

## AMENDMENTS TO HOUSE BILL NO. 1555

Sponsor: REPRESENTATIVE KAUFFMAN

Printer's No. 1937

1 Amend Bill, page 1, lines 1 through 6, by striking out all of  
2 said lines and inserting

3 Amending Titles 42 (Judiciary and Judicial Procedure) and 61  
4 (Prisons and Parole) of the Pennsylvania Consolidated States,  
5 in sentencing, further providing for order of probation and  
6 for modification or revocation of order of probation; in  
7 other criminal provisions, further providing for definitions  
8 and for supervisory relationship to offenders; and, in  
9 Pennsylvania Board of Probation and Parole, further providing  
10 for supervisory relationship to offenders.

11 Amend Bill, page 1, lines 9 through 20; pages 2 through 11,  
12 lines 1 through 30; by striking out all of said lines on said  
13 pages and inserting

14 Section 1. Section 9754(c) of Title 42 of the Pennsylvania  
15 Consolidated Statutes is amended and the section is amended by  
16 adding a subsection to read:  
17 § 9754. Order of probation.

18 \* \* \*

19 (c) Specific conditions.--The court may as a condition of  
20 its order require the defendant:

21 (1) To meet his family responsibilities, including  
22 consideration of child care responsibilities and limitations.

23 (2) To devote himself to a specific occupation [or],  
24 employment or education initiative.

25 (2.1) To participate in a public or nonprofit community  
26 service program unless the defendant was convicted of murder,  
27 rape, aggravated assault, arson, theft by extortion,  
28 terroristic threats, robbery or kidnapping.

29 (3) To undergo available medical or psychiatric  
30 treatment and to enter and remain in a specified institution,  
31 when required for that purpose.

32 (4) To pursue a prescribed secular course of study or  
33 vocational training.

34 (5) To attend or reside in a facility established for  
35 the instruction, recreation, or residence of persons on

1 probation.

2 [(6) To refrain from frequenting unlawful or  
3 disreputable places or consorting with disreputable persons.]

4 (7) To have in his possession no firearm or other  
5 dangerous weapon unless granted written permission.

6 (8) To make restitution of the fruits of his crime or to  
7 make reparations, in an amount and on a schedule that he can  
8 afford to pay, for the loss or damage caused thereby.

9 (9) To remain within the jurisdiction of the court and  
10 to notify the court or the probation officer of any change in  
11 his address or his employment.

12 (10) To report as directed to the court or the probation  
13 officer and to permit the probation officer to visit his  
14 home.

15 (11) To pay such fine as has been imposed.

16 (12) To participate in drug or alcohol treatment  
17 programs.

18 (13) To satisfy any other conditions reasonably related  
19 to the rehabilitation of the defendant and not unduly  
20 restrictive of his liberty or incompatible with his freedom  
21 of conscience.

22 (14) To remain within the premises of his residence  
23 during the hours designated by the court.

24 \* \* \*

25 (e) Prescribed medications.--A court may not, as a condition  
26 of probation, prohibit the lawful possession or use of a  
27 prescribed medication, including medical marijuana, unless:

28 (1) the defendant is being sentenced for an offense  
29 under Chapter 13 of the act of April 17, 2016 (P.L.84,  
30 No.16), known as the Medical Marijuana Act, or the act of  
31 April 14, 1972 (P.L.233, No.64), known as The Controlled  
32 Substance, Drug, Device and Cosmetic Act; or

33 (2) the court determines that a prohibition against the  
34 possession or use of a lawfully prescribed medication is  
35 necessary and appropriate to meet the sentencing standards  
36 articulated in section 9721 (relating to sentencing  
37 generally).

38 Section 2. Section 9771(c) of Title 42 is amended and the  
39 section is amended by adding subsections to read:

40 § 9771. Modification or revocation of order of probation.

41 \* \* \*

42 (b.1) Nonpayment of fines or costs.--Notwithstanding  
43 subsection (b), the court may not extend the period of probation  
44 solely due to nonpayment of fines or costs unless the court  
45 finds that the defendant is financially able to pay and has  
46 willfully refused to do so.

47 (c) Limitation on sentence of total confinement.--[The court  
48 shall not impose a sentence of total confinement upon revocation  
49 unless it finds that:

50 (1) the defendant has been convicted of another crime;

51 or

1 (2) the conduct of the defendant indicates that it is  
2 likely that he will commit another crime if he is not  
3 imprisoned; or

4 (3) such a sentence is essential to vindicate the  
5 authority of the court.] The following apply:

6 (1) Except as provided in paragraph (2), the court may  
7 not impose a sentence of total confinement upon revocation  
8 unless the court finds the defendant has been convicted of  
9 another crime.

