



Act 44/Senate Bill 838

Act 44



Effective date 6.11.2024



Amends Title 42 Judiciary
and Judicial Procedure

A Few Starting Points

- Act 44 is a probation reform bill, mainly related to:
 - ❖ **conditions** of probation
 - ❖ **modifications** of the terms of probation
 - ❖ **revocation** of probation (including sentencing limits for technical violations) and
 - ❖ **early termination** of probation.
- All cases sentenced on or after June 11, 2024, will be subject to Act 44 provisions and requirements
 - The Act also requires existing eligible cases be reviewed for early termination consideration within one year (June 11, 2025) of the effective date of Act 44
 - The Act leaves interpretative questions in several areas that will require ongoing review by each judicial District, the Administrative Office of PA Courts, The County Chief Adult Probation and Parole Officers Association of Pennsylvania, and other stakeholders.

Act 44 ONLY Applies to PROBATION SENTENCES

- Act 44 ONLY applies to PROBATION sentences, including those with restrictive conditions
- It does NOT APPLY to:
 - ❖ ARD
 - ❖ PAROLE
 - ❖ PRE-TRIAL MONITORING
 - ❖ PRE-PLEA SPECIALTY COURT ADMISSION MODELS
 - ❖ PROBATION SENTENCES OF LESS THAN 2 YEARS

(See discussion of this at the end of the Power Point)



Act 44 contains
three provisions:

- Amends 42 Pa.C.S. §9754 Conditions of Probation
- Amends 42 Pa.C.S. §9771 Modifications or revocation of order of probation
- Creates 42 Pa.C.S. §9774. Case Status Reports and Probation Review Conferences

CONDITIONS OF PROBATION

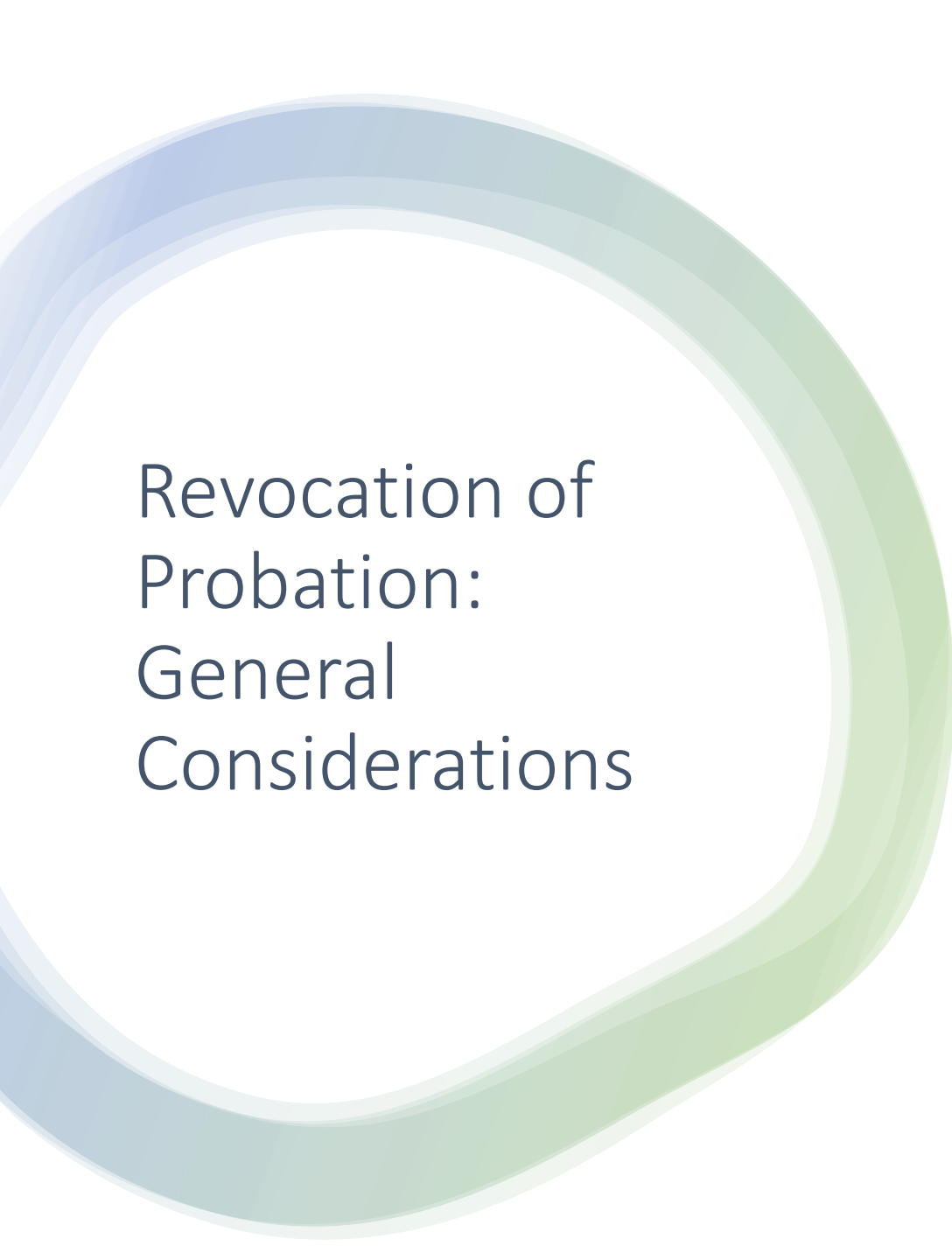
- New language REQUIRES the court to order conditions based on an **individualized assessment** of the Defendant.

This is NOT a formal assessment employing an assessment tool. It is a conversation between the Judge and the Defendant.

- The court SHALL ONLY order conditions that are NECESSARY and the **LEAST RESTRICTIVE** to promote the individual's rehabilitation and protection of the public.
- The court MUST include considerations of child-care responsibilities, studies and/or vocational training when imposing conditions.

