

House Study Bill 6 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
PUBLIC SAFETY BILL BY
CHAIRPERSON KLEIN)

A BILL FOR

1 An Act relating to probation, providing penalties, and
2 including effective date provisions.
3 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 907.7, subsection 2, Code 2021, is amended
16 to read as follows:

17 2. The length of the probation shall not be less than ~~one~~
18 ~~year~~ six months if the offense is a misdemeanor and shall not
19 be less than ~~two years~~ one year if the offense is a felony.

20 Sec. 3. Section 907.7, Code 2021, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 2A. The court shall not impose a period
23 of probation consecutive to any other court-imposed period of
24 probation.

25 Sec. 4. Section 907.9, subsections 1 and 2, Code 2021, are
26 amended to read as follows:

27 1. At any time that the court determines that the purposes
28 of probation have been fulfilled and fees ~~imposed under section~~
29 ~~905.14 and court debt collected pursuant to section 602.8107~~
30 have been paid and court debt have been paid or are subject to
31 a payment plan, the court may order the discharge of a person
32 from probation.

33 2. a. At any time that a probation officer determines
34 that the purposes of probation have been fulfilled and fees
35 ~~imposed under section 905.14 and court debt collected pursuant~~

1 ~~to section 602.8107 have been paid~~ and court debt have been
2 paid or are subject to a payment plan, the officer may order
3 the discharge of a person from probation after approval of the
4 district director and notification of the sentencing court and
5 the county attorney who prosecuted the case.

6 b. Notwithstanding any earned discharge credit under
7 subsection 6 or any earned educational credit under subsection
8 7, upon successful completion of one-half of the length
9 of a defendant's probation set pursuant to this section, a
10 probation officer shall petition the court for discharge of the
11 defendant's probation. The court shall review the defendant's
12 criminal record and consider whether to reduce the defendant's
13 probation, to discharge the defendant from probation, or to
14 reduce the terms and conditions of the defendant's probation
15 based upon the probation officer's report. The court shall not
16 discharge the defendant from probation or reduce the period or
17 terms and conditions of probation if the defendant is subject
18 to a payment plan, has been found able to afford payments but
19 is purposely avoiding making payments, or has not completed
20 court-ordered counseling or treatment.

21 c. The court shall hold a hearing to review a probation
22 officer's request for discharge of a defendant from probation
23 not less than once every six months after the defendant has
24 completed one-half of the length of probation, unless the
25 defendant is subsequently convicted of a new crime. The
26 court shall give reasonable notice to the defendant and the
27 prosecuting attorney of any hearing and the defendant shall
28 have the right to appear at the hearing.

29 Sec. 5. Section 907.9, subsection 4, paragraphs a and b,
30 Code 2021, are amended to read as follows:

31 a. At the expiration of the period of probation, if the
32 fees imposed under ~~section 905.14~~ and court debt collected
33 pursuant to ~~section 602.8107~~ have been paid and court debt
34 have been paid or are subject to a payment plan, the court
35 shall order the discharge of the person from probation. If

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

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

33 Sec. 6. Section 907.9, Code 2021, is amended by adding the
34 following new subsections:

35 NEW SUBSECTION. 6. *a.* A defendant on probation shall

1 be eligible to earn a discharge credit from the defendant's
2 term of probation for each full calendar month in which the
3 defendant is in compliance with the terms of the defendant's
4 probation.

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

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

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

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

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

30 Sec. 7. NEW SECTION. 907.12 Probation revocation —
31 resentencing.

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

35 (1) The defendant has been convicted of a new felony or

1 misdemeanor.

2 (2) The defendant's conduct indicates it is likely the
3 defendant will commit another crime and no other condition of
4 supervision or treatment would decrease this likelihood based
5 upon the testimony of the defendant's probation officer.

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

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

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

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

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

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

22 a. Upon an allegation of a technical violation of a
23 defendant by the defendant's probation officer, a written
24 request for a technical violation revocation hearing shall be
25 filed with the court.

26 b. The court shall schedule a technical violation revocation
27 hearing within a reasonable time after receiving a written
28 request for a hearing.

