



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 838 AS AMENDED BY A03337

PRINTER'S NO. 1113

PRIME SPONSOR: Baker

COST / (SAVINGS)

FUND	FY 2023/24	FY 2024/25
General Fund	See Fiscal Impact	See Fiscal Impact

SUMMARY:

Amends Title 42 (Judiciary and Judicial Procedure) to provide for conditions of probation, the modification or revocation of orders of probation, and probation review conferences.

ANALYSIS:

Senate Bill 838 amends Title 42 (Judiciary and Judicial Procedure) to clarify and establish procedures for conditions of probation, the modification or revocation of an order of probation, and probation review conferences.

Conditions of Probation

Section 9763 is amended to clarify that conditions of parole shall be assessed and ordered based on individualized circumstances. These circumstances can include consideration of child-care responsibilities and limitations and study or vocational training initiatives. The legislation loosens the requirement that a defendant be subject to intense supervision to one which requires the defendant to notify the court or designated person of any change in address or employment within fifteen days.

Modification or revocation of order of probation

The legislation clarifies that the court must find, by clear and convincing evidence, that a person presents an identifiable threat to public safety to terminate continued supervision, lessen the conditions upon which an order of probation has been imposed, or increase the conditions. Further, the court may not extend the period of probation due to nonpayment of fines or costs unless the court finds that the defendant was financially able to pay the fines and willfully refused to do so.

The bill also establishes a presumption against total confinement for technical violations of parole. A court may only impose a sentence of total confinement upon revocation for the following circumstances:

- The defendant was convicted of another crime.
- The court finds that the defendant committed a technical violation that involves an identifiable threat to public safety and cannot be safely diverted through less restrictive means.
- The defendant committed a technical violation and any of the following apply:
 - The violation was sexual in nature.
 - The violation involved assaultive behavior.
 - The violation involved possession or control of a firearm or dangerous weapon.
 - The violation involved the manufacture, sale, delivery, or possession with the intent to manufacture, sell, or deliver, a controlled substance or other drug regulated under The

Controlled Substance, Drug, Device and Cosmetic Act.

- The defendant absconded and cannot safely be diverted from total confinement through less restrictive means.
- The violation involved an intentional and unexcused failure to adhere to recommended programming or conditions on three or more separate occasions.

If the court imposes a sentence of total confinement following a revocation, after considering the employment status of the defendant, the legislation establishes limitations to the amount of time that an individual can be sentenced for first, second, third, and subsequent violations. The court is also permitted to order a period of additional confinement to allow a defendant to either be evaluated or to participate in a court-ordered drug, alcohol, or mental health treatment program or problem-solving court.

Probation Review Conference

The bill adds Section 9774, which establishes probation review conferences for the purpose of early probation termination. The legislation provides the guidelines for probation review conference eligibility, the criteria to establish eligibility for an accelerated early review conference, and the guidelines for future probation review conference eligibility for individuals who were not initially eligible. The court is required to hold a probation review conference no later than sixty days from the date that the defendant is eligible. No later than thirty days prior to the date of the conference, the probation office is required to submit a probation status report to the defendant, the defendant's last counsel of record, the court, the Commonwealth, and any victim registered either with the Office of Victim Advocate or a county victim witness program. The requirements for the report are outlined in the legislation. The Commonwealth, the defendant, and the victim have thirty days from the date of the status report to respond to object, provide input, or respond to the report.

Probation is terminated following the probation review conference unless the court finds that the conduct of the defendant while on probation created an identifiable threat to public safety, that the defendant has not successfully completed all treatment or other programs required as a condition or parole and that the programming is still necessary for rehabilitation, or that the defendant failed to pay the total restitution owed. If early termination was not approved due to the failure to pay restitution, the legislation allows for the defendant to be placed on administrative probation if half of their restitution was paid or if the court determines that a good faith effort was made to pay the restitution. Defendants for whom early termination is not approved are eligible for a subsequent probation review conference no later than twelve months after the date of the most recent probation review conference.

This legislation would take effect in 180 days upon enactment. The legislation provides guidelines for the application of this act to individuals sentenced on, after, and prior to the effective date of the act.

FISCAL IMPACT:

According to the Pennsylvania Commission on Sentencing, a conservative estimate of the impact of this legislation on the state prison population is a reduction or future avoidance of 411 inmates. The 2021/22 marginal cost per day for an avoidance in population of this size is \$67.49 per inmate per day. Therefore, enactment of this legislation will result in approximately \$10 million in annual savings for the Pennsylvania Department of Corrections.

The legislation should also result in savings to counties through a reduction in their county prison population. Although marginal costs are not available for county facilities, the average annual cost to incarcerate someone in a county jail in 2022 was \$43,701.

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House Appropriations Committee (D)

DATE: December 12, 2023

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.