

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1239 Session of
1998

INTRODUCED BY GREENLEAF, O'PAKE, GERLACH, WILLIAMS, EARLL,
WAGNER, AFFLERBACH, ARMSTRONG, COSTA, KASUNIC, LEMMOND,
RHOADES, TOMLINSON, ULIANA, SCHWARTZ, HOLL, MELLOW AND
SALVATORE, JANUARY 16, 1998

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 10, 1998

AN ACT

1 Amending the act of August 6, 1941 (P.L.861, No.323), entitled,
2 as amended, "An act to create a uniform and exclusive system
3 for the administration of parole in this Commonwealth;
4 providing state probation services; establishing the
5 'Pennsylvania Board of Probation and Parole'; conferring and
6 defining its jurisdiction, duties, powers and functions;
7 including the supervision of persons placed upon probation
8 and parole in certain designated cases; providing for the
9 method of appointment of its members; regulating the
10 appointment, removal and discharge of its officers, clerks
11 and employes; dividing the Commonwealth into administrative
12 districts for purposes of probation and parole; fixing the
13 salaries of members of the board and of certain other
14 officers and employes thereof; making violations of certain
15 provisions of this act misdemeanors; providing penalties
16 therefor; and for other cognate purposes, and making an
17 appropriation," further providing for TRANSMISSION OF RECORD <—
18 TO THE BOARD, FOR REPORTING AND INVESTIGATION AND FOR
19 supervision of persons paroled or on probation in other
20 states; providing for proceedings subsequent to parole; and
21 imposing a penalty.

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

24 ~~Section 1. Section 21 of the act of August 6, 1941 (P.L.861, <—~~
25 ~~No.323), referred to as the Pennsylvania Board of Probation and~~

1 Parole Law, amended June 1, 1995 (1st Sp.Sess., P.L.1020,
2 No.16), is amended to read:

3 Section 21. The board is hereby authorized to release on
4 parole any convict confined in any penal institution of this
5 Commonwealth as to whom power to parole is herein granted to
6 said board, except convicts condemned to death or serving life
7 imprisonment, whenever in its opinion the best interests of the
8 convict justify or require his being paroled and it does not
9 appear that the interests of the Commonwealth will be injured
10 thereby. Parole shall be subject in every instance to the
11 Commonwealth's right to immediately retake and hold in custody
12 without further proceedings any parolee charged after his parole
13 with an additional offense, until a determination can be made
14 whether to continue his parole status. The power to parole
15 herein granted to the Board of Parole may not be exercised in
16 the board's discretion at any time before, but only after, the
17 expiration of the minimum term of imprisonment fixed by the
18 court in its sentence or by the Pardon Board in a sentence which
19 has been reduced by commutation. The board may not release a
20 person on parole unless the person achieves a negative result
21 within forty five days prior to the date of release in a
22 screening test approved by the Department of Health for the
23 detection of the presence of controlled substances or designer
24 drugs under the act of April 14, 1972 (P.L.233, No.64), known as
25 "The Controlled Substance, Drug, Device and Cosmetic Act." The
26 cost of these pre parole drug screening tests for inmates
27 subject to the parole release jurisdiction of the board, whether
28 confined in a State or local correctional facility, shall be
29 paid by the board. The board shall establish rules and
30 regulations for the payment of these costs and may limit the

1 ~~types and cost of these screening tests that would be subject to~~
2 ~~payment by the board. The board shall establish, as a condition~~
3 ~~of continued parole for a parolee who, as an inmate, tested~~
4 ~~positive for the presence of a controlled substance or a~~
5 ~~designer drug or who was paroled from a sentence arising from a~~
6 ~~conviction under "The Controlled Substance, Drug, Device and~~
7 ~~Cosmetic Act," or from a drug related crime, the parolee's~~
8 ~~achievement of negative results in such screening tests randomly~~
9 ~~applied. The random screening tests shall be performed at the~~
10 ~~discretion of the board, and the parolee undergoing the tests~~
11 ~~shall be responsible for the costs of the tests. The funds~~
12 ~~collected for the tests shall be applied against the contract~~
13 ~~for such testing between the board and a testing laboratory~~
14 ~~approved by the Department of Health. Said board shall have the~~
15 ~~power during the period for which a person shall have been~~
16 ~~sentenced to recommit one paroled for violation of the terms and~~
17 ~~conditions of his parole and from time to time to reparole and~~
18 ~~recommit in the same manner and with the same procedure as in~~
19 ~~the case of an original parole or recommitment, if, in the~~
20 ~~judgment of the said board, there is a reasonable probability~~
21 ~~that the convict will be benefited by again according him~~
22 ~~liberty and it does not appear that the interests of the~~
23 ~~Commonwealth will be injured thereby.~~