Modification of Probation

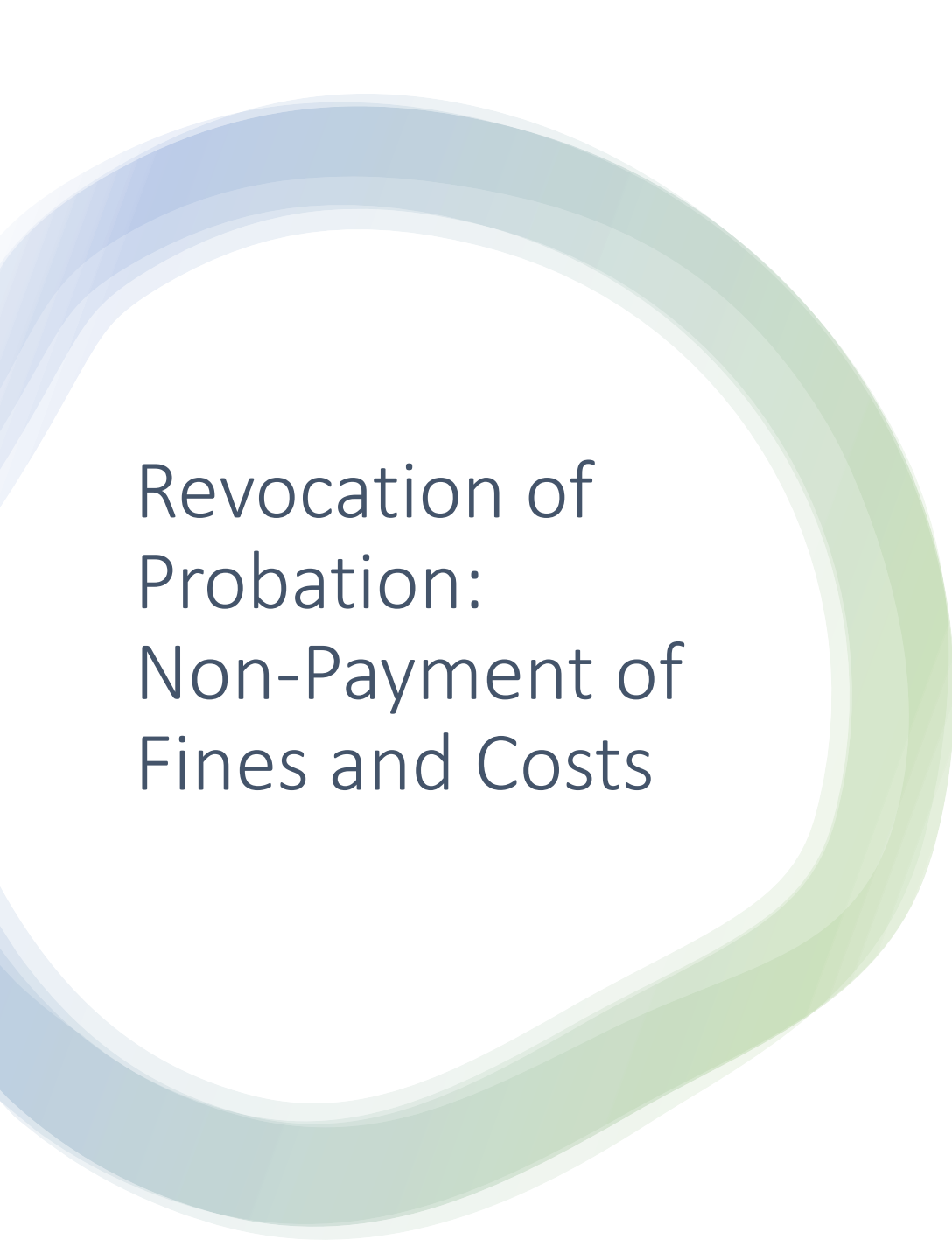
- The court can INCREASE conditions of probation ONLY upon a finding by CLEAR and CONVINCING EVIDENCE that the individual on probation presents an “Identifiable Threat to Public Safety.”
 - ❖ Because a “finding” is required, an evidentiary hearing is necessary.
 - ❖ Clear and convincing evidence is evidence so clear, direct, weighty and convincing as to enable the trier of fact to come to a clear conviction, without hesitation, of the truth of the precise facts in issue.
 - ❖ There are no restrictions identified in the Act as to “increase in conditions.” It appears that it would apply to everything from increased frequency of drug testing to the addition of EHM.
 - ❖ There is no definition provided of “identifiable Threat to Public Safety.” Conditions are often increased to protect defendants from their own self-destructive behavior (drug use, need for MH treatment). Do these concerns fall within “identifiable threat to public safety”?



Revocation of Probation: General Considerations

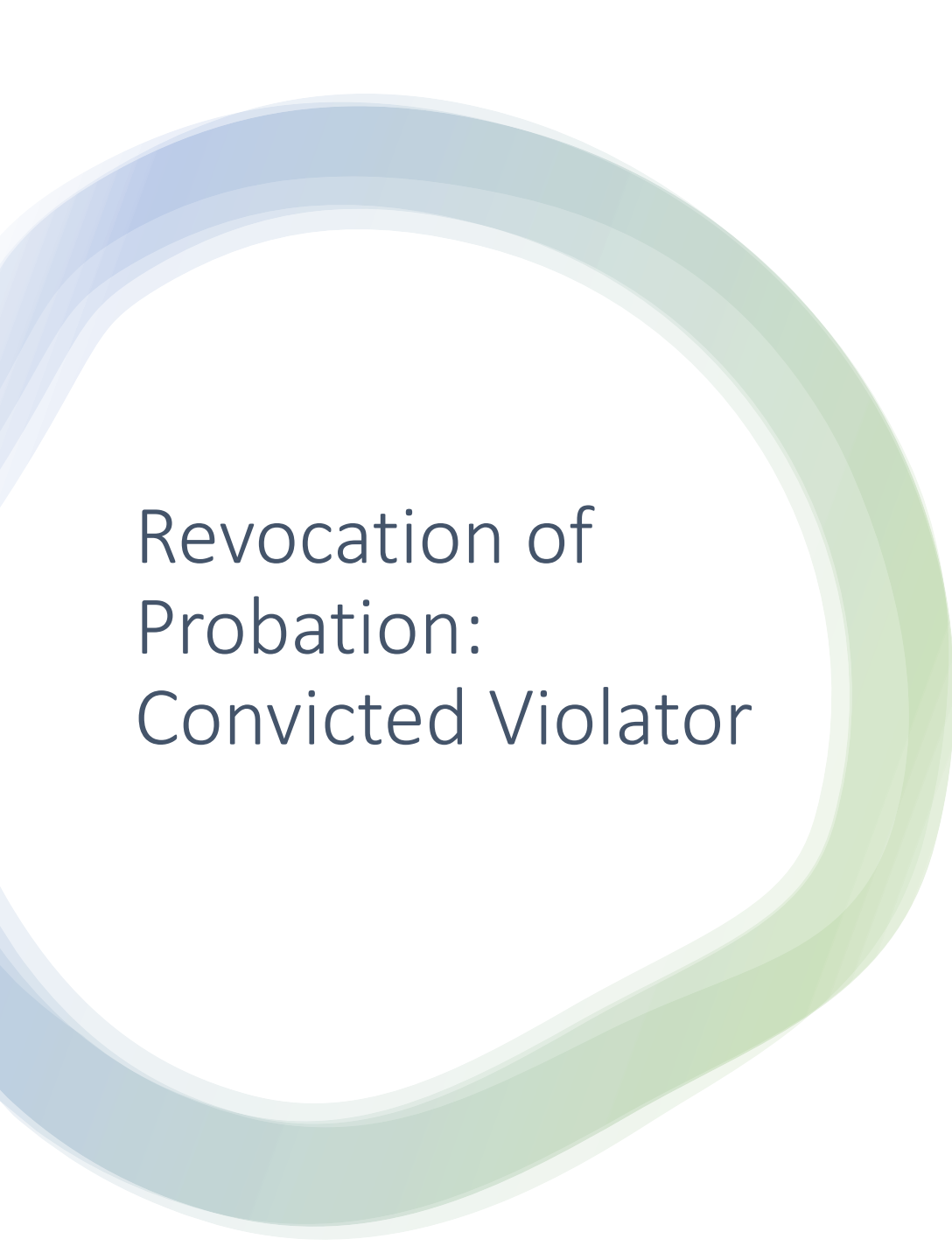
Act 44 has modified and limited the court's authority to revoke an order of probation as well as its sentencing options upon revocation.

