

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 860 Session of 2015

INTRODUCED BY GREENLEAF, YUDICHAK, EICHELBERGER, ARGALL, HUGHES, MENSCH, COSTA, WHITE, TARTAGLIONE, BROWNE AND LEACH, MAY 29, 2015

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 17, 2015

AN ACT

1 Amending the act of November 24, 1998 (P.L.882, No.111),
2 entitled "An act providing for victims' rights; imposing
3 penalties; establishing remedies; establishing the Office of
4 Victim Advocate, the Bureau of Victims' Services, the
5 Victims' Services Advisory Committee, the State Offender
6 Supervision Fund and other funds; and making repeals," in
7 preliminary provisions, further providing for definitions; in
8 crime victims, further providing for responsibilities of
9 department, local correctional facilities and board; in
10 administration, further providing for office AND FOR POWERS <--
11 AND DUTIES AND PROVIDING FOR CONFIDENTIALITY OF RECORDS; and,
12 in financial matters, further providing for costs for
13 offender supervision programs.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definitions of "board," "department" and
17 "victim advocate" in section 103 of the act of November 24, 1998
18 (P.L.882, No.111), known as the Crime Victims Act, amended June
19 28, 2002 (P.L.496, No.85), are amended to read:

20 Section 103. Definitions.

21 The following words and phrases when used in this act shall
22 have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

1 * * *

2 "Board." The Pennsylvania [Board of Probation and] Parole
3 Board.

4 * * *

5 "Department." The Department of Corrections and
6 Rehabilitation of the Commonwealth.

7 * * *

8 "Victim advocate." The victim advocate in the Office of
9 Victim Advocate within the [Pennsylvania Board of Probation and
10 Parole] department.

11 Section 2. Sections 214(a), (b) and (f), ~~301(a) and (c) and~~ <--
12 ~~1102~~ AND 301 of the act are amended to read: <--

13 Section 214. Responsibilities of department, local correctional
14 facilities and board.

15 (a) Forms.--The [department and the] board shall develop
16 standardized forms regarding victim notification. The form shall
17 include the address where the form is to be sent. The department
18 shall develop a [standardized] standard form which may be used
19 by local correctional facilities. In the case of counties with
20 victim-witness coordinators, the local correctional facility
21 shall perform its responsibilities under this section in
22 cooperation with the county's victim-witness coordinator.

23 (b) Notice.--If the [department and board have] board has
24 received notice of a victim's desire to have input under section
25 201(7), the appropriate agency shall notify the victim
26 sufficiently in advance of a pending release decision to extend
27 an opportunity for prior comment. The local correctional
28 facility's notice to the victim under section 201(9) shall occur
29 immediately.

30 * * *

1 (f) Records.--Records maintained by the department, the
2 local correctional facility [and], the board and the office
3 pertaining to victims shall be kept separate. Current address,
4 telephone number and any other personal information of the
5 victim and family members shall be deemed confidential.

6 * * *

7 Section 301. Office.

8 (a) Establishment.--There is established within the [board]
9 department the Office of Victim Advocate to represent the
10 interests of crime victims before the board or department. The
11 office shall operate under the direction of the victim advocate
12 as provided in this section. THE OFFICE SHALL FUNCTION <--
13 INDEPENDENTLY OF THE DEPARTMENT REGARDING ALL OF THE OFFICE'S
14 DECISION-MAKING FUNCTIONS, AS WELL AS ANY OTHER POWERS AND
15 DUTIES SPECIFIED IN LAW.

16 * * *

17 (B) APPOINTMENT.--THE VICTIM ADVOCATE MUST BE AN INDIVIDUAL <--
18 WHO BY REASON OF TRAINING AND EXPERIENCE IS QUALIFIED TO
19 REPRESENT THE INTERESTS OF INDIVIDUAL CRIME VICTIMS BEFORE THE
20 BOARD. THE VICTIM ADVOCATE SHALL BE APPOINTED BY THE GOVERNOR,
21 BY AND WITH THE CONSENT OF A MAJORITY OF ALL OF THE MEMBERS OF
22 THE SENATE. THE VICTIM ADVOCATE SHALL HOLD OFFICE FOR A TERM OF
23 SIX YEARS AND UNTIL A SUCCESSOR SHALL HAVE BEEN DULY APPOINTED
24 AND QUALIFIED BUT IN NO EVENT MORE THAN 90 DAYS BEYOND THE
25 EXPIRATION OF THE APPOINTED TERM. A VACANCY OCCURRING FOR ANY
26 REASON SHALL BE FILLED IN THE MANNER PROVIDED BY SECTION 8 OF
27 ARTICLE IV OF THE CONSTITUTION OF PENNSYLVANIA FOR THE REMAINDER
28 OF THE TERM. WHENEVER THE VICTIM ADVOCATE'S TERM EXPIRES, THAT
29 POSITION SHALL BE IMMEDIATELY DEEMED A VACANCY, AND THE GOVERNOR
30 SHALL NOMINATE A PERSON TO FILL THAT POSITION WITHIN 90 DAYS OF

