

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1555 Session of  
2019

---

INTRODUCED BY DELOZIER, HARRIS, JONES AND GAINNEY, MAY 30, 2019

---

REFERRED TO COMMITTEE ON JUDICIARY, MAY 30, 2019

---

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in sentencing, further  
3 providing for sentencing generally, for order of probation  
4 and for modification or revocation of order of probation and  
5 providing for resentencing of individuals incarcerated due to  
6 revocation of probation.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 9721(a.1) of Title 42 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a paragraph to read:

11 § 9721. Sentencing generally.

12 \* \* \*

13 (a.1) Exception.--

14 \* \* \*

15 (4) A court may not impose a sentence of probation  
16 consecutive to another sentence of probation.

17 \* \* \*

18 Section 2. Section 9754(a) and (c)(6) and (9) of Title 42  
19 are amended and the section is amended by adding subsections to  
20 read:

1 § 9754. Order of probation.

2 (a) General rule.--In imposing an order of probation the  
3 court shall specify at the time of sentencing the length of any  
4 term during which the defendant is to be supervised[, which term  
5 may not exceed the maximum term for which the defendant could be  
6 confined, and the authority that shall conduct the supervision.]  
7 and that the term of probation may be continued, extended or  
8 terminated.

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

11 (1) For a felony, five years.

12 (2) For a misdemeanor, two years.

13 (a.2) Nonpayment of fines or costs.--The court may not  
14 extend the period of supervision solely due to nonpayment of  
15 fines or costs unless the court makes a finding on the record  
16 that the defendant is financially able to pay and has willfully  
17 refused to do so.

18 \* \* \*

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

21 \* \* \*

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

24 \* \* \*

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

28 \* \* \*

29 Section 3. Section 9771 of Title 42 is amended to read:

30 § 9771. Modification or revocation of order of probation.

1 (a) General rule.--The court may at any time terminate  
2 continued supervision or lessen or increase the conditions upon  
3 which an order of probation has been imposed.

4 (a.1) Preliminary technical violation hearing.--

5 (1) Upon receipt of an allegation made by the  
6 supervising probation officer of a technical violation, the  
7 court will determine whether there is probable cause to  
8 believe that the defendant has committed a technical  
9 violation of the defendant's probation. If it is determined  
10 that probable cause exists, then the court will hold a  
11 preliminary technical hearing to determine if the defendant  
12 should be detained pending the revocation hearing described  
13 in subsection (e).

14 (2) The defendant shall receive notice of the  
15 preliminary hearing through service in the manner described  
16 in this paragraph and be given the opportunity to appear on  
17 his own recognizance. Original process may be served by  
18 delivering notice to:

19 (i) an adult family member with whom the defendant  
20 resides or, if no adult family member is present, an  
21 adult person in charge of the residence;

22 (ii) the clerk or manager of a hotel, inn, apartment  
23 house, boarding house or other place of lodging at which  
24 the defendant resides; or

25 (iii) the agent or person in charge of a usual place  
26 of business or employment of the defendant.

27 (a.2) Failure to appear.--

28 (1) Failure to appear at a preliminary technical  
29 violation hearing may result in the issuance of a bench  
30 warrant.

1           (2) If a defendant is arrested for failing to appear at  
2 the preliminary technical violation hearing under paragraph  
3 (1), the defendant shall be taken to the local criminal court  
4 where a bench warrant hearing shall be conducted after the  
5 individual is lodged in the jail of the county of issuance on  
6 the bench warrant.

7           (3) The defendant shall not be detained under paragraph  
8 (2) without a bench warrant hearing longer than 72 hours or  
9 the close of the next business day if the 72 hours expires on  
10 a nonbusiness day. The court will determine whether the  
11 defendant shall be detained pending the technical violation  
12 revocation hearing under subsection (e).

13 (a.3) Hearing procedure.--

14           (1) At the preliminary technical violation hearing, the  
15 defendant shall:

16                 (i) Receive notice of the alleged technical  
17 violation of probation.

18                 (ii) Have the right to present evidence on the  
19 defendant's behalf.

20                 (iii) Be provided counsel.

21                 (iv) Be provided a written hearing disposition  
22 report.

23           (2) The court shall determine if the defendant shall be  
24 detained pending the technical violation revocation hearing  
25 under subsection (e). The defendant may be detained only upon  
26 a clear and convincing finding that the defendant presents a  
27 substantial risk of willfully failing to appear at an  
28 adjudicatory hearing or poses a significant and immediate  
29 threat to the public, and that no condition or combination of  
30 conditions will reasonably assure the defendant's appearance

1 at the technical violation revocation hearing.

