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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 4

AN ACT TO AMEND TITLE 11, TITLE 13, AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE
CRIMINAL JUSTICE SYSTEM, INCLUDING PROBATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4302, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 4302. Definitions.

4 As used in this chapter:

5 (1) “Absconding” means intentionally avoiding supervision by failing to maintain contact or communication
6 with the individual’s probation officer, and reasonable efforts by the probation officer to re-engage the individual have
7 been unsuccessful.

8 (6) “Criminogenic needs” means the nature and circumstances of the offense of the individual on probation
9 and the history and characteristics of the individual on probation.

10 (10) “Non-technical violation” means all of the following:

11 a. The arrest or conviction of an individual on probation for a new felony or misdemeanor offense in
12 violation of state or federal law, other than for a violation of Title 21 that is punishable as an unclassified
13 misdemeanor.

14 b. Absconding.

15 c. Violating a judicially imposed no contact order.

16 d. The ownership, possession, or control of a firearm or deadly weapon, as the terms are defined under §
17 222 of this title, without the approval of the individual on probation’s probation and parole officer.

18 (17) “Serious physical injury” means as defined under § 222 of this title.

19 (18) “Technical violation” means any breach by an individual on probation of any condition of probation
20 imposed by the court or the Department, other than for conduct that constitutes a non-technical violation.

21 (19) “Wilful violation” means an intentional failure to make reasonable efforts to comply with conditions of
22 supervision.

23 Section 2. Amend § 4321, Title 11 of the Delaware Code by making deletions as shown by strike through and
24 insertions as shown by underline as follows:

25 § 4321. Probation and parole officers.

26 (b)(1) The Department shall furnish to each person released under the supervision of the Department a written
27 statement of the conditions of the person’s probation or parole and shall instruct the person regarding these conditions.

28 (3) The officers shall keep informed of the conduct and condition of persons in their charge, shall aid them to
29 secure employment, shall exercise supervision over them, shall see that they are in compliance with and fulfill the
30 conditions of their ~~release~~release, and shall use all suitable methods to aid and encourage them to bring about
31 improvement in their conduct and conditions and to meet their probation or parole obligations. The officers shall use
32 the least restrictive conditions possible to enhance the goals of supervision.

33 (e) Probation and parole officers may be tasked to participate in joint operations with federal authorities while in
34 the performance of the lawful duties of their employment. Any contraband, ~~property and/or property~~, or money seized in
35 the course of ~~such~~ joint operations ~~shall~~ must be apportioned in accordance with federal distribution guidelines. Any
36 distribution to probation and parole shall become the property of the Department of Correction, Bureau of Community
37 Corrections. Any proceeds from the disposal of such property ~~shall~~ must be used for the purchase of security equipment and
38 technology necessary for the support of the employees of the Bureau.

39 Section 3. Amend § 4322, Title 11 of the Delaware Code by making deletions as shown by strike through and
40 insertions as shown by underline as follows:

41 § 4322. Protection of records.

42 (a)(1) ~~The presentence report (other than a presentence report prepared for the Superior Court or the Court of~~
43 ~~Common Pleas);~~ Except as provided under paragraph (a)(2) of this section, the presentence report, the preparole report, the
44 supervision ~~history~~ history, and all other case records obtained in the discharge of official duty by any member or employee
45 of the Department shall be privileged and shall not only be disclosed ~~directly or indirectly to anyone other than the courts as~~
46 defined in § 4302 of this title, to the courts, the Board of Parole, the Board of Pardons, the Attorney General and the
47 Deputies Attorney General or others entitled by this chapter to receive ~~such information; except that the~~ this information.
48 The court or Board of Pardons may, in its discretion, may permit the inspection of the report or parts thereof of the report or

49 other information by the offender or the offender's attorney or other persons who in the judgment of the court or Board of
50 Pardons have a proper interest ~~therein, in the report or other information,~~ whenever the best interest of the State or welfare
51 of a particular defendant or person makes ~~such the~~ the action desirable or helpful. ~~No person committed to the Department shall~~
52 ~~have access to any of said records.~~

