

ACLU-PA Analysis | Amendments in SB 913 PN 1282

	SB 913 PN 1282	Amendment language (Changes made to SB 913 PN 1144 are in red, all caps.)	Notes
1	Page 1; lines 1-5	Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in sentencing, further providing for conditions of probation and for modification or revocation of order of probation AND PROVIDING FOR AUTHORITY REGARDING PROBATION DETAINERS.	Technical change.
2	Page 4; lines 14-17	(1) THE COURT SHALL NOT IMPOSE A SENTENCE OF TOTAL CONFINEMENT UPON REVOCATION UNLESS THE COURT FINDS EITHER THAT THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER CRIME OR THAT THE PROVISIONS OF PARAGRAPH (2) ARE SATISFIED.	Helpful clarification that incarceration following revocation is only permitted for new convictions or for the technical violations in #3 below.
3	Page 4; lines 18-22	(2) A DEFENDANT WHO HAS NOT BEEN CONVICTED OF ANOTHER CRIME MAY BE SENTENCED TO TOTAL CONFINEMENT UPON REVOCATION ONLY IF THE COURT FIRST FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT COMMITTED A TECHNICAL VIOLATION AND ANY OF THE FOLLOWING APPLY:	No significant change between PN 1144 and PN 1282 —this language still shifts the <i>presumption against incarceration</i> and now explicitly permits incarceration for the 6 categories of technical violations that follow. [NB: The new standard of evidence language in PN 1282 reiterates current law, which prohibits probation from being revoked unless the court finds by a preponderance of the evidence that the defendant failed to comply with an explicit condition of supervision imposed by the court.]
4	Page 5; lines 10-13	(3) If a court imposes a sentence of total confinement upon revocation for a condition under paragraph (2), the defendant shall be sentenced TO A DETERMINATE SENTENCE as follows: [incarceration limits]	It is unclear what the intent of this change is or what the effect on this sentencing scheme would be.
5	Page 6; lines 9-10	(4) NOTHING IN THIS SECTION SHALL PREVENT THE ADOPTION OF A PROGRAM UNDER SECTION 9771.1.	This is a good addition—it addresses concerns regarding potential conflicts with current incarceration limits under the “swift and certain” sanctions program under § 9771.1 .

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6	Page 8; lines 18-19	(2.2) The parties ANY INDIVIDUAL OR ENTITY entitled to the probation status report [...]	Technical clarification.
7	Page 11; lines 27-30 Page 12; line 1	(8) Notwithstanding paragraphs (1) and (11), no defendant shall be eligible for a probation review conference if: NO DEFENDANT SHALL HAVE THE DEFENDANT'S PROBATION TERMINATED AT A PROBATION REVIEW CONFERENCE HELD UNDER PARAGRAPHS (1), (2), (2.2), (3), (4), (5), (7) AND (11), IF:	<p>This is a very problematic amendment.</p> <p>SB 913 (PN 1144) made certain people <i>ineligible</i> for the review conferences, but this amendment would use the same criteria to <i>prohibit termination of probation</i> at a review conference for those who:</p> <ul style="list-style-type: none"> Violated one of the six technical violations under § 9771 within 9 months of their review conference eligibility date; Violated <u>any condition</u> of their probation within 6 months of their eligibility date; Was convicted of a misdemeanor or felony offense committed while either incarcerated or serving probation. <p>Probation termination would be prohibited at any review conference, including those that are:</p> <p>¶1 Held at 3 years for a misdemeanor; 5 years for a felony;</p> <p>¶2 Held within 60 days of eligibility;</p> <p>¶2.2 Held following an objection by the alleged victim or other party;</p> <p>¶3 Held 6 months early due to an educational achievement;</p> <p>¶4 Held 6 months early due to two educational achievements;</p> <p>¶5 Held early due to time on probation without violation;</p> <p>¶7 Held early due to no parole violations if serving a split sentence;</p> <p>¶11 Held 12 months after a review that did not result in termination.</p> <p>This change would prohibit terminating probation at any review conference for almost any reason. Worse, by replacing “ineligible” with “prohibit termination,” SB 913 would challenge the court’s authority to terminate probation.</p> <p>By prohibiting termination at a review conference, SB 913 risks interfering with the court’s inherent power to terminate probation under <u>§ 9771 (a)</u>: “The court has inherent power to at any time terminate</p>

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			continued supervision, lessen the conditions upon which an order of probation has been imposed or increase the conditions under which an order of probation has been imposed...” Although SB 913 reiterates the court’s inherent power to terminate, prohibiting the termination of probation could be interpreted as an attempt to limit judges’ “inherent power” via legislation.
8	Page 12; lines 2-6	NO DEFENDANT SHALL HAVE THE DEFENDANT'S PROBATION TERMINATED AT A PROBATION REVIEW CONFERENCE HELD UNDER PARAGRAPHS (1), (2), (2.2), (3), (4), (5), (7) AND (11), IF: 8 (i) A court determines AT THE PROBATION REVIEW CONFERENCE by a preponderance of the evidence that the defendant committed one of the following technical violations within the nine months immediately preceding the defendant's probation review conference: [6 technical violations]	This amendment appears to make “review conferences” function as hearings (with evidence introduced), rather than a review intended to simply consider whether or not to terminate probation. If these conferences are <i>hearings</i> where revocation and/or incarceration are potentially at stake, counsel must be provided. However, this bill says nothing about counsel's presence, leaving it to the already cash-strapped counties to fill this gap and ensure the appointment of counsel. Creating additional adversarial processes without a meaningful guarantee of counsel undermines due process and will make revocation and incarceration even MORE likely.
9	Page 12; lines 21-26	NO DEFENDANT SHALL HAVE THE DEFENDANT'S PROBATION TERMINATED AT A PROBATION REVIEW CONFERENCE HELD UNDER PARAGRAPHS (1), (2), (2.2), (3), (4), (5), (7) AND (11), IF: 8 (ii) A court determines AT THE PROBATION REVIEW CONFERENCE by a preponderance of the evidence that the defendant committed any other technical violation not enumerated in subparagraph (i) [6 technical violations] within the six months immediately preceding the defendant's probation review conference.	See comments under amendment #8 above.

