SPONSOR: Sen. Pinkney & Sen. Townsend & Rep. Minor-Brown & Rep. Morrison & Rep. Lambert
Sens. Gay, Lockman, S. McBride, Sokola, Sturgeon; Reps. Baumbach, Neal, Phillips, Romer, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

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:

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

§ 4302. Definitions.

As used in this chapter:

(16) "Wilful" or "wilfully" means intentional, without good faith efforts or without lawful excuse.

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

§ 4321. Probation and parole officers.

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

(3) The officers shall keep informed of the conduct and condition of persons in their charge, shall aid them to secure employment, shall exercise supervision over them, shall see that they are in compliance with and fulfill the conditions of their ~~release~~ release, and shall use all suitable methods to aid and encourage them to bring about improvement in their conduct and conditions and to meet their probation or parole obligations. The officers shall use the least liberty-restrictive means possible to enhance these goals, and should only impose incarceration as a last resort and if a new crime has been committed.

(4) a. ~~A~~ Subject to paragraphs (b)(4)a.1. and (b)(4)a.2. of this section, a special condition of supervision may be set by orders of the court, Board of ~~Parole~~ Parole, or the probation and parole officer acting under the authority of the court or Board of Parole.

1. The court, Board of Parole, or probation and parole officer shall presumptively impose the least number of conditions, and least-liberty restricting conditions, possible.

A. A condition imposed may not involve a greater deprivation of liberty than is reasonably necessary to meet the goals of deterrence, protection of the public, and rehabilitation of the person released under supervision of the Department.

B. A condition must be reasonably related to the crime of conviction of the person.

C. For each condition imposed, the court, Board of Parole, or probation and parole officer must state the reasonable relation to the person's crime of conviction.

D. Before imposing a condition, the court, Board of Parole, or probation and parole officer must find that fewer conditions or less liberty-restricting conditions do not accomplish the goals under paragraph (b)(4)a.1.A. of this section.

2. The court, Board of Parole, or probation and parole officer may not impose a standard or special condition of supervision with which the person cannot reasonably comply.

A. Before imposing a condition, the court, Board of Parole, or probation and parole officer must determine if the person has the necessary resources and ability to comply with the condition.

B. If the court, Board of Parole, or probation and parole officer determines the person does not have the necessary resources and ability to comply with the condition, the court, Board of Parole, or probation and parole officer must provide resources or impose an alternative condition that is not more restrictive than the condition.

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

(e) Probation and parole officers may be tasked to participate in joint operations with federal authorities while in the performance of the lawful duties of their employment. Any contraband, ~~property and/or~~ property, or money seized in the course of ~~such~~ joint operations ~~shall~~ must be apportioned in accordance with federal distribution guidelines. Any distribution to probation and parole shall become the property of the Department of Correction, Bureau of Community Corrections. Any proceeds from the disposal of such property ~~shall~~ must be used for ~~the purchase of security equipment and technology necessary for the support of the employees of the Bureau.~~ contracting with community-based re-entry programs providing evidence-based services.

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

§ 4322. Protection of records.

(a) The presentence ~~report (~~ report, other than a presentence report prepared for the Superior Court or the Court of Common ~~Pleas),~~ Pleas, the preparole report, the supervision ~~history~~ history, and all other case records obtained in the discharge of official duty by any member or employee of the Department shall be privileged and shall ~~not~~ be disclosed ~~directly or indirectly to anyone other than the courts as defined in § 4302 of this title,~~ to the courts, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney ~~General~~ General, the offender or the offender's attorney, or others entitled by this chapter to receive ~~such information; except that the~~ the information. The court or Board of Pardons ~~may, in its discretion,~~ may permit the inspection of ~~the report or parts thereof by the offender or the offender's attorney or~~ the information by other persons who in the judgment of the court or Board of Pardons have a proper interest ~~therein,~~ in the information, whenever the best interest of the State or welfare of a particular defendant or person makes ~~such~~ the action desirable or helpful. ~~No person committed to the Department shall have access to any of said records. The presentence reports prepared for the Superior Court and the Court of Common Pleas shall be under the control of those Courts respectively.~~

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

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

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

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

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

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

(a) ~~The~~ Subject to this subsection, the Department may adopt standards concerning the conditions of probation or suspension of sentence which the court may use in a given case. The standard ~~conditions shall apply~~ condition to not commit a new crime during probation applies in the absence of any other specific or inconsistent conditions imposed by the court under this subsection. The presentence report may recommend conditions to be imposed by the court. Nothing in this chapter ~~shall limit~~ limits the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence. The Department may recommend and, by order, the court may impose and may at any time order modification of any conditions of probation or suspension of sentence. Before any conditions are modified, a report by the Department ~~shall~~ must be presented to and considered by the court. The court shall cause a copy of any order to be delivered to the Department and to the probationer.