53 (2) ~~The A~~ presentence reports report prepared for the Superior Court ~~and or~~ the Court of Common Pleas shall
54 be is under the control of ~~those Courts respectively. the Court for which the report is prepared.~~

55 (b)(1) The Commissioner or the Commissioner's designees may receive and use, for the purpose of aiding in the
56 treatment of rehabilitation of offenders, the preparole report, the supervision ~~history~~ history, and other Department of
57 Correction case records, provided that ~~such the~~ the information or reports remain privileged for any other purpose.

58 (2) This subsection ~~shall~~ does not apply to the presentence reports of the Superior Court and the Court of
59 Common Pleas which reports shall remain under the control of such Courts.

60 (c) No inmate may be provided a copy of the Department of Correction Policy and Procedures Manuals, the
61 Bureau of Prisons Policy and Procedures Manuals, the Department of Correction Facilities Operational Procedures,
62 Administrative Regulations, or Post Orders that could jeopardize the safety or security of a correctional facility, corrections
63 staff, inmates, or the public.

64 (d) A Department of Correction policy or procedure which, in the judgement of the Commissioner, contains
65 information that could jeopardize the safety or security of a correctional facility, corrections staff, inmates or the public
66 shall be confidential and subject to disclosure only upon written authority of the Commissioner. For purposes of this
67 subsection, "Department of Correction policy or procedure" includes any policy, procedure, post order, facility operational
68 procedure, or administrative regulation adopted by a bureau, facility, or division of the Department.

69 (j) A response to a request for a document not disclosed under subsection (c) or (d) of this section must indicate
70 the reasons for the denial, including a statement that the document is not provided under the authority granted to the
71 Department under subsection (c) or (d) of this section. An index, or other compilation, as to each document or part of a
72 document not disclosed is not required.

73 Section 4. Amend § 4332, Title 11 of the Delaware Code by making deletions as shown by strike through and
74 insertions as shown by underline as follows:

75 § 4332. Conditions of probation or suspension of sentence; house arrest for offenders.

76 (a) ~~The~~ Subject to paragraphs (a)(1) through (7) of this subsection, the Department may adopt standards
77 concerning the conditions of probation or suspension of sentence which the court may use in a given case. The standard
78 conditions ~~shall~~ apply in the absence of any other specific or inconsistent conditions imposed by the court under this

79 subsection. The presentence report may recommend conditions to be imposed by the court. Nothing in this chapter shall
80 ~~limit~~ limits the authority of the court to impose or modify any ~~general or specific~~ standard or special conditions of probation
81 or suspension of sentence. The Department may recommend and, by order, the court may impose and may at any time order
82 modification of any conditions of probation or suspension of sentence. Before any conditions are modified, a report by the
83 Department shall ~~must~~ must be presented to and considered by the court. The court shall cause a copy of any order to be
84 delivered to the Department and to the ~~probationer.~~ individual on probation.

85 (1) A court, Board of Parole, or probation and parole officer shall presumptively impose the least number of
86 conditions, and least restrictive conditions of supervision, possible.

87 a. A condition imposed may not be more restrictive than reasonably necessary to meet the goals of
88 deterrence, protection of the public, and rehabilitation of the individual on probation. Before imposing a condition,
89 the court, Board of Parole, or probation and parole officer must consider whether the condition is more restrictive
90 than reasonably necessary to accomplish the goals of this paragraph (a)(1)a.

91 b. A condition must be reasonably related to the criminogenic needs of the individual on probation.

92 c. For each special condition imposed, the court, Board of Parole, or probation and parole officer must
93 state the reasonable relation to the criminogenic needs of the individual on probation.

94 d. Before imposing a condition, the court, Board of Parole, or probation and parole officer must consider
95 whether fewer conditions or less restrictive conditions do not accomplish the goals under this paragraph (a)(1).

