

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 14 Session of 2019

INTRODUCED BY A. WILLIAMS, BARTOLOTTA, STREET, FONTANA, WHITE, HUGHES, ALLOWAY, HAYWOOD, COSTA, KEARNEY, LEACH, COLLETT, MENSCH, FARNESE, BREWSTER, MUTH, FOLMER, BLAKE, SANTARSIERO, KILLION, L. WILLIAMS, K. WARD, IOVINO, BOSCOLA, MARTIN AND TARTAGLIONE, JANUARY 24, 2019

AS AMENDED ON SECOND CONSIDERATION, JUNE 30, 2020

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in sentencing, further
3 providing for conditions of probation and for modification or
4 revocation of order of probation.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 9763(b) of Title 42 of the Pennsylvania
8 Consolidated Statutes, amended December 18, 2019 (P.L.770,
9 No.115), is amended to read:

10 § 9763. Conditions of probation.

11 * * *

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

14 (1) To meet family responsibilities[.], including
15 consideration of child care responsibilities and limitations,
16 other than the child care responsibilities and limitations
17 contained in 23 Pa.C.S. Ch. 43 (relating to support matters

1 generally) which shall be governed exclusively by the
2 provisions of that chapter.

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

5 (3) To participate in a public or nonprofit community
6 service program.

7 (4) To undergo individual or family counseling.

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

11 (6) To attend educational or vocational training
12 programs.

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

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

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

21 (11) To be subject to intensive supervision while
22 remaining within the jurisdiction of the court and to notify
23 the court or designated person of any change in address or
24 employment. The court must permit the defendant to
25 temporarily leave the jurisdiction of the court unless the
26 court finds a specific, identifiable and foreseeable reason
27 that leaving the court's jurisdiction would likely result in
28 the defendant absconding, causing harm to himself or others
29 or committing a crime. ANY MOVEMENT OF A DEFENDANT OUTSIDE OF <--
30 THE COURT'S JURISDICTION MUST COMPLY WITH THE APPLICABLE

1 REQUIREMENTS OF THE INTERSTATE COMPACT FOR ADULT OFFENDER
2 SUPERVISION AND THE APPLICABLE PROVISIONS OF THE ADAM WALSH
3 CHILD PROTECTION AND SAFETY ACT OF 2006 (PUBLIC LAW 109-248,
4 120 STAT. 587) AS ADOPTED IN THIS COMMONWEALTH.

5 (12) To report as directed to the court or the
6 designated person and to permit the designated person to
7 visit the defendant's home.

8 (13) To pay a fine.

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

11 (15) To do other things reasonably related to
12 rehabilitation.

13 * * *

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

16 § 9771. Modification or revocation of order of probation.

17 * * *

18 (b.1) Nonpayment of fines or costs.--Notwithstanding
19 subsection (b), the court may not extend the period of
20 probation, may not impose a brief sanction under section 9771.1
21 (relating to court-imposed sanctions for violating probation)
22 and may not revoke an order of probation solely due to
23 nonpayment of fines or costs unless the court finds, with
24 respect to the payment of fines, the defendant is financially
25 able to pay the fines and has willfully refused to do so.

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

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

30 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 determinate sentence of total
11 confinement upon revocation if the court finds by a
12 preponderance of the evidence that the defendant committed a
13 technical violation and any of the following apply:

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

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

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

20 (iv) The defendant absconded and cannot be safely
21 diverted from total confinement through less restrictive
22 means.

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

26 (vi) The technical violation involved an intentional
27 and unexcused failure to adhere to recommended
28 programming or conditions on more than three occasions,
29 and the defendant cannot be safely diverted from total
30 confinement through less restrictive means.

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

4 (i) For a first technical violation, a maximum
5 period of 14 days.

6 (ii) For a second technical violation, a maximum
7 period of 30 days.

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

11 (iv) For a sentence of total confinement upon
12 revocation for a condition under paragraph (2) (i), (ii),
13 (iii) or (v), the court may add up to an additional 30
14 days for a first technical violation or up to an
15 additional 45 days for a second technical violation.