Importantly, the Act does not speak to the **detainment** of individuals on probation but specifically refers to "revocation." It appears that the law remains unchanged in regards to detaining an individual in violation of probationary conditions.



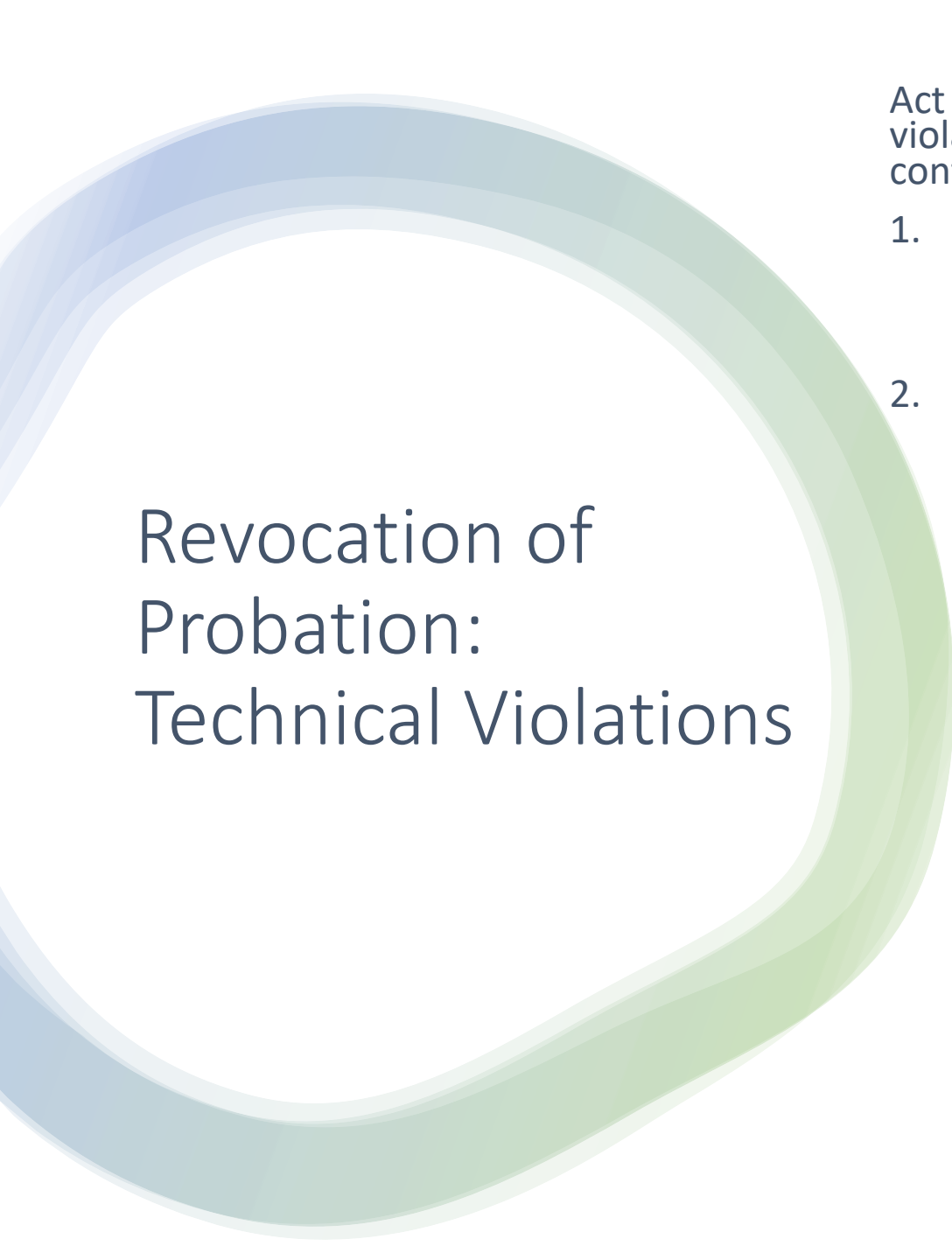
Revocation of Probation: Non-Payment of Fines and Costs

- The court cannot extend probation, impose a brief sanction or revoke SOLELY due to non-payment of **finances and costs** UNLESS the individual is financially able to pay and has willfully refused to do so.
- Note that the language of the Act refers to fines and costs, NOT RESTITUTION.



Revocation of Probation: Convicted Violator

- When an individual on probation is a convicted violator, the court has all sentencing alternatives that were available at the time of the original sentencing.
- Total confinement may be imposed on a convicted violator upon revocation.



Revocation of Probation: Technical Violations

Act 44 places limitations on sentences of total confinement for technical violations. The only circumstances when a court may impose a term of confinement for a revocation based on a technical violation are:

1. If the court finds by **clear and convincing evidence** that the individual (a) committed a technical violation that involves an “**identifiable threat to public safety**” (b) and the individual **cannot be safely diverted through less restrictive means**.
2. If the court finds by a **preponderance of the evidence** that the individual committed a technical violation **AND** that the violation:
 - Was **sexual** in nature
 - Involved **assaultive behavior** or included a **threat** to cause bodily harm to another, including acts committed against a family or household member
 - Involved possession or control of a **firearm** or dangerous weapon
 - Involved **PWID**
 - Was that the individual **absconded** and cannot be safely diverted through less restrictive means
 - Involved an **intentional and unexcused failure to adhere to recommended programming or conditions** on **THREE** or more separate occasions **AND** the individual cannot be safely diverted through less restrictive means – Multiple violations from the same episode DO NOT equal separate technical violations