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10	Page 12; line 30 - Page 13; lines 1-10	(8.1) If the defendant is ineligible for a scheduled review conference TERMINATION OF PROBATION as a result of a technical violation enumerated in paragraph (8)(i), then, if all other conditions are satisfied, a probation review conference will be held nine months after the date that the enumerated technical violation occurred. If the defendant is ineligible for a scheduled review conference TERMINATION OF PROBATION as a result of a technical violation which is the subject of paragraph (8)(ii), then, if all other conditions are satisfied, a probation review conference will be held six months after the date that the technical violation occurred.	Technical changes to align with amendment #7 above.
11	Page 16; lines 11-15	"Technical violation." A violation of the SPECIFIC terms and conditions of a defendant's sentence PROBATION , other than by the commission of a new crime of which the defendant is convicted or found guilty by a judge or jury or to which the defendant pleads guilty or nolo contendere in a court of record.	This is an appropriate clarification that aligns with PA court rulings that require that someone must violate a specific term of their order of probation to be revoked, incarcerated, and/or resentenced.
12	Page 16; lines 16-17	"WEAPON." AS DEFINED IN 18 PA.C.S. § 907(D) (RELATING TO POSSESSING INSTRUMENT OF CRIME).	<p>SB 913 uses "weapon" as one of its six technical violations: "(iii) The technical violation involved possession or control of a weapon." Violating this rule under SB 913 justifies incarceration following revocation and would prohibit termination of probation.</p> <p>This amendment relies on 18 § 907(D) to define "weapon," which means anything capable of lethal use (which could include bottles, bats, or a crowbar) could constitute a weapon under this bill. If the "weapon" was a firearm, unlike crimes under Pennsylvania's Uniform Firearms Act, firearms or guns under § 907 do not need to be functional or even capable of being made functional. Using § 907 to define "weapon" will further expand what can count as a technical violation and could be applied inconsistently and/or disproportionately.</p>

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13	Page 16; lines 20-26	§ 9771.2. AUTHORITY REGARDING PROBATION DETAINERS. NOTHING IN THIS SUBCHAPTER SHALL INFRINGE OR INHIBIT THE AUTHORITY OF A COURT OF COMPETENT JURISDICTION, A PROBATION OFFICER OR ANY OTHER RELEVANT OFFICER OR ENTITY FROM LEVYING OR REQUESTING A PROBATION DETAINER IN THE EVENT THAT NEW CRIMINAL CHARGES ARE FILED AGAINST AN INDIVIDUAL SERVING A TERM OF PROBATION.	<p>This is an extremely problematic amendment—expanding detention authority could increase the number of people incarcerated pretrial.</p> <p>Probation detainees are one of the primary drivers of incarceration in PA. When a person on probation gets charged with violating a condition of probation or a new criminal offense, they can be detained while they wait for their probation revocation hearing. This often means weeks, months, or even a year or more in jail. Probation detainees are often a form of pre-trial detention (incarceration prior to being convicted of a crime), only more punitive, because people held on detainees have no right to bail.</p> <p>This amendment is problematic for the following reasons:</p> <p>Grants undefined authority to detain for revocation: Pennsylvania’s Rules of Criminal Procedure require that prior to revocation “a written request for revocation shall be filed with the clerk of courts.” Pa. R. Crim. P. 708. Granting officers the authority to detain for an alleged probation violation, without any requirement that the officer notify the clerk of courts, would result in people languishing indefinitely in county jails.</p> <p>Expands the authority to detain people for supervision violations: Currently, only probation officers have the authority to <u>arrest</u> for probation violations (42 Pa.C.S. § 9913). The law does not define probation detainees, nor does it grant probation officers the authority to detain. Detainers are currently understood as an arrest warrant to commit and detain issued by a court or by the probation department. Because SB 913 fails to define what “levying or requesting a probation detainer” means, it would give individual police or probation officers (not probation departments or courts) the authority to hold people indefinitely on an undefined “detainer.”</p> <p>Expands the authority to detain to other entities, potentially including police officers: Because SB 913 fails to define “relevant officer or entity,” this provision could expand <u>detention</u> authority to</p>

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			<p>police officers (police officers cannot <i>arrest</i> for supervision violations). For example, a police officer could pick someone up in the officer's county, discover that they are on probation in another county, and detain them until they contact the probation department in the defendant's home county, effectively functioning like a domestic ICE detainer.</p> <p>Invites conflicts with county-specific detention policies: Detainer practices vary widely in PA. Counties throughout the commonwealth set their own policies about when to incarcerate someone on probation following a new arrest. For example, according to their policies, Allegheny, Philadelphia, and Lancaster counties (to name a few) do not lodge probation detainers for people charged with summary or misdemeanor offenses for any number of reasons. Giving individual officers the authority to detain people for a probation violation may invite some probation officers to disregard county-specific policies regarding detainers, e.g., a probation officer could decide to arrest someone for a misdemeanor offense in a county that doesn't lodge detainers for misdemeanors.</p>