

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

§ 4104. Alternative Sentence: Conditions of Probation.

(a) Whenever a sentencing Court of the Commonwealth suspends execution or imposition of any sentence of imprisonment or fine, for any violation of the Commonwealth Code, the court may impose any terms and conditions of probation which benefit the community and serve the interests of justice, and shall order the defendant, during the period of probation:

- (1) To obey all laws of the Commonwealth and of the United States;
- (2) To contribute to the support of persons he or she is legally obligated to support;
- (3) To pay restitution, as defined at 6 CMC § 4109, and in accordance with Article I, Section 11 of the Commonwealth Constitution, to any victim or other person injured by the defendant's criminal conduct;
- (4) To pay fees associated with the costs of supervision, or other surcharges authorized by statute;
- (5) To abide by the general conditions of probation as specified by the Office of Adult Probation.

(b) In addition to the conditions set forth in subsection (a) of this section, the sentencing Court may impose any of the following conditions:

- (1) A term of unsuspended incarceration as a special condition of probation, not subject to parole;
- (2) The payment of a fine in one or several sums, pursuant to 6 CMC § 4101, or reimbursement to the Commonwealth for the costs of court-appointed counsel, as authorized by statute;
- (3) To perform community work service in accordance with the provisions of 6 CMC § 4111;
- (4) To satisfy the screening, evaluation, referral and program requirements of an agency authorized by the Court to make referrals to programs or treatment reasonably related to the probationer's rehabilitation;
- (5) To participate in or comply with the treatment plan of an outpatient rehabilitation program specified by either the court or the Office of Adult Probation that is related to the probationer's offense or to the probationer's rehabilitation;
- (6) To participate in or comply with the treatment plan of an inpatient rehabilitation program specified by either the court or the Office of Adult Probation that is related to the probationer's offense or to the probationer's rehabilitation, provided that:

(A) Such treatment is specifically authorized in the sentencing order or judgment for a term not to exceed a stated maximum, either in addition to any term of suspended or unsuspended incarceration, or in lieu thereof; and

(B) The defendant is given credit for time served in any inpatient treatment program authorized under this subsection, against any suspended time subsequently revoked for a violation of any term or condition of probation.

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

(7) To refrain from any contact, direct or indirect, with any victim or witness;

(8) To comply with restrictions regarding place of abode, and with whom the probationer may or may not reside during the period of probation;

(9) To observe a curfew during specified hours, or to remain under house arrest during certain times, under the supervision of the Office of Adult Probation;

(10) To be subject to electronic monitoring, under the supervision of the Office of Adult Probation;

(11) Any other conditions which will serve the interests of justice.

(c) If the probationer is convicted of any offense involving the use, consumption or possession of any alcoholic beverage or controlled substance, the sentencing court may require, in addition to the conditions in subsections (a) and (b) of this section, that the probationer:

(1) Refrain from the possession or consumption of alcoholic beverages or controlled substances;

(2) Refrain from entering into any bar, tavern, or other establishment whose primary purpose is the sale or consumption of alcohol;

(3) Not reside in any residence where alcohol or controlled substances are present;

(4) Refrain from associating with persons who are consuming alcoholic beverages or controlled substances, or who are under the influence of alcohol or controlled substances;

(5) Not to drive any motor vehicle during the period of probation;

(6) Meaningfully participate in and successfully complete one or more outpatient or inpatient programs authorized by the court for the treatment of alcohol or substance abuse, in accordance with subsection (b) of this section; and

(7) Submit to urinalysis, portable breath tests, intoximeter or similar tests at the request of a Probation officer, to monitor compliance with the above conditions.

For purposes of this subsection, “controlled substance” or “controlled substances” shall have the meaning set forth in 6 CMC § 2102(c), but does not include prescription medications for which the person has a valid prescription.

(d) If the probationer is convicted of any crime involving domestic violence, as defined under Commonwealth law, the sentencing court may require, in addition to the conditions of probation in subsections (a), (b) and (c) of this section, that the probationer:

(1) Meaningfully participate in and successfully complete one or more programs authorized by the court for the rehabilitation of perpetrators of domestic violence, if such programs are available in the community where the probationer resides;

(2) Refrain from committing any further crimes involving domestic violence;

(3) Refrain from violating any domestic violence restraining order; and

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

(4) Refrain from any contact, direct or indirect, with the victim of the crime, any minor child in the custody of the victim, or any other member of the victim's household, during the period of probation.

(e) A person placed under probation supervision (pre-trial services or post-sentence supervision), investigation or house arrest shall pay a probation service fee in a sum not less than \$20 and nor more than \$360 annually. In determining the fee the Court shall consider the nature of the offense, the level of supervision, and investigation required. The fee shall be deposited in the Probation Services Fund established in 1 CMC § 3406.

Source: PL 3-71, § 1 (§ 1204); repealed and reenacted by PL 15-46, § 4; (e) amended by PL 16-42 § 2(b).

