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POSITION ON PROPOSED LEGISLATION

BILL: HB 1142 Criminal Procedure – Required Presence of Probationer or Defendant – Circuit Courts

FROM: Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 9, 2023

This bill aims to align the circuit courts violation of probation procedures with the District Court violation of probation procedures, specifically as it relates to the initial filing timeline for a violation of probation. This bill creates clarity and consistency in the law while appropriately balancing State interests and a defendant’s due process rights.

Who initiates a violation of probation hearing?

VOP’s, or violations of probations, are mainly initiated by a filing of the State’s Attorney’s Office or the Division of Parole and Probation. If a person is on supervised probation, then the probation agent is almost always the one who initiates a VOP proceeding. If a person is on unsupervised probation, often, the State’s Attorney’s Office initiates the violation of probation. The filed report will indicate what probation conditions are alleged to be violated and the facts supporting those allegations. A judge then reviews the submitted report and decides whether to take no action, issue a summons for a hearing, or issue a warrant.

What counts as a violation of probation?

It depends on the conditions of probation ordered in each case. Violations of probations can be initiated for a variety of reasons – but they are largely categorized as either technical violations (less serious) or nontechnical violations (more serious). The nontechnical violations are (1) receiving new criminal charges, (2) absconding from supervision, and in the case of certain types of offenses, (3) violating a no contact order. Some examples of technical violations of probation include failing to pay court costs or supervision fees, failing to attend mental health or substance abuse treatment, failing to complete community service or anger management, missing appointments, etc. Essentially, a technical violation is anything that is *not* a nontechnical violation.

What could someone be sentenced to if they violate their probation?

It depends on the type of violation (technical or nontechnical) and the amount of jail time that was suspended by the judge when the defendant was initially sentenced, otherwise known as “back-up time.”

A nontechnical violation of probation, if proven at a hearing or admitted to by the defendant, could result in the defendant’s full back-up time being imposed by their probation judge. In contrast, a technical violation of probation has presumptive caps provided in statute: 15 days for the first, 30 for the second, 45 for the third, and a fourth or subsequent violation exposes a person to their entire back-up time. The caps are presumptive because a judge can exceed those caps if certain findings are made.

What is the current law for when a violation of probation needs to be filed?

Criminal Procedure Article Section 6-223 governs the filing of VOP’s. Currently, subsection (b) only applies to the District Court and not the circuit courts.

For **District Court** probationers: the violation report must be filed either **during the period of probation or within 30 days after the end of the probationary period**, whichever is later.

For **circuit court** probationers: there is **no definite timeline** for the filing of the report. However, a person’s due process rights can limit the filing timeline. Case law states, “The State ‘must bring about the revocation hearing with due diligence or reasonable promptness so as to avoid prejudice to the defendant.’” *Edge v. State*, 63 Md. App. 676, 683 (1985) (quoting *Boone v. State*, 55 Md. App. 663, 667 (1983)); see also *State v. Berry*, 287 Md. 491, 500 (1980) (“[W]e think it fair to say that, at a minimum, the State should make reasonable efforts to initiate the proceedings and to locate and serve the defendant with process so as to bring him to trial promptly.”). If raised as an issue by the defense, a case-by-case determination must be made to ensure the VOP was filed in a timely manner so as not to infringe on a defendant’s due process rights.

What will HB 1142 do?

HB 1142 requires the Division of Parole and Probation and the State’s Attorney’s Offices to file violation of probation reports to initiate VOP hearings during the period of probation OR within 30 days after the violation, whichever is later. In effect, probation agents or State’s Attorneys would have up to thirty days *after* the probation ends to file a violation of probation report. This bill provides a definite timeline for circuit court VOP’s since it aligns the circuit court filing timeline with the District Court filing timeline. HB 1142 creates clarity and consistency in the law.

What does this bill not do?

This bill does NOT change the fact that a VOP hearing can still be postponed to await results of pending charges. It is common for violation of probation cases to be initiated when a person is charged with a new offense, but that offense is still pending. As a result,

the VOP hearing is postponed or not scheduled until the new charges are adjudicated. Still, the defendant is on notice of the possibility of future sanctions. If a person is ultimately found not guilty or receives a STET or *nolle prosequi*, then the VOP is dismissed (unless other violations are alleged). If a person is found guilty or receives a PBJ, then the VOP hearing occurs.

This bill does NOT unduly burden the Division of Parole and Probation. The same probation agents and field offices who supervise District Court probationers also supervise circuit court probationers. Agents already must file VOP reports within 30 days of the probation's expiration for District Court probationers. This bill sets the same rule for circuit court probationers as well, adding clarity and consistency to the process.

This bill does NOT just benefit defendants, instead it fairly balances State interests and defendants' due process rights. With the current law, a circuit court judge could find that a VOP report filed one day past the probation's expiration is untimely; and therefore, a VOP could be dismissed. By allowing an agent thirty days to file VOP reports past the probationary period, this law provides the State the ability to hold probationers accountable for violations even if the agent files the report outside of the probationary period without sacrificing the client's due process rights.

Why is this bill needed?

Consistency between the District Court and circuit courts is needed. People who were put on probation in the circuit court (many on probation for misdemeanor cases anyway), should not have jail time and sanctions looming over them months and months after probation is over. While the Circuit Court does handle felony cases, it also handles numerous misdemeanor cases that prayed a jury trial. These defendants are currently exposed to an undetermined filing timeline by exercising their right to a jury trial. This is unfair.

Clarity is needed. The current Criminal Procedure Article Section 6-223 creates confusion as to when it is permissible for a violation report to be filed in the circuit courts – confusion for State's Attorney's, defense attorneys, and even judges. A clear timeline outlined in statute will save time and resources. Currently, when a VOP report is filed after the probation period ends, defense attorneys file or make motions to dismiss the VOP. Litigating these motions can take time during a crowded docket, require testimony of witnesses, and require a judge to place their findings on the record as to whether the State acted with due diligence or reasonable promptness. With a clear filing timeline enunciated in law, there will be no dispute about whether the VOP was timely initiated.

This is not a theoretical problem. Real people are facing consequences for violating their probation that is long over. This writer currently represents an individual in Harford County Circuit Court whose violation of probation report was filed by the State's Attorney's Office **eight months after the client's probation ended**. The case is still pending. If found to have violated his probation, this client is facing **ten additional years**

that he could be sentenced to. A Motion to Dismiss has been filed in this case and will require the time and resources of a hearing to litigate.

For all the reasons stated above, the Maryland Office of the Public Defender urges this Committee to pass a favorable report on HB 1142. Thank you.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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