24 SECTION 1. SECTION 18 OF THE ACT OF AUGUST 6, 1941 (P.L.861, <—
25 NO.323), REFERRED TO AS THE PENNSYLVANIA BOARD OF PROBATION AND
26 PAROLE LAW, IS AMENDED TO READ:

27 SECTION 18. IT SHALL BE THE DUTY OF THE COURT SENTENCING ANY
28 PERSON FOR A TERM, AS TO WHICH POWER TO PAROLE IS HEREIN GIVEN
29 TO THE BOARD, TO TRANSMIT TO THE SAID BOARD, WITHIN THIRTY DAYS
30 AFTER THE IMPOSITION OF SUCH SENTENCE, A [FULL AND COMPLETE COPY

1 OF THE RECORD UPON WHICH SENTENCE IS IMPOSED, INCLUDING ANY
2 NOTES OF TESTIMONY] COPY OF THE NOTES OF TESTIMONY OF THE
3 SENTENCING HEARING WHICH MAY HAVE BEEN FILED OF RECORD IN THE
4 CASE, TOGETHER WITH COPIES OF ANY CRIMINAL IDENTIFICATION
5 RECORDS SECURED FROM THE FEDERAL BUREAU OF INVESTIGATION, COPIES
6 OF PRESENTENCE INVESTIGATION REPORTS AND OF BEHAVIOR CLINIC
7 REPORTS, IF ANY WERE SUBMITTED TO THE COURT, THE LAST TWO OF
8 WHICH RECORDS, BEING CONFIDENTIAL RECORDS OF THE COURT, ARE TO
9 BE TREATED CONFIDENTIALLY BY THE MEMBERS OF THE BOARD, WHO SHALL
10 NOT PERMIT EXAMINATION OF THE SAME BY ANY ONE OTHER THAN ITS
11 DULY APPOINTED AGENTS OR REPRESENTATIVES, EXCEPT UPON COURT
12 ORDER. A JUDGE IN HIS DISCRETION MAY MAKE AT ANY TIME ANY
13 RECOMMENDATION HE MAY DESIRE TO THE BOARD RESPECTING THE PERSON
14 SENTENCED AND THE TERM OF IMPRISONMENT SAID JUDGE BELIEVES SUCH
15 PERSON SHOULD BE REQUIRED TO SERVE BEFORE A PAROLE IS GRANTED TO
16 HIM, BUT A RECOMMENDATION MADE BY A JUDGE AS AFORESAID
17 RESPECTING THE PAROLE OR TERMS OF PAROLE OF SUCH PERSON SHALL BE
18 ADVISORY ONLY, AND NO ORDER IN RESPECT THERETO MADE OR ATTEMPTED
19 TO BE MADE AS A PART OF A SENTENCE SHALL BE BINDING UPON THE
20 BOARD IN PERFORMING THE DUTIES AND FUNCTIONS HEREIN CONFERRED
21 UPON IT.