Commission Comment: PL 15-46 was enacted on January 29, 2007, and contained, among other enactments (1 CMC § 2204, 6 CMC §§ 4105, 4109, 4113, 9101(a), and 4291-4298 [Adult Diversion Program]), a short title, findings and purpose, severability, and savings clause provisions. The short title and findings and purpose provisions stated:

Section 1. Short Title. This Act may be cited as the "Probation Reform Act of 2006."

Section 2. Findings and Purpose. The Legislature finds that the purposes of probation are to provide guidance in future conduct to those persons who have been convicted of crimes, to promote their rehabilitation, and to provide restitution to their victims pursuant to Article I, § 11 of the Commonwealth Constitution. The Legislature also finds that court opinions, including *Commonwealth v. Hemley*, *Commonwealth v. Santos*, *Commonwealth v. Cristobal*, *Commonwealth v. Baulechong*, *Commonwealth v. Udei*, *Commonwealth v. Rebuénog*, and *Commonwealth v. Sablan*, have pointed out the need to amend the probation statutes, to enhance the effectiveness of the Commonwealth's probation procedures, and to ensure that the recognized goals of probation are realized.

These amendments will improve the ability of the system to fully compensate crime victims, strengthen the court's ability to ensure compliance with its orders imposing probationary terms, and will codify the rights and responsibilities of probationers in the revocation process.

In addition, the Legislature recognizes the need to supplement the tools available to the court and the Attorney General's Office to divert from the court's caseload the uncontested cases of eligible first-time offenders who are likely to benefit from a community-based rehabilitation program, so the court may give priority to cases that must be tried, and to allow eligible first-time offenders to avoid getting a criminal record, thus better equipping them to compete for satisfactory employment, educational opportunities, military service and other benefits of citizenship.

These amendments are intended to address several problems which have become evident since the passage of the existing statutes.

The Act increases the period of probation the court may impose, up to three years after any period of incarceration for any misdemeanor convic-

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

tion, and up to ten years after any period of incarceration for any felony conviction. This amendment is necessary because some misdemeanor crimes have either 90-day or six-month maximum sentences. These periods of time are too brief to give probationers a realistic opportunity to pay fines and restitution, which results in the Commonwealth and crime victims not being compensated in many instances. It is also desirable for some probationers to be placed on supervised probation for lengthier periods of time, in order to keep them from committing crimes, such as cases where a probationer has a very lengthy misdemeanor history. Other examples of probationers who might require lengthier periods of supervision include cases where a probationer needs mental health counseling or monitoring of psychotropic medication on an ongoing basis, and poses a threat to society only when he stops taking such medication or stops seeing his counselor; repeat sex offenders; and those whose criminal offenses are related to chronic alcohol or substance-abuse problems.

The Act also provides for tolling the period of probation upon the filing of a petition to revoke probation or suspended imposition of sentence. Currently, if someone is on probation for six months, and the Commonwealth receives notice from the probation officer that he has failed to pay his restitution after five months, the Attorney General must notify the court, serve him with notice of his violation, secure his attendance in court, adjudicate his violation and revoke his probation, all before his probation expires. If the probationer simply avoids service of the summons, or even fails to appear in court after having been summoned, the petition is dismissed when the probation is expired, no matter what the violation, or what efforts the probation office and attorney general have taken to bring the violation before the court. This gives the probationer who intends to avoid his obligations an unfair advantage, and makes the system appear ineffective. Tolling of the probationary period will resolve this problem.

This Act also codifies some of the rights, procedures and proof burdens already applicable to probation revocation, and streamlines the documentation to be filed to commence such proceedings. For example, currently, if the Attorney General receives an affidavit from the Office of Adult Probation indicating a probationer has failed to pay his fine, the Attorney General must prepare and file numerous separate documents, including: a Motion to Revoke Probation; a Declaration in Support of the Motion to Revoke Probation; a Notice of Hearing; a Notice of Rights Associated with Revocation; and a Notice of Intent to Revoke Probation. The sheer number of documents necessary to commence such revocation proceedings makes it extremely burdensome to ensure that all probationers are held to the same standards of compliance, and many have “fallen through the cracks” in the past.

The Act also specifies some of the terms and conditions that can be imposed as conditions of probation, and provides special conditions of probation for those convicted of crimes involving domestic violence, and crimes related to drug and alcohol abuse.

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

The Act defines “restitution” and provides for procedures to determine the amount of a restitution order, and for enforcement of those orders. The term “victim” is also defined more expansively, to provide guidance to the courts in determining who a victim is for purposes of a restitution order. The Act also provides that restitution orders are enforceable as civil judgments, and allows victims to pursue payment of restitution civilly, even after the probationer’s probation has expired.

Finally, the Act establishes an Adult Diversion Program, to allow the Attorney General to divert first-time offenders who do not wish to contest their guilt to the Office of Adult Probation. If the first-time offender agrees to make restitution, and to be supervised by the Office of Adult Probation, he or she may avoid a criminal conviction.

PL 16-42, enacted on July 13, 2009, contained severability and savings clause provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Probation Reform Act of 2006, Public Law 15-46, contains certain provisions that are duplicative and may cause confusion in its implementation. It is therefore the purpose of this Act to amend and repeal certain sections of the Probation Reform Act of 2006 to remove such provisions.