(1) A court, Board of Parole, or probation and parole officer shall presumptively impose the least number of conditions, and least-liberty restricting conditions, possible.

a. A condition imposed may not involve a greater deprivation of liberty than is reasonably necessary to meet the goals of deterrence, protection of the public, and rehabilitation of the probationer.

b. A condition must be reasonably related to the crime of conviction of the probationer.

c. For each condition imposed, the court, Board of Parole, or probation and parole officer must state the reasonable relation to the probationer's crime of conviction.

d. Before imposing a condition, the court, Board of Parole, or probation and parole officer must find that fewer conditions or less liberty-restricting conditions do not accomplish the goals under paragraph (a)(1)a. of this section.

(2) The court, Board of Parole, or probation and parole officer may not impose a standard or special condition of supervision with which the probationer cannot reasonably comply.

a. Before imposing a condition, the court, Board of Parole, or probation and parole officer must determine if the probationer has the necessary resources and ability to comply with the condition.

b. If the court, Board of Parole, or probation and parole officer determines the probationer does not have the necessary resources and ability to comply with the condition, the court, Board of Parole, or probation and parole officer must provide resources or impose an alternative condition that is not more restrictive than the condition.

(3) A court, Board of Parole, or probation and parole officer may not impose as a condition of supervision that a probationer pay court fines or fees or supervision-related fees, including fees for being on supervision or enrolled in supervision-mandated programs.

(4) A court, Board of Parole, or probation and parole officer may not prohibit a probationer from using or possessing alcohol or drugs, or require a probationer to be subject to testing for alcohol or drug use, unless the use or possession of alcohol or drugs is reasonably related to the probationer's crime of conviction.

(5) A court, Board of Parole, or probation and parole officer shall ensure that reporting requirements are as minimally-intrusive as possible, and shall provide a probationer with the option of reporting remotely as much as possible.

a. A probation and parole officer must set times and locations for meetings that are required for probationers at times and locations that are reasonably designed to accommodate the work schedule of a probationer, as well as considerations related to education, childcare, healthcare, and transportation availability.

b. A probation and parole officer may utilize audio and visual communications, or audio-only communication in lieu of requiring a face-to-face in-person meeting for probationers who are low risk of wilfully fleeing or whose employment, education, childcare, healthcare, transportation, or other needs are a barrier to in-person meetings.

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

(6) If a program is a requirement of supervision, a court, Board of Parole, or probation and parole officer must facilitate acceptance into the program and ensure that the program is available in the county which the probationer resides. If the sentencing court determines on the record that court, Board of Parole, or probation and parole officer did not reasonably facilitate a probationer's acceptance into a program, a longer period of probation or suspension of sentence is prohibited.

(7) Before pursuing sanctions up to and including revocation for an alleged violation of probation, the probation and parole officer shall inquire into why a probationer failed to abide by a condition, including by affirmatively attempting to contact a probationer who fails to report before deeming the probationer to have violated the probationer's conditions of supervision for failure to report or absconding. The probation and parole officer shall make all efforts to connect the probationer with needed services and resources before pursuing sanctions against the probationer.

(8) A probation and parole officer may not pursue sanctions up to and including revocation for any of the following:

a. Conduct that is not wilful.

b. The personal use of drugs or alcohol.

c. Failure to complete a program when the program refuses to provide services or the program is cost-prohibitive or access to the program is restricted beyond control of the probationer.

d. Failure to follow supervision conditions when the probationer's mental health or medical conditions prevent compliance.

e. Failure to report, or leave a certain area, based on factors beyond the probationer's control, including transportation.

f. Failure to comply with an overbroad condition.

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

(c)(1) ~~The~~ Subject to paragraph (c)(2) of this section, the Department ~~is authorized to~~ may use offender electronic monitoring systems and any new or emerging offender monitoring technology that will assist in the supervision of offenders placed on house arrest.

