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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 50

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO PROBATION AND  
RESTITUTION IN CRIMINAL CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend Section 4204(c)(9) of Title 11 of the Delaware Code by adding immediately after the last sentence  
2 thereof the following:

3           “Notwithstanding any law, rule or regulation to the contrary, for the purposes of ensuring the payment of  
4 restitution the court shall retain jurisdiction over the offender until the amount of restitution ordered has been paid in full.”

5           Section 2. Amend Section 4204(c) of Title 11 of the Delaware Code by adding a new paragraph “(10)” to said  
6 subsection, to read as follows:

7           “(10) Whenever restitution is ordered pursuant to paragraph (9) of this subsection or any other applicable  
8 statute or rule, and if deemed appropriate to ensure or facilitate the collection of restitution from the defendant or if  
9 otherwise required by statute, the court may impose a sentence involving an Accountability Level I - Restitution  
10 Only sanction. Such a sanction shall be limited to the placement of the offender upon unsupervised probation, and  
11 the conditions of such probation shall be limited to those that are necessary to ensure or facilitate the collection of  
12 restitution. No offender shall be found to be in violation of the conditions of such a sanction unless he or she is  
13 found to be in violation of an applicable restitution order.”

14           Section 3. Amend Section 4204 of Title 11 of the Delaware Code by redesignating subsection “(m)” thereof as  
15 subsection “(n)”, and by adding a new subsection “(m)” thereto, to read as follows:

16           “(n) As a condition of any sentence, and regardless of whether such sentence includes a period of probation or  
17 suspension of sentence, the Court may order the offender to engage in a specified act or acts, or to refrain from

engaging in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender, the satisfaction of the offender's restitution obligation to the victim or his or her financial obligations to the State, or for any other purpose consistent with the interests of justice. The duration of any order entered pursuant to this subsection shall not exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the duration of such order shall not exceed 1 year. A violation of any order issued pursuant to this subsection shall be prosecuted pursuant to 11 Del.C. §1271. Any such prosecution pursuant to 11 Del.C. §1271 shall not preclude prosecution under any other provision of this Code."

Section 4. Amend Section 4333 of Title 11 of the Delaware Code by striking said subsection in its entirety, and by substituting in lieu thereof the following:

"(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:

- (1) 2 years, for any Title 11 violent felony as designated in §4201(c) of this Title;
  - (2) 18 months, for any offense set forth in Title 16 of this Code; or
  - (3) 1 year, for any offense not otherwise specified in paragraphs (1) or (2)
- of this subsection.

(c) Any offender who is serving more than one sentence imposed following convictions in more than one case shall not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations imposed by subsection (b) of said section. Any sentence of probation or suspension of sentence (or any portion 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 deemed to be concurrent to such other sentence.

(d) The limitations set forth in subsection (b) and (c) of this section shall not apply:

- (1) to any sentence imposed for a conviction of any sex offense as defined

in §761 of this Title if the sentencing court determines on the record and by a preponderance of the evidence that a longer period of probation or suspension of sentence will reduce the likelihood that the offender will commit a sex offense or other violent offense in the future;

(2) to any sentence imposed for any Title 11 violent felony as designated by §4201(c) of this Title if the sentencing court determines on the record and by a preponderance of the evidence that public safety will be enhanced by a longer period of probation or suspension of sentence; or

(3) to any sentence imposed for any offense set forth in the Delaware Code if the sentencing court determines on the record and by a preponderance of the evidence 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 subsection 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.

(e) The limitations set forth in subsection (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 this subsection shall be preceded by a hearing, and by a finding on the record and by a preponderance of the evidence, that such extension of sentence is necessary to facilitate the completion of the substance abuse treatment program.

(f) Except as provided by subsection (g) of this section, in no event shall the total period of probation or suspension of sentence exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the period of probation or suspension of sentence shall not be more than 1 year.

(g) Any period of custodial supervision imposed pursuant to §4204(l) of this Title shall not be subject to the limitations set forth by this section.

(h) Notwithstanding any provision of this Code or court rule to the contrary, any Superior Court judge who is presiding over any proceeding at which an offender is sentenced or found to have violated any condition or term of an imposed period of probation or suspension of sentence shall be deemed to have jurisdiction over any sentence to a period of probation or suspension of sentence currently being served by the offender regardless of the court or county in

72 which such sentence was originally imposed, and may modify, revoke or terminate any such period of probation or  
73 suspension of sentence.

74 (i) Notwithstanding any law, rule or regulation to the contrary, the Department shall have the authority  
75 without leave of the Court to reclassify any offender serving a sentence of probation at Accountability Levels I, II or III  
76 between said levels as deemed necessary and appropriate by the Department, provided that at least 60 days has elapsed  
77 from the date on which such sentence was originally imposed, and provided that the Department shall first evaluate the  
78 offender using an objective classification tool designed to assist in the determination of the appropriate level of  
79 probation. Offenders shall be reevaluated and reclassified periodically as the Department deems necessary and  
80 appropriate.”