96 (2) The court, Board of Parole, or probation and parole officer may not impose a standard or special condition
97 of supervision with which the individual on probation cannot reasonably comply. Before imposing a condition, the
98 court, Board of Parole, or probation and parole officer must consider if the individual on probation has the necessary
99 resources and ability to comply with the condition.

100 (3) A court, Board of Parole, or probation and parole officer may not prohibit an individual on probation from
101 using or possessing alcohol or controlled substances or other dangerous drugs or require an individual on probation to
102 be subject to testing for alcohol or controlled substances or other dangerous drugs, unless the use or possession of
103 alcohol or controlled substances or other dangerous drugs is reasonably related to the criminogenic needs of the
104 individual on probation.

105 (4) The Board of Parole or probation and parole officer shall ensure that reporting requirements are as
106 minimally-intrusive as possible, and may provide an individual on probation with alternative reporting options,
107 including the option of reporting remotely, when appropriate.

108 a. A probation and parole officer must set times and locations for meetings that are required for an
109 individual on probation at times and locations that are reasonably designed to accommodate the verifiable work
110 schedule of an individual on probation, as well as considerations related to education, childcare, healthcare, and
111 transportation availability.

112 b. A probation and parole officer may utilize audio and visual communications, or audio-only
113 communication, in lieu of requiring a face-to-face in-person meeting for an individual on probation.

114 c. A probation and parole officer may allow verifiable attendance at required programs to substitute for
115 in-person check-ins with a probation and parole officer.

116 (5) If a program is a requirement of supervision, the Board of Parole or probation and parole officer must
117 facilitate a referral into the program.

118 a. If a required program is not available, the totality of the circumstances must be considered by the court
119 if a violation of probation is filed.

120 b. If the sentencing court determines on the record that the Board of Parole or probation and parole officer
121 did not reasonably facilitate an individual on probation's referral into the program, a longer period of probation or
122 suspension of sentence is prohibited.

123 c. The Department is not required to contract for or create a program that is a requirement of supervision.

124 (6) Before pursuing sanctions up to and including revocation for an alleged violation of probation, the
125 probation and parole officer shall make reasonable efforts to inquire into why an individual on probation failed to abide
126 by a condition, including by affirmatively attempting to re-engage an individual on probation who fails to report before
127 deeming the individual on probation to have violated the individual on probation's conditions of supervision for failure
128 to report or absconding. The probation and parole officer shall make all efforts to connect the individual on probation
129 with needed services and resources before pursuing sanctions against the individual on probation.

130 (7) A probation and parole officer may not pursue sanctions for nonwilful violations, which includes all of the
131 following:

132 a. Failure to complete a program when the program refuses to provide services, the program is cost-
133 prohibitive, or access to the program is restricted beyond the control of the individual on probation.

134 b. Failure to follow supervision conditions when the individual on probation's medical conditions or
135 disability prevent compliance.

136 c. Failure to report based on factors beyond the individual on probation's control.

137 (b) ~~The Subject to the requirements of paragraph (a)(1) of this section, the Department~~ may adopt standards
138 governing any program of house arrest for ~~offenders~~; individuals. The presentence report may recommend conditions to be
139 imposed by the court. In addition to any conditions imposed by the Department or by the court, each program involving
140 house arrest for ~~offenders~~; individuals, regardless of the official or unofficial name of the program, shall include a
141 ~~reasonable monthly payment by each offender participating in the program~~, clear and consistent incentives for compliance
142 with conditions and graduated sanctions short of incarceration when a participant in the program violates any of the
143 conditions, and the ownership or leasing of all equipment by the ~~Department of Correction~~; Department.

144 (c) The Department ~~is authorized to~~ may use ~~offender~~ electronic monitoring systems and any new or emerging
145 ~~offender~~ monitoring technology that will assist in the supervision of ~~offenders~~ an individual placed on house arrest. A
146 probation and parole officer may utilize audio and visual communications, or audio-only communication, in lieu of
147 requiring a face-to-face in-person meeting for an individual placed on house arrest.

