

AMENDMENTS TO SENATE BILL NO. 14

Sponsor: SENATOR BAKER

Printer's No. 59

1 Amend Bill, page 1, lines 1 through 9, 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
5 Statutes, in sentencing, further providing for conditions of
6 probation and for modification or revocation of order of
7 probation.

8 Amend Bill, page 1, lines 12 through 21; pages 2 through 7,
9 lines 1 through 30; page 8, lines 1 through 4; by striking out
10 all of said lines on said pages and inserting

11 Section 1. Section 9763(b) of Title 42 of the Pennsylvania
12 Consolidated Statutes, amended December 18, 2019 (P.L.770,
13 No.115), is amended to read:
14 § 9763. Conditions of probation.

15 * * *

16 (b) Conditions generally.--The court may attach any of the
17 following conditions upon the defendant as it deems necessary:

18 (1) To meet family responsibilities[.], including
19 consideration of child care responsibilities and limitations,
20 other than the child care responsibilities and limitations
21 contained in 23 Pa.C.S. Ch. 43 (relating to support matters
22 generally) which shall be governed exclusively by the
23 provisions of that chapter.

24 (2) To be devoted to a specific occupation, employment
25 or education, study or vocational training initiative.

26 (3) To participate in a public or nonprofit community
27 service program.

28 (4) To undergo individual or family counseling.

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

32 (6) To attend educational or vocational training
33 programs.

34 (7) To attend or reside in a rehabilitative facility or
35 other intermediate punishment program.

1 (9) To not possess a firearm or other dangerous weapon
2 unless granted written permission.

3 (10) To make restitution of the fruits of the crime or
4 to make reparations, in an affordable amount and on a
5 schedule that the defendant can afford to pay, for the loss
6 or damage caused by the crime.

7 (11) To be subject to intensive supervision while
8 remaining within the jurisdiction of the court and to notify
9 the court or designated person of any change in address or
10 employment. The court must permit the defendant to
11 temporarily leave the jurisdiction of the court unless the
12 court finds a specific, identifiable and foreseeable reason
13 that leaving the court's jurisdiction would likely result in
14 the defendant absconding, causing harm to himself or others
15 or committing a crime.

16 (12) To report as directed to the court or the
17 designated person and to permit the designated person to
18 visit the defendant's home.

19 (13) To pay a fine.

20 (14) To participate in drug or alcohol screening and
21 treatment programs, including outpatient programs.

22 (15) To do other things reasonably related to
23 rehabilitation.

24 * * *

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

27 § 9771. Modification or revocation of order of probation.

28 * * *

29 (b.1) Nonpayment of fines or costs.--Notwithstanding
30 subsection (b), the court may not extend the period of
31 probation, may not impose a brief sanction under section 9771.1
32 (relating to court-imposed sanctions for violating probation)
33 and may not revoke an order of probation solely due to
34 nonpayment of fines or costs unless the court finds, with
35 respect to the payment of fines, the defendant is financially
36 able to pay the fines and has willfully refused to do so.

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

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

41 or

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

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

47 (1) Except as provided in paragraph (2), the court may
48 not impose a sentence of total confinement upon revocation
49 unless the court finds the defendant has been convicted of
50 another crime.

51 (2) A court may impose a determinate sentence of total

1 confinement upon revocation if the court finds by a
2 preponderance of the evidence that the defendant committed a
3 technical violation and any of the following apply:

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

5 (ii) The technical violation involved assaultive
6 behavior or included a credible threat to cause bodily
7 injury to another.

8 (iii) The technical violation involved possession or
9 control of a weapon.

10 (iv) The defendant absconded and cannot be safely
11 diverted from total confinement through less restrictive
12 means.

13 (v) There exists an identifiable threat to public
14 safety, and the defendant cannot be safely diverted from
15 total confinement through less restrictive means.

16 (vi) The technical violation involved an intentional
17 and unexcused failure to adhere to recommended
18 programming or conditions on more than three occasions,
19 and the defendant cannot be safely diverted from total
20 confinement through less restrictive means.

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

24 (i) For a first technical violation, a maximum
25 period of 14 days.

26 (ii) For a second technical violation, a maximum
27 period of 30 days.

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

31 (iv) For a sentence of total confinement upon
32 revocation for a condition under paragraph (2) (i), (ii),
33 (iii) or (v), the court may add up to an additional 30
34 days for a first technical violation or up to an
35 additional 45 days for a second technical violation.