(2) The Department should presumptively supervise probationers on house arrest without the use of electronic monitoring. A court or the Department may only impose electronic monitoring on making a factual finding on the record by clear and convincing evidence that all of the following apply:

a. Imposition of alternative, less-restrictive conditions do not suffice because the probationer poses a demonstrated risk of harming another person or wilfully absconding from supervision, or electronic monitoring would advance the probationer's rehabilitation.

b. Electronic monitoring does suffice to achieve the ends under paragraph (c)(2)a. of this section.

(d) ~~The Department is authorized to supervise offenders on house arrest without the use of any specific electronic equipment, so long as sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.~~ [Repealed.]

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

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

(a) The period of probation or suspension of sentence shall be fixed by the court subject to the provisions of this section. Any probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term, an order to this effect shall be entered by the court.

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

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

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

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

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

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

(1) ~~To any~~ Any sentence imposed for a conviction of any sex ~~offense~~ offense, as defined in § 761 of this ~~title~~ title, if the sentencing court determines on the record that a longer period of probation or suspension of sentence ~~will reduce~~ is the least-restrictive means of substantially reducing the likelihood that the offender will commit a sex offense ~~or other violent offense in the future;~~ or an offense that physically harms another person.

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

(3) ~~To any sentence imposed for any offense set forth in the Delaware Code if the sentencing court determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the collection of any restitution ordered, except that any period of probation ordered pursuant to this paragraph that is in excess of the limitations set forth in subsections (b) and (c) of this section shall be served at Accountability Level I — Restitution Only pursuant to the terms of § 4204(c)(10) of this title.~~ [Repealed.]

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

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

(2) The probation and parole officer made good faith efforts in aiding the defendant in enrolling in the program.

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

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

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

(a)(1) ~~The court may issue a warrant for the arrest of a probationer for violation of any of the conditions of probation or suspension of sentence, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the probationer. The warrant shall authorize officers to return the probationer to the custody of the court or to the Department.~~ If a probation and parole officer has probable cause to believe that a probationer committed a technical violation, the probation and parole officer may issue a written notice to appear to answer to a charge of violation. The notice must be promptly personally served on the probationer or be left at the probationer's dwelling house or usual place of abode with a person of suitable age. If the probationer has failed to appear as directed within 7 calendar days, the following apply:

a. If the alleged violation may trigger incarceration following revocation of probation, a warrant may be issued to arrest and temporarily detain the probationer pending a recognizance hearing under this subsection.

b. If the alleged violation may not trigger incarceration following revocation of probation, a warrant may not be issued and the violation is deemed sustained. Notice of that decision must be promptly served on the probationer. Within 30 days of the date the notice of decision was served on the probationer, the probationer may move to vacate the sustained violation if the probationer can show by a preponderance of the evidence that the notice of violation was not properly served or the failure to appear was otherwise excusable.

(2) If a probation and parole officer has probable cause to believe that a probationer committed a nontechnical violation, the probation and parole officer may issue a notice to appear to answer to a charge of violation or, on probable cause to believe that the probationer poses a risk of physically harming another person or wilfully absconding

from the revocation proceedings, a warrant may be issued to arrest and temporarily detain the probationer pending a recognizance hearing under this subsection.

(3) Within 24 hours of execution of a warrant issued under this subsection, an authorized officer shall present the probationer to a court for a recognizance hearing. If a court is not available to conduct any business of any type within the 24 hour period, the recognizance hearing must commence on the next day that a court is available to conduct any business of any type.

(4) The Department shall present at a recognizance hearing information to the court regarding the alleged violation and the probationer's supervision record.

(5)a. At the recognizance hearing, the court shall consider all available evidence of the probationer's employment, family, and community ties, including length of residency in the community, history of reporting in a timely fashion to a supervision officer, and other indicators of stability.

b. At the conclusion of the recognizance hearing, the court may order that the probationer be detained pending the revocation hearing only on a finding, based on clear and convincing evidence, that the probationer presents a substantial risk of harming another person or of wilfully failing to appear at the revocation hearings and that a non-monetary condition or combination of conditions in the community is not sufficient to reasonably assure the probationer does not harm another person or wilfully fail to appear.

c. If the court does not make the finding under paragraph (a)(5)b. of this section, the court shall release the probationer pending the revocation hearing on the least restrictive non-monetary conditions, with a presumption of release on recognizance. The court shall explain its decision on the record or in writing. If non-monetary conditions of release are imposed, the probationer may not be required to pay for any part of the cost of the conditions.

