandatory counseling or treatment and
2 whether the defendant is subject to a payment plan and has
3 been found able to afford payments but is purposely avoiding
4 making payments; the underlying offense and its relationship
5 to the conditions of probation imposed on the defendant;
6 the defendant's criminal record; and any mitigating factors
7 to determine whether to reduce the defendant's probation,
8 discharge the defendant from probation, or reduce the terms and
9 conditions of the defendant's probation. The bill provides
10 that nothing precludes the ability of a probation officer or
11 the court to terminate the defendant's probation early at any
12 time.

13 RESTORATION OF RIGHTS. Under current law, the court shall
14 forward a recommendation to the governor either for or against
15 the restoration of a defendant's citizenship rights. Under the
16 bill, if the court's recommendation is against the restoration
17 of a defendant's citizenship rights, the court must provide a
18 written explanation of its recommendation to the defendant and
19 give notice to the defendant of the defendant's right to appear
20 at a hearing.

21 DISCHARGE AND EDUCATION CREDITS. The bill provides that a
22 defendant shall earn a discharge credit of 14 days' reduction
23 from the defendant's term of probation for each full calendar
24 month in which the defendant has not violated any terms of
25 probation. A defendant on probation shall earn an educational
26 credit and have the defendant's probation sentence reduced by
27 90 days if, during the period of probation, the defendant earns
28 a high school diploma or high school equivalency certificate
29 or successfully completes a certified vocational program,
30 certified technical program, certified career education
31 program, or training program.

32 The bill defines "discharge credit" as a 14-day reduction
33 from a defendant's term of probation for each full calendar
34 month the defendant is in compliance with the defendant's term
35 of probation and "educational credit" as a 90-day reduction

1 from a defendant's term of probation when a defendant earns
2 a high school diploma or high school equivalency certificate
3 or completes a certified vocational, technical, or career
4 education or training program.

5 **PAYMENT OF FINES AND FEES.** The bill provides that the
6 court shall direct a defendant to pay fines and fees in
7 conjunction with a term of probation, and the court shall
8 create a payment plan based upon the defendant's ability to
9 pay. Upon the receipt of a petition from a probation officer
10 for termination of a defendant's probation, the court shall not
11 consider the defendant's lack of payment of fines and fees as a
12 disqualifying factor for early termination of the defendant's
13 probation unless the defendant has been found to be able to
14 afford payments but has purposefully avoided making those
15 payments. The bill provides that a defendant who is compliant
16 with the conditions of probation is not precluded from
17 obtaining an Iowa state driver's license due to lack of payment
18 of fines and fees, unless the defendant is found to be able to
19 afford payments and is purposefully avoiding making payments.

20 **EXPUNGEMENT.** Under current law, upon a defendant's
21 discharge from probation, if the defendant's judgment has been
22 deferred, the court's criminal record of the deferred judgment
23 and other related information shall be expunged but expungement
24 is only allowed if the defendant has paid for all restitution,
25 civil penalties, court costs, fees, or other obligations. The
26 bill allows for expungement under these circumstances if the
27 defendant has a payment plan in place for any such financial
28 obligations.

29 **PROBATION VIOLATIONS — REVOCATION AND RESENTENCING.** Under
30 the bill, upon a violation of probation, the court shall not
31 impose a sentence of imprisonment unless the defendant has
32 been convicted of a new crime or, based on the testimony
33 of the defendant's probation officer, the conduct of the
34 defendant indicates that it is likely that the defendant will
35 commit another crime and no other condition of supervision or

1 treatment would decrease this likelihood. If the defendant
2 meets either of those factors, the court shall not sentence the
3 defendant to prison on a first or second technical violation,
4 the court may sentence the defendant to up to seven days
5 in prison upon a third technical violation, the court may
6 sentence the defendant to up to 15 days in prison upon a fourth
7 technical violation, and the court may sentence the defendant
8 to up to 30 days in prison for technical violations of specific
9 conditions.

10 The bill requires a technical revocation hearing and sets
11 out provisions for the hearing, including the defendant's right
12 to be heard. The court may revoke probation if the defendant
13 has been convicted of a new crime. The bill defines "technical
14 violation" as any violation by the defendant of the terms
15 and conditions of probation other than a conviction of the
16 defendant for a new crime.