

DEFENDER ASSOCIATION OF PHILADELPHIA

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RE: SB 838

December 12, 2023

I write on behalf of the Defender Association of Philadelphia, to voice our concerns with SB 838, a bill designed to reform our system of statewide probationary supervision. Our office is the largest criminal defense law firm in the Commonwealth and we represent 70% of all people arrested in the city of Philadelphia. Last year, we represented 12,807 people alleged to have violated conditions of their probation and staffed over 42,000 hearings related to violations of probation. On average we file over 200 petitions for early termination from probation supervision every year. On behalf of the clients we serve, their families, and our community, we remain steadfast in our support of efforts to shrink the footprint of mass supervision, especially those that limit the imposition of periods of incarceration for technical violations or the length of supervision our clients face. **It is from our practical experience that we write to express our very real concerns related to SB 838 and urge our representatives to consider our opposition if presented with this legislation.**

Specifically, this legislation **does not address some of the biggest drivers of incarceration for technical violations that we see.** Firstly, the exceptions to the presumption against custodial sentences for technical violations (p.4 line 8 through p. 5 line 26) will account for over 90% of technical violations. Secondly, because there is no limit on the amount of time a person may be incarcerated pending resolution of the alleged violation, most people incarcerated pending their first (and perhaps even their second) technical violation in Philadelphia, will probably serve more than the maximum period permitted by this statute just waiting for their violation of probation hearing. In a recent analysis, 84% of our clients held on detainer for alleged technical violations of probation waited for at least 5 and up to 10 days for their first Gagnon hearing with 13% waiting 11 days or more. But this statute does not limit the issuance of detainers for technical violations, or mandate hearings within a set period of time, which is one of the biggest problems our clients face.

Perhaps even more troubling, under this statute, **people on probation will not be provided with access to counsel** to navigate the review conference process since their defense attorneys will not receive the probation officer's report and recommendation or any notice of eligibility for a conference. Per the proposed statute, this information will be sent by probation to the court, DA, and registered victim. Probationers who are not recommended for early termination will only be entitled to a hearing if they object to the recommendation, a decision they have to make without any assistance from their lawyer. And if they make the timely objection they will not be entitled to legal representation at the hearing. Furthermore, people on probation for multiple cases in the same or in different counties may be mandatorily eligible for

termination on one case but ineligible for termination on the others. This could be very confusing for clients who will be navigating this process without an attorney and may inadvertently violate conditions of probation because they wrongly believe they have been terminated from all supervision.

Finally, the bill **mandates the distribution of a probationer's medical information**, including participation in mental health or drug treatment programs, to people outside of the criminal legal system which we believe violates provisions of the Criminal History Record Information Act.

While we certainly commend the legislature's willingness to try to address issues with interminable lengths of probationary supervision and limit the imposition of periods of incarceration for technical violations, we ask that our city's Representatives please consider addressing these concerns before moving forward with the current legislation.

Respectfully Submitted,

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