

PA Probation Bill Comparison | SB 14 (PN 59) vs SB 838 (PN 1113)

PROBATION PROVISION	SB 14 (PN 59)	SB 838 (PN 1113)	CURRENT LAW	SB 14 PN 59 (2019)	SB 838 PN 1113 (2023)
<p>KEY: Positive reform Fails to reform Mixed reform Makes probation worse than current law</p>					
<p>This spreadsheet offers a comparison of probation provisions originally offered under Senate Bill 14 in 2019 and Senate Bill 838 as amended in 2023. Each provision includes a brief description of current law.</p>					
<p>Caps the amount of time someone can be sentenced to probation.</p>			<p>Under current law (42 Pa. C.S. § 9754(a)), people may be sentenced to a term of probation that can last up to the maximum sentence for an offense. Current law provides no limit on the number of times a person may be re-sentenced to probation, leading to extended and nearly indefinite supervision terms.</p>	<p>As filed, SB 14 capped the total length of probation terms at 3 years for misdemeanor offenses and 5 years for felony offenses.</p>	<p>SB 838 does not limit probation terms.</p>
<p>Prohibits judges from imposing stacked and split probation sentences.</p>			<p>Under current law (42 Pa. C.S. § 9721(a)), judges are permitted to impose consecutive probation sentences and may also sentence people to years of probation after they are released from prison or finish parole.</p>	<p>As filed, SB 14 prohibited judges from stacking probation sentences consecutively (back to back) and from splitting a sentence by imposing a term of probation to be served after a period of incarceration, commonly referred to as a "probation tail."</p>	<p>SB 838 does not eliminate stacked sentences. And it reaffirms the use of split sentences under a new section, § 9774.1(4), which addresses eligibility for review conferences for defendants "sentenced to a period of probation consecutive to a period of incarceration in a State correctional institution"—in other words, people sentenced to a separate term of probation after they're released from prison.</p>
<p>Requires automatic early termination of probation if compliant.</p>			<p>Under current law (42 Pa.C.S. § 9771 (a)), judges may terminate probation at any time, for any reason, for any offense; and it allows people on probation to file a petition for termination at any time without any need for a hearing.</p>	<p>As filed, SB 14 required automatic early termination of probation after a person successfully completed 18 months of supervision without violation or revocation.</p>	<p>SB 838 does not require early termination. Instead, it creates "probation review conferences" that offer a convoluted parallel procedure to the current termination hearing process. Probation "status reports" may offer presumptive termination as long as there are no objections from the DA, probation officer, or adverse input from victims. Furthermore, § 9774.1(f) explicitly prohibits termination of probation if the defendant violated any of the new provisions under (g) OR for conduct that presents a "identifiable threat to public safety," failure to complete treatment, to ensure continued treatment, or failure to pay total restitution owed.</p>
<p>Requires judges to hold mandatory probation review conferences.</p>	N/A		<p>Under current law (42 Pa.C.S. § 9771 (a)), judges may review and terminate supervision at any time <i>without a hearing</i>. Under current law, a hearing is only required when judges seek to revoke probation or increase the terms of supervision.</p>	<p>As filed, SB 14 did not create the need for hearings or review conference, since the defendant, counsel for the defendant, and/or a probation officer can petition the court for a termination hearing at any time, for any reason, and for any offense. Instead, SB 14 provided for automatic termination of probation after a person successfully completed 18 months without violation or revocation.</p>	<p>SB 838 creates a complicated process that requires judges to hold review hearings to consider terminating probation after 2 years for a misdemeanor or 4 years for a felony offense (but prohibits any review conference to be held less than 12 months from sentencing). The process to terminate probation is easier under current law, whereas getting an actual "review conference" is narrowly accessible, confusing to navigate, and riddled with exceptions. And alarmingly, SB 838 excludes defense counsel from any of its review conference proceedings.</p>
<p>Prohibits judges from incarcerating people to "vindicate the authority of the court."</p>			<p>Under current law (42 Pa.C.S. § 9771 (c)), judges can only incarcerate someone after revoking probation if (1) convicted of a new crime; (2) "the conduct of the defendant indicates that it is likely he will commit another crime if not imprisoned;" or (3) "to vindicate the authority of the court." The vindication provision permits judges to incarcerate people who have committed technical violations but who do not pose a risk of committing a future crime.</p>	<p>As filed, SB 14 eliminated this widely abused provision that gives judges the power to arbitrarily and sometimes vindictively incarcerate people for technical violations. Striking the vindication provision is meaningful because it limits incarceration to only direct violations (new offenses) or instances where a person is likely to commit a crime in the future if not imprisoned.</p>	<p>SB 838 also strikes this flawed provision. However, SB 838 replaces it with a new section that codifies the authority to incarcerate people for specific types of technical violations. This enumerated list may be interpreted as recommending revocation and incarceration, thereby encouraging judges to incarcerate people for particular violations. As a result, SB 838 effectively nullifies the benefit striking the vindication provision.</p>

