
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 5 Session of
2021

INTRODUCED BY BARTOLOTTA, A. WILLIAMS, KEARNEY, FONTANA, STREET,
TARTAGLIONE, COLLETT, MENSCH, PITTMAN, STEFANO, CAPPELLETTI,
KANE, BOSCOLA AND HAYWOOD, MARCH 19, 2021

REFERRED TO JUDICIARY, MARCH 19, 2021

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in judicial boards and
3 commissions, providing for adoption of guidelines for
4 administrative probation violations; and, in sentencing,
5 further providing for sentencing generally, for order of
6 probation, for modification or revocation of order of
7 probation and for court-imposed sanctions for violating
8 probation and providing for resentencing of certain offenders
9 incarcerated due to revocation of probation.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Title 42 of the Pennsylvania Consolidated
13 Statutes is amended by adding a section to read:

14 § 2154.8. Adoption of guidelines for administrative probation
15 violations.

16 Within 180 days of the effective date of this section, the
17 commission shall adopt guidelines for a graduated response to
18 administrative probation violations. The guidelines may not
19 include imprisonment for more than 30 days.

20 Section 2. Section 9721(a.1) of Title 42 is amended by
21 adding a paragraph to read:

1 § 9721. Sentencing generally.

2 * * *

3 (a.1) Exception.--

4 * * *

5 (4) A court may not impose a sentence of probation
6 consecutive to another sentence of probation, total
7 confinement or State or county intermediate punishment.

8 * * *

9 Section 3. Sections 9754, 9771 and 9771.1 of Title 42 are
10 amended to read:

11 § 9754. Order of probation.

12 (a) General rule.--In imposing an order of probation the
13 court shall specify at the time of sentencing the length of any
14 term during which the defendant is to be supervised[, which term
15 may not exceed the maximum term for which the defendant could be
16 confined, and the authority that shall conduct the supervision.]
17 and that the term of probation may be continued, extended or
18 terminated. The court shall consider probation guidelines
19 adopted by the Pennsylvania Commission on Sentencing under
20 sections 2154 (relating to adoption of guidelines for
21 sentencing) and 2154.1 (relating to adoption of guidelines for
22 restrictive conditions).

23 (a.1) Misdemeanors and felonies.--The total probation period
24 may not exceed the following:

25 (1) for a felony, five years; and

26 (2) for a misdemeanor, three years.

27 (a.2) Nonpayment of fines, costs or restitution.--The court
28 may not extend the period of supervision due to nonpayment of
29 fines, costs or restitution unless the court makes a finding on
30 the record that the defendant is financially able to pay and has

1 willfully refused to do so.

2 (b) Conditions generally.--The court shall attach reasonable
3 conditions authorized by section 9763 (relating to conditions of
4 probation) as it deems necessary to ensure or assist the
5 defendant in leading a law-abiding life.

6 (d) Sentence following violation of probation.--The sentence
7 to be imposed in the event of the violation of a condition shall
8 [not be fixed prior to a finding on the record that a violation
9 has occurred.] conform with the guidelines adopted under section
10 2154.8 (relating to adoption of guidelines for administrative
11 probation violations).

12 § 9771. Modification or revocation of order of probation.

13 (a) General rule.--The court has inherent power to at any
14 time terminate continued supervision, lessen the conditions upon
15 which an order of probation has been imposed or increase the
16 conditions under which an order of probation has been imposed
17 upon a finding that a person presents an identifiable threat to
18 public safety.

19 (b) Revocation.--The court may increase the conditions,
20 impose a brief sanction under section 9771.1 (relating to court-
21 imposed sanctions for violating probation) or revoke an order of
22 probation upon proof of the violation of specified conditions of
23 the probation. Upon revocation the sentencing alternatives
24 available to the court shall be [the same as were available at
25 the time of initial sentencing, due consideration being given to
26 the time spent serving the order of probation] those adopted
27 under section 2154.8 (relating to adoption of guidelines for
28 administrative probation violations). The attorney for the
29 Commonwealth may file notice at any time prior to resentencing
30 of the Commonwealth's intention to proceed under an applicable

1 provision of law requiring a mandatory minimum sentence.

2 (c) Limitation on sentence of total confinement.--[The]
3 Except for defendants who were admitted to a program established
4 under section 9771.1 (relating to court-imposed sanctions for
5 violating probation), the court shall not impose a sentence of
6 total confinement upon revocation unless it finds that:

7 (1) the defendant has been convicted of another [crime;
8 or] felony, in which case the court may sentence the
9 defendant to the sentencing alternatives available at the
10 time of the initial sentencing;

11 (1.1) the defendant has been convicted of another
12 misdemeanor, in which case the court may sentence the
13 defendant to imprisonment for not more than six months; or

14 (2) the conduct of the defendant indicates that it is
15 likely that [he] the defendant will commit another crime if
16 [he] the defendant is not imprisoned[; or

17 (3) such a sentence is essential to vindicate the
18 authority of the court.] and no other condition of
19 supervision or treatment would decrease the likelihood that
20 the defendant will commit a future crime, in which case the
21 court may sentence the defendant to imprisonment for not more
22 than 30 days.

