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§ 2204. Public Defender: Eligibility.

The Public Defender shall establish eligibility criteria and may promulgate rules and regulations regarding eligibility criteria, to take effect upon their approval by the Governor. The determination as to whether a defendant be indigent or whether a person is unable to afford a private attorney, however, shall be at the discretion of the judge before whom such person is appearing.

Source: PL 1-8, tit. 1, ch. 4, § 4, modified; amended by PL 15-46, § 3; amended by PL 16-42 § 2(a).

Commission Comment: PL 15-46 was enacted on January 29, 2007, and contained, among other enactments (6 CMC §§ 4104, 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. Rebuenog*, 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 conviction, 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

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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.

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

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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.

See the comment to 6 CMC § 4104 for information regarding PL 16-42, which became law on July 13, 2009.