(6) A probationer has a right to be represented by counsel at a recognizance hearing. If the probationer cannot afford counsel, the court shall appoint counsel without charge.

(7) If the violation charge involves conduct that constitutes a new criminal offense, and a court orders the probationer released on related criminal charges, or the probationer secures release by paying bail or satisfying other conditions, the probationer may not be detained further based solely on the warrant issued by the Department.

(8) For purposes of this subsection and subsection (c) of this section, "technical violation" means any breach by an individual under community supervision of any term of community supervision imposed by the court or the Department, other than for the commission of a new criminal offense in violation of state or federal law.

(b)(1) ~~The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of probation or suspended sentence. The written statement delivered with the probationer by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the probationer. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to the probationers arrested under these provisions.~~ The standard of proof at a revocation hearing is clear and convincing evidence to believe that the probationer has wilfully violated one or more conditions of supervision in an important respect to the charge. Conduct that formed the basis of an arrest may not form a basis of a sustained violation of probation if a court has adjudicated the matter with an acquittal or dismissal.

(2) A probationer has a right to be represented by counsel at a revocation hearing. If the probationer cannot afford counsel, the court shall appoint counsel without charge.

(c)(1) ~~Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence. Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or summary. If the violation is established,~~ Subject to paragraphs (c)(2) through (4) of this section, if a violation is established under subsection (b) of this section, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator 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.

(2) A court may not impose a period of incarceration for a technical violation.

(3) For a sentence imposed for a technical or nontechnical violation a court shall impose the least restrictive sanction.

(4) Any periods of incarceration imposed under this subsection runs concurrently if more than 1 violation is sustained. If a period of incarceration is imposed, the probationer must be released from custody on expiration of the period of incarceration or the end of the probationer's period of supervision, whichever occurs first.

(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 the following:

a. ~~administratively~~ Administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, 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.

(2) The Department shall adopt written procedures providing for administrative review for all cases in which ~~an offender~~ a probationer is placed at Level IV or home confinement pursuant to this subsection.

(3) All administrative dispositions imposed pursuant to this subsection ~~shall~~ must be documented in the ~~offender's~~ probationer's record and ~~shall~~ must be made available to the court in the event of a subsequent violation which is considered by the court.

(4) For the purposes of this subsection, ~~the term~~ "technical and minor violations of the conditions of probation or supervision" ~~shall~~ does not include arrests or convictions for new criminal offenses.

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

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

(e) A probationer for whose return a warrant cannot be served, ~~shall be~~ is deemed a fugitive from justice or to have fled from justice. The Department shall determine if the probationer wilfully absconded to evade court proceedings or supervision. The Department shall make all efforts to find the probationer before issuing a warrant. If it ~~shall appear~~ appears that the probationer has violated probation or suspended sentence, the court shall determine whether the time from issuing of the warrant to the date of the probationer's arrest, or any part of it, ~~shall~~ is to be counted as time served on probation or suspended sentence.

(f) The Justice of the Peace Court ~~shall have~~ has jurisdiction over violations of probation ~~where such~~ if the probation or suspension of sentence was ~~pursuant to an order of~~ ordered by the Justice of the Peace Court.

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

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

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

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

§ 4383. Earned compliance credit for probation.

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

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

(2) ~~Earned compliance credit will be forfeited upon conviction of a new crime and may be forfeited upon revocation of probation.~~ Earned compliance credit may be withheld or revoked for the 30-day period commencing from the date of violative behavior as sustained at a revocation hearing, or for the period during which a person under supervision absconded from supervision, as sustained at a revocation hearing.

(3) Earned time credits may not be earned and must be suspended as follows:

a. During a period of incarceration imposed for any sustained violation.

b. During the period in which the person has absconded.

c. Pending the outcome of a revocation hearing.

(4) If at a revocation hearing there is not a finding of a wilful violation of a condition of release in an important respect or a violation is not sustained at the revocation hearing, the person is deemed to have been in compliance with the terms of release and must be awarded earned time credits from the period in which the accrual was suspended. If a violation is sustained, the calculation of an earned time credit period recommences on the thirty-first day after the date of the violative behavior or, if the sustained violation or conviction resulted in a term of reincarceration, on the day the person is restored to supervision, whichever is later.