2 (b) Revocation.--The court may revoke an order of probation  
3 upon proof of the violation of specified conditions of the  
4 probation. Upon revocation [the sentencing alternatives  
5 available to the court shall be the same as were available at  
6 the time of initial sentencing, due consideration being given to  
7 the time spent serving the order of probation.]:

8 (1) If the defendant has been convicted of a new felony,  
9 the sentencing alternatives available to the court shall be  
10 the same as were available at the time of the defendant's  
11 initial sentencing, and due consideration shall be given to  
12 the time spent serving the order of probation.

13 (2) If the defendant has been convicted of a new  
14 misdemeanor, the sentencing alternatives available to the  
15 court shall be the same as were available at the time of the  
16 defendant's initial sentencing, but the defendant's sentence  
17 may include a term of imprisonment of up to 90 days.

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

21 (1) the defendant has been convicted of [another] a new  
22 crime; or

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

26 (3) such a sentence is essential to vindicate the  
27 authority of the court.] and no other condition of

28 supervision or treatment would decrease this likelihood, in  
29 which case the court may sentence the defendant to the  
30 following terms of imprisonment:

1           (i) Up to seven days of imprisonment upon the third  
2           technical violation of specific conditions.

3           (ii) Up to 15 days of imprisonment upon the fourth  
4           technical violation of specific conditions.

5           (iii) Up to 30 days of imprisonment for every  
6           technical violation of specific conditions thereafter.

7           (c.1) Further limitation on sentence of total confinement.--  
8           Notwithstanding subsection (c), an individual on probation shall  
9           not be sentenced to a term of imprisonment for a probation  
10           violation if the violation is:

11           (1) By an individual who has been issued an  
12           identification card under the act of April 17, 2016 (P.L.84,  
13           No.16), known as the Medical Marijuana Act, who tests  
14           positive for marijuana.

15           (2) For associating with another person with a criminal  
16           record or for traveling out of the jurisdiction without  
17           permission, unless it can be shown by clear and convincing  
18           evidence that the travel was to permanently avoid  
19           supervision.

20           (d) Hearing required.--There shall be no revocation or  
21 increase of conditions of sentence under this section except  
22 after a technical violation revocation hearing [at which the  
23 court shall consider the record of the sentencing proceeding  
24 together with evidence of the conduct of the defendant while on  
25 probation.] and the following shall apply:

26           (1) The hearing shall be scheduled upon the  
27           determination of probable cause at a preliminary technical  
28           violation hearing under subsection (a.1).

29           (2) The court shall hold a technical violation  
30           revocation hearing to determine whether the facts warrant

1 revocation of the defendant's probation and whether probation  
2 is still an effective vehicle to accomplish the  
3 rehabilitation and a sufficient deterrent against future  
4 criminal conduct.

5 (3) Probation may be eliminated or the term decreased  
6 without a hearing.

7 (e) Technical violation revocation hearing procedure.--

8 (1) Upon a determination of probable cause at a  
9 preliminary technical violation revocation hearing under  
10 subsection (a.1), a written request for a technical violation  
11 revocation hearing shall be filed with the clerk of courts.  
12 The request may be filed by the appropriate probation  
13 department.

14 (2) The technical violation revocation hearing shall be  
15 held before the defendant's sentencing judge or a judge  
16 generally assigned to hear violations of probation.

17 (3) The court shall schedule a technical violation  
18 revocation hearing within a reasonable amount of time after  
19 receiving the written request for a hearing required under  
20 paragraph (1).

21 (4) The defendant shall be provided legal counsel and  
22 the opportunity to be heard in person and present witnesses  
23 and documentary evidence.

24 (5) The defendant shall be provided the right to  
25 confront and cross-examine witnesses.

26 (f) Sentencing procedures.--The following apply:

27 (1) At the time of sentencing, the court shall afford  
28 the defendant the opportunity to make a statement on the  
29 defendant's behalf and shall afford counsel for the  
30 Commonwealth and the defendant the opportunity to present

1 information and argument relative to sentencing.

2 (2) The court shall state on the record the reasons for  
3 the sentence imposed.

4 (3) The court shall advise the defendant on the record:

5 (i) of the right to file a motion to modify sentence  
6 and to appeal, of the time within which the defendant  
7 must exercise those rights and of the right to assistance  
8 of counsel in the preparation of the motion and appeal;  
9 and

10 (ii) of the rights, if the defendant is indigent, to  
11 proceed in forma pauperis and to proceed with assigned  
12 counsel.

13 (4) The court shall require that a record of the  
14 sentencing proceeding be made and preserved so that the  
15 record can be transcribed as needed. The record shall  
16 include:

17 (i) The record of any stipulation made at a  
18 presentence conference.

19 (ii) A verbatim account of the entire sentencing  
20 proceeding.