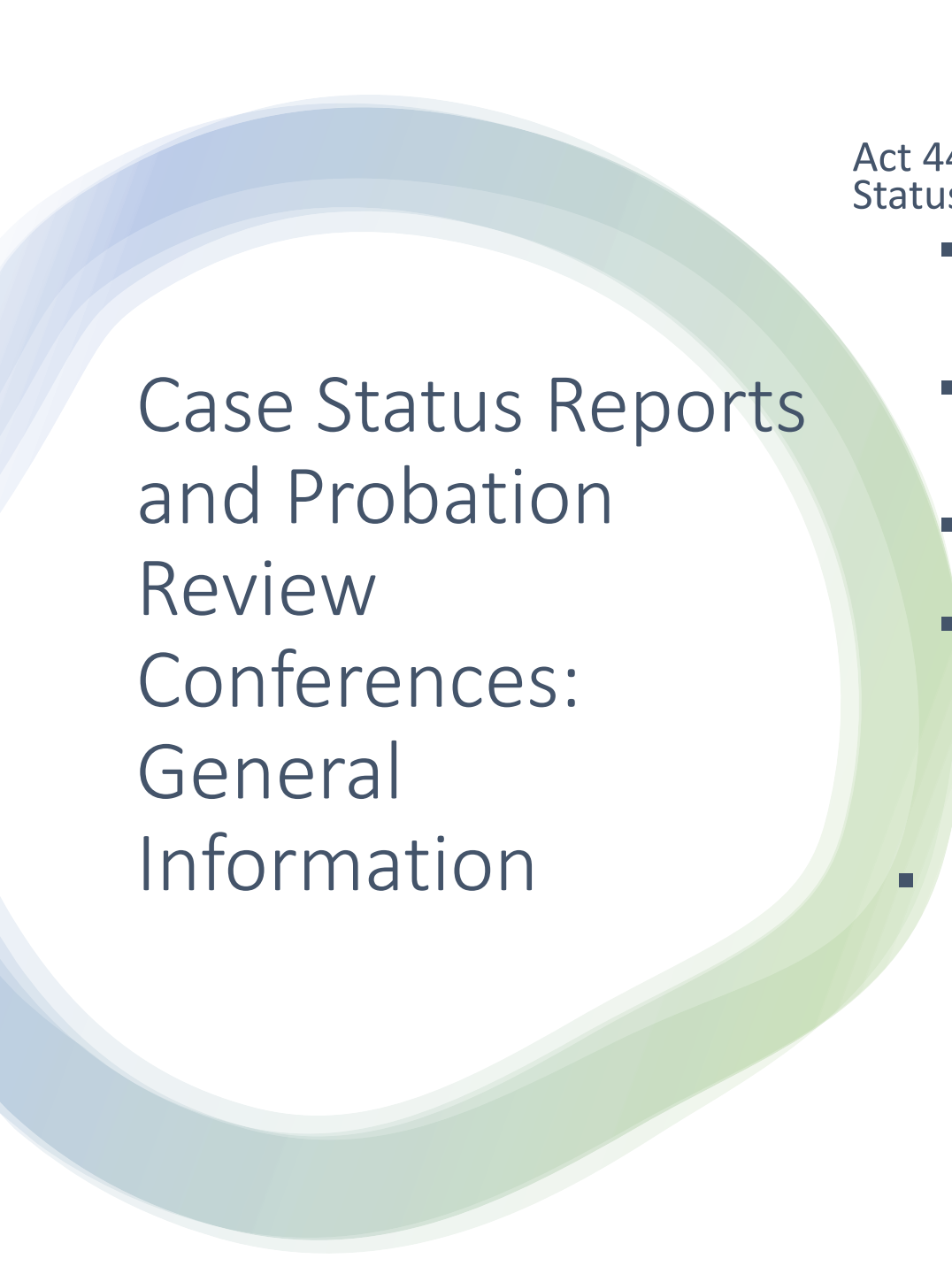
These violations are known as the **SERIOUS SIX** and will be referred to that way throughout the rest of this presentation



Revocation of Probation: Time Limits on Confinement Sentences for Technical Violations

For technical violations, upon revocation, the court is limited in terms of the length of total confinement as follows:

- a. For a **first** technical violation, the maximum period of total confinement is **14 days**.
 - b. For a **second** technical violation, the maximum period of total confinement is **30 days**.
 - c. For a **third** or subsequent technical violation, the court may impose **any sentencing alternatives available at the time of initial sentencing**.
 - d. These time limits may be extended for up to 30 days to allow the individual to be evaluated for or participate in a court ordered treatment program or a problem-solving court.
- Detainers are not subject to these limits. This section applies only to revocation sentences.
 - The court SHALL consider the employment status of the individual when imposing total confinement for technical violations.



Case Status Reports and Probation Review Conferences: General Information

Act 44 creates a new procedure for eligible probation cases --Case Status Reports (CSRs) and Probation Review Conferences (PRCs)

- Probation case status reports and review conferences are the prerequisites to early termination of probation as required by Act 44.
- Case status reports for eligible cases **MUST** be submitted regardless of pending violations or pending charges (this includes detained and incarcerated individuals).
- A case status report is due **30 days prior to the individual's eligibility date**.
- The court **SHALL** hold a probation review conference **no later than 60 days from the date the individual is eligible**. If the probation review conference hasn't occurred within the required timeframe, the defense attorney, or the individual if unrepresented, may file a motion demanding a probation review conference within five business days.
- A probation review conference does not need to be scheduled if no parties object to the report recommendation, in which case a court order shall be prepared reflecting the outcome. If any party objects, a hearing must be scheduled no later than 60 days from the eligibility date.

Probation Review Conferences: Eligibility

- Act 44 requires that a case status report be submitted on **ELIGIBLE** cases, regardless of outstanding violations or pending charges. Several factors must be looked at in determining “eligibility” for a Probation Review Conference (PRC):

First, are the **offenses** eligible? An individual is NOT eligible for a PRC if the offense was

- (1) relating to **criminal homicide**;
- (2) a **crime of violence** as defined by 42 Pa.C.S.A. 9714 (g). (Generally, sex crimes; aggravated assaults; kidnapping; burglary; robbery; F1 strangulation; arson; drug delivery resulting in death; and criminal attempt, solicitation or conspiracy to commit the above);
- (3) **SORNA** cases;
- (4) **Simple Assault against a family or household member**;
- (5) **Stalking**

Probation Review Conferences: Eligibility (Continued)

Second, have the **conditions** of probation and **time requirements** been met? Individuals must complete court-ordered conditions AND meet the following time requirements:

Misdemeanor cases – complete 2 years of probation or 50% of the probation sentence, **whichever is sooner**

Felony cases – complete 4 years of probation or 50% of the probation sentence, **whichever is sooner**

Consecutive probations arising from the **same** conduct or **same** criminal episode:

Misdemeanor cases – complete 2 years of probation or 50% of the aggregate sentence, **whichever is sooner**

Felony cases – complete 4 years of probation or 50% of the aggregate sentence, **whichever is sooner**

Consecutive probations based on **separate** conduct and arising from **separate** criminal episodes:

Must complete 4 years of probation or 50% of the aggregate, **whichever is sooner** – no distinction is made between misdemeanor and felony cases

Individuals are NOT ELIGIBLE for PRC less than 12 months from original date of sentence.



CASE EXAMPLES

ELIGIBILITY DATE CALCULATIONS



Joe Smith

- Judge 1: Sentence date: 8/30/24 3-year probation Retail Theft 8/30/24-8/30/27
- Judge 1 Sentence date 8/30/24 15-month probation Retail Theft 8/30/24-11/30/25
- Judge 2: Sentence date 10/18/24 2-year probation Receiving Stolen Property 10/18/24-10/18/26
- Judge 1: Sentence date 2/13/25 9-month probation Retail Theft 2/13/25-11/13/25

None of the sentencing orders reflect any consecutive sentence links.
All probations were effective on date of sentence.

Judge 1 cases are all concurrent with the longest case running until 8/30/27

Eligibility Date for Judge 1: 2/28/26

Report due date: 1/28/26

Judge 2 case must be calculated and submitted separately

Eligibility date for Judge 2: 10/18/25

Report due date 9/18/25



John Doe

- Sentence date 6/22/24
 - Case 1: Possession with Intent to Deliver- 3 year probation (effective 6/22/24)
 - Case 2: Receiving Stolen Property- 2 year probation (consecutive to case 1)

Cases must be aggregated due to consecutive sentences

Total supervision time: 5 years 6/22/24-6/22/29

Eligibility date: 12/21/26 Report due date: 11/21/26



Probation Review Conferences: Early Eligibility

An individual is entitled to an early probation review conference, at 6 months prior to the eligibility date instead of 60 days following the eligibility date, if the individual:

- Earns a HS diploma or GED
- Earns Assoc, BA, BS, MA or MS degrees
- Obtains vocational or occupational license, certification, registration or permit
- Completes a certified vocational, technical, career, education or training program
- Completes any court-imposed condition that “substantially assists” the person in leading a law-abiding life or furthers their rehabilitation needs

The programs listed above must be approved by the probation office in accordance with standards developed by PCCD.