10 (2) A court may impose a sentence of total confinement  
11 upon revocation if the defendant committed a technical  
12 violation and any of the following apply:

13 (i) The technical violation was sexual in nature.

14 (ii) The technical violation involved assaultive  
15 behavior or included a credible threat to cause bodily  
16 injury to another.

17 (iii) The technical violation involved possession or  
18 control of a weapon.

19 (iv) The defendant absconded and cannot be safely  
20 diverted from incarceration.

21 (v) There exists an identifiable threat to public  
22 safety, and the defendant cannot be safely diverted from  
23 incarceration.

24 (vi) The technical violation involved an intentional  
25 and unexcused failure to adhere to recommended  
26 programming or conditions on more than three occasions,  
27 and the defendant cannot be safely diverted from  
28 incarceration.

29 (3) If a court imposes a sentence of total confinement  
30 upon revocation for a condition under paragraph (2), the  
31 defendant shall be sentenced as follows:

32 (i) For a first technical violation, a maximum  
33 period of 14 days.

34 (ii) For a second technical violation, a maximum  
35 period of 30 days.

36 (iii) For a third or subsequent technical violation,  
37 the court may impose any sentencing alternatives  
38 available at the time of initial sentencing.

39 (iv) For a sentence of total confinement upon  
40 revocation for a condition under paragraph (2) (i), (ii),  
41 (iii) or (v), the court may add up to an additional 30  
42 days for a first technical violation or up to an  
43 additional 45 days for a second technical violation.

44 (v) The court shall consider allowing the term of  
45 incarceration to be served on weekends or other nonwork  
46 days for employed probationers who have committed a first  
47 or second technical violation.

48 \* \* \*

49 (e) Possession or use of prescribed medications.--A court  
50 may not consider a defendant's lawful possession or use of a  
51 prescribed medication, including medical marijuana, as a basis

1 for the modification or revocation of an order of probation  
2 unless a prohibition on the possession or use of the prescribed  
3 medication is a condition of the defendant's probation.

4 (f) Mandatory probation review conference.--

5 (1) A defendant shall be eligible for an initial  
6 probation review conference as follows:

7 (i) Subject to subparagraph (ii), after the  
8 defendant has completed three years of probation  
9 following a misdemeanor conviction or five years of  
10 probation following a felony conviction.

11 (ii) Any of the following:

12 (A) If the sentence imposed arises out of  
13 convictions for multiple offenses but does not  
14 include a conviction of a felony offense, after the  
15 defendant has completed three years of probation.

16 (B) If the sentence imposed arises out of  
17 convictions for multiple offenses and includes at  
18 least one felony conviction, after the defendant has  
19 completed five years of probation.

20 (2) Unless waived under subsection (d), the court shall  
21 hold a probation review conference no later than 60 days from  
22 the date the defendant is eligible.

23 (3) A defendant shall be eligible for an initial  
24 probation review conference six months prior to the date that  
25 the defendant would otherwise be eligible under paragraph (1)  
26 if the defendant successfully satisfies any of the following  
27 conditions while serving the term of probation:

28 (i) Earns a high school diploma or certificate of  
29 high school equivalency.

30 (ii) Earns an associate degree from an accredited  
31 university, college, seminary college, community college  
32 or two-year college.

33 (iii) Earns a bachelor's degree from an accredited  
34 university, college or seminary college.

35 (iv) Earns a master's or other graduate degree from  
36 an accredited university, college or seminary college.

37 (v) Obtains a vocational or occupational license,  
38 certificate, registration or permit.

39 (vi) Completes a certified vocational, certified  
40 technical or certified career education or training  
41 program.

42 (vii) Any other condition approved by the court at  
43 the time of sentencing that substantially assists the  
44 defendant in leading a law-abiding life or furthers the  
45 rehabilitative needs of the defendant.

46 (4) A defendant serving probation following a felony  
47 conviction shall be eligible for an initial probation review  
48 conference up to a total of 12 months prior to the date that  
49 the defendant would otherwise be eligible under paragraphs

50 (1) if the defendant satisfies two or more of the conditions  
51 under paragraph (3).

1           (5) To qualify a defendant for an accelerated initial  
2 probation review conference under paragraph (3) or (4), any  
3 condition under paragraph (3)(v), (vi) or (vii) must be  
4 approved by the Pennsylvania Commission on Crime and  
5 Delinquency or any advisory committee of that commission  
6 designated to provide approval.