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

20 (vi) The time limitations contained in this
21 paragraph shall not apply to the extent an additional
22 term of total confinement is necessary to allow a
23 defendant to either be evaluated for or to participate
24 in:

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

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

29 * * *

30 (e) Mandatory probation review conference.--

1 (1) (i) Subject to subparagraph (ii), a defendant shall
2 be eligible for an initial probation review conference
3 after the defendant has completed three years of
4 probation following a misdemeanor conviction or five
5 years of probation following a felony conviction.

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

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

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

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. If a defendant's
23 probation review conference has not commenced within the time
24 frames specified in this subsection, the defendant's
25 attorney, or the defendant if unrepresented, may file a
26 motion demanding a probation review conference within five
27 business days.

28 (3) A defendant serving probation following either a
29 felony conviction or misdemeanor conviction shall be eligible
30 for an initial probation review conference six months prior

1 to the date that the defendant would otherwise be eligible
2 under paragraph (1) if the defendant successfully satisfies
3 any of the following conditions while serving the term of
4 probation:

5 (i) Earns a high school diploma or certificate of
6 high school equivalency.

7 (ii) Earns an associate degree from an accredited
8 university, college, seminary college, community college
9 or two-year college.

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

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

14 (v) Obtains a vocational or occupational license,
15 certificate, registration or permit.

16 (vi) Completes a certified vocational, certified
17 technical or certified career education or training
18 program.

19 (vii) Any other condition approved by the court at
20 the time of sentencing that substantially assists the
21 defendant in leading a law-abiding life or furthers the
22 rehabilitative needs of the defendant.

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

29 (5) A defendant sentenced to probation following either
30 a felony conviction or a misdemeanor conviction shall be

1 eligible for an initial probation review conference prior to
2 the date otherwise eligible under paragraphs (1), (3) or (4)
3 as follows:

4 (i) Two months earlier for every six consecutive
5 calendar months served on probation without a violation.
6 Such six-calendar-month-period shall be referred to as
7 the "non-violation period." No two non-violation periods
8 may contain the same calendar month in the same calendar
9 year.

10 (ii) Two months earlier for every six consecutive
11 calendar months in which the defendant maintains at least
12 80 hours per month of employment. Such six-calendar-
13 month-period shall be referred to as the "employment
14 period." No two employment periods may contain the same
15 calendar month in the same calendar year.

16 (iii) Two months earlier for every six consecutive
17 calendar months in which the defendant performs at least
18 80 hours per month of community service on behalf of a
19 Pennsylvania registered 501(c)(3) nonprofit organization
20 or civic or governmental agency. Such six-calendar-month-
21 period shall be referred to as the "community service
22 period." No two community service periods may contain the
23 same calendar month in the same calendar year.

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

26 (6) To qualify a defendant for an accelerated initial
27 probation review conference under paragraph (3), (4) or (5),
28 any condition under paragraph (3)(v), (vi) or (vii) an
29 employer referenced under paragraph (5)(ii) or a nonprofit
30 organization or civic or governmental agency referenced under

1 paragraph (5) (iii) must be approved by the Pennsylvania
2 Commission on Crime and Delinquency or any advisory committee
3 of that commission designated to provide approval.

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

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

17 (i) A court determines by a preponderance of the
18 evidence that the defendant committed one of the
19 following technical violations within the nine months
20 immediately preceding the defendant's probation review
21 conference:

22 (A) A technical violation that was sexual in
23 nature.

24 (B) A technical violation that involved
25 assaultive behavior or included a credible threat to
26 cause bodily injury to another.

27 (C) A technical violation that involved
28 possession or control of a weapon.

29 (D) The defendant absconded.

30 (E) A technical violation that involved an

1 identifiable threat to public safety.

2 (F) A technical violation that involved an
3 intentional and unexcused failure to adhere to
4 recommended programming or conditions on more than
5 three occasions.

6 (ii) A court determines by a preponderance of the
7 evidence that the defendant committed any other technical
8 violation not enumerated in subparagraph (i) within the
9 six months immediately preceding the defendant's
10 probation review conference.

11 (iii) The defendant was convicted of a misdemeanor
12 or felony offense committed while either incarcerated or
13 serving probation.

