



SPONSOR: Sen. Pinkney

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE AMENDMENT NO. 1
TO
SENATE SUBSTITUTE NO. 2
FOR
SENATE BILL NO. 4

AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 18 by deleting "Serious physical" and inserting in lieu thereof "Physical".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on lines 49, 158, 164, 170, 308 by deleting "offender" and inserting in lieu thereof "~~offender~~ individual".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 49 by deleting "offender's" and inserting in lieu thereof "~~offender's~~ individual's".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 56 and 75 by deleting "offenders" and inserting in lieu thereof "~~offenders~~ an individual".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 86 by deleting "possible." and inserting in lieu thereof "possible to achieve the goals of supervision.".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 100 by inserting "a." after "(3)" and before "A court.".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on lines 101, 102, and 103, by deleting "or other dangerous drugs".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 after line 104 and before line 105 by inserting the following:

"b. A court, Board of Parole, or probation and parole officer may require an individual on probation to submit to a one-time, baseline alcohol or drug test.".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 175 by deleting "offender" and inserting in lieu thereof "individual".

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on lines 175, 194, 209, 215, and 228 by deleting "serious" therein.

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 by deleting lines 237 through 240 in their entirety and inserting in lieu thereof the following:

“(5) If the violation is established, the court may do any of the following:

a. ~~continue or~~ For any violation, continue the probation or suspension of sentence.

b. For a non-technical violation of probation or a technical violation of probation under paragraph (h)(1) of this section, revoke the probation or suspension of sentence, ~~and may sentence and~~ require the ~~probation~~ violator individual who violated probation to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, ~~may~~ impose any sentence which might originally have been imposed.”.

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 by deleting lines 241 through 249 in their entirety and inserting in lieu thereof the following:

“(d)(1) Notwithstanding any provision of subsection (c) of this section or any other law, ~~rule rule,~~ or regulation to the contrary, the Department is ~~authorized to~~ may do all of the following:

a. ~~administratively~~ Administratively resolve technical ~~and minor~~ violations of the conditions of probation or supervision at Accountability Levels I, II, ~~III~~ III, or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the ~~violation,~~ violation.

b. ~~and is further authorized to administratively~~ Administratively resolve technical ~~and minor~~ violations of conditions of probation or supervision at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar year.”.

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 by deleting lines 270 through 273 and inserting in lieu thereof the following:

a. The use or possession of alcohol or controlled substances, unless prescribed lawfully, in violation of a condition to abstain from the use or possession of alcohol or controlled substances imposed due to the criminogenic needs of the individual on probation.

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 275 by inserting “or time-sensitive healthcare needs of the individual on probation or a dependent of the individual on probation,” after “emergencies” and before “or”.

FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 on line 277 by deleting “home confinement equipment or failure to report a problem with”.

53 FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 after line 278 and before line 279 by inserting
54 the following:

55 “d. Wilful noncompliance with alcohol, drug, or other treatment ordered by a court.

56 e. Wilful failure to charge an electronic monitoring system or wilful failure to comply with an electronic
57 monitoring system.”.

58 FURTHER AMEND Senate Substitute No. 2 for Senate Bill No. 4 by deleting lines 290 and 291 in their entirety.

SYNOPSIS

This Amendment does all of the following:

- (1) Replaces “serious physical injury” with “physical injury” throughout the Act.
- (2) Continues the process of updating the Delaware Code to use people-first language to refer to an individual on probation or otherwise involved in the criminal justice system.
- (3) Removes vague language regarding “other dangerous drugs” in favor of “controlled substances”, a term with a meaning in Titles 11 and 16.
- (4) Permits a court, Board of Parole, or probation and parole office to require an individual on probation to submit to a one-time, baseline alcohol or drug test.
- (5) Makes clear that revocation of probation for technical violations of probation is not permitted, except for those technical violations under § 4334(h)(1) of Title 11.
- (6) Corrects a drafting error to revert § 4334(d)(1) of Title 11 to as a drafted in Senate Substitute No. 1 for Senate Bill No. 4.
- (7) Makes clear that a court may impose a sentence of incarceration for a technical violation if the technical violation is for the use or possession of alcohol or controlled substances, unless prescribed lawfully, in violation of a condition to abstain from the use or possession of alcohol or controlled substances that was imposed due to the criminogenic needs of the individual on probation. This is consistent with the court’s ability under § 4332(a)(3) of Title 11 to impose such a condition only if it is reasonably related to the criminogenic needs of the individual on probation.
- (8) Makes clear that an individual on probation may leave the individual on probation’s residence during curfew hours for time-sensitive healthcare needs of the individual on probation or a dependent of the individual on probation.
- (9) Removes the failure to report a problem with a home confinement equipment from the list of technical violations for which a court may impose a sentence of incarceration.
- (10) Add additional technical violations for which a court may impose a sentence of incarceration. Specifically, (a) wilful noncompliance with alcohol, drug, or other treatment ordered by a court and (b) wilful failure to charge an electronic monitoring system or wilful failure to comply with an electronic monitoring system.
- (11) Removes the requirement that if a period of incarceration is imposed, the individual on probation must be released from custody on expiration of the period of incarceration or the end of the individual on probation’s period of probation, whichever occurs first.

Author: Senator Pinkney