

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1133 Session of
2005

INTRODUCED BY JAMES, D. EVANS, KIRKLAND, WATERS, WILLIAMS,
JOSEPHS, HENNESSEY, LEVDANSKY, YOUNGBLOOD, OLIVER, THOMAS,
CREIGHTON, BASTIAN, WHEATLEY, CALTAGIRONE, HARPER, HERSHEY,
BISHOP, WASHINGTON, PRESTON, BLACKWELL, FABRIZIO AND PALLONE,
MARCH 29, 2005

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 29, 2005

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 a system of earned
18 time.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 21 of the act of August 6, 1941 (P.L.861,
22 No.323), referred to as the Pennsylvania Board of Probation and
23 Parole Law, amended December 21, 1998 (P.L.1077, No.143), is
24 amended to read:

1 Section 21. (a) The board is hereby authorized to release
2 on parole any convict confined in any penal institution of this
3 Commonwealth as to whom power to parole is herein granted to the
4 board, except convicts condemned to death or serving life
5 imprisonment, whenever in its opinion the best interests of the
6 convict justify or require his being paroled and it does not
7 appear that the interests of the Commonwealth will be injured
8 thereby. Parole shall be subject in every instance to the
9 Commonwealth's right to immediately retake and hold in custody
10 without further proceedings any parolee charged after his parole
11 with an additional offense until a determination can be made
12 whether to continue his parole status. [The] Except as provided
13 in subsection (a.1), the power to parole herein granted to the
14 Board of Parole may not be exercised in the board's discretion
15 at any time before, but only after, the expiration of the
16 minimum term of imprisonment fixed by the court in its sentence
17 or by the Pardon Board in a sentence which has been reduced by
18 commutation.

19 (a.1) The board may exercise its power to parole a person
20 before the expiration of the minimum term of imprisonment fixed
21 by the court in its sentence or the Pardon Board in a sentence
22 which has been reduced by commutation by reducing the sentence
23 by applying earned time awarded under section 34.2.

24 (b) The board may not release a person on parole unless the
25 person achieves a negative result within forty-five days prior
26 to the date of release in a screening test approved by the
27 Department of Health for the detection of the presence of
28 controlled substances or designer drugs under the act of April
29 14, 1972 (P.L.233, No.64), known as "The Controlled Substance,
30 Drug, Device and Cosmetic Act." The cost of these pre-parole

1 drug screening tests for inmates subject to the parole release
2 jurisdiction of the board, whether confined in a State or local
3 correctional facility, shall be paid by the board. The board
4 shall establish rules and regulations for the payment of these
5 costs and may limit the types and cost of these screening tests
6 that would be subject to payment by the board. The board shall
7 establish, as a condition of continued parole for a parolee who,
8 as an inmate, tested positive for the presence of a controlled
9 substance or a designer drug or who was paroled from a sentence
10 arising from a conviction under "The Controlled Substance, Drug,
11 Device and Cosmetic Act," or from a drug-related crime, the
12 parolee's achievement of negative results in such screening
13 tests randomly applied. The random screening tests shall be
14 performed at the discretion of the board, and the parolee
15 undergoing the tests shall be responsible for the costs of the
16 tests. The funds collected for the tests shall be applied
17 against the contract for such testing between the board and a
18 testing laboratory approved by the Department of Health.

19 (b.1) The board may not release a person who is serving a
20 sentence for a crime of violence as defined in 42 Pa.C.S. §
21 9714(g) (relating to sentences for second and subsequent
22 offenses) on parole unless the person has received instruction
23 from the Department of Corrections on the impact of crime on
24 victims and the community.

25 (c) The board shall have the power during the period for
26 which a person shall have been sentenced to recommit one paroled
27 for violation of the terms and conditions of his parole and from
28 time to time to reparole and recommit in the same manner and
29 with the same procedure as in the case of an original parole or
30 recommitment, if, in the judgment of the board, there is a

1 reasonable probability that the convict will be benefited by
2 again according him liberty and it does not appear that the
3 interests of the Commonwealth will be injured thereby.

4 (d) When the board releases a parolee from a State or local
5 correctional facility, the board shall provide written notice to
6 the probation department located in the county where the
7 sentencing order was imposed of the release and new address of
8 the parolee.

9 Section 2. The act is amended by adding a section to read:

10 Section 34.2. (a) On or after the effective date of this
11 section and except as provided in subsection (b), earned time
12 shall be applied to an inmate as follows:

13 (1) Earned time shall be awarded to inmates at the rate of
14 three months per year served who have made an active effort to
15 participate in approved institutional programs, including
16 attempting to participate in a program offered by the prison or
17 jail. Earned time shall be awarded, on a prorated basis, for
18 each complete calendar month spent without being charged with an
19 infraction of the guidelines or regulations issued under
20 paragraph (2). No earned time shall be awarded for time served
21 prior to the effective date of this section.

22 (2) The Secretary of Corrections shall issue guidelines or
23 regulations prescribing the participation for which and the
24 procedures by which earned time may be awarded, withheld or
25 revoked.

26 (3) An inmate charged with an infraction of the guidelines
27 or regulations issued under paragraph (2) shall receive written
28 notice and an explanation of the charge and an opportunity for a
29 hearing.

30 (4) Earned time that has been granted may be revoked for

1 subsequent infractions in accordance with the guidelines or
2 regulations issued under paragraph (2).

3 (b) An inmate who has been returned to prison by the
4 Pennsylvania Board of Probation and Parole for violations of
5 parole shall not be eligible for earned time during service of
6 the balance of the inmate's original term of imprisonment, but
7 shall be eligible for earned time during service of any new
8 sentence imposed as a result of the violations of parole.

9 (c) For purposes of this section, the term "inmate" shall
10 mean an individual serving a sentence of imprisonment with a
11 maximum term of two years or more. The term shall not include an
12 individual who meets any of the following:

13 (1) Is subject to a sentence the calculation of which
14 includes an enhancement for the use of a deadly weapon as
15 defined pursuant to law or the sentencing guidelines promulgated
16 by the Pennsylvania Commission on Sentencing.

17 (2) Has been convicted of a personal injury crime as defined
18 in section 103 of the act of November 24, 1998 (P.L.882,
19 No.111), known as the "Crime Victims Act," or an attempt or
20 conspiracy to commit such a crime.

21 (3) Has been convicted of violating 18 Pa.C.S. § 4302
22 (relating to incest), 5901 (relating to open lewdness), 6312
23 (relating to sexual abuse of children), 6318 (relating to
24 unlawful contact with minor) or 6320 (relating to sexual
25 exploitation of children) or Ch. 76 Subch. C (relating to
26 Internet child pornography).

27 Section 3. This act shall take effect in 60 days.