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

31 d. The court shall hold a technical violation revocation
32 hearing to determine whether the facts warrant revocation of
33 a defendant's probation and whether probation is still an
34 effective vehicle to accomplish rehabilitation of the defendant
35 and a sufficient deterrent against future criminal conduct.

1 e. The defendant shall have the right to confront and
2 cross-examine witnesses.

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

9 b. The court shall state on the record the reasons for the
10 sentence imposed.

11 c. The court shall advise the defendant on the record of
12 the right to file a motion to modify the sentence, the right to
13 appeal, and of the right to the assistance of an attorney in
14 the preparation of the motion and appeal. The court shall also
15 advise the defendant of the time within which the defendant
16 must exercise the rights in this paragraph.

17 d. The court shall require that a record of the resentencing
18 proceeding be made and preserved to allow the record to be
19 transcribed including the record of any stipulation made
20 between the parties at any presentence hearing.

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

25 5. The court may revoke an order of probation upon proof
26 of a violation of any of the following specified conditions of
27 probation:

28 a. If a defendant has been convicted of a new felony, the
29 sentencing alternatives available to the court shall be the
30 same as were available at the time of a defendant's initial
31 sentencing, and consideration shall be given to the defendant's
32 time spent serving the order of probation.

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

1 sentencing; however, the defendant's sentence may include a
2 term of imprisonment of up to ninety days.

3 Sec. 8. NEW SECTION. 907.15 **Payment of fines and fees.**

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

7 2. The court, upon the receipt of a petition from a
8 probation officer for termination of a defendant's probation,
9 shall not consider the defendant's lack of payment of fines and
10 fees as a disqualifying factor for early termination of the
11 defendant's probation unless the defendant has been found to
12 be able to afford payments but has purposefully avoided making
13 payments.

14 3. A defendant who is compliant with the conditions of
15 probation shall not be precluded from obtaining a driver's
16 license due to lack of payment of fines and fees, unless a
17 defendant has been found to be able to afford payments but has
18 purposefully avoided making payments.

19 Sec. 9. **EFFECTIVE DATE.** This Act, being deemed of immediate
20 importance, takes effect upon enactment.

21 **EXPLANATION**

22 The inclusion of this explanation does not constitute agreement with
23 the explanation's substance by the members of the general assembly.

24 This bill relates to probation, provides penalties, and
25 includes effective date provisions.

26 Iowa law provides that upon a plea of guilty, a verdict
27 of guilty, or a special verdict upon which a judgment of
28 conviction may be rendered, the trial court may defer judgment
29 and may place the defendant on probation upon conditions as
30 it may require, defer the sentence and assign the defendant
31 to a judicial district department of correctional service,
32 or suspend the sentence and place the defendant on probation
33 upon such terms and conditions as it may require including
34 commitment to an alternate jail facility or a community
35 correctional residential treatment facility to be followed by

1 a period of probation.

2 LENGTH OF PROBATION. Under current law, the length of a
3 defendant's probation shall not be less than one year if the
4 offense for which a defendant was convicted is a misdemeanor
5 and shall not be less than two years if the offense for which a
6 defendant was convicted is a felony. The bill changes these
7 minimum probation periods to not less than six months if the
8 offense is a misdemeanor and to not less than one year if the
9 offense is a felony. The bill provides that the court shall
10 not impose a period of probation consecutive to another imposed
11 period of probation.

12 DISCHARGE FROM PROBATION. Current law requires fees and
13 court debt to be paid before a defendant can be discharged
14 from probation. The bill allows a defendant to be discharged
15 from probation if the court determines that the purposes of
16 probation have been fulfilled and fees and court debt have been
17 paid or are subject to a payment plan. The bill requires a
18 probation officer to petition the court for the defendant's
19 discharge if the defendant has successfully completed one-half
20 of the length of the defendant's probation. The court shall
21 hold a hearing to review the defendant's case and determine
22 whether to reduce the period of probation, terminate the period
23 of probation, or reduce the conditions of probation based on
24 the probation officer's report. Such a hearing shall be held
25 every six months after the defendant has completed one-half
26 of the term of probation. The defendant and the prosecuting
27 attorney shall have notice of the hearing and the defendant
28 shall have the right to appear at the hearing. The court shall
29 not consider the defendant's lack of payment of fines and fees
30 as a disqualifying factor for early termination of probation
31 unless the defendant is found to be able to afford payments and
32 is purposefully avoiding making payments. The court shall not
33 discharge the defendant from probation or reduce the period or
34 terms and conditions of probation if the defendant is subject
35 to a payment plan, has been found able to afford payments but

1 is purposefully avoiding making payments, or has not completed
2 court-ordered counseling or treatment.

