

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 6

Session of
2007

INTRODUCED BY MANDERINO, BAKER, BASTIAN, BENNINGHOFF, CAPPELLI, CLYMER, DALLY, DENLINGER, EVERETT, FABRIZIO, FAIRCHILD, GIBBONS, HALUSKA, HARHAI, HARPER, HERSHEY, HICKERNELL, KENNEY, KIRKLAND, KOTIK, KULA, MAHONEY, MANN, MARSICO, McGEEHAN, O'NEILL, RAPP, ROHRER, SABATINA, SCAVELLO, SCHRODER, SHAPIRO, SIPTROTH, SONNEY, STAIRS, THOMAS, TRUE, WANSACZ, WATSON AND YUDICHAK, AUGUST 21, 2007

REFERRED TO COMMITTEE ON JUDICIARY, AUGUST 21, 2007

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 intent, for business of
18 the Pennsylvania Board of Probation and Parole, for powers
19 and duties of the board, for duties of the chairman of the
20 board, for supervision of parole and probation, for power to
21 parole and for commission of crime during parole.

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

24 Section 1. Section 1 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 December 18, 1996 (P.L.1098, No.164), is
2 amended to read:

3 Section 1. The parole system provides several benefits to
4 the criminal justice system, including the provision of adequate
5 supervision of the offender while protecting the public, the
6 opportunity for the offender to become a useful member of
7 society and the diversion of appropriate offenders from prison.

8 In providing these benefits to the criminal justice system,
9 the board shall first and foremost seek to protect the safety of
10 the public. In addition to this goal, the board shall address
11 input by crime victims [and], assist in the fair administration
12 of justice by ensuring the custody, control and treatment of
13 paroled offenders[.], shall consider any applicable guidelines
14 established by the Pennsylvania Commission on Sentencing and
15 shall ensure that parole proceedings, release and recommitment
16 are administered in an efficient and timely manner.

17 Section 2. Sections 3 and 4 of the act, amended October 9,
18 1986 (P.L.1424, No.134), are amended to read:

19 Section 3. The Governor shall from time to time, as the
20 occasion may arise, designate one of the members of the board to
21 be its chairman who shall direct the operations, management and
22 administration of the board and fulfill the functions
23 established by this act, secure the effective application of the
24 probation system in all of the courts of the State and the
25 enforcement of the probation laws. [He] The chairman shall
26 preside at all meetings of the board and perform all the duties
27 and functions of chairman thereof, including organizing,
28 staffing, controlling, directing and administering the work of
29 the staff. The chairman shall administer the proceedings of the
30 board to ensure efficient and timely procedures for parole board

1 decisions, parole releases, discharges and recommitments. The
2 board may designate one of its members to act as chairman during
3 the absence or incapacity of the chairman and, when so acting,
4 the member so designated shall have and perform all the powers
5 and duties of chairman of the board, but shall not receive any
6 additional compensation for so acting. [The chairman, in
7 performing his duties as they relate to parole, reparole and
8 violation and revocation proceedings, shall act in accordance
9 with the policies and procedures established by the board.]

10 Section 4. (a) A majority of the board shall constitute a
11 quorum for transacting business and, except as hereinafter
12 otherwise provided, a majority vote of those present at any
13 meeting shall be sufficient for any official action taken by the
14 board. Except as provided in subsections (b), (c) [and (d)], (d)
15 and (e), no person shall be paroled, discharged from parole, or
16 the parole of any person revoked, except by a majority of the
17 entire membership of the board.

18 (b) The board may make decisions on parole, reparole, return
19 or revocation in panels of two persons. A panel shall consist of
20 one board member and one hearing examiner or of two board
21 members. Panels shall be appointed by the chairman or the
22 chairman's designee.

23 (c) If there is disagreement on a decision to parole between
24 the members of a panel, the matter shall be decided by a board
25 member appointed by the chairman or the chairman's designee, who
26 shall concur with one of the original panel members. If there is
27 disagreement on a revocation decision between the members of the
28 panel, the matter shall be decided by three board members
29 appointed by the chairman or the chairman's designee; at least
30 two of these members must not have been on the disagreeing

1 panel, if practicable.

2 (d) An interested party may appeal a revocation decision
3 within thirty days of the board's order. The decision shall be
4 reviewed by three board members appointed by the chairman or the
5 chairman's designee. If practicable, at least two of the board
6 members reviewing the decision must not have been on the panel
7 whose decision is being appealed. The three board members
8 deciding the appeal may affirm, reverse or remand the decision
9 of the panel or may order the matter be heard de novo.

