

§ 47-7-37

[Effective 7/1/2014]

Section 58 of House Bill 585

PERIOD OF PROBATION

(1)

- probation fixed by the court
- may be extended/terminated by the court/judge at any time
- extension period shall \leq 5 years
- extension can be $>$ 5 years if:
 - desertion/failure to support minor children for so long as support duty exists
- The time served on probation/PRS may be reduced per Section 55 of HB585

(Section 55 of HB585)

- Works like 30/30 on PRS and probation but month-for-month
- Ex. For a 28 day month, get 28 days credit... a 31 day month gets 31 days credit
- If you violate, only lose the credit time for the month violated
- Will be §47-7-__ (still unassigned)

VIOLATION OF PROBATION / PRS ARREST/REVOCAATION/ RECOMMITMENT

(2)

- during probation judge can issue warrant for violating any conditions of probation/suspended sentence
- Probation/parole officer or deputy can arrest without a warrant, on belief that defendant violated the conditions of probation
- Written statement delivered with the defendant by the arresting officer shall be sufficient warrant for detention

(3)

- **On arrest**, department shall hold an **informal preliminary hearing** within **(72) hours** to determine reasonable cause to believe violation occurred
- No arrest or signed a waiver of a preliminary = NO PRELIM.
- OK to conduct prelim electronically
- On detention, if reasonable cause found, **(21) days to conduct revocation hearing.**
- If revocation hearing not held w/in (21) days, defendant shall be released from custody and returned to probation status.

DEFINITION: TECHNICAL VIOLATION

- Section 47-7-2(q) Mississippi Code 1972
- “‘technical violation’ means an act or omission by the probationer that violates a condition or conditions of probation placed on the probationer by the court or the probation officer”

BAIL RESTRICTION SEX OFFENDERS

(4)

Sex offender probationer =

- court must find prior to release (with or without bail) probationer **not a danger to the public**
- court may consider:
 - nature/circumstance of violation
 - new offenses charged
 - past/present conduct
 - convictions of crimes
 - arrest record w/out conviction for crimes of violence/sex crimes
 - allegations of unlawful sexual conduct/violence
 - family ties/length of residence
 - employment history
 - mental condition
 - history/conduct/discipline during probation, supervised release, other previous supervisions, incarcerations
 - likelihood of recidivism
 - weight of the evidence against the probationer
 - any other relevant facts

VIOLATION OF PROBATION / PRS : ARREST/REVOCATION/ RECOMMITMENT

(5)

(a) AFTER ARREST:

- P.O. shall give jail written report of violations.
- P.O. shall notify court of the arrest and give court written report of violations
- **W/in (21) days of arrest** on warrant court shall conduct hearing and can continue/revoke any/all part of probation/PRS.
- If revoked on **TECHNICAL VIOLATION** court shall impose:
 - 1st technical violation <=(90) days in technical or restitution center
 - 2nd technical violation <=(120) days in technical or restitution center
 - 3rd technical violation <=(180) days in technical or restitution center or Court can impose remainder of suspended portion of sentence.
 - 4th+ technical violation, the court can impose up to remainder of suspended sentence.
- Sentence to serve in technical violation center cannot be reduced at all

(b) NOT DETAINED ON WARRANT

- **W/in a REASONABLE TIME** court shall conduct hearing and can continue/revoke any/all part of probation/PRS.
- If continued >>> court can modify terms/conditions of probation
- If revoked on **Technical Violation** court shall impose same as above (a)

(c) NO HEARING/ACTION WITHING (21) DAYS OF DETENTION:

- Detainee shall be released and return to probation.
- **Court can subsequently hold a hearing** and can continue/revoke probation/PRS
- If continued >>> court can modify terms/conditions of probation
- If revoked on **Technical Violation**, court shall impose same as above (a)

(d) NOT DETAINED AND NO WARRANT

- **W/in a REASONABLE TIME** court shall conduct hearing and can continue/revoke any/all part of probation/PRS.
- If continued >>> court can modify terms/conditions of probation
- If revoked on **Technical Violation** court shall impose same as above (a)

(6)

- If arrested in MS circuit court district **other than district of conviction**, sentencing judge can request probation officer to furnish judge of arresting county a report concerning probationer.
- Such judge shall have authority, after a hearing continue/revoke any/all part of probation/suspended sentence
 - If revoked >>> proceed with the case as if no probation.
 - If revoked >>> clerk of revoking court sends transcript of revoking order to the clerk of original to file
 - If revoked >>> Defender in the legal custody of MDOC

(7)

- Probationer who leaves MS w/out permission of court = fugitive from justice >>>>> extradition
- **Probation time served is not counted as any part of sentenced to serve**

(8)

- Arresting officer, (not P.O.) gets same fee as arrest on warrant, and such fees taxed against the probationer

(9)

- Arrest, revocation and recommitment procedures of this section
- also apply to persons serving **POST RELEASE SUPERVISION**

(10)

- Revocation charge for probation/PRS shall be **DISMISSED** if the revocation hearing is not held within **thirty (30) days of the warrant being issued** unless good for delay established

(11)

- MDOC shall semiannually provide statistics to Oversight Task Force:
 - # of warrants issued for an violation of probation/PRS
 - average time btw warrant detention and prelim
 - average time btw warrant detention and revocation hearing
 - Number of 90/120/180 sentences in a tech violation center
 - avg length of the suspended sentences for violation