22 SECTION 2. SECTION 19 OF THE ACT, AMENDED OCTOBER 9, 1986
23 (P.L.1424, NO.134), IS AMENDED TO READ:

24 SECTION 19. IT SHALL BE THE DUTY OF THE BOARD, UPON THE
25 COMMITMENT TO PRISON OF ANY PERSON WHOM SAID BOARD IS HEREIN
26 GIVEN THE POWER TO PAROLE, TO [INVESTIGATE AND INFORM ITSELF
27 RESPECTING THE CIRCUMSTANCES OF THE OFFENSE FOR WHICH SAID
28 PERSON SHALL HAVE BEEN SENTENCED, AND, IN ADDITION THERETO, IT
29 SHALL PROCURE INFORMATION AS FULL AND COMPLETE AS MAY BE
30 OBTAINABLE WITH REGARD TO THE CHARACTER, MENTAL CHARACTERISTICS,

1 HABITS, ANTECEDENTS, CONNECTIONS AND ENVIRONMENT OF SUCH
2 PERSON.] CONSIDER THE NATURE AND CIRCUMSTANCES OF THE OFFENSE
3 COMMITTED, ANY RECOMMENDATIONS MADE BY THE TRIAL JUDGE AND
4 PROSECUTING ATTORNEY, THE GENERAL CHARACTER AND BACKGROUND OF
5 THE PRISONER AND THE WRITTEN OR PERSONAL STATEMENT OF THE
6 TESTIMONY OF THE VICTIM OR THE VICTIM'S FAMILY SUBMITTED
7 PURSUANT TO SECTION 22.1 OF THIS ACT. THE BOARD SHALL FURTHER
8 [PROCURE] CONSIDER THE [STENOGRAPHIC RECORD] NOTES OF TESTIMONY
9 OF THE SENTENCING HEARING, IF ANY, [OF THE TRIAL, CONVICTION AND
10 SENTENCE,] TOGETHER WITH SUCH ADDITIONAL INFORMATION REGARDING
11 THE [CRIME] NATURE AND CIRCUMSTANCES OF THE OFFENSE COMMITTED
12 FOR WHICH SENTENCE WAS IMPOSED AS MAY BE AVAILABLE. THE BOARD
13 SHALL FURTHER CAUSE THE CONDUCT OF THE PERSON WHILE IN PRISON
14 AND HIS PHYSICAL, MENTAL AND BEHAVIOR CONDITION AND HISTORY, HIS
15 HISTORY OF FAMILY VIOLENCE AND HIS COMPLETE CRIMINAL RECORD, AS
16 FAR AS THE SAME MAY BE KNOWN, TO BE [INVESTIGATED AND] REPORTED
17 AND INVESTIGATED. ALL PUBLIC OFFICIALS HAVING POSSESSION OF SUCH
18 RECORDS OR INFORMATION ARE HEREBY REQUIRED AND DIRECTED TO
19 FURNISH THE SAME TO THE BOARD UPON ITS REQUEST AND WITHOUT
20 CHARGE THEREFOR[. SAID INVESTIGATION SHALL BE MADE BY THE BOARD]
21 SO FAR AS MAY BE PRACTICABLE WHILE THE CASE IS RECENT.[, AND IN
22 GRANTING PAROLES THE BOARD SHALL CONSIDER THE NATURE AND
23 CHARACTER OF THE OFFENSE COMMITTED, ANY RECOMMENDATION MADE BY
24 THE TRIAL JUDGE, THE GENERAL CHARACTER AND HISTORY OF THE
25 PRISONER AND THE WRITTEN OR PERSONAL STATEMENT OR TESTIMONY OF
26 THE VICTIM OR THE VICTIM'S FAMILY SUBMITTED PURSUANT TO SECTION
27 22.1 OF THIS ACT.

28 THE BOARD SHALL, IN ALL CASES, CONSIDER THE RECOMMENDATIONS
29 OF THE TRIAL JUDGE AND OF THE DISTRICT ATTORNEY AND OF EACH
30 WARDEN OR SUPERINTENDENT, AS THE CASE MAY BE, WHO HAS HAD CHARGE

1 OF AN APPLICANT, EACH OF WHOM IS DIRECTED TO SUBMIT TO THE BOARD
2 HIS RECOMMENDATION AND THE REASONS THEREFOR, WITH RESPECT TO
3 EACH PAROLE APPLICATION.]