7           (6) A defendant sentenced to a period of probation  
8 consecutive to a period of incarceration in a State  
9 correctional institution shall be eligible for an initial  
10 probation review conference 12 months prior to the date that  
11 a defendant would otherwise be eligible for a probation  
12 review conference under paragraph (1) if the defendant  
13 completed the final 12 months of State parole supervision  
14 without violating the terms and conditions of the defendant's  
15 parole. This paragraph shall not apply to a defendant who  
16 serves fewer than 12 months on State parole supervision.

17           (7) Notwithstanding paragraphs (1) and (10), no  
18 defendant shall be eligible for a probation review conference  
19 if the defendant:

20           (i) committed a technical violation within the 18  
21 months immediately preceding the defendant's probation  
22 review conference; or

23           (ii) was convicted of a misdemeanor or felony  
24 offense committed while either incarcerated or serving  
25 probation.

26           (8) Following the probation review conference, the court  
27 shall terminate probation unless the court finds any of the  
28 following:

29           (i) The conduct of the defendant on probation is  
30 such that there exists an identifiable threat to public  
31 safety, including consideration of whether the defendant  
32 is the subject of an active protection from abuse order  
33 under 23 Pa.C.S. Ch. 61 (relating to protection from  
34 abuse) or an active protection from intimidation order  
35 under 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and  
36 witness intimidation).

37           (ii) The defendant has not successfully completed  
38 all treatment or other programs required as a condition  
39 of probation, or the court otherwise finds that  
40 termination would substantially jeopardize the  
41 rehabilitative needs of the defendant.

42           (iii) The defendant has failed to pay the total  
43 restitution owed by the defendant.

44           (9) If the court does not terminate probation at a  
45 probation review conference solely because of the defendant's  
46 failure to pay restitution in full, the court shall order  
47 that the defendant be placed on administrative probation if  
48 the defendant has paid at least 50% of the restitution owed.  
49 An eligible defendant placed on administrative probation  
50 shall do all of the following and not be subject to any other  
51 conditions of probation:

1           (i) Make supervision contact at least one time per  
2 year.  
3           (ii) Provide updated contact information upon a  
4 change in residence or employment.  
5           (iii) Pay the remaining restitution owed, as ordered  
6 by the court.  
7           (10) If the court does not terminate probation at a  
8 probation review conference, the defendant shall be eligible  
9 for a subsequent probation review conference no later than 12  
10 months after the date of the most recent probation review  
11 conference.  
12           (11) This subsection shall not apply if any of the  
13 following has occurred:  
14           (i) The defendant was convicted of an offense listed  
15 under Subchapter H (relating to registration of sexual  
16 offenders) or I (relating to continued registration of  
17 sexual offenders) of Chapter 97.  
18           (ii) The defendant was convicted of a crime of  
19 violence.  
20           (iii) The defendant was convicted of an offense  
21 under 18 Pa.C.S. § 2701 (relating to simple assault) or  
22 2709.1 (relating to stalking) against a family or  
23 household member.  
24           (12) Nothing in this subsection shall prohibit the  
25 court, in its discretion, from eliminating or decreasing the  
26 term of probation under subsection (d).  
27           (g) Definitions.--As used in this section, the following  
28 words and phrases shall have the meanings given to them in this  
29 subsection unless the context clearly indicates otherwise:  
30           "Crime of violence." As defined in section 9714(g) (relating  
31 to sentences for second and subsequent offenses).  
32           "Family or household member." As defined in 23 Pa.C.S. §  
33 6102(a) (relating to definitions).  
34           "Technical violation." A violation of the terms and  
35 conditions of a defendant's sentence, other than by the  
36 commission of a new crime of which the defendant is convicted or  
37 found guilty by a judge or jury or to which the defendant pleads  
38 guilty or nolo contendere in a court of record.  
39           Section 3. Section 9911 of Title 42 is amended by adding a  
40 definition to read:  
41 § 9911. Definitions.  
42           The following words and phrases when used in this subchapter  
43 shall have the meanings given in this section unless the context  
44 clearly indicates otherwise:  
45           \* \* \*  
46           "Drug trafficking offense." A violation of section 13(a)  
47 (14), (30) or (37) of the act of April 14, 1972 (P.L.233,  
48 No.64), known as The Controlled Substance, Drug, Device and  
49 Cosmetic Act, if the controlled substance or a mixture  
50 containing the controlled substance is:  
51           (1) Marijuana, if the amount of marijuana involved is at

1 least 50 pounds or at least 51 live plants.

2 (2) A narcotic drug classified in Schedule I or Schedule  
3 II under section 3 or 4 of The Controlled Substance, Drug,  
4 Device and Cosmetic Act, if the aggregate weight of the  
5 compound or mixture containing the substance involved is at  
6 least 100 grams.

