

ACLU-PA Position: **Oppose**

Bill summary

[Senate Bill 14 \(PN 1834\)](#) eliminates all of the fundamental, structural changes to Pennsylvania’s broken probation system [originally proposed](#) by SB 14 ([PN 59](#)). It does nothing to reduce the amount of time people can be sentenced to probation. Worse, it makes changes to current law that would result in more people incarcerated for technical violations and would keep people on probation indefinitely until they can pay their restitution in full. Its only solution to reducing time on probation is a convoluted, exclusionary process to get a review hearing—an outcome that is far easier to attain under current law.

Bill details

[SB 14 \(PN 1834\)](#) proposes the following changes:

Modifies the conditions of probation.

- Requires that the court consider physical child care responsibilities in setting terms of probation.
- Includes vocational training as an acceptable condition in addition to a specific employment or educational initiative.
- Limits the ability of the court to restrict the travel of the defendant unless there is a specific identifiable and foreseeable reason for restricting the travel due to concerns the defendant will abscond or commit another crime while complying with the applicable requirements and provisions of the Interstate Compact for Adult Offender Supervision and the Adam Walsh Child Protection and Safety Act.

Makes it easier for judges to revoke probation.

Thankfully, SB 14 (PN 1834) does prohibit judges from incarcerating people to “[vindicate the authority of the court](#).” But it also eliminates the conduct provision—a critical backstop that prevents incarceration for *all* technical violations and changes the [current presumption](#) for courts to incarcerate following revocation from SHALL NOT to MAY impose incarceration, including for violations that are not being charged as new cases or are even specific violations of a person’s probation order (likely violating a recent [PA Supreme Court](#) ruling):

- The court **may not** revoke probation and impose the underlying sentence unless the defendant has been convicted of another crime.
- The court **may impose** incarceration if the defendant committed a technical violation that was:
 - Sexual in nature;
 - Involved assaultive behavior or included a credible threat to cause bodily injury to another;
 - Involved possession or control of a weapon;
 - The defendant absconded and cannot be safely diverted from total confinement ;
 - There exists an identifiable threat to public safety and the defendant cannot be safely diverted through less restrictive means;
 - Intentional and unexcused failures to adhere to programming or conditions on more than three occasions and the defendant cannot be safely diverted through less restrictive means.

Increases the length of time people can be incarcerated for technical probation violations.

[Current law](#) limits the amount of time a person can be incarcerated for technical violations. SB 14 (PN 1834) makes the following changes, including increasing the graduated limits on incarceration:

- First technical: maximum 14 days—**increased from 3 days**
- Second technical: maximum 30 days—**increased from 7 days**

- Third or subsequent technical: any sentence which would have been available for the underlying crime—**increased from 14 days**
 - **Current law** caps incarceration for the fourth or *any subsequent violations* at 21 days, so this provision **not only increases the limit, but entirely eliminates the current cap on incarceration**, which means people can be incarcerated up to the maximum allowable for their underlying offense for a third or subsequent violation.
- For a technical violation that was sexual, assaultive, involved possessing a weapon, or created an identifiable threat to public safety, the court may add up to 30 extra days for a first violation and up to 45 additional days for a second violation.
- The court shall consider allowing the term of incarceration to be served on non-work days for a first or second technical.
- These guidelines do not apply if the defendant is being evaluated for or ordered to a treatment program.
 - Excluding people in need of drug or mental health treatment ensures they will remain incarcerated following a violation, which means that the **bill allows administrative delays in getting evaluated for or admitted to a treatment program to dictate how long a person can be incarcerated.**

Creates a parallel, convoluted process for judges to terminate probation.

Under **current law**, judges may already terminate probation at any time, for any reason, for any offense; and it allows for probation review hearings at any time, including by petition of the probationer. SB 14 (PN 1834) clearly underscores this ability by ensuring that nothing in the bill should be construed to:

- Prevent a defendant from petitioning a court for early termination of probation or modification of the terms and conditions of probation as otherwise permitted by law.
- Prohibit the court from eliminating or decreasing the term of probation.
- Diminish the court's ability to, at any time, terminate probation or lessen the conditions of probation; or to create or administer a process or program which seeks to terminate probation or lessen the conditions of probation.

