



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

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
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) “Crime of conviction” means a crime for which an individual pled guilty or has been found guilty and for
6 which the individual is sentenced to probation.

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

8 (18) “Wilful” or “wilfully” means knowingly and without either good faith efforts or reasonable excuse.

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

11 § 4321. Probation and parole officers.

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

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

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

23 1. The court, Board of Parole, or probation and parole officer shall presumptively impose the least
24 number of conditions, and least restrictive conditions of supervision, possible.

25 A. A condition imposed may not be more restrictive than reasonably necessary to meet the goals
26 of deterrence, protection of the public, and rehabilitation of the person released under supervision of the
27 Department.

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

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

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

34 2. The court, Board of Parole, or probation and parole officer may not impose a standard or special
35 condition of supervision with which the person cannot reasonably comply. Before imposing a condition, the
36 court, Board of Parole, or probation and parole officer must determine if the person has the necessary
37 resources and ability to comply with the condition.

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

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

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

49 § 4322. Protection of records.

50 (a)(1) ~~The presentence report (other than a presentence report prepared for the Superior Court or the Court of~~
51 ~~Common Pleas); Except as provided under paragraph (a)(2) of this section, the preparole report, the supervision history~~
52 ~~history, and all other case records obtained in the discharge of official duty by any member or employee of the Department~~
53 ~~shall be privileged and shall not only be disclosed directly or indirectly to anyone other than the courts as defined in § 4302~~
54 ~~of this title, to the courts, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney~~
55 ~~General General, the offender or the offender's attorney, or others entitled by this chapter to receive such information;~~
56 ~~except that the the information. The court or Board of Pardons may, in its discretion, may permit the inspection of the~~
57 ~~report or parts thereof by the offender or the offender's attorney or the information by other persons who in the judgment of~~
58 ~~the court or Board of Pardons have a proper interest therein, in the information, whenever the best interest of the State or~~
59 ~~welfare of a particular defendant or person makes such the action desirable or helpful. No person committed to the~~
60 ~~Department shall have access to any of said records.~~

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

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

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

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

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

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

79 § 4332. Conditions of probation or suspension of sentence; house arrest for offenders.

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

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

91 a. A condition imposed may not be more restrictive than reasonably necessary to meet the goals of
92 deterrence, protection of the public, and rehabilitation of the individual on probation.

93 b. A condition must be reasonably related to the crime of conviction of the individual on probation.

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

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

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

102 (3) A court, Board of Parole, or probation and parole officer may not prohibit an individual on probation from
103 using or possessing alcohol or drugs, or require an individual on probation to be subject to testing for alcohol or drug
104 use, unless the use or possession of alcohol or drugs is reasonably related to the individual on probation's crime of
105 conviction.

106 (4) A court, Board of Parole, or probation and parole officer shall ensure that reporting requirements are as
107 minimally-intrusive as possible, and shall provide an individual on probation with the option of reporting remotely as
108 much as possible.

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

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

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

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

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

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

130 a. Conduct that is not wilful.

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

133 c. Failure to follow supervision conditions when the individual on probation's mental health or medical
134 conditions prevent compliance.

135 d. Failure to report, or leave a certain area, based on factors beyond the individual on probation's control,
136 including transportation.

137 e. Failure to comply with an overbroad condition.

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

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

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

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

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

155 (3) Under paragraph (c)(2) of this section, a factual finding by the court must be made on the record and a
156 factual finding by the Department must be recorded in writing and shared with the individual on probation.

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

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

162 § 4333. Period of probation or suspension of sentence; termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203 § 4334. Arrest for violation of conditions; subsequent disposition.

204 (a)(1) ~~The court may issue a warrant for the arrest of a probationer~~ an individual on probation for a non-technical
205 violation of any of the conditions of probation or suspension of sentence, or sentence on a finding of probable cause that the
206 individual on probation poses a substantial risk of causing serious physical injury to another person or wilfully absconding
207 from the revocation of probation proceeding.

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

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

213 (b)(1) ~~The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment~~
214 ~~there has been a violation of any condition~~ the Commissioner or probation officer has probable cause to believe an
215 individual on probation committed a non-technical violation of probation or suspension of sentence, sentence and probable
216 cause that the individual on probation poses a substantial risk of causing serious physical injury to another person or
217 wilfully absconding from the revocation of probation hearing, may arrest such probationer the individual on probation
218 without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement
219 setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of
220 probation or suspended sentence. the evidence of probable cause of the non-technical violation and substantial risk of
221 causing serious physical injury to another person or wilfully absconding from the revocation of probation proceeding.

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

225 (3) When an arrest is made by a probation officer, the Department shall present to the detaining authority a
226 written statement of the circumstances of the non-technical violation.

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

229 (c)(1) ~~Upon such~~ On arrest and ~~detention,~~ detention of an individual on probation, the Department shall
230 immediately notify the court and shall submit in writing a report showing in what manner the ~~probationer~~ the individual on
231 probation has violated the conditions of probation or suspension of ~~sentence.~~ sentence and the evidence of probable cause
232 of substantial risk of causing serious physical injury to another person or wilfully absconding from the revocation of
233 probation proceeding.

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

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

238 (4) The standard of proof for the establishment of a violation of probation is clear and convincing evidence
239 that the individual on probation has wilfully violated a condition of supervision in an important respect to the alleged
240 probation violation. Conduct that formed the basis of an arrest may not form a basis of an established violation of
241 probation if a court has adjudicated the matter with an acquittal or dismissal.

