AMENDMENTS TO HOUSE BILL NO. 1555

Sponsor: REPRESENTATIVE KAUFFMAN

Printer's No. 1937

Amend Bill, page 1, lines 1 through 6, by striking out all of said lines and inserting

Amending Titles 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole) of the Pennsylvania Consolidated States, in sentencing, further providing for order of probation and for modification or revocation of order of probation; in other criminal provisions, further providing for definitions and for supervisory relationship to offenders; and, in Pennsylvania Board of Probation and Parole, further providing for supervisory relationship to offenders.

Amend Bill, page 1, lines 9 through 20; pages 2 through 11, lines 1 through 30; by striking out all of said lines on said pages and inserting

Section 1. Section 9754(c) of Title 42 of the Pennsylvania Consolidated Statutes is amended and the section is amended by adding a subsection to read:

§ 9754. Order of probation.

* * *

(c) Specific conditions.--The court may as a condition of its order require the defendant:

(1) To meet his family responsibilities<u>, including consideration of child care responsibilities and limitations</u>.

(2) To devote himself to a specific occupation [or]<u>,</u> employment or <u>education initiative</u>.

(2.1) To participate in a public or nonprofit community service program unless the defendant was convicted of murder, rape, aggravated assault, arson, theft by extortion, terroristic threats, robbery or kidnapping.

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

(4) To pursue a prescribed secular course of study or vocational training.

(5) To attend or reside in a facility established for the instruction, recreation, or residence of persons on

probation.

[(6) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons.]

(7) To have in his possession no firearm or other dangerous weapon unless granted written permission.

(8) To make restitution of the fruits of his crime or to make reparations, in an amount and on a schedule that he can afford to pay, for the loss or damage caused thereby.

(9) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment.

(10) To report as directed to the court or the probation officer and to permit the probation officer to visit his home.

(11) To pay such fine as has been imposed.

(12) To participate in drug or alcohol treatment programs.

(13) To satisfy any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience.

(14) To remain within the premises of his residence during the hours designated by the court.

* * *

(e) Prescribed medications.--A court may not, as a condition of probation, prohibit the lawful possession or use of a prescribed medication, including medical marijuana, unless:

(1) the defendant is being sentenced for an offense under Chapter 13 of the act of April 17, 2016 (P.L.84, No.16), known as the Medical Marijuana Act, or the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act; or

(2) the court determines that a prohibition against the possession or use of a lawfully prescribed medication is necessary and appropriate to meet the sentencing standards articulated in section 9721 (relating to sentencing generally).

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

§ 9771. Modification or revocation of order of probation.

* * *

(b.1) Nonpayment of fines or costs.--Notwithstanding subsection (b), the court may not extend the period of probation solely due to nonpayment of fines or costs unless the court finds that the defendant is financially able to pay and has willfully refused to do so.

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

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

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

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

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

(2) A court may impose a sentence of total confinement upon revocation if the defendant committed a technical violation and any of the following apply:

(i) The technical violation was sexual in nature.

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

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

(iv) The defendant absconded and cannot be safely diverted from incarceration.

(v) There exists an identifiable threat to public safety, and the defendant cannot be safely diverted from incarceration.

(vi) The technical violation involved an intentional and unexcused failure to adhere to recommended programming or conditions on more than three occasions, and the defendant cannot be safely diverted from incarceration.

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

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

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

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

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

(v) 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.

* * *

(e) Possession or use of prescribed medications.--A court may not consider a defendant's lawful possession or use of a prescribed medication, including medical marijuana, as a basis

for the modification or revocation of an order of probation unless a prohibition on the possession or use of the prescribed medication is a condition of the defendant's probation.

(f) Mandatory probation review conference.--

(1) A defendant shall be eligible for an initial probation review conference as follows:

(i) Subject to subparagraph (ii), after the defendant has completed three years of probation following a misdemeanor conviction or five years of probation following a felony conviction.

(ii) Any of the following:

(A) If the sentence imposed arises out of convictions for multiple offenses but does not include a conviction of a felony offense, after the defendant has completed three years of probation.

(B) If the sentence imposed arises out of convictions for multiple offenses and includes at least one felony conviction, after the defendant has completed five years of probation.

(2) Unless waived under subsection (d), the court shall hold a probation review conference no later than 60 days from the date the defendant is eligible.

(3) A defendant shall be eligible for an initial probation review conference six months prior to the date that the defendant would otherwise be eligible under paragraph (1) if the defendant successfully satisfies any of the following conditions while serving the term of probation:

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

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

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

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

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

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

(vii) 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.

(4) A defendant serving probation following a felony conviction shall be eligible for an initial probation review conference up to a total of 12 months prior to the date that the defendant would otherwise be eligible under paragraphs (1) if the defendant satisfies two or more of the conditions under paragraph (3).

(5) To qualify a defendant for an accelerated initial probation review conference under paragraph (3) or (4), any condition under paragraph (3)(v), (vi) or (vii) must be approved by the Pennsylvania Commission on Crime and Delinquency or any advisory committee of that commission designated to provide approval.

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

(7) Notwithstanding paragraphs (1) and (10), no defendant shall be eligible for a probation review conference if the defendant:

(i) committed a technical violation within the 18 months immediately preceding the defendant's probation review conference; or

(ii) was convicted of a misdemeanor or felony offense committed while either incarcerated or serving probation.