10 (e) Subject to the provisions of section 21(b.2), the board
11 or its designee may issue a decision to parole an eligible
12 offender as defined under 44 Pa.C.S. § 5303 (relating to
13 definitions) without further review by the board.

14 Section 3. Section 16.2(a) of the act is amended by adding a
15 paragraph to read:

16 Section 16.2. (a) The board shall have the power and its
17 duty shall be:

18 * * *

19 (12) To provide information as required under 42 Pa.C.S. §
20 2153(a)(14) (relating to powers and duties) as requested by the
21 Pennsylvania Commission on Sentencing.

22 Section 4. Section 17 of the act, amended December 27, 1965
23 (P.L.1230, No.501), is amended to read:

24 Section 17. (a) The board shall have exclusive power to
25 parole and reparole, commit and recommit for violations of
26 parole, and to discharge from parole all persons heretofore or
27 hereafter sentenced by any court in this Commonwealth to
28 imprisonment in any prison or penal institution thereof, whether
29 the same be a state or county penitentiary, prison or penal
30 institution, as hereinafter provided. It is further provided

1 that the board shall have exclusive power to supervise any
2 person hereafter placed on parole (when sentenced to a maximum
3 period of less than two years) by any judge of a court having
4 criminal jurisdiction, when the court may by special order
5 direct supervision by the board, in which case the parole case
6 shall be known as a special case and the authority of the board
7 with regard thereto shall be the same as herein provided with
8 regard to parole cases within one of the classifications above
9 set forth: Provided, however, That, except for such special
10 cases, the powers and duties herein conferred shall not extend
11 to persons sentenced for a maximum period of less than two
12 years[, and nothing herein contained shall prevent any].

13 (b) A court of this Commonwealth [from paroling any person
14 sentenced by it for a maximum period of less than two years: And
15 provided further, That the], subject to consideration of
16 guidelines established under 42 Pa.C.S. §§ 2154.3 (relating to
17 adoption of guidelines for resentencing) and 2154.4 (relating to
18 adoption of guidelines for parole), may parole at the expiration
19 of the minimum sentence any person sentenced by it for a maximum
20 period of less than two years or committed to a county prison
21 within the jurisdiction of the court under 42 Pa.C.S. §
22 9762(b)(2) (relating to sentencing proceeding and place of
23 confinement). The power to parole granted under this subsection
24 to a court may be exercised only after the expiration of the
25 minimum term of imprisonment fixed by the court or by the Pardon
26 Board in a sentence which has been reduced by commutation. In
27 each case where a court deviates from the guidelines established
28 under 42 Pa.C.S. § 2154.3 or 2154.4, the court shall provide a
29 contemporaneous written statement of the reason for the
30 deviation from the guidelines.

1 (c) The period of two years herein referred to shall mean
2 the entire continuous term of sentence to which a person is
3 subject, whether the same be by one or more sentences, either to
4 simple imprisonment or to an indeterminate imprisonment at hard
5 labor, as now or hereafter authorized by law to be imposed for
6 criminal offenses. The power of the board to parole shall extend
7 to prisoners sentenced to definite or flat sentences.

8 Section 5. Section 21 of the act, amended December 21, 1998
9 (P.L.1077, No.143), is amended to read:

10 Section 21. (a) The board is hereby authorized, to parole
11 subject to consideration of guidelines established under 42
12 Pa.C.S. § 2154.4 (relating to adoption of guidelines for
13 parole), to release on parole any convict confined in any penal
14 institution of this Commonwealth as to whom power to parole is
15 herein granted to the board, except convicts condemned to death
16 or serving life imprisonment, whenever in its opinion the best
17 interests of the convict justify or require his being paroled
18 and it does not appear that the interests of the Commonwealth
19 will be injured thereby. Parole shall be subject in every
20 instance to the Commonwealth's right to immediately retake and
21 hold in custody without further proceedings any parolee charged
22 after his parole with an additional offense until a
23 determination can be made whether to continue his parole status.
24 The power to parole herein granted to the Board of Parole may
25 not be exercised in the board's discretion at any time before,
26 but only after, the expiration of the minimum term of
27 imprisonment fixed by the court in its sentence or by the Pardon
28 Board in a sentence which has been reduced by commutation.