Mandatory probation review conferences: With the court's current power reasserted, SB 14 (PN 1834) establishes a convoluted process to establish mandatory review conferences. If a defendant has successfully completed three years' probation for a misdemeanor or five years for a felony, the court shall hold a mandatory probation review conference within 60 days from the eligibility date based on the following criteria:

- **Earning an earlier review date:** A defendant serving probation shall be eligible for the mandatory probation review conference six months sooner for successfully completing any of the following:
 - A high school diploma or GED
 - An associate's degree
 - A bachelor's degree
 - A masters or other graduate degree
 - Vocational or occupational license, certificate, or program
 - Any other condition approved by the court at sentencing that substantially assists the defendant in leading a law-abiding life or furthers the rehabilitative needs of the defendant.
- A defendant serving time for a felony shall receive an additional 6 months credit towards the review conference for completing two or more of the above conditions.
- A defendant shall earn two months credit for every six consecutive calendar months served on probation without a violation, and for every six consecutive calendar months where the defendant works at least 80 hours per month or completes at least 80 hours per month community service, not to exceed a total of six months credit from all sources under this section.
- **Probation after parole:** If a defendant served the last 12 months of parole without violation, they shall be eligible for a mandatory review conference 12 months sooner than otherwise eligible.
- **Ineligibility:** Several factors can render a person ineligible for a probation review conference.
 - Review conferences are not available to the following:
 - Sex offenders
 - Those convicted of a crime of violence

- Those convicted of domestic violence
- A person is ineligible if they committed one of the following technical probation violations within nine months of the eligibility date of the mandatory review conference:
 - Sexual in nature;
 - Involved assaultive behavior or included a credible threat to cause bodily injury to another;
 - Involved possession or control of a weapon;
 - The defendant absconded and cannot be safely diverted from total confinement;
 - There exists an identifiable threat to public safety and the defendant cannot be safely diverted through less restrictive means;
 - Involved intentional and unexcused failure to adhere to programming or conditions on more than three occasions and the defendant cannot be safely diverted through less restrictive means;
 - If the person is ineligible for a scheduled review conference as a result of a technical violation listed above, then if all other conditions are satisfied, a probation review conference will be held nine months after the date that the technical violation occurred.
- A person is ineligible if they commit any technical violation within six months of the mandatory review conference.
 - If the person is ineligible for a scheduled review conference as a result of a technical violation, then if all other conditions are satisfied, a probation review conference will be held six months after the date that the technical violation occurred.
- A person is ineligible if they were convicted of a misdemeanor or felony offense committed while either incarcerated or serving probation.
- **Termination exceptions:** The court shall terminate probation at the mandatory review conference unless it finds by a preponderance of the evidence:
 - The conduct of the defendant creates an identifiable threat to public safety including consideration of being the active subject of a PFA.
 - The defendant has not successfully completed all court ordered programs.
 - The defendant has failed to pay the total restitution.
- If the court does not terminate probation after the mandatory review conference, the defendant shall receive a detailed letter on the court's findings and be eligible for another conference no later than 12 months after the first.

Creates “administrative probation” that allows people to remain on probation indefinitely

Despite the fact that unpaid restitution is commonly converted to a civil judgment, enforceable by the court's use of its contempt power, SB 14 (PN 1834) creates a mechanism to allow judges to keep people on probation indefinitely. If termination of probation is denied solely due to the failure to pay restitution, the court shall order the defendant to administrative probation if the defendant has paid at least 50% of the restitution or if the court determines that the defendant has made a good faith effort to pay. Administrative probation requires:

- Supervision contact once a year
- Updated contact information on change of residence or employment
- Payment of balance of restitution
- No other conditions are permitted

While this may seem like a reasonable reduction in supervision requirements, as long as a person is on probation **of any kind**, if they violate a probation rule or get charged with a new offense, they can be [detained indefinitely](#) in jail pending a hearing, where they are ([unconstitutionally](#)) [denied pre-hearing release](#) either on bail, their own recognizance, or under supervision. And while some states have similar provisions for “administrative probation,” those states hold ability to pay hearings as part of that process—Pennsylvania does not. This provision would fundamentally alter probation in Pennsylvania by **allowing courts to keep people on probation indefinitely, including those who are too poor to pay restitution**. And denying termination of probation for those who have not paid restitution in full (or denied administrative probation if they haven't paid 50%) is almost certainly [unconstitutional](#).