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

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

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

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

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

258 (3) All administrative dispositions imposed ~~pursuant to~~ under this subsection ~~shall~~ must be documented in the
259 ~~offender's individual on probation's~~ individual on probation's record and ~~shall~~ must be made available to the court ~~in the event of if~~ a subsequent
260 violation which is considered by the court. ~~For the purposes of this subsection, the term "technical and minor violations~~
261 ~~of the conditions of probation or supervision" shall not include arrests or convictions for new criminal offenses.~~

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

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

266 (e) ~~A probationer~~ An individual on probation for whose return a warrant cannot be served, ~~shall be served is~~
267 deemed a fugitive from justice or to have fled from justice. If it ~~shall appear that probationer~~ appears the individual on
268 probation has violated probation or suspended sentence, the court shall determine whether the time from issuing of the
269 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
270 served on probation or suspended sentence.

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

273 (g) As used in this section, "technical violation" means any breach by an individual on probation of any condition
274 of probation imposed by the court or the Department, other than for the arrest or conviction of a new criminal offense in
275 violation of state or federal law.

276 (h) An individual on probation may not be detained for an alleged technical violation and a court may not impose a
277 period of incarceration for a technical violation.

278 (i) For a sentence imposed for a technical or non-technical violation, a court shall impose the least restrictive
279 sanction.

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

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

285 § 4359. Short ~~title;~~ Service fee title.

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

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

291 § 4383. Earned compliance credit for probation.

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

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

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

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

302 a. During a period of incarceration imposed for any established violation.

303 b. During the period in which the person under supervision has absconded.

304 c. Pending the outcome of a revocation hearing.

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

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

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

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

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

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

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

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

322 a. The total earned time credits received.

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

324 c. The total earned time credits withheld.

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

326 e. The total amount of time reduced from the person under supervision’s sentence.

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

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

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

331 § 101. Void and voidable marriages.

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

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

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

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

341 Clerks of the peace shall examine and satisfy themselves of the validity of papers submitted to them by divorced
342 ~~persons,~~ persons and past or present patients of Delaware Psychiatric Center or other designated psychiatric treatment
343 facilities as defined in § 5001 of Title 16, ~~and persons on probation or parole~~ and shall file such papers in the office of the
344 recorder of the appropriate county. Such papers shall constitute a part of the application for marriage license, but shall be

345 open to inspection of the public only upon order of the Resident Judge of the proper county or such person as the Judge
346 may appoint to give such orders.

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

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

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

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

356 § 122. Marriage license application.

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

365 Section 13. Amend § 10002, Title 29 of the Delaware Code by making deletions as shown by strike through and
366 insertions as shown by underline as follows:

367 § 10002. Definitions.

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

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

SYNOPSIS

This Act is a substitute for Senate Bill No. 4. Like Senate Bill No. 4 this Act does the following:

In Section 1, adds a definition for “wilful” and “wilfully”, as used throughout the Act.

In Section 2:

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

In Section 3:

- (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.

In Section 4:

- (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 individual 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 sanction for use of drugs or alcohol unless part of the criminal offense, 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.

In Section 5, reduces the maximum length of the period of probation.

In Section 6, revises the process for arrest and disposition of a violation of probation to do the following:

- (1) Establish standards of proof for the issuance of warrants for alleged violations and establishment of violations.
- (2) Prohibit incarceration for technical violations.
- (3) Require that any sentence imposed for a technical or non-technical violation be the least restrictive.
- (4) Require that sanctions resulting in incarceration must run concurrently and cannot last longer than the original sentence.
- (5) Create a definition for “technical violation”.

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

In Section 8:

- (1) Replaces the forfeiture of earned compliance credit with a process for withholding or revoking earned credits.
- (2) Allows reduction of probation period by use of earn compliance credits for certain offenses currently prohibited.
- (3) Requires the Department to provide individuals on probation with a supervision report with credit earned and time remaining on probation every 90 days.

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

In Section 13, repeals the restriction on the disclosure of public records in the Department’s possession when these records are sought by an individual in the Department’s custody.

This Act differs from Senate Bill No. 4 as follows:

- (1) Revises language added by Senate Bill No. 4 to conform the language to terms used in existing Delaware law.

(2) Removes a requirement 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.

(3) Replaces the requirement that a presentence report prepared for the Superior Court or Court of Common Pleas is under the control of the Court for which the report is prepared, which was inadvertently removed in Senate Bill No. 4.

(4) Uses people-first language to refer to an individual on probation.

(5) Removes language added by Senate Bill No. 4 to § 4333(d)(1) (regarding probation sentencing for a sexual offense).

(6) Removes language added by Senate Bill No. 4 that would require the Statistical Analysis Center to publish data related to the probation system and racial disparities in the criminal justice system.

(7) Removes a provision added by Senate Bill No. 4 that would require the court, Board of Parole, or probation and parole officer to provide resources or impose an alternative condition that is not more restrictive than the original condition 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.

(8) Removes a provision added by Senate Bill No. 4 that would prohibit the court, Board of Parole, or probation and parole officer from imposing as a condition of supervision that an individual on probation pay court fines or fees or supervision-related fees, including fees for being on supervision or enrolled in supervision-mandated programs.

Author: Senator Pinkney