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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 3
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 (6) "Criminogenic needs" means the nature and circumstances of the offense of the individual on probation
6 and the history and characteristics of the individual on probation.

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

9 § 4321. Probation and parole officers.

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

12 (4) a. A special condition of supervision may be set by orders of the court, Board of ~~Parole~~ Parole, or the
13 probation and parole officer acting under the authority of the court or Board of Parole.

14 b. Special conditions of supervision imposed by the probation and parole officer ~~shall~~ must be in
15 accordance with Department procedures and may be enforced in the interim period of final review by the court or
16 Board of Parole.

17 c. The probation and parole officer shall use the least restrictive special conditions possible to enhance the
18 goals of supervision.

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

21 § 4322. Protection of records.

22 (a)(1) ~~The presentence report (other than a presentence report prepared for the Superior Court or the Court of~~
23 ~~Common Pleas), Except as provided under paragraph (a)(2) of this section, the presentence report, the parole report, the~~
24 ~~supervision history~~ history, and all other case records obtained in the discharge of official duty by any member or employee
25 of the Department shall be privileged and shall ~~not only~~ be disclosed ~~directly or indirectly to anyone other than the courts as~~
26 ~~defined in § 4302 of this title, to the courts,~~ the Board of Parole, the Board of Pardons, the Attorney General and the
27 Deputies Attorney General General, or others entitled by this chapter to receive ~~such information; except that the this~~
28 information. The court or Board of Pardons ~~may, in its discretion, may~~ permit the inspection of the report or other
29 information or parts thereof of the report or other information by the offender an individual who is the subject of the report
30 or other information or the offender's individual's attorney or other persons who in the judgment of the court or Board of
31 Pardons have a proper interest ~~therein, in the report or other information,~~ whenever the best interest of the State or welfare
32 of a particular defendant or person makes ~~such the~~ action desirable or helpful. ~~No person committed to the Department shall~~
33 ~~have access to any of said records.~~

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

36 (b)(1) The Commissioner or the Commissioner's designees may receive and use, for the purpose of aiding in the
37 treatment of rehabilitation of offenders, an individual, the parole report, the supervision ~~history~~ history, and other
38 Department of Correction case records, provided that ~~such the~~ information or reports remain privileged for any other
39 purpose.

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

42 (c) ~~No inmate~~ An individual incarcerated in a correctional facility may not be provided a copy of the Department
43 of Correction Policy and Procedures Manuals, the Bureau of Prisons Policy and Procedures Manuals, the Department of
44 Correction Facilities Operational Procedures, Administrative Regulations, or Post Orders that could jeopardize the safety or
45 security of a correctional facility, corrections staff, ~~inmates,~~ individuals incarcerated in a correctional facility, or the public.

46 (d) A Department of Correction policy or procedure which, in the judgement of the Commissioner, contains
47 information that could jeopardize the safety or security of a correctional facility, corrections staff, ~~inmates~~ individuals
48 incarcerated in a correctional facility, or the public shall be confidential and subject to disclosure only upon written

49 authority of the Commissioner. For purposes of this subsection, "Department of Correction policy or procedure" includes
50 any policy, procedure, post order, facility operational procedure, or administrative regulation adopted by a bureau, facility,
51 or division of the Department.

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

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

58 § 4332. Conditions of probation or suspension of sentence; house arrest for ~~offenders~~ an individual.

59 (a) The Department may adopt standards concerning the conditions of probation or suspension of sentence which
60 the court may use in a given case. The standard conditions shall apply in the absence of any other specific or inconsistent
61 conditions imposed by the court under this subsection. The presentence report may recommend conditions to be imposed by
62 the court. Nothing in this chapter ~~shall limit~~ limits the authority of the court to impose or modify any ~~general or specific~~
63 standard or special conditions of probation or suspension of sentence. The Department may recommend and, by order, the
64 court may impose and may at any time order modification of any conditions of probation or suspension of sentence. Before
65 any conditions are modified, a report by the Department ~~shall~~ must be presented to and considered by the court. The court
66 shall cause a copy of any order to be delivered to the Department and to the ~~probationer~~ individual on probation.

67 (1) A court, Board of Parole, or probation and parole officer shall presumptively impose the least number of
68 special conditions, and least restrictive special conditions of supervision, possible to achieve the goals of supervision.

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

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

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

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

80 (2) Except as provided by other law of this State, the court, Board of Parole, or probation and parole officer
81 may not impose a special condition of supervision with which the individual on probation cannot reasonably comply.
82 Except as provided by other law of this State, before imposing a special condition, the court, Board of Parole, or
83 probation and parole officer must consider if the individual on probation has the necessary resources and ability to
84 comply with the special condition.