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

(d) ~~Earned compliance credit shall not be available to reduce any period of probation:~~

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

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

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

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

(e)(1) At least every 90 days from the first date of a person's release to supervision, and every 90 days thereafter, the Department shall provide each person under supervision a report indicating all of the following:

a. The total earned time credits received.

b. The total earned time credits received in the prior 90 days.

c. The total earned time credits withheld.

d. The total earned time credits withheld in the prior 180 days.

e. The total amount of time reduced from the person's sentence.

f. The person's earliest release date based on the amount of earned time credits received.

(2) The Department shall provide the report in written or electronic form.

Section 9. Amend § 8901, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8901. Established; ~~employees.~~employees; definitions.

(a) The Statistical Analysis Center is ~~hereby~~ located within the Criminal Justice Council. The Director of the Statistical Analysis Center shall be qualified by education or experience to carry out the mission of the Statistical Analysis Center and shall report to the Director of the Criminal Justice Council.

(b) The Director of the Statistical Analysis Center may employ such personnel as are necessary to carry out the functions of this chapter, subject to the approval of the Director of the Criminal Justice Council and within the limits of any appropriation made by the General Assembly. The staff of the Statistical Analysis Center is ~~hereby~~ placed under the authority of and is subject to the oversight and supervision of the Director of the Criminal Justice Council.

(c) For purposes of this chapter:

(1)a. "Community supervision" means any correctional control or monitoring of an individual outside of a Level IV or V correctional facility under a court order in a criminal case.

b. "Community supervision" includes probation, parole, house arrest, electronic location monitoring, and pretrial supervision.

(2) "Technical violation" means any breach by an individual under community supervision of any term of community supervision imposed by the court or the Department of Correction, other than for the commission of a new criminal offense in violation of state or federal law.

Section 10. Amend § 8902, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8902. Mission.

The Statistical Analysis Center shall provide the State with a professional capability for the collection, public disclosure, and objective, interpretive analysis of data relating to crime and criminal justice issues in order to improve the effectiveness of policy-making, program development, planning and reporting.

Section 11. Amend § 8903, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8903. General powers and duties.

In pursuit of its mission, the Statistical Analysis Center shall have the following powers, duties, and functions:

(9) Conduct research and provide analyses as required to determine the impact proposed policy changes may have on the criminal justice system; ~~and~~

(10) Submit annually to the Governor, Chief Justice, President Pro Tem of the Senate, and the Speaker of the House a report examining 1-year, 2-year, and 3-year rates of re-arrest and recommitment of released offender ~~cohorts.~~ cohorts;

(11) Prescribe, in partnership with the relevant agencies, the manner and methods by which criminal justice agencies must collect data, format and maintain data, and transmit data to the Statistical Analysis Center for processing and public dissemination in accordance with this chapter; and

(12) Make criminal justice data and information publicly available by posting the data and information on the Statistical Analysis Center website in a clear, useable, electronic, machine-readable format, de-identified to meet both state and federal security and privacy laws, in a uniform and consistent fashion to allow for meaningful comparison of criminal justice data over time.

Section 12. Amend Chapter 89, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8906. Criminal justice case and population data to be collected and published.

(a) The Statistical Analysis Center shall collect and publicly disseminate community corrections data reflecting monthly counts on the composition of the probation population from any criminal justice agency, county, municipality,

court, or state database entity containing the data and shall work with any criminal justice agency, county, municipality, court, or state database entity as necessary to modify collection methods so as to capture, collect, and publicly disseminate the community corrections data.

(b) The community corrections data under subsection (a) of this section must include all of the following:

(1) A monthly count of the number of individuals on probation, including all of the following:

a. Demographic information for each individual on probation.

b. Total length of supervision term as sentenced and actually served for each individual on probation.

c. The number of individuals released from probation and the reason.

d. The number of individuals violated.

e. The reason for each violation of probation.

f. Whether the violation is a technical violation or for a new offense.

g. The number and nature of violations of probation that resulted in a return to incarceration.

h. The length of incarceration imposed for each violation of probation.

(2) A monthly count of the number of people on parole, including all of the following:

a. Demographic information for each individual on parole.

b. The total length of supervision term.

c. The number of people violated.

d. The reason for each violation of parole.

e. Whether the violation is a technical violation or for a new offense.

f. The number and nature of violations of parole that resulted in a return to incarceration.

g. The length of incarceration imposed for each violation of parole.