4 SECTION 3. SECTION 21 OF THE ACT, AMENDED JUNE 11, 1998
5 (P.L.461, NO.66), IS AMENDED TO READ:

6 SECTION 21. (A) THE BOARD IS HEREBY AUTHORIZED TO RELEASE
7 ON PAROLE ANY CONVICT CONFINED IN ANY PENAL INSTITUTION OF THIS
8 COMMONWEALTH AS TO WHOM POWER TO PAROLE IS HEREIN GRANTED TO THE
9 BOARD, EXCEPT CONVICTS CONDEMNED TO DEATH OR SERVING LIFE
10 IMPRISONMENT, WHENEVER IN ITS OPINION THE BEST INTERESTS OF THE
11 CONVICT JUSTIFY OR REQUIRE HIS BEING PAROLED AND IT DOES NOT
12 APPEAR THAT THE INTERESTS OF THE COMMONWEALTH WILL BE INJURED
13 THEREBY. PAROLE SHALL BE SUBJECT IN EVERY INSTANCE TO THE
14 COMMONWEALTH'S RIGHT TO IMMEDIATELY RETAKE AND HOLD IN CUSTODY
15 WITHOUT FURTHER PROCEEDINGS ANY PAROLEE CHARGED AFTER HIS PAROLE
16 WITH AN ADDITIONAL OFFENSE, UNTIL A DETERMINATION CAN BE MADE
17 WHETHER TO CONTINUE HIS PAROLE STATUS. THE POWER TO PAROLE
18 HEREIN GRANTED TO THE BOARD OF PAROLE MAY NOT BE EXERCISED IN
19 THE BOARD'S DISCRETION AT ANY TIME BEFORE, BUT ONLY AFTER, THE
20 EXPIRATION OF THE MINIMUM TERM OF IMPRISONMENT FIXED BY THE
21 COURT IN ITS SENTENCE OR BY THE PARDON BOARD IN A SENTENCE WHICH
22 HAS BEEN REDUCED BY COMMUTATION.

23 (B) THE BOARD MAY NOT RELEASE A PERSON ON PAROLE UNLESS THE
24 PERSON ACHIEVES A NEGATIVE RESULT WITHIN FORTY-FIVE DAYS PRIOR
25 TO THE DATE OF RELEASE IN A SCREENING TEST APPROVED BY THE
26 DEPARTMENT OF HEALTH FOR THE DETECTION OF THE PRESENCE OF
27 CONTROLLED SUBSTANCES OR DESIGNER DRUGS UNDER THE ACT OF APRIL
28 14, 1972 (P.L.233, NO.64), KNOWN AS "THE CONTROLLED SUBSTANCE,
29 DRUG, DEVICE AND COSMETIC ACT." THE COST OF THESE PRE-PAROLE
30 DRUG SCREENING TESTS FOR INMATES SUBJECT TO THE PAROLE RELEASE

1 JURISDICTION OF THE BOARD, WHETHER CONFINED IN A STATE OR LOCAL
2 CORRECTIONAL FACILITY, SHALL BE PAID BY THE BOARD. THE BOARD
3 SHALL ESTABLISH RULES AND REGULATIONS FOR THE PAYMENT OF THESE
4 COSTS AND MAY LIMIT THE TYPES AND COST OF THESE SCREENING TESTS
5 THAT WOULD BE SUBJECT TO PAYMENT BY THE BOARD. THE BOARD SHALL
6 ESTABLISH, AS A CONDITION OF CONTINUED PAROLE FOR A PAROLEE WHO,
7 AS AN INMATE, TESTED POSITIVE FOR THE PRESENCE OF A CONTROLLED
8 SUBSTANCE OR A DESIGNER DRUG OR WHO WAS PAROLED FROM A SENTENCE
9 ARISING FROM A CONVICTION UNDER "THE CONTROLLED SUBSTANCE, DRUG,
10 DEVICE AND COSMETIC ACT," OR FROM A DRUG-RELATED CRIME, THE
11 PAROLEE'S ACHIEVEMENT OF NEGATIVE RESULTS IN SUCH SCREENING
12 TESTS RANDOMLY APPLIED. THE RANDOM SCREENING TESTS SHALL BE
13 PERFORMED AT THE DISCRETION OF THE BOARD, AND THE PAROLEE
14 UNDERGOING THE TESTS SHALL BE RESPONSIBLE FOR THE COSTS OF THE
15 TESTS. THE FUNDS COLLECTED FOR THE TESTS SHALL BE APPLIED
16 AGAINST THE CONTRACT FOR SUCH TESTING BETWEEN THE BOARD AND A
17 TESTING LABORATORY APPROVED BY THE DEPARTMENT OF HEALTH.

