

SUBJECT: Revising process to set, modify, review, reduce, terminate probation terms

COMMITTEE: Corrections — committee substitute recommended

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson

0 nays

WITNESSES: For — Terra Tucker, Alliance for Safety and Justice; Keith Davis and Tricia Forbes, Crime Survivors for Safety and Justice; (*Registered, but did not testify*: Lauren Johnson, ACLU of Texas; Douglas Smith, Texas Criminal Justice Coalition)

Against — (*Registered, but did not testify*: Alexis Tatum, Travis County Commissioners Court)

On — Elmer Beckworth, Cherokee County District Attorney's Office; (*Registered, but did not testify*: Carey Green, Texas Department of Criminal Justice; Eric Knustrom, Texas Probation Association)

BACKGROUND: Under Code of Criminal Procedure art. 42A.701(a), after a defendant has completed one-third of a period of probation or two years, whichever is less, judges may reduce or terminate the probation. Under art. 42A.701(b), after completion of one-half of a probation term or two years, whichever is more, judges must review the defendant's record and consider whether to reduce or terminate the probation unless the defendant was delinquent in paying costs, fines, fees, or restitution that the defendant has the ability to pay or the defendant has not completed counseling or treatment.

Some have suggested that some criminal defendants choose state jails over probation terms because the current system is complicated and cumbersome, making it difficult to succeed on probation. They suggest that ensuring reviews of probation and the ability to pay fees along with appropriate use of probation conditions could address this situation.

DIGEST: CSHB 3512 would revise the processes for considering reductions or early terminations of probation terms and for modifying probation, amend current authorizations relating to the terms of probation, revise the way courts consider a probationer's financial situation when assessing payments, and revise the conditions and programs related to time credits for probationers.

Reduction in probation terms. The bill would eliminate the prohibition on judges considering reducing or terminating probation after one-half of a probation term if the defendants had not paid their costs, fines, or fees.

Probation officers would have to notify courts if probationers who at the time of a review were delinquent in paying restitution or had not completed counseling or treatment had later completed either task. After getting the notice, courts would have to review the defendant's record and consider whether to reduce or terminate probation.

Judges who did not reduce or terminate probation after a review would be required, as soon as practicable between 180 days and 270 days after the review, to again review the defendant's record and consider whether to reduce or terminate probation.

Modifying probation. The bill would expand the current purposes for which probation officers could modify probation requirements, if authorized by a judge. Under the bill, the conditions could be modified to:

- prioritize the court-ordered conditions according to the defendant's needs as determined by a risk and needs assessment and the defendants' progress; or
- require a defendant who was not already being tested for alcohol or drugs to submit to testing on any occasion when a probation officer had reasonable suspicion that the defendant had used a controlled substance.

Probation conditions. The bill would revise the current authorization for probation conditions to include avoiding persons or places of disreputable

or harmful character, including active members of a criminal street gang. Under the revised condition, probationers could be required to avoid persons or places of disreputable or harmful character to the extent indicated by the currently required risk and needs assessment.

CSHB 3512 would revise the current broad authorization for judges to require alcohol and drug testing. Under the bill, testing could be required:

- in the 45 days after the defendant was placed on community supervision;
- at any time during the probation period if the defendant had tested positive for a controlled substance during the first 45 days of probation or during testing done because a probation officer had reasonable suspicion that the defendant had used a controlled substance;
- if the judge determined, based on a currently required risk assessment or evaluation, that testing was necessary to protect or restore the community or the victim or to rehabilitate or reform the defendant; or
- if the offense involved a controlled substance or alcohol.

Current authorization for judges to require defendants to attend counseling or treatment related to substance abuse would be conditioned on:

- the judge determining, based on currently required risk assessment or evaluation, that counseling or treatment was necessary to protect or restore the community or the victim or to rehabilitate or reform the defendant; or
- the defendant's offense being related to controlled substance or alcohol abuse.

Ability to pay. CSHB 3512 would revise the current requirement that courts consider a defendant's ability to pay before ordering payments related to probation.

Before ordering payments, courts would have to inquire about whether the

defendant had sufficient resources or income to pay. Courts also would have to reconsider at certain times whether the defendant could pay, including if the defendant's financial status changed.

If a court determined that the defendant did not have sufficient resources or income to make payments, judges would be required to determine whether payments should be postponed, made in payments, waived, discharged through community service, or a combination of these methods.

Time credits toward probation terms. CSHB 3512 would revise the conditions under which certain probationers were entitled to time credits toward the completion of their probation terms. The bill would remove the current prohibition on time credits for offenses that involve family violence and on giving credits to probationers who were delinquent in paying costs, fines, or fees, or had not fully paid restitution.

The bill would expand the list of programs for which defendants are entitled to receive time credits to include 30 days credit for successfully completing faith-based, volunteer, or community-based programs ordered or approved by the court. This would apply only to defendants placed on probation on or after the bill's effective date.

Other provisions. CSHB 3512 would allow local probation departments to develop the continuum of care treatment plan currently required when a judge sentences a probationer to a term in a substance abuse felony punishment facility.

The bill would eliminate a requirement that certain educational programs offered in a substance abuse felony punishment facility be equivalent to the program used for probation for certain intoxication offenses.

The bill would take effect September 1, 2019, and would apply to defendants on probation on or after the effective date, regardless of when they were placed on probation.