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

40 (vi) The time limitations contained in this
41 paragraph shall not apply to the extent an additional
42 term of total confinement is necessary to allow a
43 defendant to either be evaluated for or to participate
44 in:

45 (A) a court-ordered drug, alcohol or mental
46 health treatment program; or

47 (B) a problem-solving court provided for in
48 section 916 (relating to problem-solving courts).

49 * * *

50 (e) Mandatory probation review conference.--

51 (1) (i) Subject to subparagraph (ii), a defendant shall

1 be eligible for an initial probation review conference
2 after the defendant has completed three years of
3 probation following a misdemeanor conviction or five
4 years of probation following a felony conviction.

5 (ii) If the sentence or sentences imposed arise out
6 of the conviction for multiple offenses and:

7 (A) The sentence or sentences imposed are all
8 misdemeanors and are based on the same conduct or
9 arise from the same criminal episode, the defendant
10 shall be eligible for a probation review conference
11 at the initial completion of three years of probation
12 by the defendant.

13 (B) The sentence or sentences imposed include a
14 felony and are based on the same conduct or arise
15 from the same criminal episode, the defendant shall
16 be eligible for a probation review conference at the
17 initial completion of five years of probation by the
18 defendant.

19 (2) Unless waived under subsection (d), the court shall
20 hold a probation review conference no later than 60 days from
21 the date the defendant is eligible. If a defendant's
22 probation review conference has not commenced within the time
23 frames specified in this subsection, the defendant's
24 attorney, or the defendant if unrepresented, may file a
25 motion demanding a probation review conference within five
26 business days.

27 (3) A defendant serving probation following either a
28 felony conviction or misdemeanor conviction shall be eligible
29 for an initial probation review conference six months prior
30 to the date that the defendant would otherwise be eligible
31 under paragraph (1) if the defendant successfully satisfies
32 any of the following conditions while serving the term of
33 probation:

34 (i) Earns a high school diploma or certificate of
35 high school equivalency.

36 (ii) Earns an associate degree from an accredited
37 university, college, seminary college, community college
38 or two-year college.

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

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

43 (v) Obtains a vocational or occupational license,
44 certificate, registration or permit.

45 (vi) Completes a certified vocational, certified
46 technical or certified career education or training
47 program.

48 (vii) Any other condition approved by the court at
49 the time of sentencing that substantially assists the
50 defendant in leading a law-abiding life or furthers the
51 rehabilitative needs of the defendant.

1 (4) A defendant serving probation following a felony
2 conviction shall be eligible for an initial probation review
3 conference up to a total of six months prior to the date that
4 the defendant would otherwise be eligible under paragraph (3)
5 if the defendant satisfies an additional condition specified
6 in paragraph (3) while serving the term of probation.

7 (5) A defendant sentenced to probation following either
8 a felony conviction or a misdemeanor conviction shall be
9 eligible for an initial probation review conference prior to
10 the date otherwise eligible under paragraphs (1), (3) or (4)
11 as follows:

12 (i) Two months earlier for every six consecutive
13 calendar months served on probation without a violation.
14 Such six-calendar-month-period shall be referred to as
15 the "non-violation period." No two non-violation periods
16 may contain the same calendar month in the same calendar
17 year.

18 (ii) Two months earlier for every six consecutive
19 calendar months in which the defendant maintains at least
20 80 hours per month of employment. Such six-calendar-
21 month-period shall be referred to as the "employment
22 period." No two employment periods may contain the same
23 calendar month in the same calendar year.

24 (iii) Two months earlier for every six consecutive
25 calendar months in which the defendant performs at least
26 80 hours per month of community service on behalf of a
27 Pennsylvania registered 501(c)(3) nonprofit organization
28 or civic or governmental agency. Such six-calendar-month-
29 period shall be referred to as the "community service
30 period." No two community service periods may contain the
31 same calendar month in the same calendar year.

32 (iv) In no event shall the total reduction in time
33 calculated pursuant to this paragraph exceed six months.

34 (6) To qualify a defendant for an accelerated initial
35 probation review conference under paragraph (3), (4) or (5),
36 any condition under paragraph (3)(v), (vi) or (vii) an
37 employer referenced under paragraph (5)(ii) or a nonprofit
38 organization or civic or governmental agency referenced under
39 paragraph (5)(iii) must be approved by the Pennsylvania
40 Commission on Crime and Delinquency or any advisory committee
41 of that commission designated to provide approval.

