

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1642 Session of  
1995

INTRODUCED BY WOGAN, FAJT, BELARDI, FICHTER, ARMSTRONG, SATHER,  
McGEEHAN, J. TAYLOR, MASLAND, BAKER, CLARK, TRELLO, NYCE,  
KENNEY, DEMPSEY, SAYLOR, PETTIT, BATTISTO, STISH, BUNT,  
SERAFINI, STABACK, HASAY, MICHLOVIC, HALUSKA, BUTKOVITZ,  
KELLER, LEH, MERRY, SEMMEL, GEIST, O'BRIEN, DeLUCA, MILLER,  
DIGIROLAMO, FARGO AND RAYMOND, MAY 17, 1995

REFERRED TO COMMITTEE ON JUDICIARY, MAY 17, 1995

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," providing for powers of parole and probation  
18 officers relating to searches.

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

21 Section 1. The act of August 6, 1941 (P.L.861, No.323),  
22 referred to as the Pennsylvania Board of Probation and Parole  
23 Law, is amended by adding sections to read:

24 Section 27.1. (a) State parole agents are in a supervisory

relationship with their offenders. The purpose of this supervision is to assist the offenders in their rehabilitation and reassimilation into the community and to protect the public.

(b) State parole agents are authorized to search the person and property of State offenders in accordance with the provisions of this section.

(c) No violation of this section shall constitute an independent ground for suppression of evidence in any probation/parole or criminal proceeding.

(d) (1) A personal search of an offender may be conducted by any agent:

(i) if there is a reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision;

(ii) when an offender is transported or taken into custody; or

(iii) upon an offender entering or leaving the securing enclosure of a correctional institution, jail or detention facility.

(2) A property search may be conducted by any agent if there is reasonable suspicion to believe that the offender's real property or other property contains contraband or other evidence of violations of the conditions of supervision.

(3) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances. No prior approval shall be required for a personal search.

(4) A written report of every property search conducted without prior approval shall be prepared by the agent who conducted the search and filed in the offender's case record. The exigent circumstances shall be stated in the report.

1     (5) The offender may be detained if he is present during a  
2 property search. If the offender is not present during a  
3 property search, the agent in charge of the search shall attempt  
4 to provide the offender with notice of the search, including a  
5 list of the items seized, after the search is completed.

6     (6) The existence of reasonable suspicion to search shall be  
7 determined in accordance with constitutional search and seizure  
8 provisions as applied by judicial decision. In accordance with  
9 such case law, the following factors, where applicable, may be  
10 taken into account:

11         (i) The observations of agents.

12         (ii) Information provided by others.

13         (iii) The activities of the offender.

14         (iv) Information provided by the offender.

15         (v) The experience of agents with the offender.

16         (vi) The experience of agents in similar circumstances.

17         (vii) The prior criminal and supervisory history of the  
18 offender.

19         (viii) The need to verify compliance with the conditions of  
20 supervision.

21     (e) No agent shall conduct a personal or property search of  
22 an offender who is residing in a foreign state, except for the  
23 limited purposes permitted under the Interstate Compact for the  
24 Supervision of Offenders and Probationers. The offender is held  
25 accountable to the rules of both the sending state and the  
26 receiving state. Any personal or property search of an offender  
27 residing in another state shall be conducted by an agent of the  
28 receiving state.

29     (f) The authority granted to agents under this section shall  
30 be effective upon enactment, without the necessity of any

1 further regulation by the board.

2 (g) As used in this section, the following words and phrases  
3 shall have the meanings given to them in this subsection:

4 "Agent." A parole officer appointed by the board.

5 "Conditions of supervision." Any terms or conditions of the  
6 offender's supervision, whether imposed by the court, the board  
7 or an agent, including compliance with all requirements of  
8 Federal, State and local law.

9 "Contraband." Any item that the offender is not permitted to  
10 possess under the conditions of supervision, including any item  
11 whose possession is forbidden by any Federal, State or local  
12 law.

13 "Court." The court of common pleas or any judge thereof, the  
14 Philadelphia Municipal Court or any judge thereof, the  
15 Pittsburgh Magistrates Court or any judge thereof or any  
16 district justice.

17 "Exigent circumstances." Includes, but is not limited to,  
18 suspicion that contraband or other evidence of violations of the  
19 conditions of supervision might be destroyed or suspicion that a  
20 weapon might be used. Exigent circumstances always exist with  
21 respect to a vehicle.

22 "Offender." Any person subject to the parole or probationary  
23 supervision of the board.

24 "Personal search." A warrantless search of an offender's  
25 person, including, but not limited to, the offender's clothing  
26 and any personal property in the offender's possession or within  
27 his reach.

28 "Property search." A warrantless search of an offender's  
29 real property, vehicle or personal property, including property  
30 within the offender's control.

