

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 838

PRINTER NO. 973

AMOUNT

See Fiscal Impact

FUND

General Fund
Local Government Funds

DATE INTRODUCED

June 21, 2023

PRIME SPONSOR

Senator Baker

DESCRIPTION

Senate Bill 838 amends Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes further providing for conditions of probation, modification or revocation of order of probation and probation review conferences.

Title 42 is amended by adding section 9774.1 (relating to probation review conference) providing that the court shall hold a probation review conference (review) no later than 60 days from the date the defendant is eligible.

A defendant shall be eligible for an initial review as follows:

- 1) After completing two years of probation or 50% of the probation sentence, whichever is sooner, if the offense for which a sentence of probation was imposed was a misdemeanor;
- 2) After completing four years of probation or 50% of the probation sentence, whichever is sooner, if the offense for which a sentence of probation was imposed was a felony; and
- 3) If the sentence(s) imposed arose out of conviction for multiple offenses which the court ordered to be served consecutively, after completing two years of probation or 50% of the probation sentence, whichever is sooner, if the offenses for which a sentence of probation was imposed were misdemeanors or after completing four years of probation or 50% of the probation sentence, whichever is sooner, if the offenses for which a sentence of probation was imposed included a felony.

A defendant shall not be eligible for a review less than 12 months from the original date of sentencing.

A defendant shall be eligible for an early review six months early if the defendant successfully satisfies any of the following conditions while serving the term of probation:

- 1) Earns a high school diploma or GED;
- 2) Earns an associate degree, bachelor's degree or master's degree;
- 3) Obtains a vocational or occupational license, certificate, registration, or permit;

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- 4) Completes a certified vocational, certified technical or certified career education or training program; or
- 5) Any other condition approved by the court at the time of sentencing that substantially assists the defendant in leading a law-abiding life or furthers the rehabilitative needs of the defendant.

A defendant shall be eligible for an additional six-month early review if they complete two of the conditions from the specified list above.

No later than 30 days prior to the date the defendant becomes eligible for the review, the probation officer shall complete and submit a probation status report (report) to the defendant, the court, the Commonwealth and any victim registered with either the Pennsylvania Office of Victim Advocate or a county victim witness program. The report shall detail the defendant's progress and a recommendation to:

- 1) Terminate probation;
- 2) Continue probation; or
- 3) Continue probation under modified conditions.

All recipients of the report shall have 30 days to object or otherwise respond to the report. If a party objects to all or any component of the report, the court shall hold a conference. If none of the parties object, the hearing shall be deemed waived, and the court shall enter an order memorializing the recommendation of the probation officer in the report.

Immediately following the review, the court shall terminate probation unless the court finds:

- 1) The defendant created a threat to public safety while on probation;
- 2) The defendant failed to complete all treatment or other programs required as a condition of probation; or
- 3) The defendant failed to pay restitution.

A defendant shall not have their probation terminated under any of the following circumstances:

- 1) The defendant was convicted of a misdemeanor of the first or second degree or a felony offense of any degree committed while on probation;
- 2) The defendant committed a technical violation involving an identifiable threat to public safety within the six months prior to the review;
- 3) The defendant committed one of the following technical violations within the 6 months prior to the review:
 - A violation sexual in nature;
 - Assault;
 - A violation involving a firearm;
 - Sale, delivery or possession of a controlled substance;

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- Absconding; or
- Failure to adhere to recommended programming or conditions on three or more separate occasions.

If a court imposes a sentence of total confinement following a revocation, the basis of which is for one or more technical violations, the defendant shall be sentenced as follows:

- 1) For a first technical violation, a maximum period of 14 days;
- 2) For a second technical violation, a maximum period of 30 days;
- 3) For a third or subsequent technical violation, the court may impose any sentencing alternatives available at the time of initial sentencing; and
- 4) The court shall consider allowing the term of incarceration to be served on weekends or other nonwork days for employed probationers who have committed a first or second technical violation.

If the court does not terminate because of failure to pay restitution, the defendant shall be placed on administrative probation, which requires the defendant to make regular payments and check in no more than quarterly but otherwise does not impose any additional conditions or require supervision fees.

A defendant shall not be entitled to a probation review conference or to early termination of probation if the defendant has ever been convicted of:

- 1) An offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- 2) A crime of violence;
- 3) An offense listed under Subchapter H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) of Chapter 97;
- 4) An offense under 18 Pa.C.S. § 2701 (relating to simple assault) when committed against a family or household member; or
- 5) An offense under 18 Pa.C.S. § 2709.1 (relating to stalking).

This act shall take effect in 180 days.

FISCAL IMPACT:

According to data provided by the Pennsylvania Commission on Sentencing, the Pennsylvania Department of Corrections estimates a reduction in the state prison population of 356 inmates as a result of this legislation. The marginal cost for 300-600 inmates is \$67.49 per inmate per day. Therefore, enactment of this legislation will result in a \$8.8 million annual savings to the Pennsylvania Department of Corrections.

Additionally, there will be savings to counties through a reduction in county prison population and changes to the terms of probation. Using a minimum marginal cost

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of \$29.44 per inmate per day, a county would realize an annual savings of \$107,456 for every 10 defendants diverted from county jail.