

SB 817 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/14

WHAT THE MEASURE DOES:

Allows the court to defer a change of plea and sentence a person to probation when a person is charged with a misdemeanor or Class C felony, other than a person felony or driving while under the influence of intoxicants, and consents to the probation agreement. Eliminates requirement that the person be accepted into a specialty court. Eliminates requirement that the district attorney consent to the agreement. Provides that if a person is accepted into and consents to participate in a specialty court, the agreement may include a requirement that the person participate in the specialty court. Requires the court to hold a hearing if the person violates the terms of the probation agreement to determine if the person is guilty of the offense in the charging instrument. Provides that the person may not argue against the admissibility of evidence, but may argue that the evidence is insufficient to establish the person's guilt. Provides that the court may extend the period of probation if the person has not fulfilled the agreement in the specified time period. Allows the court to discharge the person and dismiss the proceedings against the person if the period of probation expires and the terms haven't been fulfilled, but no probation violation proceedings were initiated prior to the expiration of probation.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

A pre-plea probation agreement allows a person to defer entering a plea on a charge and enter into a probation agreement. The agreement could require the person participate in alcohol or substance abuse treatment, mental health treatment, community service, pay restitution, or other requirements. If the person successfully completes the probation, then the charge is dismissed and the person is not convicted of the crime. Currently, the statute does not permit someone to enter into a pre-plea probation agreement on a misdemeanor or Class C felony unless the person is accepted into and participates in a specialty court *and* receives the consent of the district attorney. Some counties have limited capacity for specialty courts or requirements for entry that some defendants don't meet. If a person enters into a pre-plea probation agreement and violates the terms of the agreement, the person may not contest the sufficiency of the evidence. If the person does not fulfill the requirements of the probation agreement and probation violation proceedings have not been initiated, the court is not permitted to discharge the person and dismiss the proceedings, but instead the court is required to issue an order requiring the person to appear and show cause why the court should not enter an adjudication of guilt.

Senate Bill 817 will permit a person to enter into a pre-plea probation agreement, if charged with a misdemeanor or non-person Class C felony, without needing to be accepted into and participate in a specialty court and without needing the consent of the district attorney. However, the person would still be permitted to participate in a specialty court if the person consents; and if the person does consent, the plea agreement may include a requirement that the person participate in the specialty court. If the person violates the terms of the probation, the person is allowed to argue against the sufficiency of the evidence, but not against the admissibility of the evidence. If the probation period expires and the person has not fulfilled the requirements, the court would no longer be permitted to order the person to appear and show cause; the court may discharge the person and

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dismiss the charges.

Senate Bill 817 allows a person charged with a misdemeanor or non-person Class C felony, other than driving while under the influence of intoxicants, to enter into a pre-plea probation agreement and if the person violates the terms of the agreement, the person would not be allowed to contest the admissibility of the evidence against them, but would be allowed to contest the sufficiency of such evidence.