42 (7) A defendant sentenced to a period of probation
43 consecutive to a period of incarceration in a State
44 correctional institution shall be eligible for an initial
45 probation review conference 12 months prior to the date that
46 a defendant would otherwise be eligible for a probation
47 review conference under paragraph (1) if the defendant
48 completed the final 12 months of State parole supervision
49 without violating the terms and conditions of the defendant's
50 parole. This paragraph shall not apply to a defendant who
51 serves fewer than 12 months on State parole supervision.

1 (8) Notwithstanding paragraphs (1) and (11), no
2 defendant shall be eligible for a probation review conference
3 if:

4 (i) A court determines by a preponderance of the
5 evidence that the defendant committed one of the
6 following technical violations within the nine months
7 immediately preceding the defendant's probation review
8 conference:

9 (A) A technical violation that was sexual in
10 nature.

11 (B) A technical violation that involved
12 assaultive behavior or included a credible threat to
13 cause bodily injury to another.

14 (C) A technical violation that involved
15 possession or control of a weapon.

16 (D) The defendant absconded.

17 (E) A technical violation that involved an
18 identifiable threat to public safety.

19 (F) A technical violation that involved an
20 intentional and unexcused failure to adhere to
21 recommended programming or conditions on more than
22 three occasions.

23 (ii) A court determines by a preponderance of the
24 evidence that the defendant committed any other technical
25 violation not enumerated in subparagraph (i) within the
26 six months immediately preceding the defendant's
27 probation review conference.

28 (iii) The defendant was convicted of a misdemeanor
29 or felony offense committed while either incarcerated or
30 serving probation.

31 (9) Following the probation review conference, the court
32 shall terminate probation unless the court finds by a
33 preponderance of the evidence any of the following:

34 (i) The conduct of the defendant on probation
35 creates an identifiable threat to public safety,
36 including consideration of whether the defendant is the
37 subject of an active protection from abuse order under 23
38 Pa.C.S. Ch. 61 (relating to protection from abuse) or an
39 active protection from intimidation order under 18
40 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness
41 intimidation).

42 (ii) The defendant has not successfully completed
43 all treatment or other programs required as a condition
44 of probation and termination of probation would either
45 prevent the defendant from continuing in the court-
46 mandated treatment or programming that the court
47 determines is still necessary to aid in the defendant's
48 rehabilitation or would create a substantial likelihood
49 that the defendant would discontinue the treatment or
50 programs.

51 (iii) The defendant has failed to pay the total

1 restitution owed by the defendant.

2 (10) If the court does not terminate probation at a
3 probation review conference solely because of the defendant's
4 failure to pay restitution in full, the court shall order
5 that the defendant be placed on administrative probation if
6 the defendant either has paid at least 50% of the restitution
7 owed or the court determines, considering the defendant's
8 resources, income and family, legal or other obligations,
9 that the defendant has made a good faith effort to pay. For
10 purposes of this paragraph, "administrative probation" shall
11 be defined as probation imposed under this paragraph that:

12 (i) Requires a defendant to make supervision contact
13 at least one time per year.

14 (ii) Requires a defendant to provide updated contact
15 information upon a change in residence or employment.

16 (iii) Requires a defendant to pay the remaining
17 restitution owed, as ordered by the court on a schedule
18 that the defendant can afford to pay.

19 (iv) Does not impose any other condition of
20 probation.

21 (11) If the court does not terminate probation at a
22 probation review conference, the defendant shall receive
23 written notice of the court's order detailing its findings.
24 The defendant shall be eligible for a subsequent probation
25 review conference no later than 12 months after the date of
26 the most recent probation review conference.

27 (12) This subsection shall not apply and the defendant
28 shall not be entitled to a probation review if any of the
29 following has occurred:

30 (i) The defendant was convicted of an offense listed
31 under Subchapter H (relating to registration of sexual
32 offenders) or I (relating to continued registration of
33 sexual offenders) of Chapter 97.

34 (ii) The defendant was convicted of a crime of
35 violence.

36 (iii) The defendant was convicted of an offense
37 under 18 Pa.C.S. § 2701 (relating to simple assault) or
38 2709.1 (relating to stalking) against a family or
39 household member.

40 (13) Nothing in this subsection shall be construed to:

41 (i) Prevent a defendant from petitioning a court for
42 early termination of probation or modification of the
43 terms and conditions of probation as otherwise permitted
44 by law.