1     "Real property." Any residence or business property of the  
2     offender, including all portions of the property to which the  
3     offender has access.

4     "Supervisor." Any individual acting in a supervisory or  
5     administrative capacity.

6     Section 27.2. (a) County probation and parole officers are  
7     in a supervisory relationship with their offenders. The purpose  
8     of this supervision is to assist the offenders in their  
9     rehabilitation and reassimilation into the community and to  
10    protect the public.

11    (b) County probation and parole officers are authorized to  
12    search the person and property of county offenders in accordance  
13    with the provisions of this section.

14    (c) No violation of this section shall constitute an  
15    independent ground for suppression of evidence in any probation  
16    and parole or criminal proceeding.

17    (d) (1) A personal search of an offender may be conducted  
18    by any officer:

19    (i) if there is a reasonable suspicion to believe that the  
20    offender possesses contraband or other evidence of violations of  
21    the conditions of supervision;

22    (ii) when an offender is transported or taken into custody;  
23    or

24    (iii) upon an offender entering or leaving the securing  
25    enclosure of a correctional institution, jail or detention  
26    facility.

27    (2) A property search may be conducted by any officer if  
28    there is reasonable suspicion to believe that the offender's  
29    real property or other property contains contraband or other  
30    evidence of violations of the conditions of supervision.

1     (3) Prior approval of a supervisor shall be obtained for a  
2 property search absent exigent circumstances. No prior approval  
3 shall be required for a personal search.

4     (4) A written report of every property search conducted  
5 without prior approval shall be prepared by the officer who  
6 conducted the search and filed in the offender's case record.  
7 The exigent circumstances shall be stated in the report.

8     (5) The offender may be detained if he is present during a  
9 property search. If the offender is not present during a  
10 property search, the officer in charge of the search shall  
11 attempt to provide the offender with notice of the search,  
12 including a list of the items seized, after the search is  
13 completed.

14     (6) The existence of reasonable suspicion to search shall be  
15 determined in accordance with constitutional search and seizure  
16 provisions as applied by judicial decision. In accordance with  
17 such case law, the following factors, where applicable, may be  
18 taken into account:

19         (i) The observations of officers.

20         (ii) Information provided by others.

21         (iii) The activities of the offender.

22         (iv) Information provided by the offender.

23         (v) The experience of the officers with the offender.

24         (vi) The experience of officers in similar circumstances.

25         (vii) The prior criminal and supervisory history of the  
26 offender.

27         (viii) The need to verify compliance with the conditions of  
28 supervision.

29     (e) No officer shall conduct a personal or property search  
30 of an offender who is residing in a foreign state, except for

1 the limited purposes permitted under the Interstate Compact for  
2 the Supervision of Parolees and Probationers. The offender is  
3 held accountable to the rules of both the sending state and the  
4 receiving state. Any personal or property search of an offender  
5 residing in another state shall be conducted by an officer of  
6 the receiving state.

7 (f) The authority granted to the officers under this section  
8 shall be effective upon enactment, without the necessity of any  
9 further regulation by the board.

10 (g) As used in this section, the following words and phrases  
11 shall have the meanings given to them in this subsection:

12 "Conditions of supervision." Any terms or conditions of the  
13 offender's supervision, whether imposed by the court or an  
14 officer, including compliance with all requirements of Federal,  
15 State and local law.

16 "Contraband." Any item that the offender is not permitted to  
17 possess under the conditions of supervision, including any item  
18 whose possession is forbidden by any Federal, State or local  
19 law.

20 "Court." The court of common pleas or any judge thereof, the  
21 Philadelphia Municipal Court or any judge thereof, the  
22 Pittsburgh Magistrates Court or any judge thereof or any  
23 district justice.

24 "Exigent circumstances." Includes, but is not limited to,  
25 suspicion that contraband or other evidence of violations of the  
26 conditions of supervision might be destroyed or suspicion that a  
27 weapon might be used. Exigent circumstances always exist with  
28 respect to a vehicle.

29 "Offender." Any person released on A.R.D., county probation,  
30 intermediate punishment or county parole.

1     "Officer." A probation or parole officer appointed or  
2     employed by any court or by any county department of probation  
3     and parole to supervise persons released on county probation or  
4     parole.

5     "Personal search." A warrantless search of an offender's  
6     person, including, but not limited to, the offender's clothing  
7     and any personal property in the offender's possession or within  
8     his reach.

9     "Property search." A warrantless search of an offender's  
10    real property, vehicle or personal property including property  
11    within the offender's control.

12    "Real property." Any residence or business property of the  
13    offender, including all portions of the property to which the  
14    offender has access.

15    "Supervisor." Any individual acting in a supervisory or  
16    administrative capacity.

17    Section 2. All acts and parts of acts are repealed insofar  
18    as they are inconsistent with this act.

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