148 (d) The Department ~~is authorized to~~ may supervise ~~offenders~~ an individual placed on house arrest without the use
149 of any specific electronic equipment, ~~so long as~~ if sufficient and reasonable methods for ensuring compliance with the
150 terms of house arrest are employed.

151 Section 5. Amend § 4333, Title 11 of the Delaware Code by making deletions as shown by strike through and
152 insertions as shown by underline as follows:

153 § 4333. Period of probation or suspension of sentence; termination.

154 (b) The length of any period of probation or suspension of sentence ~~shall be limited to:~~ is limited to the following:

155 (1) Two years, for any violent felony in this title as designated in § 4201(c) of this ~~title~~; title.

156 (2) Eighteen months, for any offense set forth in Title ~~16~~; or 16.

157 (3) One year, for any offense not otherwise specified in paragraph (b)(1) or (2) of this section.

158 (c) Any offender who is serving more than 1 sentence imposed following convictions in more than 1 case ~~shall~~
159 must not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations imposed by
160 subsection (b) of this section. Any sentence of probation or suspension ~~of sentence~~ (~~sentence~~, or any portion thereof)
161 thereof, which, if served consecutively to another such sentence, would result in an aggregate sentence of probation or
162 suspension of sentence in excess of the limitations imposed by subsection (b) of this ~~section shall be~~ section, is deemed to
163 be concurrent to ~~such~~ the other sentence. ~~The provisions of this~~ This subsection ~~shall~~ does not apply to a sentence imposed
164 for a conviction involving an offense committed while the offender was serving a period of probation or suspension of
165 sentence.

166 (d) The limitations set forth in subsections (b) and (c) of this section ~~shall not apply~~: do not apply to any of the
167 following:

168 (1) ~~To any~~ Any sentence imposed for a conviction of any sex ~~offense~~ offense, as defined in § 761 of this ~~title~~
169 title, if the sentencing court determines on the record that a longer period of probation or suspension of sentence will
170 substantially reduce the likelihood that the offender will commit a sex offense or other violent offense in the ~~future~~;
171 future.

172 (2) ~~To any~~ Any sentence imposed for any violent felony in this title as designated by § 4201(c) of this ~~title~~
173 title, if the sentencing court determines on the record that ~~public safety will be enhanced by~~ a longer period of
174 probation or suspension of ~~sentence~~; or sentence is the least-restrictive means of substantially reducing the likelihood
175 the offender will commit an offense that causes serious physical injury to another person.

176 (3) ~~To any~~ Any sentence imposed for any offense set forth in the Delaware ~~Code~~ Code, if the sentencing court
177 determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the
178 collection of any restitution ~~ordered, except that any~~ ordered. Any period of probation ordered ~~pursuant to~~ under this
179 paragraph ~~(d)(3)~~ that is in excess of the limitations ~~set forth in~~ under subsections (b) and (c) of this section ~~shall~~ must
180 be served at Accountability Level I — Restitution Only ~~pursuant to~~ under the terms of § 4204(c)(10) of this title. An
181 individual sentenced to Accountability Level I – Restitution Only may not have the individual's probation level
182 increased based on the individual's reasonable inability to pay the restitution ordered.

183 (e) The limitations set forth in ~~subsection~~ subsections (b) and (c) of this section may be exceeded by up to 90 days
184 by the sentencing court if it determines that the defendant has not yet completed a substance abuse treatment program
185 ordered by the court, provided, that each extension of sentence ordered ~~pursuant to~~ under this subsection ~~shall~~ must be
186 preceded by a hearing, and by a finding on the ~~record, that such~~ record of all of the following:

187 (1) The extension of sentence is necessary to facilitate the completion of the substance abuse treatment
188 program: program.

189 (2) The probation and parole officer made reasonable efforts to refer the defendant to the appropriate program.

190 (3) Less-restrictive measures do not facilitate completion of the program.