45 (ii) Prohibit the court, in its discretion, from
46 eliminating or decreasing the term of probation under
47 subsection (d).

48 (f) Definitions.--As used in this section, the following
49 words and phrases shall have the meanings given to them in this
50 subsection unless the context clearly indicates otherwise:

51 "Crime of violence." As defined in section 9714(g) (relating

1 to sentences for second and subsequent offenses).

2 "Family or household members." As defined in 23 Pa.C.S. §
3 6102(a) (relating to definitions).

4 "Technical violation." A violation of the terms and
5 conditions of a defendant's sentence, other than by the
6 commission of a new crime of which the defendant is convicted or
7 found guilty by a judge or jury or to which the defendant pleads
8 guilty or nolo contendere in a court of record.

9 Section 3. This act shall apply as follows:

10 (1) This act shall apply to individuals sentenced or
11 resentenced on or after the effective date of this section.

12 (2) Except for the amendment of 42 Pa.C.S. § 9771(e),
13 this act shall apply to individuals sentenced or resentenced
14 prior to the effective date of this section.

15 Section 4. Nothing in this act shall be construed to prevent
16 a defendant from petitioning a court for early termination of
17 probation or modification of the terms and conditions of
18 probation as otherwise permitted by law.

19 Section 5. Courts shall ensure that the probation of all
20 individuals sentenced or resentenced prior to the effective date
21 of this section are reviewed to determine whether the
22 individuals should be considered for early termination of
23 probation or modification of the terms and conditions of
24 probation. The review shall occur at the later of two years
25 after the effective date of this section or:

26 (1) the date the individual has completed three years of
27 probation following a misdemeanor conviction or five years of
28 probation following a felony conviction; or

29 (2) if the sentence or sentences imposed arise out of
30 the conviction of multiple offenses and:

31 (i) The sentence or sentences imposed are all
32 misdemeanors and are based on the same conduct or arise
33 from the same criminal episode, the defendant shall be
34 eligible for a probation review conference at the initial
35 completion of three years of probation by the defendant.

36 (ii) The sentence or sentences imposed include a
37 felony and are based on the same conduct or arise from
38 the same criminal episode, the defendant shall be
39 eligible for a probation review conference at the initial
40 completion of five years of probation by the defendant.

41 For each case under review, the defendant and the Commonwealth
42 shall have the opportunity, in advance of a decision, to provide
43 written comments to the court. Courts may by local rule adopt
44 such procedures as they deem appropriate to accomplish the
45 reviews.

46 Section 6. When a court, either as a result of a petition or
47 as a result of its review under section 6 of this act, seeks to
48 determine whether an individual sentenced or resentenced prior
49 to the effective date of this section should be considered for
50 early termination of probation or modification of the terms and
51 conditions of probation, the court shall ensure that due

1 consideration is given to whether the individual has
2 successfully satisfied the conditions contained in 42 Pa.C.S. §
3 9771(e) (3) (i), (ii), (iii), (iv), (v), (vi) and (vii) or has
4 engaged in behavior that would have otherwise made the
5 individual eligible for the reductions in time specified in 42
6 Pa.C.S. § 9771(e) (5), (i), (ii) and (iii).

7 Section 7. Section 5 of this act shall not apply and the
8 defendant shall not be entitled to a probation review if:

9 (1) The defendant committed one of the following
10 technical violations within the nine months immediately
11 preceding the defendant's probation review conference:

12 (i) A technical violation that was sexual in nature.

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

16 (iii) A technical violation that involved possession
17 or control of a weapon.

18 (iv) The defendant absconded.

19 (v) A technical violation that involved an
20 identifiable threat to public safety.

21 (vi) A technical violation which involved an
22 intentional and unexcused failure to adhere to
23 recommended programming or conditions on more than three
24 occasions.

25 (2) The defendant committed any other technical
26 violation not enumerated in subparagraph (i) within the six
27 months immediately preceding the defendant's probation review
28 conference.

29 (3) The defendant was convicted of a misdemeanor or
30 felony offense committed while either incarcerated or serving
31 probation.

32 (4) The defendant was convicted of an offense listed
33 under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
34 sexual offenders) or I (relating to continued registration of
35 sexual offenders).

36 (5) The defendant was convicted of a crime of violence.

37 (6) The defendant was convicted of an offense under 18
38 Pa.C.S. § 2701 (relating to simple assault) or 2709.1
39 (relating to stalking) against a family or household member.

40 Section 8. This act shall take effect January 1, 2021.