21 (g) Motion to modify sentence.--A motion to modify a  
22 sentence imposed after a revocation shall be filed within 10  
23 days of the date of imposition. The filing of a motion to modify  
24 sentence will not toll the 30-day appeal period.

25 (h) Earned credit time.--

26 (1) For each calendar month in which the defendant has  
27 complied with the terms of probation and has not violated any  
28 conditions of probation, the defendant's term of probation  
29 shall be reduced by 14 days.

30 (2) No earned discharge credit may be awarded for a



1 calendar month in which a violation occurred, the defendant  
2 has absconded or the defendant is incarcerated.

3 (3) No earned discharge credit may be awarded for a  
4 partial month or the last full month of supervised probation.

5 (4) This section shall not apply to a defendant whose  
6 probation is for a crime requiring registration under section  
7 9799.15 (relating to period of registration).

8 (5) The reduction of the terms of a defendant's  
9 probation shall be applied to the termination date within 30  
10 days of the end of the month in which the credits were  
11 earned. Earned time credits shall be applied to each  
12 defendant under county probation supervision on or after the  
13 effective date of this subsection.

14 (6) This subsection shall apply retroactively to the  
15 start date of a defendant's sentence of probation for a  
16 defendant who is on probation on the effective date of this  
17 subsection.

18 (i) Educational earned credit time.--

19 (1) A defendant on county probation shall have the  
20 defendant's total community supervision sentence reduced by  
21 90 days if during the period under community supervision, the  
22 defendant:

23 (i) earns a high school diploma or high school  
24 equivalency certificate; or

25 (ii) successfully completes a certified vocational,  
26 certified technical or certified career education or  
27 training program.

28 (2) A defendant's supervision officer shall notify the  
29 court if the defendant earns one or more time credits under  
30 this subsection. On receipt of the notice from the

1 supervision officer, the court shall conduct the review of  
2 the defendant's community supervision to determine if the  
3 defendant is eligible for a reduction or termination of  
4 community supervision, taking into account any time credits  
5 to which the defendant is entitled under this section. A  
6 defendant can use any combination of the educational earned  
7 credit time toward the completion of the period of community  
8 supervision in accordance with this subsection.

9 (j) Early termination of county probation.--

10 (1) Notwithstanding earned credit time under subsection  
11 (h) or (i), upon completion of one-half of the original  
12 probation or two years of probation, whichever is later, the  
13 court shall review the defendant's record and consider  
14 whether to reduce the period or probation, terminate the  
15 period of probation or reduce the conditions of probation,  
16 unless the defendant is delinquent in paying required  
17 restitution, is delinquent in paying the required fines and  
18 costs that the defendant has the ability to pay or has not  
19 completed court-ordered counseling or treatment.

20 (2) If the court does not terminate the defendant's  
21 probation, the court shall review the defendant's record no  
22 less than once every two years after a review under paragraph  
23 (1), unless the defendant is subsequently convicted of a  
24 crime graded as a felony or misdemeanor.

25 (3) The court shall give reasonable notice to the  
26 defendant and the Commonwealth of the review and the  
27 defendant shall have the right to appear.

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

1 "Technical violation." A violation of the terms and  
2 conditions of probation, other than by the commission of a new  
3 crime for which the defendant is convicted or found guilty by a  
4 judge or jury or to which the individual pleads guilty or nolo  
5 contendere.

6 Section 4. Title 42 is amended by adding a section to read:  
7 § 9771.2. Resentencing of individuals incarcerated due to  
8 revocation of probation.

9 (a) General rule.--The sentencing court shall resentence a  
10 defendant as provided under section 9771(d) (relating to  
11 modification or revocation of order of probation) upon petition  
12 of the defendant and proof that the defendant's probation  
13 sentence was revoked and the petitioner was sentenced to  
14 imprisonment in excess of the guidelines provided for under  
15 section 9771(d) as a result of a violation of the specific  
16 conditions of the defendant's probation.

17 (b) Petition procedure.--A petition under subsection (a)  
18 shall be recognized as an authorized motion and shall be  
19 assigned an identification code by the Administrative Office of  
20 Pennsylvania Courts. The filing of a petition under this section  
21 shall not require a fee.

22 (c) Subsequent petitions.--A subsequent petition may not be  
23 considered by the sentencing court unless the petition alleges  
24 and the petitioner proves that the facts upon which the claim is  
25 predicated were unknown to the petitioner at the time of the  
26 original filing and could not have been ascertained by the  
27 exercise of due diligence. A subsequent petition that is not  
28 scheduled for a hearing by the court within 30 days after filing  
29 shall be deemed denied by the court.

30 Section 5. This act shall take effect immediately.