Early eligibility is available to individuals serving probation on felony cases as well as misdemeanor cases.



Case Status Reports

- When a Defendant is eligible for a PRC, a Case Status Report must be created and submitted NO LATER THAN 30 DAYS PRIOR TO THE ELIGIBILITY DATE
- The CSR is created and submitted by the supervising probation officer.
- The report must be submitted to the Court, Office of the District Attorney, last defense attorney of record, the victim, and the supervised individual

Case Status Reports: Contents


The CSR must contain the following information:

Eligibility date for the PRC

A statement as to whether the Defendant:


- Was convicted of an M1, M2 or any felony while either incarcerated or serving probation
- Committed any technical violations, that were found by the court by clear and convincing evidence, within the 6 months prior to the PRC that involved an identifiable threat to public safety
- Committed any of the SERIOUS SIX (sexual in nature, assaultive or credible threat of bodily injury, firearms or dangerous weapons, PWID, absconded, failed to adhere to treatment or conditions on at least 3 occasions) within the 6 months prior to the PRC and as determined by the court by a preponderance of the evidence
- Committed any other technical violations within the 6 months prior to the CSR
- Was convicted of a misdemeanor or felony while either incarcerated or serving a probation sentence
- Has completed all treatment or any other program required as a condition of probation
- Has paid all restitution owed to the victim

A Description of the Defendant's Progress on Probation



Case Status Reports: Contents -- Recommendation

The CSR must also contain a recommendation to the court. There are 3 recommendations:

- Early termination of probation at or before the date that the probation officer believes that the Defendant is eligible for a PRC.
 - The Defendant should remain on probation with the same conditions.
 - The Defendant should remain on probation under different, reduced or increased terms and conditions.
- 

Case Status Hearing/Probation Review Conference

- The Commonwealth and the Defendant have 30 days from the date of the report to **object** or otherwise respond to the PSR.
- The Victim has 30 days from the date of the report to **provide input** or otherwise respond.
- If any party objects, the Court **SHALL** hold a probation review conference within 60 days of the established eligibility date.
- If no party objects within 30 days **and** the court is satisfied that the report was served, the Probation Review Conference **SHALL** be deemed waived, and the court **SHALL** enter an order memorializing the recommendation contained in the case status report and shall notify the parties of the same.

The court can enter the order even if the case was the result of a plea agreement.



Probation Review Conference -- Early Termination

Early termination **SHALL** immediately occur at the eligibility date UNLESS the court finds:

- (1) By **clear and convincing evidence** that the conduct of the Defendant created an “identifiable threat to public safety”. The court is able to consider if the Defendant is subject to an active PFA or an active protection from intimidation order.
- (2) By **preponderance of the evidence** that the Defendant has NOT successfully completed all treatment or other programs required as a condition of probation **AND** termination would either prevent the Defendant from continuing treatment that is still necessary or would create a substantial likelihood that the Defendant would discontinue treatment.
- (3) By **preponderance of the evidence** that the Defendant has failed to pay the total restitution owed.

Early termination may occur even if it is against a plea agreement.

If early termination does NOT occur, the Defendant **SHALL** receive **WRITTEN** notice of the court’s order and findings. The Defendant shall be re-eligible for termination NO LATER than 12 months after the Probation Review Conference.

Ineligibility for Early Termination – No Probation Review Conference Required

In certain cases, Defendants are not eligible for early termination at their original eligibility date due to violations.

- Where Defendant was convicted of an M1, M2 or F offense while either incarcerated or on probation
- Where the court finds, by **clear and convincing evidence**, that the Defendant committed a technical violation within 6 months of the probation review conference that involved an “identifiable threat to public safety.”
- Where the court determines, by **a preponderance of the evidence**, that the technical violation involves one of the SERIOUS SIX (sexual in nature, assaultive or credible threat of bodily injury, firearms or dangerous weapons, PWID, absconded, failed to adhere to treatment or conditions on at least 3 occasions)

When a Gagnon 1 report is filed within the six months preceding the eligibility date, the Case Status Report must be submitted but the case is ineligible for Act 44 early termination at that time. The eligibility date will be recalculated 6 months from the filing of the Gagnon 1 report. A new Act 44 case status report will be submitted to the court at that time. If all other conditions are satisfied, the Defendant shall have a Probation Review Conference at that revised date.

Recalculation of Eligibility Dates

- Although a case status report is required for individuals with technical violations, including pending charges, they are not eligible for an early termination recommendation. This will require a future eligibility date to be calculated.
- Upon the filing of a Gagnon 1 report, an individual's eligibility date for early termination is rescheduled 6 months from the filing of the violation.
- Eligibility dates will also need recalculated as individuals are sentenced for new unattributable cases, revocations occur, other Judge's cases expire, close, and take effect, etc.

Administrative Probation

- If half or more of court-ordered restitution has been paid at the time of the Act 44 eligibility date, and no other violations exist, the individual is to be placed on administrative probation.
- This status requires:
 - a minimum of one (1) and a maximum of four (4) contacts per year with probation.
 - the Defendant to notify the court of any change in address or employment “within a reasonable period of time.”
 - The Defendant to pay the remaining restitution balance on a schedule or payment plan that the Defendant can afford to pay
 - That no other conditions of probation be imposed.
- Upon being ordered to administrative probation, the individual is not to be charged supervision fees for the remainder of the supervision period.

Eligibility and Review of Act 44 Lookback Cases

- Eligibility for early termination on lookback cases remains the same as related to offense exclusions in terms of initial criminal charges
- The required time completed under supervision for these cases is longer than cases sentenced on or after the effective date of Act 44, June 11, 2024.
 - For misdemeanor cases, the individual must have completed two years of probation
 - For felony cases, the individual must have completed four years of probation
 - These timelines apply for multiple counts within the same case
 - Individuals are ineligible for early termination under this requirement if they have:
 - Committed any of the “serious six” technical violations
 - A technical violation that involved an identifiable threat to public safety
 - Been convicted of a felony, M1 or M2 while incarcerated or on probation supervision
 - Been convicted of registerable sex offenses
 - Been convicted of a crime of violence
 - Been convicted of Simple Assault or Stalking against a family or household member

Act 44 Clarification regarding Probation Periods Less than 2 Years

This Power Point contains a statement that Act 44 does not apply to periods of probation that are less than two (2) years. This point requires some clarification.

First, the statement that Act 44 does not apply to periods of probation that are less than two (2) years only applies to the early termination provisions of the Act. The restrictions and changes that the Act set forth on the conditions, modifications and revocation of probation still apply.

