
Community Safety, Justice, & Reentry Committee

HB 1994

Brief Description: Concerning judicial dismissal of a misdemeanor following completion of court-ordered conditions.

Sponsors: Representatives Farivar, Goodman, Reed, Alvarado, Ramos, Cortes, Morgan and Reeves.

Brief Summary of Bill

- Authorizes the court, in its discretion or upon motion of either party, to dismiss a defendant's qualifying misdemeanor or gross misdemeanor charge upon the defendant's meaningful progress towards compliance with court-ordered conditions.

Hearing Date: 1/9/24

Staff: Corey Patton (786-7388).

Background:

Under certain circumstances, the prosecuting authority reviewing a case for possible criminal charges against a person may use its discretion to offer a diversion opportunity to the person before filing charges. Generally, pre-filing diversions involve an agreement by the prosecuting authority to decline to file the pending charges if the person complies with certain conditions, such as completing a treatment program or remaining crime-free for an agreed period of time. These types of pre-filing diversions are typically operated by the prosecuting authority.

If charges have been filed in a case, the defendant may seek other opportunities to resolve the case prior to trial depending on the nature of the charges. For example, a defendant charged with

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a misdemeanor or gross misdemeanor in district or municipal court may petition the court for a deferred prosecution, subject to meeting eligibility criteria, making certain stipulations and waivers, and complying with a specific treatment plan and other conditions. If the defendant completes the treatment plan and all other statutory requirements, the court must dismiss the defendant's charges.

Alternatively, a defendant may enter into a dispositional continuance, such as a Stipulated Order of Continuance, with the agreement of the prosecutor and approval of the court. A dispositional continuance typically requires the defendant to comply with agreed conditions in exchange for the dismissal of the defendant's charges. To enter into a dispositional continuance, the defendant must waive the right to a speedy trial. In some cases, the defendant must also waive the right to a trial by jury and agree to a stipulated facts trial if the defendant violates the conditions of the continuance.

Summary of Bill:

The court is authorized, in its discretion or upon motion of either party, to offer to dismiss a defendant's misdemeanor or gross misdemeanor charge upon meaningful progress towards compliance with court-ordered terms, conditions, or programs. The following offenses are not eligible to be dismissed through this process:

- Driving Under the Influence (DUI) offenses, if the defendant has been previously convicted of DUI or has one or more qualifying prior offenses within 10 years, or if the defendant has ever been convicted of Vehicular Homicide or Vehicular Assault committed while under the influence of intoxicating liquor or any drug; and
- domestic violence offenses involving an intimate partner.

If the defendant agrees to waive the right to a speedy trial, the court may continue the defendant's case for a period not to exceed 12 months and order the defendant to comply with terms, conditions, or programs that the court deems appropriate based on the defendant's specific situation. Full restitution must be a required condition, but the defendant's inability to pay restitution due to indigence may not be grounds to deny a dismissal following progress towards compliance or as a basis for finding that the defendant has failed to make meaningful progress with compliance. If the defendant makes meaningful progress towards compliance with the court-ordered terms and conditions, the court must dismiss the pending charges.

If it appears to the prosecutor that the defendant is not meaningfully engaged with the court-ordered terms and conditions, and after providing the defendant with written notice of the alleged violations and disclosure of all evidence to be offered against the defendant, the court must hold a hearing to determine whether the defendant has willfully failed to meaningfully engage with the court-ordered terms and conditions. The Rules of Evidence do not apply at the hearing. The defendant must be afforded the due process rights required for the revocation of probation, including the right to confront and cross-examine all witnesses, and the defendant must have the opportunity to be heard in person and present evidence. The prosecutor and the court may not subpoena service providers to provide records or testimony in any revocation proceeding. If the

court finds by clear and convincing evidence that the defendant is willfully failing to meaningfully engage with the terms and conditions, the court may either continue the hearing to provide additional time for meaningful engagement or end the period of continuance.

Appropriation: None.

Fiscal Note: Requested on January 3, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.