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Limits the court's ability to incarcerate people for technical violations.			Under current law, 42 Pa. C.S. § 9771 (c) already includes a <i>presumption against incarceration</i> , stating that courts SHALL NOT incarcerate someone following a revocation unless: (1) convicted of a new crime; (2) "the conduct of the defendant indicates that it is likely he will commit another crime if not imprisoned;" or (3) "to vindicate the authority of the court."	As filed, SB 14 made it more difficult for judges to incarcerate people for technical violations by requiring that judges may imprison for technical violations unless no other condition of supervision or treatment would decrease the likelihood of future crime.	SB 838 expands and codifies the court's ability to incarcerate people for violations following revocation by: (1) It strikes the current prohibition against incarceration for ANY violation (" shall not impose a sentence of total confinement upon revocation") and (2) replaces it with a weaker and more limited " presumption against total confinement for technical violations ." (3) SB 838 then gives courts explicit permission to incarcerate (" may impose a sentence of total confinement upon revocation only if...") followed by (4) a new list of technical violations for which judges may incarcerate. That list includes violations involving an "identifiable threat to public safety"—a vague, subjective standard that replaces the current conduct provision permitting judges to incarcerate if "the <i>conduct</i> of the defendant indicates that it is likely he will commit another crime if not imprisoned." While imperfect, the focus on "conduct" at least offers more objective criteria to justify incarceration.
Limits the amount of time someone can be incarcerated for violations following a revocation.			Under current law, courts may choose to participate in the "swift and certain" sanctions program under 42 Pa. C.S. § 9771.1 (g) , which caps incarceration after technical violations at: 3 days after the 1st violation; 7 days after the 2nd; 14 days after the 3rd; and 21 days for the 4th and any subsequent violations and doesn't require probation to be revoked prior to incarceration.	Except for people sentenced under § 9771.1, SB 14, as filed, limited incarceration following a revocation to 30 days for any technical violation if their conduct indicated they may commit a future crime and no other condition of supervision or treatment would decrease that likelihood. Incarceration was limited to 6 months if convicted of a new misdemeanor. For those convicted of a new felony offense, the court would have the same sentencing alternatives available as at the initial sentencing.	SB 838 does not limit incarceration for new convictions, but does limit incarceration for technical violations: 14 days after a 1st violation; 30 days after a 2nd violation, and no limits for a 3rd or subsequent violation. In addition, SB 838 explicitly allows defendants to be held for 30 additional days in order to receive a drug, alcohol, or mental health evaluation, placement in a treatment program, or participation in a problem-solving court. Long delays for treatment evaluations and admission to programs are common due to staffing or waiting lists; extending incarceration would only punish people for circumstances beyond their control.
Prohibits extending or revoking probation for nonpayment of fines, costs, or restitution.			Under current law (42 Pa.C.S. § 9754), courts can make payment of fines or restitution a condition of probation. But both the PA Superior Court and the U.S. Supreme Court have ruled that nonpayment of fines or restitution only violates probation if the defendant is able, but willfully refuses, to pay.	As filed, SB 14 clarified the current statute to reflect US and PA case law by explicitly protecting people who can't afford to pay their pay fines, costs or restitution from having their probation extended or revoked.	SB 838 also prohibits courts from punishing people who cannot afford to pay fines and costs, but it does not protect those who owe restitution (see "administrative probation" below).
Prohibits people from who only owe restitution from remaining on probation.			"Administrative probation" does not currently exist under PA law.	As filed, SB 14 protected people who can't afford to pay their pay fines, costs, or restitution from having their probation extended or revoked.	SB 838 creates "administrative probation" to require continued, albeit reduced, criminal supervision for people who still owe restitution, even if they are too poor to pay . However, because SB 838 offers no instruction on what happens when/if a defendant misses a payment, it leaves them vulnerable to having their 'administrative probation' revoked, resentenced to 'regular' probation, or even incarcerated. SB 838's debtors probation is a dangerous and likely unconstitutional change to the probation system in Pennsylvania.