Second, in terms of early termination of a period of less than two (2) years of probation, there appears to be some disagreement among different jurisdictions as to whether this is accurate. What is agreed upon is that “a defendant shall not be eligible to receive an initial probation review conference less than 12 months from the original date of sentencing.” Section 9774.1(b)(5)

How the above language is interpreted is where the disagreement arises. For example, in Allegheny County the reasoning is that, on a case with less than two (2) years of probation, the defendant cannot be eligible until at least one (1) year, but the Act does not indicate that there should be a recalibrated eligibility date after one year is completed. Thus, on an 18 month probation, the general eligibility for a probation review conference would be at nine (9) months, except that the language above prohibits eligibility until twelve (12) months or one (1) year. The Act then does not provide for any recalibration of the eligibility date for a case ineligible based on Section 9774.1(b)(5). The Act contains recalculation dates for situations where the Defendant is found ineligible for early termination at a probation review conference (Section 9774.1(f)(3) or where the defendant is ineligible due to specific enumerated technical violations that occurred within the six (6) months prior to the probation review conference (Section 9774.1(g)(2), neither of which applies to the ineligibility to even have a probation review conference per Section 9774.1(b)(5).

Other counties are interpreting Section 9774.1(b)(5) to mean that consideration for early termination can occur once one (1) year of probation has been served. Therefore, in an eighteen (18) month probation, the defendant could be considered at one (1) year, and early termination could occur.

The Appellate courts will need to decide this issue, as well as so many more!

JUDICIAL CODE (42 PA.C.S.) - ORDER OF PROBATION, CONDITIONS OF
PROBATION, MODIFICATION OR REVOCATION OF ORDER OF PROBATION AND
PROBATION REVIEW CONFERENCE

Act of Dec. 14, 2023, P.L. 381, No. 44

Cl. 42

Session of 2023
No. 2023-44

SB 838

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in sentencing, further providing for order of probation, for conditions of probation and for modification or revocation of order of probation and providing for probation review conference.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 9754(b) of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:
§ 9754. Order of probation.

* * *

(b) Conditions generally.--The court shall attach reasonable conditions authorized by section 9763 (relating to conditions of probation) [as it deems necessary to ensure or assist the defendant in leading a law-abiding life].

* * *

Section 2. Section 9763(b) introductory paragraph, (1), (2) and (11) of Title 42 are amended to read:
§ 9763. Conditions of probation.

* * *

(b) Conditions generally.--[The court may attach any of the following conditions upon the defendant as it deems necessary:]
Conditions shall be assessed and ordered based on individualized circumstances. Following an individualized assessment of the defendant, including the defendant's history and the underlying crime or crimes committed, the court shall attach only those conditions that the court deems necessary and the least restrictive means available to promote the defendant's rehabilitation and protection of the public, including any of the following:

(1) To meet family responsibilities[.], **including consideration of child-care responsibilities and limitations, other than the child-care responsibilities and limitations contained in 23 Pa.C.S. Ch. 43 (relating to support matters generally) which shall be governed exclusively by the provisions of that chapter.**

(2) To be devoted to a specific occupation, employment or education, **study or vocational training** initiative.

* * *

(11) To [be subject to intensive supervision while remaining within the jurisdiction of the court and to] notify the court or designated person of any change in address or employment[.] **within 15 days, unless the defendant provides sufficient proof of extenuating circumstances to explain the delay.**

* * *

Section 3. Section 9771(a), (b) and (c) of Title 42 are amended and the section is amended by adding a subsection to read:

§ 9771. Modification or revocation of order of probation.

(a) General rule.--The court has inherent power to at any time terminate 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 upon a finding **by clear and convincing evidence** that a person presents an identifiable threat to public safety.

(b) Revocation.--The court may increase the conditions, impose a brief sanction under section 9771.1 (relating to court-imposed sanctions for violating probation) or revoke an order of probation upon proof of the violation of specified conditions of the probation. [Upon] **Subject to the limitations of subsections (b.1) and (c), upon** revocation the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation. The attorney for the Commonwealth may file notice at any time prior to resentencing of the Commonwealth's intention to proceed under an applicable provision of law requiring a mandatory minimum sentence.

(b.1) Nonpayment of fines or costs.--Notwithstanding subsection (b), the court may not extend the period of probation, may not impose a brief sanction under section 9771.1 and may not revoke an order of probation solely due to nonpayment of fines or costs unless the court finds, with respect to the payment of fines, the defendant is financially able to pay the fines and has willfully refused to do so.

(c) Limitation on sentence of total confinement.--[The court shall not impose a sentence of total confinement upon revocation unless it finds that:

(1) the defendant has been convicted of another crime;
or

(2) the conduct of the defendant indicates that it is likely that he will commit another crime if he is not imprisoned; or

(3) such a sentence is essential to vindicate the authority of the court.] **There is a presumption against total confinement for technical violations of probation. The following shall apply:**

(1) The court may impose a sentence of total confinement upon revocation only if:

(i) the defendant has been convicted of another crime;

(ii) the court finds by clear and convincing evidence that the defendant committed a technical violation that involves an identifiable threat to public safety and the defendant cannot be safely diverted from total confinement through less restrictive means; or

(iii) the court finds by a preponderance of the evidence that the defendant committed a technical violation and any of the following apply:

(A) The technical violation was sexual in nature.

(B) The technical violation involved assaultive behavior or included a credible threat to cause bodily injury to another, including acts committed against a family or household member.

(C) The technical violation involved possession or control of a firearm or dangerous weapon.

(D) The technical violation involved the manufacture, sale, delivery or possession with the intent to manufacture, sell or deliver, a controlled substance or other drug regulated under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(E) The defendant absconded and cannot be safely diverted from total confinement through less restrictive means.

(F) The technical violation involved an intentional and unexcused failure to adhere to recommended programming or conditions on three or more separate occasions and the defendant cannot be safely diverted from total confinement through less restrictive means. For purposes of this clause, multiple technical violations stemming from the same episode of events shall not constitute separate technical violations.

(2) If a court imposes a sentence of total confinement following a revocation, the basis of which is for one or more technical violations under paragraph (1)(ii) or (iii), the court shall consider the employment status of the defendant. The defendant shall be sentenced as follows:

(i) For a first technical violation, a maximum period of 14 days.

(ii) For a second technical violation, a maximum period of 30 days.

(iii) For a third or subsequent technical violation, the court may impose any sentencing alternatives available at the time of initial sentencing.

(iv) The time limitations contained in this paragraph shall not apply to the extent that a reasonable term of additional total confinement, not to exceed 30 days, is necessary to allow a defendant to either be evaluated for or to participate in:

(A) a court-ordered drug, alcohol or mental health treatment program; or

(B) a problem-solving court provided for in section 916 (relating to problem-solving courts).

(3) Nothing in this section shall prevent the adoption of a program under section 9771.1.

* * *

Section 4. Title 42 is amended by adding a section to read:
§ 9774.1. Probation review conference.

(a) General rule.--Except as otherwise provided in this section, the court shall hold a probation review conference no later than 60 days from the date the defendant is eligible. If a defendant's probation review conference has not commenced within the time frames specified in this subsection, the defendant's attorney, or the defendant if unrepresented, may file a motion demanding a probation review conference within five business days.