23 (d) Hearing required.--There shall be no revocation or
24 increase of conditions of sentence under this section except
25 after a hearing at which the court shall consider the record of
26 the sentencing proceeding together with evidence of the conduct
27 of the defendant while on probation. Probation may be eliminated
28 or the term decreased without a hearing.

29 (e) Early termination of probation for merit time.--Where a
30 defendant has successfully completed 18 months of supervised

1 probation without violation or revocation, the probation
2 sentence shall be terminated by the county probation department.

3 § 9771.1. Court-imposed sanctions for violating probation.

4 (a) Program.--Notwithstanding the provisions of section 9771
5 (relating to modification or revocation of order of probation),
6 the court of common pleas of a judicial district may establish a
7 program to impose swift, predictable and brief sanctions on
8 persons who violate their probation.

9 (b.1) Warning.--

10 (1) At the time of sentencing, the court shall hold a
11 warning hearing for each participant in the program to
12 clearly communicate program expectations and consequences and
13 to encourage the participant's compliance and success.

14 (2) The court shall emphasize the expectations that the
15 participant remain drug free and comply with any treatment or
16 services ordered by the court as a condition of the
17 participant's probation.

18 (3) The court shall put the participant on notice that
19 each probation violation, including missed appointments and
20 positive drug tests, will result in jail time as provided for
21 under subsection (g).

22 (4) A warning shall be provided to the participant at
23 the warning hearing verbally and in writing.

24 (f) Violation hearing.--If a participant commits a probation
25 violation, the participant shall promptly be arrested, and a
26 hearing shall be held no later than two business days after the
27 arrest date.

28 (g) Sanctions.--

29 (1) The court shall impose a term of imprisonment of up
30 to:

1 (i) three days for a first violation;
2 (ii) seven days for a second violation;
3 (iii) fourteen days for a third violation; and
4 (iv) twenty-one days for a fourth or subsequent
5 violation of probation.

6 (2) The court may allow the term of imprisonment to be
7 served on weekends or other nonwork days for employed
8 probationers who have committed a first or second violation.

9 (3) The court may increase the conditions of probation,
10 including additional substance abuse treatment for a
11 participant who has failed one or more drug tests.

12 (h) Exceptions.--If the participant is able to provide a
13 compelling reason for the probation violation, the court may
14 grant an exception to the sanctions authorized under subsection
15 (g).

16 (i) Revocation of probation.--

17 (1) After a third violation, the court may revoke the
18 order of probation.

19 (2) Upon revocation, the sentencing alternatives shall
20 be [the same as were available at the time of initial
21 sentencing, due consideration being given to the time spent
22 serving the order of probation] in accordance with section
23 9771(c).

24 (j) Local rules.--

25 (1) The court may adopt local rules for the
26 administration of this program. [Except as provided for under
27 paragraph (2), the] The local rules [may not be inconsistent]
28 must be consistent with this section or any rules adopted by
29 the Supreme Court.

30 [(2) The court may adopt local rules that are

1 inconsistent with subsection (g) regarding the terms of
2 imprisonment or other sanctions or conditions provided for
3 under subsection (g).]

4 Section 4. Title 42 is amended by adding a section to read:
5 § 9771.2. Resentencing of certain offenders incarcerated due to
6 revocation of probation.

7 (a) General rule.--The sentencing court shall resentence a
8 defendant as provided under section 9771(c) (relating to
9 modification or revocation of order of probation) upon petition
10 of the defendant and proof of all of the following:

11 (1) The defendant's probation sentence was revoked and
12 the petitioner was sentenced to imprisonment for more than
13 one year as a result of an administrative probation
14 violation.

15 (2) The defendant has no disciplinary infractions during
16 imprisonment.

17 (3) The defendant has no pending criminal charges or
18 convictions for a new offense since the date the petitioner
19 was placed on probation.

20 (b) Petition procedure.--The petition for resentencing shall
21 be recognized as an authorized motion for sentence modification,
22 assigned an identification code by the Administrative Office of
23 Pennsylvania Courts and shall not require payment of a filing
24 fee.

25 (c) Successive petitions.--A successive petition may not be
26 considered by the sentencing court unless new grounds are raised
27 in the petition. Any successive petition that is not scheduled
28 for a hearing within 30 days after filing shall be deemed denied
29 by operation of law.

30 Section 5. This act shall take effect immediately.