191 Section 6. Amend § 4334, Title 11 of the Delaware Code by making deletions as shown by strike through and
192 insertions as shown by underline as follows:

193 § 4334. Arrest for violation of conditions; subsequent disposition.

194 (a)(1) ~~The~~ On a finding that the individual on probation poses a substantial risk of causing serious physical injury
195 to another person or intentionally failing to appear for a revocation of probation proceeding, the court may issue a warrant
196 for the arrest of a probationer an individual on probation for any of the following:

- 197 a. A non-technical violation of any of the conditions of probation or suspension of sentence, or sentence.
198 b. A technical violation of probation for which, if established, the court may impose a sentence of
199 incarceration.

200 (2) In all other instances, the court may issue to an individual on probation a notice to appear to answer to a
201 charge of violation.

202 (3) ~~Such~~ The notice shall must be personally served upon the probationer. on the individual on probation. The
203 warrant shall must authorize officers to return the ~~probationer~~ individual on probation to the custody of the court or to
204 the Department.

205 (b)(1) ~~The~~ The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment
206 there has been a violation of any condition the Commissioner or probation officer believes an individual on probation
207 committed a non-technical violation of probation or suspension of sentence, sentence or a technical violation for which, if
208 established, the court may impose a sentence of incarceration, and believes that the individual on probation poses a
209 substantial risk of causing serious physical injury to another person or intentionally failing to appear for a revocation of
210 probation hearing, may arrest such probationer do any of the following:

- 211 a. Arrest the individual on probation without a warrant, warrant.
212 b. or may deputize Deputize any other officer with power of arrest to do so by giving that officer a written
213 statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated
214 the conditions of probation or suspended sentence. the evidence of the non-technical or technical violation and
215 substantial risk of causing serious physical injury to another person or intentionally failing to appear for a
216 revocation of probation proceeding.

217 (2) The written statement delivered with the probationer individual on probation by the arresting officer to the
218 official in charge of the place of detention shall be is sufficient warrant for the detention of the probationer. individual
219 on probation.

220 (3) When an arrest is made by a probation officer, the Department shall present to the detaining authority a
221 written statement of the circumstances of violation. the non-technical violation or the technical violation for which, if
222 established, the court may impose a sentence of incarceration.

223 (4) Provisions regarding release on bail of persons charged with crime shall be are applicable to the
224 ~~probationers~~ individuals arrested under these provisions.

225 (c)(1) ~~Upon such~~ On arrest and ~~detention,~~ detention of an individual on probation, the Department shall
226 immediately notify the court and shall submit in writing a report showing in what manner the ~~probationer~~ the individual on
227 probation has violated the conditions of probation or suspension of ~~sentence.~~ sentence and the evidence of substantial risk
228 of causing serious physical injury to another person or intentionally failing to appear for a revocation of probation
229 proceeding.

230 (2) Thereupon, or ~~upon~~ on arrest by warrant ~~as provided in~~ under subsection (b) of this section, the court shall
231 cause the ~~probationer~~ individual on probation to be brought before ~~it~~ the court without unnecessary delay, for a hearing
232 on the violation charge.

233 (3) The hearing on the violation charge may be informal or summary.

234 (4) Conduct that formed the basis of an arrest for a violation of probation may not form the basis of an
235 established violation of probation if a court has adjudicated the matter with an acquittal or dismissal before the
236 violation of probation is established.

237 (5) If the violation is established, the court may continue or revoke the probation or suspension of sentence,
238 and may require the ~~probation violator~~ individual who violated probation to serve the sentence imposed, or any lesser
239 sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been
240 imposed.

241 (d)(1) Notwithstanding any provision of subsection (c) of this section or any other law, ~~rule~~ rule, or regulation to
242 the contrary, the Department ~~is authorized to~~ may administratively resolve technical ~~and minor~~ violations of the conditions
243 of probation or supervision at Accountability Levels I, II, ~~III~~ III, or IV when a sanction less restrictive than Level V is being
244 sought by the Department as a result of the violation, ~~and is further authorized to administratively resolve technical and~~
245 ~~minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at~~
246 ~~Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar~~
247 ~~year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar~~
248 ~~year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender~~
249 ~~is placed at Level IV or home confinement pursuant to this subsection.~~ violation.