(b) Eligibility for review conference.--Except as otherwise provided in this section, a defendant shall be eligible for an initial probation review conference as follows:

(1) If the offense for which a sentence of probation was imposed was a misdemeanor, the defendant shall be eligible for an initial probation review conference after completing two years of probation or 50% of the probation sentence, whichever is sooner.

(2) If the offense for which a sentence of probation was imposed was a felony, the defendant shall be eligible

for an initial probation review conference after completing four years of probation or 50% of the probation sentence, whichever is sooner.

(3) If the sentence or sentences imposed arose out of convictions for multiple offenses which the court ordered to be served consecutively and:

(i) The offenses for which the sentence or sentences were imposed are misdemeanors based on the same conduct or arising from the same criminal episode, the defendant shall be eligible for a probation review conference after completing two years of probation or 50% of the aggregate probation sentence, whichever is sooner.

(ii) The offenses for which the sentence or sentences were imposed included a felony and are based on the same conduct or arise from the same criminal episode, the defendant shall be eligible for a probation review conference after completing four years of probation or 50% of the aggregate probation sentence, whichever is sooner.

(iii) The offenses for which the sentence or sentences were imposed are based on separate conduct and arose from separate criminal episodes, the defendant shall be eligible for a probation review conference after completing four years of probation or 50% of the aggregate probation sentence, whichever is sooner.

(4) A defendant sentenced to a period of probation consecutive to a period of incarceration in a State correctional institution shall be eligible for an initial probation review conference 12 months prior to the date that the defendant would otherwise be eligible for a probation review conference under this subsection if the defendant completed the final 12 months of State parole supervision without violating the terms and conditions of the defendant's parole. This paragraph shall not apply to a defendant who serves fewer than 12 months on State parole supervision.

(5) Notwithstanding any other provisions of this section, a defendant shall not be eligible to receive an initial probation review conference less than 12 months from the original date of sentencing.

(c) Accelerated early review conference.--

(1) Subject to the limitations in subsection (b) (5), a defendant serving probation that was imposed for a misdemeanor or felony offense shall be eligible for an initial probation review conference six months prior to the date that the defendant would otherwise be eligible under subsection (b) if the defendant successfully satisfies any of the following conditions while serving the term of probation:

(i) Earns a high school diploma or certificate of high school equivalency.

(ii) Earns an associate degree from an accredited university, college, seminary college, community college or two-year college.

(iii) Earns a bachelor's degree from an accredited university, college or seminary college.

(iv) Earns a master's or other graduate degree from an accredited university, college or seminary college.

(v) Obtains a vocational or occupational license, certificate, registration or permit.

(vi) Completes a certified vocational, certified technical or certified career education or training program.

(vii) Any other condition approved by the court at the time of sentencing that substantially assists the defendant in leading a law-abiding life or furthers the rehabilitative needs of the defendant.

(2) Subject to the limitations in subsection (b)(5), a defendant serving probation that was imposed for a felony offense shall be eligible for an initial probation review conference up to a total of six months prior to the date that the defendant would otherwise be eligible under paragraph (1) if the defendant satisfies an additional condition specified in paragraph (1) while serving the term of probation.

(3) To qualify a defendant for an accelerated initial probation review conference under paragraphs (1) and (2), any condition under paragraph (1)(v), (vi) or (vii) must be approved by the probation office responsible for the supervision of the defendant, in accordance with standards developed by the Pennsylvania Commission on Crime and Delinquency. The Pennsylvania Commission on Crime and Delinquency shall develop standards pursuant to this paragraph.

(d) Probation status report.--No later than 30 days prior to the date the defendant is otherwise entitled to a probation review conference under subsection (b) or (c), the probation office responsible for the supervision of the defendant shall complete and submit a probation status report to the defendant, the defendant's last counsel of record, the court, the Commonwealth and any victim registered with either the Pennsylvania Office of Victim Advocate or a county victim witness program. The probation status report shall contain the following:

(1) The date the probation office believes the defendant is eligible for a probation review conference.

(2) A statement as to whether:

(i) Any of the factors or violations specified in subsection (g)(1)(ii) and (iii) have occurred.

(ii) The defendant has committed any other technical violation within the six months prior to the probation status report.

(iii) The defendant was convicted of a misdemeanor or felony while either incarcerated or serving probation.

(iv) The defendant has completed all treatment or any other program required as a condition of probation.

(v) The defendant has paid all restitution owed to the victim.

(3) A description of the defendant's progress on probation and a recommendation that:

(i) the defendant's probation be terminated at or before the date the probation office believes the defendant is eligible for a probation review conference;

(ii) the defendant should continue on probation as previously ordered; or

(iii) the defendant should continue on probation under different, reduced or increased terms and conditions.

(e) Objections to status report.--The Commonwealth and the defendant shall have 30 days from the date of the status report to object or otherwise respond to the probation status report. A victim shall have 30 days from the date of the status report to provide input or otherwise respond to the probation status report. The following shall apply:

(1) If a party objects to all or any component of the probation status report, the court shall hold a probation review conference as otherwise provided by this subsection and shall notify the defendant, the Commonwealth and any victim registered with either the Pennsylvania Office of Victim Advocate or a county victim witness program of the date of the probation review conference.

(2) If none of the parties entitled to the probation status report object to the recommendation contained in the report within 30 days, upon evidence satisfactory to the court that the probation status report was sent to each party entitled to receive the probation status report, the probation review conference shall be deemed waived. The court shall enter an order memorializing the recommendation contained in the probation status report and so notify the defendant, the Commonwealth and any victim registered with either the Pennsylvania Office of Victim Advocate or a county victim witness program. The court may enter the order even if the defendant's probation, sentence or plea of guilty was the result of an agreement between the Commonwealth and the defendant.

(f) Termination of probation.--

(1) Except as provided in subsection (g), immediately following the probation review conference, the court shall terminate probation unless the court finds:

(i) by clear and convincing evidence that the conduct of the defendant while on probation created an identifiable threat to public safety, including consideration of whether the defendant is the subject of an active protection from abuse order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or an active protection from intimidation order under 18 Pa.C.S. Ch. 49 Subch. B. (relating to victim and witness intimidation);

(ii) by a preponderance of the evidence that the defendant has not successfully completed all treatment or other programs required as a condition of probation, and termination of probation would either prevent the defendant from continuing in the court-mandated treatment or programming that the court determines is still necessary to aid in the defendant's rehabilitation or would create a substantial likelihood that the defendant would discontinue the treatment or programs; or

(iii) by a preponderance of the evidence that the defendant has failed to pay the total restitution owed by the defendant.

(2) The court may terminate probation under paragraph (1) even if the defendant's probation, sentence or plea of guilty was the result of an agreement between the Commonwealth and the defendant.

(3) If the court does not terminate probation at a probation review conference, the defendant shall receive written notice of the court's order detailing the court's findings. The defendant shall be eligible for a subsequent probation review conference no later than 12 months after the date of the most recent probation review conference.