81 Section 5. Amend Section 4334 of Title 11 of the Delaware Code by redesignating subsection (d) thereof as subsection  
82 “(e)”, and by striking subsection (c) thereof in its entirety, and by adding new subsections “(c)” and “(d)” to said section, to read  
83 as follows:

84 “(c) Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing  
85 a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence.  
86 Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be  
87 brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or  
88 summary. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may  
89 require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was  
90 suspended, may impose any sentence which might originally have been imposed.

91 (d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the  
92 contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of  
93 probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being  
94 sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and  
95 minor violations of conditions of the conditions of probation at Accountability Levels I, II or III by placing the probationer  
96 at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any one  
97 calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an  
98 offender is placed at level IV pursuant to this subsection. All administrative dispositions imposed pursuant to this  
99 subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent

violation which is considered by the court. For the purposes of this subsection, the term “technical and minor violations of the conditions of probation or supervision” shall not include arrests or convictions for new criminal offenses.” For the purposes of this subsection, the limits pertaining to the use of Level IV as administrative sanction for technical and minor violations of Level I, II or III shall not apply to the use of home confinement for such purposes.”

Section 6. Amend Section 6504(14) of Title 11 of the Delaware Code by striking the first two sentences of said subsection and by substituting in lieu thereof the following:

“(14) Collecting a fee as a condition of probation supervision. An offender sentenced to probation shall be charged a fixed fee of \$200.00 for each period of probation. If an offender is serving multiple sentences of probation simultaneously, the sentences shall be treated as one period of probation for the purposes of assessing and collecting the supervision fee.”

Section 7. Amend Section 4101(b) of Title 11 of the Delaware Code by striking the second sentence of said subsection in its entirety, and by substituting in lieu thereof the following:

“Such judgment shall be immediately executable, enforceable and/or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay shall not be granted as a matter of right but only within the discretion of the court.”

Section 8. Amend Section 4101(b) of Title 11 of the Delaware Code by adding immediately after the last sentence of said subsection the following:

“Judgments docketed pursuant to this subsection shall be exempt from the provisions of 10 Del. C. §4711 which mandate the expiration of judgments, and which require the renewal of such judgments.”

Section 9. Amend Section 4711 of Title 10 of the Delaware Code by adding a new paragraph to said section, to read as follows:

“This section shall not apply to those judgments entered of record pursuant to court-ordered restitution awards as provided in 11 Del. C. § 4101(b).”

Section 10. Within 90 days of the effective date of this Act, the Sentencing Accountability Commission will promulgate guidelines that will substantially reduce use of probation as a means of punishment. These guidelines shall include meaningful restrictions on the practice of imposing sentences involving short periods of incarceration that are followed by long periods of probation. Within 180 days of the effective date of this Act, the Sentencing Accountability Commission will review proceedings

128 conducted pursuant to 11 Del.C. §4333(h) as promulgated herein, will make recommendations concerning the proper allocation of  
129 resources by the judiciary for this purpose and will identify any funding sources necessary to support this procedure.

#### SYNOPSIS

This Act will substantially reform the use of probation in Delaware. Since the adoption of the SENTAC sentencing system in 1987, the number of defendants on probation has increased by 75%. The huge increase in the number of defendants on probation has also led to a huge increase in the number of defendants incarcerated for violations of probation. Probation violations are now the largest single source of admissions to Delaware's prison system, and account for approximately one-third of all inmates. The Delaware Department of Correction currently supervises more than 19,000 individuals on probation and parole. Delaware ranks third in the nation in the number of its citizens on probation. Moreover, in Delaware over 38% of the probation population is under intensive supervision, as compared with 3% nationally.

In order to ensure that Delaware's prison space is reserved for violent and repeat offenders, this Act will end the practice of using lengthy periods of probation as punishment. Except where necessary to ensure public safety or effective substance abuse treatment, probation sentences will be strictly limited. As a result of these limitations, the number of probation violations will be significantly reduced, thereby reducing the number of defendants who are sentenced to incarceration as a consequence. The Act will also direct SENTAC to quickly develop new sentencing guidelines to ensure that probation will not be used excessively. Victims will benefit from provisions of the Act which will strengthen the State's ability to collect restitution from criminals. Victims will also be given new tools which will permit them to use civil remedies to seek restitution.

The Act will simplify proceedings following a violation of the conditions of probation. The Superior Court will be authorized to consolidate multiple pending violations of probation involving a defendant into one proceeding regardless of the court or county in which the sentences were originally imposed, thereby simplifying sentences while conserving scarce judicial resources. The Department of Correction will also be given enhanced authority to administratively sanction minor and technical violations of the terms of probation by temporarily reclassifying the offender to Level IV for a short period of time. In order to ensure that probationers are classified to the appropriate level of supervision, the Department of Correction will be given the discretion to reclassify probationers between the various levels of probation.

Author: Senator Vaughn