250 (2) All administrative dispositions imposed ~~pursuant to~~ under this subsection shall must be documented in the
251 ~~offender's~~ individual on probation's record and shall must be made available to the court ~~in the event of~~ if a subsequent

252 violation which is considered by the court. ~~For the purposes of this subsection, the term “technical and minor violations~~
253 ~~of the conditions of probation or supervision” shall not include arrests or convictions for new criminal offenses.~~

254 (3) Under this section, the purpose of home confinement is to reduce the number of persons held at Level V
255 and Level IV facilities by substituting home confinement when appropriate.

256 (4) The Department shall develop guidelines for probation and parole officers to assist them in providing
257 consistent and appropriate responses to compliance and violations of the conditions of probation or supervision.

258 (e) ~~A probationer~~ An individual on probation for whose return a warrant cannot be served, ~~shall be served~~ is
259 deemed a fugitive from justice or to have fled from justice. If it ~~shall appear that probationer~~ appears the individual on
260 probation has violated probation or suspended sentence, the court shall determine whether the time from issuing of the
261 warrant to the date of the ~~probationer’s~~ individual on probation’s arrest, or any part of it, ~~shall~~ is to be counted as time
262 served on probation or suspended sentence.

263 (f) The Justice of the Peace Court ~~shall have~~ has jurisdiction over violations of probation where ~~sueh~~ the probation
264 or suspension of sentence was pursuant to an order of the Justice of the Peace Court.

265 (g) Except as provided under subsection (h) of this section, a court may not impose a sentence of incarceration for
266 a technical violation, unless the established technical violation was committed by an individual on probation for a sexual
267 offense, as “sexual offense” is defined in § 761 of this title.

268 (h)(1) A court may only impose a sentence of incarceration for a technical violation if the technical violation
269 consists of one of the following:

270 a. The use or possession of alcohol or controlled substances or other dangerous drugs, unless prescribed
271 lawfully, in violation of a condition to abstain from the use or possession of alcohol or controlled substances or
272 other dangerous drugs due to a conviction for driving under the influence of alcohol or controlled substances or
273 other dangerous drugs.

274 b. Leaving the individual on probation’s residence during curfew hours for a reason other than life
275 threatening emergencies or with the advance approval of the individual on probation’s probation and parole
276 officer.

277 c. Damage to or destruction of home confinement equipment or failure to report a problem with home
278 confinement equipment.

279 (2) On the establishment of a violation of probation for a technical violation under paragraph (h)(1) of this
280 section, a court may impose the following sentence of incarceration:

281 a. For the first and second established violation, no period of incarceration.

282 b. For the third established violation, up to 5 days of incarceration.
283 c. For the fourth established violation, up to 10 days of incarceration.
284 d. For the fifth and subsequent established violations, up to 21 days of incarceration.

285 (i) For any sentence imposed for a violation of probation, a court shall impose the least restrictive sanction
286 possible to achieve the goals of supervision. For a sentence imposed for a non-technical violation or for a technical
287 violation that is eligible for incarceration under subsection (h) of this section, a court should impose incarceration only as a
288 last resort.

289 (j) Any periods of incarceration imposed under this section run concurrently if more than 1 violation is established.
290 If a period of incarceration is imposed, the individual on probation must be released from custody on expiration of the
291 period of incarceration or the end of the individual on probation's period of probation, whichever occurs first.

292 Section 7. Amend § 4359, Title 11 of the Delaware Code by making deletions as shown by strike through and
293 insertions as shown by underline as follows:

294 § 4359. Short ~~title~~; Service fee title.