1 THE DATE OF EXPIRATION EVEN IF THE VICTIM ADVOCATE CONTINUES IN
2 OFFICE. TO BE ELIGIBLE TO BE APPOINTED BY THE GOVERNOR AS VICTIM
3 ADVOCATE, AN INDIVIDUAL MUST HAVE AT LEAST SIX YEARS OF
4 PROFESSIONAL EXPERIENCE IN VICTIM ADVOCACY, SOCIAL WORK OR
5 RELATED AREAS, INCLUDING ONE YEAR IN A SUPERVISORY OR
6 ADMINISTRATIVE CAPACITY, AND A BACHELOR'S DEGREE. ANY EQUIVALENT
7 COMBINATION OF EXPERIENCE AND TRAINING SHALL BE ACCEPTABLE.
8 COMPENSATION SHALL BE SET BY THE EXECUTIVE BOARD AS DEFINED BY
9 THE ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE
10 ADMINISTRATIVE CODE OF 1929.

11 (c) Service and employees.--The victim advocate shall
12 operate from [the central office of the board] office space
13 provided by the department with such clerical, technical and
14 professional staff as may be [available within the budget of the
15 board] furnished by the department. [The compensation of
16 employees of the office shall be set by the Executive Board.]
17 LEGAL COUNSEL FOR THE OFFICE SHALL BE APPOINTED IN ACCORDANCE <--
18 WITH THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
19 COMMONWEALTH ATTORNEYS ACT.

20 (D) PROCEDURE FOR REMOVAL.--

21 (1) THE VICTIM ADVOCATE MAY BE REMOVED FOR CAUSE BY THE
22 GOVERNOR, BY AND WITH THE ADVICE AND CONSENT OF A MAJORITY OF
23 THE MEMBERS OF THE SENATE.

24 (2) DURING A RECESS OF THE SENATE, THE GOVERNOR MAY
25 SUSPEND THE VICTIM ADVOCATE FOR CAUSE, AND BEFORE SUSPENSION,
26 THE GOVERNOR SHALL FURNISH TO THE VICTIM ADVOCATE A STATEMENT
27 IN WRITING OF THE REASONS FOR THE PROPOSED SUSPENSION. THE
28 SUSPENSION SHALL OPERATE AND BE EFFECTIVE ONLY UNTIL THE
29 ADJOURNMENT OF THE NEXT SESSION OF THE SENATE FOLLOWING THE
30 SUSPENSION.

1 SECTION 3. SECTION 302 OF THE ACT, AMENDED OCTOBER 2, 2002
2 (P.L.839, NO.121), IS AMENDED TO READ:

3 SECTION 302. POWERS AND DUTIES OF VICTIM ADVOCATE.

4 THE VICTIM ADVOCATE HAS THE FOLLOWING POWERS AND DUTIES:

5 (1) TO REPRESENT THE INTERESTS OF INDIVIDUAL CRIME
6 VICTIMS BEFORE THE BOARD, DEPARTMENT OR HEARING EXAMINER.

7 (2) TO SUPERVISE THE VICTIM NOTIFICATION DUTIES
8 PRESENTLY CONDUCTED BY THE BOARD.

9 (3) TO ASSIST IN AND COORDINATE THE PREPARATION OF
10 TESTIMONY BY THE CRIME VICTIMS AS SET FORTH IN SECTIONS
11 501(C) AND 502 OR THE SUBMISSION OF ORAL, WRITTEN OR
12 VIDEOTAPED COMMENTS BY CRIME VICTIMS PRIOR TO A RELEASE
13 DECISION.

14 (4) TO REPRESENT THE INTERESTS OF A CRIME VICTIM UNDER
15 SECTION 502.

16 [(5) TO ACT AS A LIAISON WITH THE VICTIM NOTIFICATION
17 PROGRAM DIRECTOR IN THE DEPARTMENT TO COORDINATE VICTIM
18 NOTIFICATION AND SERVICES FOR THE DEPARTMENT AND THE BOARD.
19 THE VICTIM ADVOCATE IS AUTHORIZED TO ADDRESS THE INTERESTS OF
20 ALL VICTIMS BEFORE THE BOARD, DEPARTMENT OR HEARING EXAMINER
21 CONCERNING ANY ISSUES DETERMINED APPROPRIATE BY THE VICTIM
22 ADVOCATE.]

23 SECTION 4. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

24 SECTION 303. CONFIDENTIALITY OF RECORDS.

25 (A) GENERAL RULE.--EACH REPORT, RECORD OR OTHER INFORMATION
26 IN THE POSSESSION OF OR MAINTAINED BY THE OFFICE, INCLUDING THE
27 HOME ADDRESSES OF EMPLOYEES OF THE OFFICE, SHALL:

28 (1) BE CONFIDENTIAL AND PRIVILEGED.

29 (2) NOT BE SUBJECT TO SUBPOENA OR DISCOVERY.

