

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.