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COMMENTS ON 14 H-7844, RELATING TO SENTENCE AND EXECUTION

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The ACLU opposes this bill, which would allow the Department of Corrections to obtain court permission to impose additional conditions of probation on a probationer at any stage of the probation, and to violate him or her if he or she fails to abide by those new conditions.

We believe giving the DOC such power raises serious constitutional concerns. When a defendant is given probation, it is often pursuant to a plea agreement at which time he or she is made aware of – and agrees to – the conditions that attach to the probation and of the consequences that arise from failure to comply with them. Adding conditions of probation after the sentence has been imposed thus amounts to a serious change in the voluntariness of the plea agreement. Depending on the types of new conditions added, it could also raise significant ex post facto questions by essentially increasing a probationer’s punishment after the fact.

In addition, this power upsets a basic principle of the plea bargaining process. When a defendant agrees to plead to a criminal offense, the plea is supposed to be knowing and voluntary. To ensure that, it is critical that the defendant is made aware of both the direct and collateral consequences that flow from the plea. Under this bill, however, the defendant would be entering a plea agreement with potentially serious, but unknown, consequences hanging over his or head. This is unfair and inappropriate, and undermines the plea bargaining process.

The ACLU therefore opposes this legislation.