(3) The following information regarding each individual on probation:

a. The amount of fees and costs assessed to the individual and the reason for the fee or cost.

b. Whether GPS monitoring is being used.

c. Whether the individual has housing and the nature of the individual's housing.

d. Each special condition imposed on the individual and whether the condition was imposed by the court or probation and parole officer.

e. Whether the individual has had a change in level of probation and, if so, the reason for the change and whether the change was made by court order or the Department of Correction.

(4) A monthly count of the number of individuals in Level V and Level IV correctional facilities for a probation violation, disaggregated by the number of individuals in a correctional facility due to a technical violation of probation and the number of individuals in prison due to a probation violation that constituted a new criminal offense.

(5) Any other community corrections data necessary to accomplish the intent of this chapter as determined by the Statistical Analysis Center.

§ 8907. Review of criminal justice data for racial disparity.

Beginning [2 years after the effective date of this Act], by September 1 of every-other year the Statistical Analysis Center shall produce a public report for the Chief Justice of the Supreme Court, President Pro Tempore of the Senate, and Speaker of the House that analyzes the data received under this chapter for racial disparities in the criminal legal system and isolates all causes of the disparities.

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

§ 101. Void and voidable marriages.

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

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

Section 14. Amend § 111, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

Section 15. Amend § 113, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

Section 16. Amend § 122, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 122. Marriage license application.

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

Section 17. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10002. Definitions.

(o) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

(13) ~~Any records in the possession of the Department of Correction where disclosure is sought by an inmate in the Department's custody;~~ [Repealed.]

SYNOPSIS

This Act modernizes Delaware's criminal justice system, especially its probation system, by doing the following:
(1) Ending incarceration of probationers for technical violations.
(2) Enabling the customization of conditions of probation to meet individual needs.
(3) Requiring the collection and publication of community corrections data.
(4) Investing in community-based re-entry programs.
(5) Limiting probation terms to 1 year.

Specifically, the Act does all of the following:

Section 1 of this Act adds a definition for "wilful", as used throughout the Act.

Section 2 of this Act does the following:

(1) Requires probation and parole officers to use the least liberty-restrictive means to enhance compliance to conditions.

(2) Requires the probation and parole officers not impose special conditions with which a person cannot in good faith comply. Probation and parole officers must also assess whether the person has the necessary resources to comply with the condition.

(3) Changes that any proceeds gained from seizures in conducting business with federal authorities must go to contracting with community-based re-entry programs providing evidence-based services.

Section 3 of this Act does the following:

(1) Removes the prohibition on an incarcerated person receiving access to the Department of Correction's ("Department") policy & procedure manuals.

(2) Removes prohibition on the disclosure of Department policies and procedures except on the written authority of the Commissioner.

Section 4 of this Act does the following:

(1) Requires that a condition of probation established by Department 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 person on probation.

(2) Prohibits the imposition of a condition of supervision that requires paying court fines, fees, supervision-related fees, and supervision-mandated programs.

(3) Authorizes the Department to use alternate methods of reporting such as audiovisual communications.

(4) Requires the Department to not pursue sanctions for use of drugs or alcohol, failure to complete a program when the costs were unable to be met, failure to follow conditions when mental health conditions prevent compliance, and failure to comply with broad conditions that are impossible to follow.

(5) Requires the Department to bear the cost of house arrest programs.

(6) Sets criteria for the use of house arrest.

Section 5 of this Act reduces the maximum length of the period of probation.

Section 6 of this Act does the following:

(1) Outlines the process for revoking probation, including the timing of revocation and requirements of revocation proceedings.

(2) Requires that incarceration cannot be used for any technical violation and sets a limit on period of incarceration for other violations.

Section 7 of this Act repeals the fee for a person applying for an interstate transfer of probation under the Interstate Compact for Adult Offender Supervision.

Section 8 of this Act does the following:

(1) Replaces the forfeiture of earned compliance credit with a process for withholding or revoking earned credits.

(2) Repeals certain offenses being excluded from being able to gain earn compliance credit.

(3) Requires the Department to provide those on probation with a supervision report with credit earned and time remaining on probation every 90 days.

Section 9 through 12 of this Act requires the Statistical Analysis Center to publish data related to the probation system and racial disparities in the criminal justice system.

Sections 13 through 16 of this Act removes the requirement that individuals on probation or parole must have permission before getting married.

Section 17 repeals the restriction on the disclosure of public records in the Department's possession when these records are sought by an inmate in the Department's custody.

Author: Senator Pinkney