85 (3) The Board of Parole or probation and parole officer shall ensure that reporting requirements are as
86 minimally-intrusive as possible to address criminogenic needs and enhance the goals of supervision, and may provide
87 an individual on probation with alternative reporting options, including the option of reporting remotely, when
88 appropriate.

89 a. A probation and parole officer must set times and locations for reporting that are required for an
90 individual on probation at times and locations that are reasonably designed to accommodate the verifiable work
91 schedule of an individual on probation, as well as considerations related to education, childcare, healthcare, and
92 transportation availability.

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

95 c. A probation and parole officer may allow verifiable attendance at required programs to substitute for
96 in-person reporting with a probation and parole officer.

97 (4) If a program is a requirement of supervision, the Board of Parole or probation and parole officer must
98 facilitate a referral into the program.

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

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

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

105 (5) Before pursuing sanctions up to and including revocation for an alleged violation of probation, the
106 probation and parole officer shall make reasonable efforts to inquire into why an individual on probation failed to abide

107 by a condition, including by affirmatively attempting to re-engage an individual on probation who fails to report before
108 deeming the individual on probation to have violated the individual on probation's conditions of supervision. The
109 probation and parole officer shall make all efforts to connect the individual on probation with needed services and
110 resources before pursuing sanctions against the individual on probation.

111 (b) The Department may adopt standards governing any program of house arrest for ~~offenders~~ individuals. The
112 presentence report may recommend conditions to be imposed by the court. In addition to any conditions imposed by the
113 Department or by the court, each program involving house arrest for ~~offenders~~ individuals, regardless of the official or
114 unofficial name of the program, shall include ~~a reasonable monthly payment by each offender participating in the program,~~
115 clear and consistent incentives for compliance with conditions and graduated sanctions when a participant in the program
116 violates any of the conditions, and the ownership or leasing of all equipment by the ~~Department of Correction~~ Department.

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

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

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

126 § 4333. Period of probation or suspension of sentence; termination.

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

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

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

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

131 (c) Any ~~offender~~ individual who is serving more than 1 sentence imposed following convictions in more than 1
132 case ~~shall~~ must not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations
133 imposed by subsection (b) of this section. Any sentence of probation or suspension of ~~sentence~~ sentence, or any portion
134 ~~thereof~~ thereof, which, if served consecutively to another such sentence, would result in an aggregate sentence of probation
135 or suspension of sentence in excess of the limitations imposed by subsection (b) of this ~~section~~ section, ~~shall be~~ is deemed
136 to be concurrent to ~~such~~ the other sentence. ~~The provisions of this~~ This subsection ~~shall~~ does not apply to a sentence

137 imposed for a conviction involving an offense committed while the ~~offender~~ individual was serving a period of probation or
138 suspension of sentence.

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

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

145 (2) ~~To any~~ Any sentence imposed for any violent felony in this title as designated by § 4201(c) of this ~~title~~
146 title, if the sentencing court determines on the record that public safety will be enhanced by a longer period of
147 probation or suspension of ~~sentence;~~ or sentence.

148 (3) ~~To any~~ Any sentence imposed for any offense set forth in the Delaware ~~Code~~ Code, if the sentencing court
149 determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the
150 collection of any restitution ~~ordered,~~ except that any ordered.

151 a. Any period of probation ordered ~~pursuant to~~ under this paragraph (d)(3) that is in excess of the
152 limitations ~~set forth in~~ under subsections (b) and (c) of this section ~~shall~~ must be served at Accountability Level I
153 — Restitution Only ~~pursuant to~~ under the terms of § 4204(c)(10) of this title.

154 b. An individual sentenced to Accountability Level I – Restitution Only may not have the individual's
155 probation level increased based on the individual's reasonable inability to pay the restitution ordered.

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

161 (1) The extension of sentence is necessary to facilitate the completion of the substance abuse treatment
162 program.

163 (2) The probation and parole officer made reasonable efforts to refer the individual to the appropriate
164 program.

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

166 Section 6. Amend § 4359, Title 11 of the Delaware Code by making deletions as shown by strike through and
167 insertions as shown by underline as follows:

168 § 4359. Short ~~title~~; Service fee title.

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

172 Section 7. Amend § 4383, Title 11 of the Delaware Code by making deletions as shown by strike through and
173 insertions as shown by underline as follows:

174 § 4383. Earned compliance credit for probation.

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

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

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

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

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

186 (1) ~~Imposed for any~~ A sexual offense as defined in § 761 of this ~~title~~; ~~or~~ title.

187 (2) ~~Imposed for any~~ A violent felony in this title as designated by § 4201(c) of this ~~title~~; ~~or~~ title.

188 (3) ~~Imposed for any~~ An offense set forth in the Delaware ~~Code~~ Code, if the period of probation is imposed to
189 ensure the collection of any restitution ordered and the individual is sentenced to Accountability Level I—Restitution
190 ~~Only~~; ~~or~~ Only.