3 RESTORATION OF RIGHTS. Under current law, the court shall
4 forward a recommendation to the governor either for or against
5 the restoration of a defendant's citizenship rights. Under the
6 bill, if the court's recommendation is against the restoration
7 of a defendant's citizenship rights, the court must provide a
8 written explanation of its recommendation to the defendant and
9 give notice to the defendant of the defendant's right to appear
10 at a hearing.

11 DISCHARGE AND EDUCATION CREDITS. The bill provides that a
12 defendant shall earn a discharge credit of 14 days' reduction
13 from the defendant's term of probation for each full calendar
14 month in which the defendant has not violated any terms of
15 probation. A defendant on probation shall earn an educational
16 credit and have the defendant's probation sentence reduced by
17 90 days if, during the period of probation, the defendant earns
18 a high school diploma or high school equivalency certificate
19 or successfully completes a certified vocational program,
20 certified technical program, certified career education
21 program, or training program.

22 The bill defines "discharge credit" as a 14-day reduction
23 from a defendant's term of probation for each full calendar
24 month the defendant is in compliance with the defendant's term
25 of probation and "educational credit" as a 90-day reduction
26 from a defendant's term of probation when a defendant earns
27 a high school diploma or high school equivalency certificate
28 or completes a certified vocational, technical, or career
29 education or training program.

30 PAYMENT OF FINES AND FEES. The bill provides that the
31 court shall direct a defendant to pay fines and fees in
32 conjunction with a term of probation, and the court shall
33 create a payment plan based upon the defendant's ability to
34 pay. Upon the receipt of a petition from a probation officer
35 for termination of a defendant's probation, the court shall not

1 consider the defendant's lack of payment of fines and fees as a
2 disqualifying factor for early termination of the defendant's
3 probation unless the defendant has been found to be able to
4 afford payments but has purposefully avoided making those
5 payments. The bill provides that a defendant who is compliant
6 with the conditions of probation is not precluded from
7 obtaining an Iowa state driver's license due to lack of payment
8 of fines and fees, unless the defendant is found to be able to
9 afford payments and is purposefully avoiding making payments.

10 **EXPUNGEMENT.** Under current law, upon a defendant's
11 discharge from probation, if the defendant's judgment has been
12 deferred, the court's criminal record of the deferred judgment
13 and other related information shall be expunged but expungement
14 is only allowed if the defendant has paid for all restitution,
15 civil penalties, court costs, fees, or other obligations. The
16 bill allows for expungement under these circumstances if the
17 defendant has a payment plan in place for any such financial
18 obligations.

19 **PROBATION VIOLATIONS — REVOCATION AND RESENTENCING.** Under
20 the bill, upon a violation of probation, the court shall not
21 impose a sentence of imprisonment unless the defendant has
22 been convicted of a new crime or, based on the testimony
23 of the defendant's probation officer, the conduct of the
24 defendant indicates that it is likely that the defendant will
25 commit another crime and no other condition of supervision or
26 treatment would decrease this likelihood. If the defendant
27 meets either of those factors, the court shall not sentence the
28 defendant to prison on a first or second technical violation,
29 the court may sentence the defendant to up to seven days
30 in prison upon a third technical violation, the court may
31 sentence the defendant to up to 15 days in prison upon a fourth
32 technical violation, and the court may sentence the defendant
33 to up to 30 days in prison for technical violations of specific
34 conditions.

35 The bill requires a technical revocation hearing and sets

1 out provisions for the hearing, including the defendant's right
2 to be heard. The court may revoke probation if the defendant
3 has been convicted of a new crime. The bill defines "technical
4 violation" as any violation by the defendant of the terms
5 and conditions of probation other than a conviction of the
6 defendant for a new crime.

7 The bill takes effect upon enactment.