295 This subchapter may be cited as the Interstate Compact for Adult Offender Supervision. ~~Any probationee who~~
296 ~~applies under this Compact for interstate transfer into or from the State of Delaware shall pay to the Department of~~
297 ~~Correction a service fee of \$50 to defray costs under the Compact.~~

298 Section 8. Amend § 4383, Title 11 of the Delaware Code by making deletions as shown by strike through and
299 insertions as shown by underline as follows:

300 § 4383. Earned compliance credit for probation.

301 (a) Any periods of probation sentenced to or released to probation on or after August 8, 2012, may be reduced by
302 earned compliance credit under the provisions of this chapter and rules and regulations adopted by the ~~Department of~~
303 ~~Correction.~~ Department.

304 (b)(1) Persons under supervision may earn up to 30 days of credit for 30 days of compliance with conditions of
305 supervision, ~~not to exceed $\frac{1}{2}$ of their probationary period.~~ supervision.

306 (2) Earned compliance credit ~~will be~~ is forfeited ~~upon~~ on conviction of a new crime and may be forfeited ~~upon~~
307 on revocation of probation.

308 (c) For any offender released on or after August 8, 2012, a period of conditional release ~~shall~~ must be served
309 concurrently with the probationary period.

310 (d) Earned compliance credit ~~shall not be available to reduce any period of probation~~ does not apply to any period
311 of probation imposed for any of the following:

312 (1) ~~Imposed for any A~~ sexual offense as defined in § 761 of this ~~title; or title.~~
313 (2) ~~Imposed for any A~~ violent felony in this title as designated by § 4201(c) of this ~~title; or title.~~
314 (3) ~~Imposed for any An~~ offense set forth in the Delaware ~~Code Code,~~ if the period of probation is imposed to
315 ensure the collection of any restitution ordered and the individual is sentenced to Accountability Level I—Restitution
316 ~~Only; or Only.~~

317 (4) ~~Imposed for such other categories of offenses as set forth in the rules and regulations adopted by the~~
318 ~~Department of Correction. [Repealed.]~~

319 (e) If an individual on probation is eligible to receive earned compliance credits, the Department shall notify the
320 individual in writing that the individual is eligible to receive earned compliance credits. The Department shall notify an
321 individual on probation of the individual's earned compliance credit eligibility date when the Department calculates the
322 date.

323 Section 9. Amend § 101, Title 13 of the Delaware Code by making deletions as shown by strike through and
324 insertions as shown by underline as follows:

325 § 101. Void and voidable marriages.

326 (b) A marriage is prohibited, and is void from the time its nullity is declared by a court of competent jurisdiction at
327 the instance of the innocent party, if either party thereto is:

328 (7) ~~On probation or parole from any court or institution, unless such person first files with the clerk of the~~
329 ~~peace to whom such person makes application for a marriage license a written consent to such person's proposed~~
330 ~~marriage from the chief officer of such court or institution or from someone who is appointed by such officer to give~~
331 ~~such consent, and unless in other respects the applicant may lawfully marry. [Repealed.]~~

332 Section 10. Amend § 111, Title 13 of the Delaware Code by making deletions as shown by strike through and
333 insertions as shown by underline as follows:

334 § 111. Establishing validity of papers submitted by applicants; filing and inspection.

335 Clerks of the peace shall examine and satisfy themselves of the validity of papers submitted to them by divorced
336 ~~persons, persons and~~ past or present patients of Delaware Psychiatric Center or other designated psychiatric treatment
337 facilities as defined in § 5001 of Title 16, ~~and persons on probation or parole~~ and shall file such papers in the office of the
338 recorder of the appropriate county. Such papers shall constitute a part of the application for marriage license, but shall be
339 open to inspection of the public only upon order of the Resident Judge of the proper county or such person as the Judge
340 may appoint to give such orders.

341 Section 11. Amend § 113, Title 13 of the Delaware Code by making deletions as shown by strike through and
342 insertions as shown by underline as follows:

343 § 113. Supplies of marriage licenses, books and other forms; form.