(8) Following the probation review conference, the court shall terminate probation unless the court finds any of the following:

(i) The conduct of the defendant on probation is such that there exists an identifiable threat to public safety, including consideration of whether the defendant is the subject of an active protection from abuse order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or an active protection from intimidation order under 18 Pa.C.S. Ch. 49 Subch. B (relating to victim and witness intimidation).

(ii) The defendant has not successfully completed all treatment or other programs required as a condition of probation, or the court otherwise finds that termination would substantially jeopardize the rehabilitative needs of the defendant.

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

(9) If the court does not terminate probation at a probation review conference solely because of the defendant's failure to pay restitution in full, the court shall order that the defendant be placed on administrative probation if the defendant has paid at least 50% of the restitution owed. An eligible defendant placed on administrative probation shall do all of the following and not be subject to any other conditions of probation:

(i) Make supervision contact at least one time per year.

(ii) Provide updated contact information upon a change in residence or employment.

(iii) Pay the remaining restitution owed, as ordered by the court.

(10) If the court does not terminate probation at a probation review conference, the defendant shall be eligible for a subsequent probation review conference no later than 12 months after the date of the most recent probation review conference.

(11) This subsection shall not apply if any of the following has occurred:

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

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

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

(12) Nothing in this subsection shall prohibit the court, in its discretion, from eliminating or decreasing the term of probation under subsection (d).

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

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

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

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

Section 3. Section 9911 of Title 42 is amended by adding a definition to read:

§ 9911. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given in this section unless the context clearly indicates otherwise:

* * *

"Drug trafficking offense." A violation of section 13(a)(14), (30) or (37) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, if the controlled substance or a mixture containing the controlled substance is:

(1) Marijuana, if the amount of marijuana involved is at

least 50 pounds or at least 51 live plants.

(2) A narcotic drug classified in Schedule I or Schedule II under section 3 or 4 of The Controlled Substance, Drug, Device and Cosmetic Act, if the aggregate weight of the compound or mixture containing the substance involved is at least 100 grams.

(3) Any of the following, if the aggregate weight of the compound or mixture of the substance involved is at least 100 grams:

(i) Coca leaves.

(ii) A salt, compound, derivative or preparation of coca leaves.

(iii) A salt, compound, derivative or preparation that is chemically equivalent or identical with any of the substances under subparagraph (i) or (ii).

(iv) A mixture containing any of the substances under subparagraph (i) or (ii), except decocainized coca leaves or extracts of coca leaves which do not contain cocaine or ecgonine.

(4) Any of the following, if the aggregate weight of the compound or mixture of the substance involved is at least 100 grams:

(i) Methamphetamine.

(ii) Phencyclidine.

(iii) A salt, isomer or salt of an isomer of methamphetamine or phencyclidine.

(iv) A mixture containing:

(A) Methamphetamine or phencyclidine.

(B) A salt of methamphetamine or phencyclidine.

(C) An isomer of methamphetamine or phencyclidine.

(D) A salt of an isomer of methamphetamine or phencyclidine.

(5) Heroin or a mixture containing heroin, if the aggregate weight of the compound or mixture containing the heroin is 50 grams or greater.

(6) A mixture containing 3,4-methylenedioxyamphetamine (MDA); 3,4-methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-ethylamphetamine; N-hydroxy-3; or 4-methylenedioxyamphetamine if the aggregate weight of the compound or mixture containing the substance involved is at least 1,000 tablets, capsules, caplets or other dosage units, or 300 grams.

(7) Fentanyl or a mixture containing fentanyl, if the aggregate weight of the compound or mixture containing the fentanyl is 10 grams or more.

(8) Carfentanil or a mixture containing carfentanil, if the aggregate weight of the compound or mixture containing the carfentanil is one gram or more.

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Section 4. Section 9912(d) of Title 42 is amended by adding

a paragraph to read:
§ 9912. Supervisory relationship to offenders.
* * *
(d) Grounds for personal search.--
* * *
(2.1) Notwithstanding paragraphs (1) and (2), the court may order that, as a condition of the offender's probation, an officer employed by the county in which the offender is supervised may conduct a search of the offender or the offender's property without a warrant or reasonable suspicion pursuant to such authorization, if the offender is serving probation as a result of a conviction for one of the following offenses:
(i) An offense if the offender possessed a firearm or an offensive weapon, as those terms are defined in 18 Pa.C.S. § 908(c) (relating to prohibited offensive weapons), during the commission of the offense.
(ii) A drug trafficking offense.
(iii) An offense listed under Subchapter H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) of Chapter 97.
* * *
Section 5. Section 6153(d) of Title 61 is amended by adding a paragraph to read:
§ 6153. Supervisory relationship to offenders.
* * *
(d) Grounds for personal search of offender.--
* * *
(2.1) Notwithstanding paragraphs (1) and (2), the court may order that, as a condition of the offender's probation, an agent may conduct a search of the offender or the offender's property without a warrant or reasonable suspicion pursuant to such authorization, if the offender is serving probation as a result of a conviction for one of the following offenses:
(i) An offense if the offender possessed a firearm or an offensive weapon, as those terms are defined in 18 Pa.C.S. § 908(c) (relating to prohibited offensive weapons), during the commission of the offense.
(ii) A drug trafficking offense, as that term is defined in 42 Pa.C.S. § 9911 (relating to definitions).
(iii) An offense listed under 42 Pa.C.S. Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders).
* * *
Section 6. This act shall apply only to individuals sentenced or resentenced on or after the effective date of this section.
Section 7. This act shall take effect January 1, 2020.