14 (8.1) IF THE DEFENDANT IS INELIGIBLE FOR A SCHEDULED <--
15 REVIEW CONFERENCE AS A RESULT OF A TECHNICAL VIOLATION
16 ENUMERATED IN PARAGRAPH (8) (I), THEN IF ALL OTHER CONDITIONS
17 ARE SATISFIED, A PROBATION REVIEW CONFERENCE WILL BE HELD
18 NINE MONTHS AFTER THE DATE THAT THE ENUMERATED TECHNICAL
19 VIOLATION OCCURRED. IF THE DEFENDANT IS INELIGIBLE FOR A
20 SCHEDULED REVIEW CONFERENCE AS A RESULT OF A TECHNICAL
21 VIOLATION WHICH IS THE SUBJECT OF PARAGRAPH (8) (II), THEN IF
22 ALL OTHER CONDITIONS ARE SATISFIED, A PROBATION REVIEW
23 CONFERENCE WILL BE HELD SIX MONTHS AFTER THE DATE THAT THE
24 TECHNICAL VIOLATION OCCURRED.

25 (9) Following the probation review conference, the court
26 shall terminate probation unless the court finds by a
27 preponderance of the evidence any of the following:

28 (i) The conduct of the defendant on probation
29 creates an identifiable threat to public safety,
30 including consideration of whether the defendant is the

1 subject of an active protection from abuse order under 23
2 Pa.C.S. Ch. 61 (relating to protection from abuse) or an
3 active protection from intimidation order under 18
4 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness
5 intimidation).

6 (ii) The defendant has not successfully completed
7 all treatment or other programs required as a condition
8 of probation and termination of probation would either
9 prevent the defendant from continuing in the court-
10 mandated treatment or programming that the court
11 determines is still necessary to aid in the defendant's
12 rehabilitation or would create a substantial likelihood
13 that the defendant would discontinue the treatment or
14 programs.

15 (iii) The defendant has failed to pay the total
16 restitution owed by the defendant.

17 (10) If the court does not terminate probation at a
18 probation review conference solely because of the defendant's
19 failure to pay restitution in full, the court shall order
20 that the defendant be placed on administrative probation if
21 the defendant either has paid at least 50% of the restitution
22 owed or the court determines, considering the defendant's
23 resources, income and family, legal or other obligations,
24 that the defendant has made a good faith effort to pay. For
25 purposes of this paragraph, "administrative probation" shall
26 be defined as probation imposed under this paragraph that:

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

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

1 (iii) Requires a defendant to pay the remaining
2 restitution owed, as ordered by the court on a schedule
3 that the defendant can afford to pay.

4 (iv) Does not impose any other condition of
5 probation.

6 (11) If the court does not terminate probation at a
7 probation review conference, the defendant shall receive
8 written notice of the court's order detailing its findings.
9 The defendant shall be eligible for a subsequent probation
10 review conference no later than 12 months after the date of
11 the most recent probation review conference.

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

15 (i) The defendant was convicted of an offense listed
16 under Subchapter H (relating to registration of sexual
17 offenders) or I (relating to continued registration of
18 sexual offenders) of Chapter 97.

19 (ii) The defendant was convicted of a crime of
20 violence.

21 (iii) The defendant was convicted of an offense
22 under 18 Pa.C.S. § 2701 (relating to simple assault) or
23 2709.1 (relating to stalking) against a family or
24 household member.

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

26 (i) Prevent a defendant from petitioning a court for
27 early termination of probation or modification of the
28 terms and conditions of probation as otherwise permitted
29 by law.

30 (ii) Prohibit the court, in its discretion, from

1 eliminating or decreasing the term of probation under
2 subsection (d).

3 (III) DIMINISH THE COURT'S POWER TO: <--

4 (A) OTHERWISE, AT ANY TIME, TERMINATE CONTINUED
5 SUPERVISION OR LESSEN THE CONDITIONS UPON WHICH AN
6 ORDER OF PROBATION HAS BEEN IMPOSED;

7 (B) CREATE OR ADMINISTER A PROCESS OR PROGRAM
8 WHICH SEEKS TO TERMINATE CONTINUED SUPERVISION OR
9 LESSEN THE CONDITIONS UPON WHICH AN ORDER OF
10 PROBATION HAS BEEN IMPOSED; OR

11 (C) SEEK INFORMATION FROM THE COMMONWEALTH, THE
12 DEFENDANT, VICTIM, COUNTY PROBATION OFFICER OR ANY
13 OTHER INDIVIDUAL OR ENTITY TO ASSIST IN THESE
14 PROCESSES OR PROGRAMS.

