

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 23

Special Session No. 1 of
1995

INTRODUCED BY RHOADES, FISHER, GREENLEAF, O'PAKE, BRIGHTBILL,
LEMOND, SHAFFER, WAGNER, FUMO, ANDREZESKI, JUBELIRER,
LOEPER, MELLOW, LAVALLE, TILGHMAN, WENGER, SALVATORE,
STEWART, STOUT, BODACK, CORMAN, PETERSON, HELFRICK, HOLL,
ROBBINS, PORTERFIELD, STAPLETON, ULIANA, TOMLINSON, GERLACH,
DELP, AFFLERBACH, SCHWARTZ, ARMSTRONG, MADIGAN, SHUMAKER,
MOWERY, MUSTO, KASUNIC, TARTAGLIONE, BELAN AND DAWIDA,
JANUARY 24, 1995

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
FEBRUARY 13, 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," further providing for investigations and
18 recommendations to the Board of Pardons AND FOR GRANTS OF
19 PAROLE. <—

20 The General Assembly of the Commonwealth of Pennsylvania

21 hereby enacts as follows:

22 Section 1. Section 21 of the act of August 6, 1941 (P.L.861,
23 No.323), referred to as the Pennsylvania Board of Probation and

1 Parole Law, amended December 27, 1994 (P.L. , No.159), is
2 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. The power to parole herein granted to the Board of
11 Parole may not be exercised in the board's discretion at any
12 time before, but only after, the expiration of the minimum term
13 of imprisonment fixed by the court in its sentence or by the
14 Pardon Board in a sentence which has been reduced by
15 commutation[: Provided, however, That if the Board of Parole
16 refuse to parole the prisoner at the expiration of any minimum
17 term fixed by the Pardon Board, it shall, within ten days after
18 the date when the minimum term expired, transmit to the Pardon
19 Board a written statement of the reasons for refusal to parole
20 the prisoner at the expiration of the minimum term fixed by the
21 Pardon Board. Thereafter, the Pardon Board may either accept the
22 action of the Board of Parole, or order the immediate release of
23 the prisoner on parole, under the supervision of the Board of
24 Parole]. 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. Said
19 board shall have the power during the period for which a person
20 shall have been sentenced to recommit one paroled for violation
21 of the terms and conditions of his parole and from time to time
22 to reparole and recommit in the same manner and with the same
23 procedure as in the case of an original parole or recommitment,
24 if, in the judgment of the said board, there is a reasonable
25 probability that the convict will be benefited by again
26 according him liberty and it does not appear that the interests
27 of the Commonwealth will be injured thereby.

28 Section 2. Section 22 of the act, amended May 27, 1943
29 (P.L.767, No.324), is amended to read:

30 Section 22. The board shall have the power, subject to the

1 provisions and limitations set forth in section twenty-one, to
2 grant paroles of its own motion whenever in its judgment the
3 interests of justice require the granting of the same. In
4 addition thereto, the board shall have the power, and it shall
5 be its duty, to consider applications for parole by a prisoner
6 or by his attorney, relatives or friends or by any person
7 properly interested in the matter. Hearings of applications
8 shall be held by the board whenever in its judgment hearings are
9 necessary. Reasonable rules and regulations shall be adopted by
10 the board for the presentation and hearing of applications for
11 parole: Provided, however, That whenever any prisoner is paroled
12 by the board, whether of its own motion or after hearing of an
13 application therefor, or whenever an application for parole is
14 refused by the board, a brief statement of the reasons for the
15 board's action shall be filed of record in the offices of the
16 board and shall be at all reasonable times open to public
17 inspection; in no case shall a parole be granted, or an
18 application for parole be dismissed, unless a district
19 supervisor shall have seen and heard him in person in regard
20 thereto within six months prior to the granting or dismissal
21 thereof. Application shall be disposed of by the board within
22 six months of the filing thereof. [Except in cases where the
23 Pardon Board has reduced a minimum term by commutation, the
24 board shall initially act on the application, if possible,
25 before the expiration of the minimum term so fixed, and in no
26 case more than thirty days thereafter.]

27 In granting and revoking paroles, and in discharging from
28 parole, the members of the board acting thereon shall not be
29 required to personally hear or see all the witnesses and
30 evidence submitted to them for their action, but they may act on

1 report submitted to them by their agents and employees, together
2 with any pertinent and adequate information furnished to them by
3 fellow members of the board or by others.

4 At least ten days before paroling a prisoner on its own
5 motion the board shall give written notice of such contemplated
6 parole to the district attorney of the county wherein the
7 prisoner shall have been sentenced, and, in cases of hearings on
8 applications for parole as herein provided for, at least ten
9 days written notice of the time and place fixed for such hearing
10 shall be given either by the board or by the applicant, as the
11 board shall direct, to the court and district attorney of the
12 county wherein the applicant shall have been sentenced.

13 Section 3. Section 34 of the act is repealed.

14 Section 4. The act is amended by adding a section to read:

15 Section 34.1. (a) The board shall have the following powers
16 and duties with regard to the Board of Pardons and individuals
17 granted clemency by the Governor who are subject to parole
18 supervision by the board:

19 (1) Make investigations and recommendations to the Board of
20 Pardons in cases coming before it and upon its request. The
21 investigations shall include all information set forth under
22 section 19 of this act, including a risk assessment if the
23 applicant is incarcerated.

24 (2) Immediately notify the Board of Pardons when a parolee
25 has violated a condition of parole. This shall apply to parolees
26 under supervision by other jurisdictions through the Interstate
27 Compact CONCERNING PAROLE.

28 (3) Not parole an inmate whose term of imprisonment was
29 commuted from life to life on parole or an inmate serving a term
30 of imprisonment for a crime of violence unless the inmate has

<—

1 served at least one year in a prerelease center. Upon parole,
2 these parolees shall be subject to weekly supervision for the
3 first six months of parole. The parolee shall not be paroled to
4 another state unless the state will provide weekly supervision
5 for the first six months of parole.

6 (b) As used in this section, the term "crime of violence"
7 means:

8 (1) Murder of the third degree, voluntary manslaughter,
9 rape, involuntary deviate sexual intercourse, robbery as defined
10 in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to
11 robbery), aggravated assault as defined in 18 Pa.C.S. §
12 2702(a)(1) (relating to aggravated assault) or kidnapping.

13 (2) An attempt to commit voluntary manslaughter, rape,
14 involuntary deviate sexual intercourse, robbery as defined in 18
15 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii), aggravated assault as
16 defined in 18 Pa.C.S. § 2702(a)(1) or kidnapping.

17 ~~(3) The serving of a sentence pursuant to 42 Pa.C.S. § 9712~~ <—
18 ~~(relating to sentences for offenses committed with firearms).~~

19 (3) AN OFFENSE COMMITTED WHILE IN VISIBLE POSSESSION OF A <—
20 FIREARM FOR WHICH SENTENCING WAS IMPOSED UNDER 42 PA.C.S. § 9712
21 (RELATING TO SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS).

22 Section 5. This act shall take effect in 60 days.