18 (C) THE BOARD SHALL HAVE THE POWER DURING THE PERIOD FOR
19 WHICH A PERSON SHALL HAVE BEEN SENTENCED TO RECOMMIT ONE PAROLED
20 FOR VIOLATION OF THE TERMS AND CONDITIONS OF HIS PAROLE AND FROM
21 TIME TO TIME TO REPAROLE AND RECOMMIT IN THE SAME MANNER AND
22 WITH THE SAME PROCEDURE AS IN THE CASE OF AN ORIGINAL PAROLE OR
23 RECOMMITMENT, IF, IN THE JUDGMENT OF THE BOARD, THERE IS A
24 REASONABLE PROBABILITY THAT THE CONVICT WILL BE BENEFITED BY
25 AGAIN ACCORDING HIM LIBERTY AND IT DOES NOT APPEAR THAT THE
26 INTERESTS OF THE COMMONWEALTH WILL BE INJURED THEREBY.

27 (D) WHEN THE BOARD RELEASES A PAROLEE FROM A STATE OR LOCAL
28 CORRECTIONAL FACILITY, THE BOARD SHALL PROVIDE WRITTEN NOTICE TO
29 THE PROBATION DEPARTMENT LOCATED IN THE COUNTY WHERE THE
30 SENTENCING ORDER WAS IMPOSED OF THE RELEASE AND NEW ADDRESS OF

1 THE PAROLEE.

2 Section 2 4. Section 21.1 of the act is amended by adding a <—
3 subsection to read:

4 Section 21.1. * * *

5 (a.1) Subsequent Arrest. The formal filing of a charge after
6 parole against any parolee within this Commonwealth for any
7 violation of the statutes of this Commonwealth shall constitute
8 an automatic detainer and permit him to be taken into and held
9 in custody. The automatic detainer shall dissolve on the
10 fifteenth day after he is taken into custody, unless sooner
11 waived or otherwise superseded by direction of the supervising
12 parole office. The automatic detainer shall be in addition to
13 and not in lieu of any other detainer that heretofore may have
14 been lodged in such circumstances.

15 * * *

16 Section 3 5. Section 33 of the act, amended December 18, <—
17 1996 (P.L.1098, No.164), is amended to read:

18 Section 33. (a) (1) In compliance with the Federal
19 Interstate Compact Laws and the provisions of this section, the
20 [Parole Board] Pennsylvania Board of Probation and Parole is
21 authorized to supervise persons paroled by other states and now
22 residing in Pennsylvania, where such other states agree to
23 perform similar services for the Pennsylvania Board of Probation
24 and Parole.

25 (2) Additionally, the [Parole Board] Pennsylvania Board of
26 Probation and Parole is authorized to relinquish jurisdiction
27 over a parolee to the proper Federal authorities where the
28 parolee is placed into the [Federal] Witness Protection Program
29 of the United States Department of Justice.

30 ~~(b) The contracting states must adhere to Pennsylvania's~~ <—

~~laws regarding the Interstate Compact, which are as follows:~~

~~(1) The contracting states solemnly agree that it is competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state, herein called "receiving state," while on probation or parole, if:~~

~~(i) a confirmed offer of viable employment or other verifiable means of support exists; and~~

~~(ii) a residence approved by the receiving state is available.~~

~~(2) The following information must be made available to the receiving state from the sending state at the time the application for acceptance to the receiving state is filed:~~