191 (4) Imposed for such other categories of offenses as set forth in the rules and regulations adopted by the
192 Department of Correction.

193 (e) If an individual on probation is eligible to receive earned compliance credits, the Department shall notify the
194 individual in writing that the individual is eligible to receive earned compliance credits. The Department shall notify an

195 individual on probation of the individual's earned compliance credit eligibility date when the Department calculates the
196 date.

197 Section 8. Amend § 101, Title 13 of the Delaware Code by making deletions as shown by strike through and
198 insertions as shown by underline as follows:

199 § 101. Void and voidable marriages.

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

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

206 Section 9. Amend § 111, Title 13 of the Delaware Code by making deletions as shown by strike through and
207 insertions as shown by underline as follows:

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

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

215 Section 10. Amend § 113, Title 13 of the Delaware Code by making deletions as shown by strike through and
216 insertions as shown by underline as follows:

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

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

222 Section 11. Amend § 122, Title 13 of the Delaware Code by making deletions as shown by strike through and
223 insertions as shown by underline as follows:

224 § 122. Marriage license application.

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

233 Section 12. As of the effective date of this Act, any outstanding balances owed by an individual for a service fee
234 imposed under § 4332(b) of Title 11 of the Delaware Code (repealed by Section 4 of this Act) or § 4359 of Title 11 of the
235 Delaware Code (repealed by Section 6 of this Act), including any fee, costs, interest, or other charge assessed on a service
236 fee imposed under § 4332(b) of Title 11 of the Delaware Code (repealed by Section 4 of this Act) or § 4359 of Title 11 of
237 the Delaware Code (repealed by Section 6 of this Act), are discharged.

238 Section 13. This Act takes effect 180 days after its enactment into law.

SYNOPSIS

This Act is a substitute for Senate Bill No. 4, replacing Senate Substitute No. 1 for Senate Bill No. 4. and Senate Substitute No. 2 for Senate Bill No. 4. Like Senate Bill No. 4, Senate Substitute No. 1, and Senate Substitute No. 2 for Senate Bill No. 4, this Act modernizes Delaware's probation system, including by directing the courts, the Board of Parole, and the Bureau of Community Corrections to use the least restrictive probation and parole conditions and the most minimally intrusive reporting requirements necessary to achieve the goals of community supervision.

This Act differs from Senate Substitute No. 2 for Senate Bill No. 4 by doing all of the following:

- (1) Continuing 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.
- (2) Removing the prohibition on imposing a sentence of incarceration for a technical violation and the special sentencing matrix for certain technical violations. As a result, the definitions for "non-technical violation" and "technical violation" are also removed.
- (3) Removing the requirement that periods of incarceration imposed when probation violations are found for multiple offenses be served concurrently.
- (4) Removing the requirement that for a court, Board of Parole, or probation and parole officer to impose a condition that an individual on probation not possess or use alcohol or controlled substances there must be a reasonable relationship to the criminogenic needs of the individual.
- (5) Removing the prohibition on a probation and parole officer from pursuing sanctions for nonwilful violations of probation, which include the following:
 - a. An individual on probation's failure to complete a program when the program refuses to provide services, the program is cost prohibitive, or access to the program is restricted beyond the control of the individual on probation.
 - b. An individual on probation's failure to follow supervision conditions when the individual on probation's medical conditions or disability prevent compliance.
 - c. An individual on probation's failure to report based on factors beyond the individual on probation's control.
- (6) Removing the prohibition on a court finding a probation violation occurred based on criminal conduct that the court acquitted the individual on probation of or dismissed the underlying criminal charge for.
- (7) Removing the repeal of a provision that permits the Department of Correction to deny earned compliance credits to an individual on probation for other categories of offenses that the Department establishes by rules and regulations. The Department is statutorily permitted to deny credits for individuals on probation for a sexual offense, a

violent felony, and any offense in the Delaware Code if the probation is imposed to collect restitution at Accountability Level I.

(8) Removing the requirement that there be a finding that the individual on probation poses a substantial risk of injury to others or of intentionally failing to appear for a revocation hearing before a court could issue an arrest warrant or the Department could deputize officers to make an arrest.

(9) Making clear that outstanding balances owed on the home confinement fee imposed under § 4332(b) of Title 11, which is repealed by this Act, are discharged.

(10) Clarifying that the requirement that a court, Board of Parole, or probation and parole officer presumptively impose the least number of conditions, and least restrictive conditions of supervision, possible to achieve the goals of supervision applies only to special conditions of probation.

(11) Not including any changes to § 4334 of Title 11 (relating to arrests for violation of conditions of supervision and disposition of those violations) in this Act.

(12) Providing for a delay in the effect of this Act. This Act takes effect 180 days after its enactment into law.

This Act makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Pinkney