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

18 "Crime of violence." As defined in section 9714(g) (relating
19 to sentences for second and subsequent offenses).

20 "Family or household members." As defined in 23 Pa.C.S. §
21 6102(a) (relating to definitions).

22 "Technical violation." A violation of the terms and
23 conditions of a defendant's sentence, other than by the
24 commission of a new crime of which the defendant is convicted or
25 found guilty by a judge or jury or to which the defendant pleads
26 guilty or nolo contendere in a court of record.

27 Section 3. This act shall apply as follows:

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

30 (2) Except for the addition of 42 Pa.C.S. § 9771(e),

1 this act shall apply to individuals sentenced or resentenced
2 prior to the effective date of this section.

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

7 Section 5. Courts shall ensure that the probation of all
8 individuals sentenced or resentenced prior to the effective date
9 of this section are reviewed to determine whether the
10 individuals should be considered for early termination of
11 probation or modification of the terms and conditions of
12 probation. The review shall occur at the later of two years
13 after the effective date of this section or:

14 (1) the date the individual has completed three years of
15 probation following a misdemeanor conviction or five years of
16 probation following a felony conviction; or

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

19 (i) The sentence or sentences imposed are all
20 misdemeanors and are based on the same conduct or arise
21 from the same criminal episode, the defendant shall be
22 eligible for a probation review conference at the initial
23 completion of three years of probation by the defendant.

24 (ii) The sentence or sentences imposed include a
25 felony and are based on the same conduct or arise from
26 the same criminal episode, the defendant shall be
27 eligible for a probation review conference at the initial
28 completion of five years of probation by the defendant.

29 For each case under review, the defendant and the Commonwealth
30 shall have the opportunity, in advance of a decision, to provide

1 written comments to the court. Courts may by local rule adopt
2 such procedures as they deem appropriate to accomplish the
3 reviews.

4 Section 6. When a court, either as a result of a petition or
5 as a result of its review under section 5 of this act, seeks to
6 determine whether an individual sentenced or resentenced prior
7 to the effective date of this section should be considered for
8 early termination of probation or modification of the terms and
9 conditions of probation, the court shall ensure that due
10 consideration is given to whether the individual has
11 successfully satisfied the conditions contained in 42 Pa.C.S. §
12 9771(e)(3)(i), (ii), (iii), (iv), (v), (vi) and (vii) or has
13 engaged in behavior that would have otherwise made the
14 individual eligible for the reductions in time specified in 42
15 Pa.C.S. § 9771(e)(5), (i), (ii) and (iii).

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

18 (1) The defendant committed one of the following
19 technical violations within the nine months immediately
20 preceding the defendant's probation review conference:

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

22 (ii) A technical violation that involved assaultive
23 behavior or included a credible threat to cause bodily
24 injury to another.

25 (iii) A technical violation that involved possession
26 or control of a weapon.

27 (iv) The defendant absconded.

28 (v) A technical violation that involved an
29 identifiable threat to public safety.

30 (vi) A technical violation which involved an

1 intentional and unexcused failure to adhere to
2 recommended programming or conditions on more than three
3 occasions.

4 (2) The defendant committed any other technical
5 violation not enumerated in paragraph (1) within the six
6 months immediately preceding the defendant's probation review
7 conference.

8 (3) The defendant was convicted of a misdemeanor or
9 felony offense committed while either incarcerated or serving
10 probation.

11 (4) The defendant was convicted of an offense listed
12 under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
13 sexual offenders) or I (relating to continued registration of
14 sexual offenders).

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

16 (6) The defendant was convicted of an offense under 18
17 Pa.C.S. § 2701 (relating to simple assault) or 2709.1
18 (relating to stalking) against a family or household member.
19 Section 8. This act shall take effect January 1, 2021.