~~(i) Institutional adjustment information on parolees or probationers.~~

~~(ii) Current supervision history on parolees or probationers.~~

~~(iii) A psychological report or psychological update, completed no more than one year prior to the receiving state's consideration for persons convicted of a violent offense.~~

~~(iv) The following information must be made available to the receiving state for those cases defined as a sexual offense:~~

~~(A) a summary of any type of treatment received and dates of completion; and~~

~~(B) a description of behavioral characteristics that may have contributed to the parolee or probationer's conduct.~~

~~(3) Any parolee or probationer convicted of a sexual offense shall be required to:~~

~~(i) submit to mandatory registration and public notification of all current addresses with the Pennsylvania State Police;~~

~~(ii) provide a signed copy of Pennsylvania State Police Sexual Offender Registration Notification form and Pennsylvania State Police Sexual Offender Registration form to receiving state; and~~

~~(iii) provide a signed copy of Addendum to Application for Compact Services/Agreement to Return form to receiving state.~~

~~(4) Except as hereafter provided, the receiving state shall not consider the acceptance of supervision if the parolee is already physically present in this State. Investigation and consideration of a case shall occur only after the parolee returns to the sending state and proper application is filed. The receiving state may consider the acceptance of supervision if the probationer is already physically present in this State, where the probationer has established domicile in the receiving state before adjudication on the criminal offense.~~

~~(5) Electronic monitoring and/or other special conditions of supervision shall be imposed as deemed necessary by the receiving state.~~

~~(6) At the request of the receiving state, the sending state shall agree to retake the parolee or probationer if that individual violates any condition of probation or parole.~~

~~(e) (B) Any person who is on parole or probation in another state and who resides in this Commonwealth in violation of this section commits a misdemeanor of the first degree and shall be sentenced to pay a fine of not more than ten thousand dollars (\$10,000) or to imprisonment for not more than five years, or both.~~

~~(d) As used in this section, the following words and phrases~~

~~shall have the meanings given to them in this subsection:~~

~~"Other verifiable means of support." The term includes, but is not limited to, support by parent, grandparent, sibling, spouse or adult child. The term shall not include public assistance.~~

~~"Sexual offense."~~

~~(1) Any of the following or equivalent offenses that is classified as a felony and involves a victim who is a minor:~~

~~18 Pa.C.S. § 2901 (relating to kidnapping).~~

~~18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses).~~

~~18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances).~~

~~(2) Any of the following or equivalent offenses that is classified as a felony and involves a victim who is less than thirteen years of age:~~

~~18 Pa.C.S. § 3126 (relating to indecent assault).~~

~~(3) Any of the following or equivalent offenses, regardless of the victim's age:~~

~~18 Pa.C.S. § 3121 (relating to rape).~~

~~18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).~~

~~18 Pa.C.S. § 3125 (relating to aggravated indecent assault).~~

~~"Violent offense." Any of the following or equivalent~~

~~(C) AS USED IN THIS SECTION, THE TERM "VIOLENT OFFENSE" MEANS ANY OF THE FOLLOWING OR EQUIVALENT offenses:~~

~~18 Pa.C.S. § 2502 (relating to murder).~~

~~18 Pa.C.S. § 2503 (relating to voluntary manslaughter).~~

~~18 Pa.C.S. § 2702 (relating to aggravated assault).~~

1 18 Pa.C.S. § 2703 (relating to assault by prisoner).

2 18 Pa.C.S. § 2704 (relating to assault by life prisoner).

3 18 Pa.C.S. § 2901 (relating to kidnapping) where the
4 victim is a minor.

5 18 Pa.C.S. § 3121 (relating to rape).

6 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
7 intercourse).

8 18 Pa.C.S. § 3301 (relating to arson and related
9 offenses).

10 18 Pa.C.S. § 3502 (relating to burglary).

11 18 Pa.C.S. § 3701 (relating to robbery).

12 18 Pa.C.S. § 3923 (relating to theft by extortion) where
13 a threat of violence is made.

14 A criminal attempt, criminal solicitation or criminal
15 conspiracy to commit any offenses set forth in this clause.

16 Section 4 6. This act shall take effect in 60 days.

<—