30 (3) NOT BE SUBJECT TO THE PROVISIONS OF THE ACT OF

1 FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE RIGHT-TO-KNOW
2 LAW.

3 (4) BE USED FOR NO PURPOSE OTHER THAN TO ADVOCATE FOR
4 THE INTERESTS OF CRIME VICTIMS.

5 (5) EXCEPT AS PROVIDED BY LAW OR UNDER THIS SECTION, NOT
6 BE INTRODUCED INTO EVIDENCE IN A JUDICIAL OR ADMINISTRATIVE
7 PROCEEDING.

8 (B) DISCLOSURE RESTRICTED.--EXCEPT AS PROVIDED BY LAW, A
9 PERSON WHO HAS HAD ACCESS TO A REPORT, RECORD OR ANY OTHER
10 INFORMATION UNDER THIS SECTION MAY NOT DISCLOSE THE CONTENT OF
11 THE REPORT, RECORD OR OTHER INFORMATION OR TESTIFY IN A JUDICIAL
12 OR ADMINISTRATIVE PROCEEDING WITHOUT THE WRITTEN CONSENT OF THE
13 DIRECT VICTIM OR INTERVENOR OR, IF THE DIRECT VICTIM OR
14 INTERVENOR IS DECEASED, THE VICTIM ADVOCATE.

15 (C) CONSTRUCTION.--THIS SECTION SHALL NOT BE CONSTRUED TO
16 PRECLUDE OR LIMIT INTRODUCTION OF THE CONTENTS OF A REPORT,
17 RECORD OR OTHER INFORMATION IN AN INVESTIGATION, PROSECUTION OR
18 JUDICIAL PROCEEDING ENFORCING SECTION 1303 OR IN COMMUNICATING
19 WITH THE PROSECUTOR'S OFFICE REGARDING RESTITUTION.

20 SECTION 5. SECTION 1102 OF THE ACT IS AMENDED TO READ:

21 Section 1102. Costs for offender supervision programs.

22 (a) County fund.--The county treasurer of each county shall
23 establish and administer a county offender supervision fund
24 consisting of the fees collected under this section. The county
25 treasurer shall disperse money from this fund only at the
26 discretion of the president judge of the court of common pleas.
27 The money in this fund shall be used to pay the salaries and
28 employee benefits of all probation and parole personnel employed
29 by the county probation and parole department and the
30 operational expenses of that department. Money from this fund

1 shall be used to supplement Federal, State or county
2 appropriations for the county adult probation and parole
3 department. The president judge shall by August 31 provide the
4 [board] department with an annual statement which fully reflects
5 all collections deposited into and expenditures from the
6 offender supervision fund for the preceding fiscal year. The
7 [board] department shall promulgate regulations to provide for
8 the permanent administration of this program.

9 (b) State fund.--There is established a State Offender
10 Supervision Fund to be administered by the [board] department
11 and comprised of the supervision fees collected by the [board]
12 department under this section. The money in this fund shall be
13 used to supplement the Federal or State funds appropriated for
14 the improvement of adult probation services.

15 (c) Court.--The court shall impose as a condition of
16 supervision a monthly supervision fee of at least \$25 on any
17 offender placed on probation, parole, accelerated rehabilitative
18 disposition, probation without verdict or intermediate
19 punishment unless the court finds that the fee should be
20 reduced, waived or deferred based on the offender's present
21 inability to pay. Of the fee collected, 50% shall be deposited
22 into the County Offender Supervision Fund established in each
23 county pursuant to this section, and the remaining 50% shall be
24 deposited into the State Offender Supervision Fund established
25 pursuant to this section.

26 (d) Board.--The board or the department shall impose as a
27 condition of supervision a monthly supervision fee of at least
28 \$25 on any offender under the [board's] department's supervision
29 unless the board finds that such fee should be reduced, waived
30 or deferred based on the offender's present inability to pay.

1 All fees collected shall be deposited into the State Offender
2 Supervision Fund established under subsection (b).

3 (e) Continuation.--

4 (1) For offenders under supervision of a county
5 probation department or the board as of [August 14, 1991] the
6 day prior to the effective date of this section or under the
7 supervision of the department, the fee shall automatically
8 become a part of the supervision conditions as if the court
9 or board had imposed it unless the court or board makes a
10 finding that the offender is presently unable to pay.

11 (2) The court or board may make a finding that the
12 offender is unable to pay based on any of the following
13 factors:

14 (i) The offender has diligently attempted but has
15 been unable to obtain employment that provides the
16 offender sufficient income to make such payments.

17 (ii) The offender is a student in a school, a
18 college, a university or a course of vocational or
19 technical training designed to fit the student for
20 gainful employment.

21 (iii) The offender has an employment handicap as
22 determined by an examination acceptable to or ordered by
23 the court or board.

24 (iv) The offender's age prevents employment.

25 (v) The offender is responsible for the support of
26 dependents, and the payment of the assessment constitutes
27 an undue hardship on the offender.

28 (vi) Other extenuating circumstances as determined
29 by the court or board.

30 Section 3 6. This act shall take effect in one year.

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