7 (3) Any of the following, if the aggregate weight of the  
8 compound or mixture of the substance involved is at least 100  
9 grams:

10 (i) Coca leaves.

11 (ii) A salt, compound, derivative or preparation of  
12 coca leaves.

13 (iii) A salt, compound, derivative or preparation  
14 that is chemically equivalent or identical with any of  
15 the substances under subparagraph (i) or (ii).

16 (iv) A mixture containing any of the substances  
17 under subparagraph (i) or (ii), except decocainized coca  
18 leaves or extracts of coca leaves which do not contain  
19 cocaine or ecgonine.

20 (4) Any of the following, if the aggregate weight of the  
21 compound or mixture of the substance involved is at least 100  
22 grams:

23 (i) Methamphetamine.

24 (ii) Phencyclidine.

25 (iii) A salt, isomer or salt of an isomer of  
26 methamphetamine or phencyclidine.

27 (iv) A mixture containing:

28 (A) Methamphetamine or phencyclidine.

29 (B) A salt of methamphetamine or phencyclidine.

30 (C) An isomer of methamphetamine or  
31 phencyclidine.

32 (D) A salt of an isomer of methamphetamine or  
33 phencyclidine.

34 (5) Heroin or a mixture containing heroin, if the  
35 aggregate weight of the compound or mixture containing the  
36 heroin is 50 grams or greater.

37 (6) A mixture containing 3,4-methylenedioxyamphetamine  
38 (MDA); 3,4-methylenedioxymethamphetamine (MDMA); 5-methoxy-  
39 3,4-methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-  
40 ethylamphetamine; N-hydroxy-3; or 4-methylenedioxyamphetamine  
41 if the aggregate weight of the compound or mixture containing  
42 the substance involved is at least 1,000 tablets, capsules,  
43 caplets or other dosage units, or 300 grams.

44 (7) Fentanyl or a mixture containing fentanyl, if the  
45 aggregate weight of the compound or mixture containing the  
46 fentanyl is 10 grams or more.

47 (8) Carfentanil or a mixture containing carfentanil, if  
48 the aggregate weight of the compound or mixture containing  
49 the carfentanil is one gram or more.

50 \* \* \*

51 Section 4. Section 9912(d) of Title 42 is amended by adding

1 a paragraph to read:

2 § 9912. Supervisory relationship to offenders.

3 \* \* \*

4 (d) Grounds for personal search.--

5 \* \* \*

6 (2.1) Notwithstanding paragraphs (1) and (2), the court  
7 may order that, as a condition of the offender's probation,  
8 an officer employed by the county in which the offender is  
9 supervised may conduct a search of the offender or the  
10 offender's property without a warrant or reasonable suspicion  
11 pursuant to such authorization, if the offender is serving  
12 probation as a result of a conviction for one of the  
13 following offenses:

14 (i) An offense if the offender possessed a firearm  
15 or an offensive weapon, as those terms are defined in 18  
16 Pa.C.S. § 908(c) (relating to prohibited offensive  
17 weapons), during the commission of the offense.

18 (ii) A drug trafficking offense.

19 (iii) An offense listed under Subchapter H (relating  
20 to registration of sexual offenders) or I (relating to  
21 continued registration of sexual offenders) of Chapter  
22 97.

23 \* \* \*

24 Section 5. Section 6153(d) of Title 61 is amended by adding  
25 a paragraph to read:

26 § 6153. Supervisory relationship to offenders.

27 \* \* \*

28 (d) Grounds for personal search of offender.--

29 \* \* \*

30 (2.1) Notwithstanding paragraphs (1) and (2), the court  
31 may order that, as a condition of the offender's probation,  
32 an agent may conduct a search of the offender or the  
33 offender's property without a warrant or reasonable suspicion  
34 pursuant to such authorization, if the offender is serving  
35 probation as a result of a conviction for one of the  
36 following offenses:

37 (i) An offense if the offender possessed a firearm  
38 or an offensive weapon, as those terms are defined in 18  
39 Pa.C.S. § 908(c) (relating to prohibited offensive  
40 weapons), during the commission of the offense.

41 (ii) A drug trafficking offense, as that term is  
42 defined in 42 Pa.C.S. § 9911 (relating to definitions).

43 (iii) An offense listed under 42 Pa.C.S. Subch. H  
44 (relating to registration of sexual offenders) or I  
45 (relating to continued registration of sexual offenders).

46 \* \* \*

47 Section 6. This act shall apply only to individuals  
48 sentenced or resentenced on or after the effective date of this  
49 section.

50 Section 7. This act shall take effect January 1, 2020.