SPONSOR: Sen. Pinkney & Sen. Townsend & Rep. Minor-Brown & Rep. Bush & Rep. Lambert & Rep. Morrison & Rep. Romer
Sens. Huxtable, Lockman, Seigfried, Sokola, Sturgeon; Reps. Bolden, Gorman, Neal, Phillips, Snyder-Hall, Wilson-Anton

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 7
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 AND TITLE 13 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:

(6) "Criminogenic needs" means the dynamic factors or conditions that, when addressed in an individualized manner with evidence-based interventions, can significantly reduce the likelihood of recidivism.

(8) "Goals of supervision" means deterrence of criminal conduct, protection of the community, protection of victims, and rehabilitation of the individual on probation.

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.

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

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

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c. Unless the offense for which the person is sentenced mandates specific conditions, the probation and parole officer shall use the least restrictive special conditions necessary to achieve the goals of supervision.

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)(1) ~~The presentence report (other than a presentence report prepared for the Superior Court or the Court of Common Pleas),~~ Except as provided under paragraph (a)(2) of this section, the presentence report, 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~~ only 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, or others entitled by this chapter to receive ~~such information; except that the~~ this information. The court or Board of Pardons ~~may, in its discretion,~~ may permit the inspection of the report or other information or parts ~~thereof~~ of the report or other information by the ~~offender~~ individual who is the subject of the report or other information or the ~~offender's~~ individual's attorney or other persons who in the judgment of the court or Board of Pardons have a proper interest ~~therein,~~ in the report or other information, whenever the best interest of ~~the~~ this State or welfare of ~~a particular defendant~~ the individual who is the subject of the report or other information or other person makes ~~such~~ the action desirable or helpful. ~~No person committed to the Department shall have access to any of said records.~~

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

(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,~~ an individual, the preparole report, the supervision ~~history~~ history, and other Department of Correction case records, provided that ~~such~~ 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~~ An individual incarcerated in a correctional facility may not 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,~~ individuals incarcerated in a correctional facility, or the public.

(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~~ individuals incarcerated in a correctional facility, 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.

(j) An individual denied access to a document under subsection (c) or (d) of this section may seek relief under § 10005 of Title 29.

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)(1) The Department may adopt standards concerning the conditions of probation or suspension of sentence which the court may use in a given case.

(2) The standard conditions ~~shall~~ apply in the absence of any other specific or inconsistent conditions imposed by the court under this subsection.

(3) The presentence report may recommend conditions to be imposed by the court.

(4) Nothing in this chapter ~~shall limit~~ limits the authority of the court to impose or modify any ~~general or specific~~ standard or special conditions of probation or suspension of sentence.

(5) 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.

(6) The court shall cause a copy of any order to be delivered to the Department and to the ~~probationer.~~ individual on probation.

(7) Unless the offense for which an individual on probation is sentenced mandates specific conditions, a court, Board of Parole, or probation and parole officer shall presumptively impose the least number of special conditions, and least restrictive special conditions of supervision, necessary to achieve the goals of supervision.

a. A special condition imposed may not be more restrictive than reasonably necessary to achieve the goals of supervision or address criminogenic needs.

b. Before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider whether the special condition is more restrictive than reasonably necessary to achieve the goals of supervision.

c. A special condition must be reasonably related to the criminogenic needs of the individual on probation or goals of supervision.

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

e. Before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider whether fewer special conditions or less restrictive special conditions do not achieve the goals of supervision.

(8) Unless the offense for which the person is sentenced mandates specific conditions, the court, Board of Parole, or probation and parole officer may not impose a special condition of supervision with which the individual on probation cannot reasonably comply. Unless the offense for which the person is sentenced mandates specific conditions, before imposing a special condition, the court, Board of Parole, or probation and parole officer must consider if the individual on probation has the necessary resources and ability to comply with the special condition.

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

a. A probation and parole officer must set the required reporting times and locations for an individual on probation at times and locations reasonably designed to accommodate the verifiable work schedule of an individual on probation, 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 reporting for an individual on probation.

c. A probation and parole officer may excuse an in-person probation visit as a graduated incentive for compliance with treatment program requirements.

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

a. If a required program is not available and a violation of probation is filed, the court must consider the totality of the circumstances when deciding whether to establish the alleged violation.

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

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

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

(b) The Department may adopt standards governing any program of house ~~arrest for offenders.~~ arrest. 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,~~ arrest, regardless of the official or unofficial name of the program, ~~shall include a reasonable monthly payment by each offender participating in the program, clear~~ must include all of the following:

(1) Clear and consistent incentives for compliance and sanctions ~~when a participant in the program violates any of the conditions,~~ for non-compliance with conditions of supervision.

(2) ~~and the ownership or leasing of all equipment by the Department of Correction.~~ That the Department owns or leases all equipment.

(c) 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~~ an individual placed on house ~~arrest.~~ arrest, as reasonably necessary. 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 reporting for an individual placed on house arrest.

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

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.

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

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

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

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

(c) ~~Any offender~~ An individual who is serving more than 1 sentence imposed following convictions in more than 1 case ~~shall~~ must 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~~ This subsection ~~shall~~ does not apply to a sentence imposed for a conviction involving an offense committed while the ~~offender~~ individual 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~~ A sentence imposed for a conviction of any ~~sex offense~~ sexual 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 substantially reduce the likelihood that the ~~offender~~ individual will commit a ~~sex~~ sexual offense or other violent offense in the ~~future;~~ future.

(2) ~~To any~~ A sentence imposed for any violent felony in this title as designated by § 4201(c) of this ~~title~~ 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.

(3) ~~To any~~ A sentence imposed for any offense set forth in the Delaware ~~Code~~ 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~~ ordered.

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

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

(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~~ the sentencing court determines that ~~the defendant~~ the individual 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 reasonable efforts to refer the individual to the appropriate program.

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

Section 6. 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~~ is forfeited ~~upon~~ on conviction of a new crime and may be forfeited ~~upon~~ on revocation of probation.

(c) For any ~~offender~~ individual 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~~ does not apply to any period of probation imposed for any of the following:

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

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

(3) ~~Imposed for any~~ An offense set forth in the Delaware ~~Code~~ 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~~ Only.

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

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

Section 7. 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 8. 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. 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 9. 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 10. 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 11. As of the effective date of this Act, any outstanding balances owed by an individual for a service fee imposed under § 4332(b) of Title 11 of the Delaware Code (repealed by Section 4 of this Act), including any fee, costs, interest, or other charge assessed on a service fee imposed under § 4332(b) of Title 11 of the Delaware Code are discharged.

Section 12. This Act takes effect 180 days after the Act's enactment into law.