(g) Prohibitions on early termination.--

(1) A defendant shall not have the defendant's probation terminated under this section if:

(i) the defendant was convicted of a misdemeanor of the first degree, misdemeanor of the second degree

or felony offense of any degree committed while either incarcerated or serving probation;

(ii) the court finds by clear and convincing evidence that the defendant committed a technical violation within the six months immediately preceding the defendant's probation review conference that involved an identifiable threat to public safety; or

(iii) 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 six months immediately preceding the defendant's probation review conference:

(A) A technical violation that was sexual in nature.

(B) A technical violation that involved assaultive behavior or included a credible threat to cause bodily injury to another, including acts committed against a family or household member.

(C) A technical violation that involved possession or control of a firearm or dangerous weapon.

(D) The technical violation involved the manufacture, sale, delivery or possession with the intent to manufacture, sell or deliver, a controlled substance or other drug regulated under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(E) The defendant absconded.

(F) A technical violation that involved an intentional and unexcused failure to adhere to recommended programming or conditions on three or more separate occasions. For purposes of this clause, multiple technical violations stemming from the same episode of events shall not constitute separate technical violations.

(2) If the defendant is ineligible for termination of probation as a result of a technical violation enumerated in paragraph (1)(ii) or (iii) occurring within the six months immediately preceding the probation review conference and if all other conditions are satisfied, a probation review conference shall be held six months after the date that the enumerated technical violation occurred.

(h) Failure to pay restitution.--

(1) If the court does not terminate probation at a probation review conference solely because of the defendant's failure to pay restitution in full, the court shall order that the defendant be placed on administrative probation for the remaining balance of the defendant's probation sentence if:

(i) the defendant has paid at least 50% of the restitution owed; or

(ii) the court determines, considering the defendant's resources, income and family, legal or other obligations, that the defendant has made a good faith effort to pay.

(2) The provisions of section 9771(c) (relating to modification or revocation of order of probation) shall apply to individuals placed on administrative probation pursuant to this subsection.

(3) Nothing in this section shall be construed to interfere with a victim's right to pursue private remedies

in accordance with 18 Pa.C.S. § 1106(g) (relating to restitution for injuries to person or property).

(i) Applicability.--This section shall not apply and the defendant shall not be entitled to a probation review conference or to early termination of probation under this section if the offense for which the defendant was sentenced to probation was one of the following:

- (1) an offense under 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) a crime of violence;
- (3) an offense listed under Subchapter H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders);
- (4) an offense under 18 Pa.C.S. § 2701 (relating to simple assault) when committed against a family or household member; or
- (5) an offense under 18 Pa.C.S. § 2709.1 (relating to stalking).

(j) Other remedies preserved.--Nothing in this section shall be construed to:

- (1) 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;
- (2) prohibit the court, in its discretion, from eliminating or decreasing the term of probation under section 9771(d); or
- (3) diminish the court's power to:
 - (i) otherwise, at any time, terminate continued supervision or lessen the conditions upon which an order of probation has been imposed;
 - (ii) create or administer a process or program which seeks to terminate continued supervision or lessen the conditions upon which an order of probation has been imposed; or
 - (iii) seek information from the Commonwealth, defendant, victim, county probation officer or any other individual or entity to assist in these processes or programs.

(k) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Administrative probation." A term of imposed probation that:

- (1) Requires a defendant to make supervision contact at least one time and no more than four times per year.
- (2) Requires a defendant to notify the court or the designated person of any change in address or employment within a reasonable period of time.
- (3) Requires a defendant to pay the remaining restitution, as ordered by the court on a schedule or payment plan that the defendant can afford to pay.
- (4) Does not require the defendant to pay monthly probation administration fees or any additional costs for the continuation of supervision on administrative probation.
- (5) Does not impose any other condition of probation.

"Crime of violence." As defined in section 9714(g) (relating to sentences for second and subsequent offenses).

"Dangerous weapon." Any of the following:

- (1) A "weapon" as defined in 18 Pa.C.S. § 907 (relating to possessing instruments of crime); or
- (2) An "offensive weapon" as defined in 18 Pa.C.S. § 908 (relating to prohibited offensive weapons).

"Family or household members." As defined in 23 Pa.C.S. § 6102(a) (relating to definitions).

"Firearm." As defined in 18 Pa.C.S. § 908.

"Technical violation." A violation of the specific terms and conditions of a defendant's 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.

Section 5. This act shall apply as follows:

(1) This act shall apply to individuals sentenced or resentenced on or after the effective date of this section.

(2) Except for the addition of 42 Pa.C.S. § 9774.1, this act shall apply to individuals sentenced or resentenced prior to the effective date of this section.

Section 6. Nothing in this act shall 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.

Section 7. The following apply:

(1) The following apply to postsentencing reviews:

(i) Subject to paragraph (2), the courts shall ensure that the probation of all individuals sentenced or resentenced prior to the effective date of this section are reviewed to determine whether the individuals should be considered for early termination of probation or modification of the terms and conditions of probation. The review shall occur at the later of one year after the effective date of this section or:

(A) For a probation sentence on a misdemeanor conviction, the date the defendant has completed two years of probation.

(B) For a felony conviction, the date the defendant has completed four years of probation.

(C) For a probation sentence based on a conviction involving multiple offenses arising out of the same criminal episode:

(I) the date the defendant has completed two years of probation if all the offenses resulting in the sentence were misdemeanors; or

(II) the date the defendant has completed four years of probation if one of the offenses resulting in the sentence included a felony.

(ii) For each case under review, the defendant and the Commonwealth shall have the opportunity, in advance of a decision, to provide written comments to the court. Courts may by local rule adopt such procedures as they deem appropriate to accomplish the reviews.

(2) (i) This section shall not apply if:

(A) The defendant committed one of the following technical violations within the six months immediately preceding the defendant's probation review conference:

(I) A technical violation that was sexual in nature.

(II) A technical violation that involved assaultive behavior or included a credible threat to cause bodily injury to another, including incidents involving domestic violence.

(III) A technical violation that involved possession or control of a firearm or dangerous weapon.

(IV) The technical violation involved the manufacture, sale, delivery or possession with the intent to manufacture, sell or deliver, a controlled substance or other drug regulated under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(V) The defendant absconded.

(VI) A technical violation which involved an intentional and unexcused failure to adhere to recommended programming or conditions on three or more separate occasions. For the purposes of this clause, multiple technical violations stemming from the same episode of events shall not constitute separate technical violations.

(VII) A technical violation that involved an identifiable threat to public safety.

(ii) The defendant was convicted of a misdemeanor of the first degree, misdemeanor of the second degree or felony offense committed while either incarcerated or serving probation.

(iii) The defendant was convicted of an offense listed under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders).

(iv) The defendant was convicted of a crime of violence.

(v) The defendant was convicted of an offense under 18 Pa.C.S. § 2701 (relating to simple assault) or 2709.1 (relating to stalking) against any of the defendant's family or household members.

Section 8. When a court, either as a result of a petition or as a result of its review under section 7 of this act, seeks to determine whether an individual sentenced or resentenced prior to the effective date of this section should be considered for early termination of probation or modification of the terms and conditions of probation, the court shall ensure that due consideration is given to whether the individual has successfully satisfied the conditions contained in 42 Pa.C.S. § 9774.1(c)(1) or (2).

Section 9. This act shall take effect in 180 days.

APPROVED--The 14th day of December, A.D. 2023.

JOSH SHAPIRO