344 (d) ~~In the case of an adult person who is on probation or parole from any court or institution, the chief officer of~~
345 ~~such court or institution, or such person as such officer may appoint to give consent to marry, shall supply such consent in~~
346 ~~whatever form such officer deems advisable to such applicants for marriage license as such officer believes may properly~~
347 ~~marry.~~ [Repealed.]

348 Section 12. Amend § 122, Title 13 of the Delaware Code by making deletions as shown by strike through and
349 insertions as shown by underline as follows:

350 § 122. Marriage license application.

351 (a) The marriage license application shall be in the form prescribed and provided by the Department of Health and
352 Social Services and shall be permanently preserved by the issuing officer in the manner as prescribed by the Department of
353 Health and Social Services. The marriage license application shall include the following information and such other
354 information as prescribed by the Department of Health and Social Services: date of application, full name, sex, Social
355 Security number, birth date and occupation of applicants, names and addresses of parents of applicants, date and place of
356 previous marriages, civil unions, domestic partnerships or other substantially similar legal unions, and termination of
357 previous marriages, civil unions, domestic partnerships or other substantially similar legal unions, ~~place and court where~~
358 ~~applicants are on probation or parole, if such they be,~~ and time of application.

359 Section 13. As of the effective date of this Act, any outstanding balances owed by an individual for a service fee
360 imposed under § 4359 of Title 11 of the Delaware Code (repealed by Section 7 of this Act), including any fee, costs,
361 interest, or other charge assessed on a service fee imposed under § 4359 of Title 11 of the Delaware Code (repealed by
362 Section 7 of this Act), are discharged.

SYNOPSIS

This Act is a substitute for Senate Bill No. 4, replacing Senate Substitute No. 1 for Senate Bill No. 4. Like Senate Bill No. 4 and Senate Substitute No. 1 for Senate Bill No. 4, this Act modernizes Delaware's probation system. Specifically, this Act does all of the following:

(1) In Section 1 of this Act, adds defined terms and uses the defined terms throughout the Act.

(2) In Section 2, requires probation and parole officers to use the least restrictive conditions possible to enhance compliance.

(3) In Section 3, makes technical corrections to existing records procedures and requires that an individual denied access to the Department of Correction's ("Department") policy and procedure manuals must be provided with the reason for the denial.

(4) In Section 4, requires that a condition of probation established by a court, the Department, or the Board of Parole may not involve a greater deprivation of liberty than is necessary to meet the goals of deterrence, protection of the public, and rehabilitation of the individual on probation; prohibits a court, the Department, or the Board of Parole from prohibiting an individual on probation from using or possessing alcohol or drugs, or requiring an individual on probation to

be subject to testing for alcohol or drug use, unless the use or possession of alcohol or drugs is reasonably related to the criminogenic needs of the individual; and authorizes the Department to use alternate methods of reporting to a probation and parole officer, such as audiovisual communications.

(5) In Section 5, prohibits an individual sentenced to Accountability Level I – Restitution Only from having the individual's probation level increased based on the individual's reasonable inability to pay the restitution order.

(6) In Section 6, establishes standards of proof for the issuance of warrants for alleged violations and establishment of violations; prohibits incarceration for technical violations, except in certain circumstances and for certain periods of time; requires that any sentence imposed for a technical or non-technical violation be the least restrictive and imposed as a last resort; and requires that sanctions resulting in incarceration must run concurrently and that the individual must be released from custody on expiration of incarceration or the end of the individual's period of probation, whichever comes first.

(7) In Section 7, repeals the fee for a person applying for an interstate transfer of probation under the Interstate Compact for Adult Offender Supervision.

(8) In Section 8, requires the Department to provide individuals on probation with a supervision report with credit earned and time remaining on probation.

(9) In Sections 9 through 12, removes the requirement that individuals on probation or parole must have permission before getting married.

(11) In Section 13, provides that outstanding balances owed by an individual for a service fee imposed under § 4359 of Title 11 of the Delaware Code (repealed by Section 7 of this Act) are discharged.

(12) Uses people-first language to refer to an individual on probation throughout this Act.

(13) Makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

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