29 (a.1) In each case in which the board deviates from the
30 guidelines established under 42 Pa.C.S. § 2154.4, the board

1 shall provide a contemporaneous written statement of the reason
2 for the deviation from the guidelines. The board may develop and
3 use appropriate forms and documentation methods for compliance
4 with this subsection, including internal decisional instruments.
5 This subsection shall not be construed to prevent the board from
6 developing detailed guideline forms or other documents, policies
7 and procedures consistent with this act.

8 (a.2) (1) An eligible offender shall be placed on
9 administrative parole one year after release on parole and until
10 the maximum sentence date if the board's supervision staff
11 determines that:

12 (i) the eligible offender has not violated the terms and
13 conditions of the eligible offender's parole; or

14 (ii) (A) the eligible offender has not been subject to the
15 extensive use of sanctions prior to the completion of one year
16 from the date of release on parole; and

17 (B) there is no substantial information indicating
18 dangerousness or that placement on administrative parole would
19 compromise public safety.

20 (2) An eligible offender placed on administrative parole
21 shall continue to be subject to recommitment at the board's
22 discretion and shall be subject to the board's power to recommit
23 and reparole, recommit and review or otherwise impose sanctions
24 at its discretion until the eligible offender's maximum sentence
25 date.

26 (3) An eligible offender placed on administrative parole
27 shall do all of the following:

28 (i) Have supervision contact at least one time a year.

29 (ii) Provide updated contact information upon a change in
30 residence or employment.

1 (iii) Continue to pay any restitution owed.

2 (iv) Comply with other requirements imposed by the board.

3 (a.3) The board shall have the power and its duty shall be
4 to comply with the requirements of 44 Pa.C.S. § 5306 (relating
5 to recidivism risk reduction incentive minimum).

6 (b) The board may not release a person on parole unless the
7 person achieves a negative result within forty-five days prior
8 to the date of release in a screening test approved by the
9 Department of Health for the detection of the presence of
10 controlled substances or designer drugs under the act of April
11 14, 1972 (P.L.233, No.64), known as "The Controlled Substance,
12 Drug, Device and Cosmetic Act." The cost of these pre-parole
13 drug screening tests for inmates subject to the parole release
14 jurisdiction of the board, whether confined in a State or local
15 correctional facility, shall be paid by the board. The board
16 shall establish rules and regulations for the payment of these
17 costs and may limit the types and cost of these screening tests
18 that would be subject to payment by the board. The board shall
19 establish, as a condition of continued parole for a parolee who,
20 as an inmate, tested positive for the presence of a controlled
21 substance or a designer drug or who was paroled from a sentence
22 arising from a conviction under "The Controlled Substance, Drug,
23 Device and Cosmetic Act," or from a drug-related crime, the
24 parolee's achievement of negative results in such screening
25 tests randomly applied. The random screening tests shall be
26 performed at the discretion of the board, and the parolee
27 undergoing the tests shall be responsible for the costs of the
28 tests. The funds collected for the tests shall be applied
29 against the contract for such testing between the board and a
30 testing laboratory approved by the Department of Health.

1 (b.1) The board may not release a person who is serving a
2 sentence for a crime of violence as defined in 42 Pa.C.S. §
3 9714(g) (relating to sentences for second and subsequent
4 offenses) on parole unless the person has received instruction
5 from the Department of Corrections on the impact of crime on
6 victims and the community.

7 (b.2) (1) The department shall identify all prisoners
8 committed to the custody of the department that meet the
9 definition of an eligible offender.

10 (2) Upon identification of a prisoner as an eligible
11 offender, the department shall send notice to the board. The
12 board shall send notice to the prosecuting attorney and the
13 court no less than six months before the expiration of the
14 prisoner's minimum sentence indicating that the department has
15 preliminarily identified the prisoner as an eligible offender.
16 The notice shall be sent by United States mail unless the board,
17 the court and the prosecutor have consented to receipt of notice
18 via electronic means. For prisoners committed to the department
19 whose expiration of the minimum sentence is six months or less
20 from the date of admission, the department shall give prompt
21 notice.

22 (3) Within 60 days of receipt of notice under paragraph (2),
23 the court or prosecuting attorney may file a written objection
24 to the department's preliminary identification of the prisoner
25 as an eligible offender. Notice of the objection shall be
26 provided to the department and the board.

27 (4) If no notice of objection has been filed under paragraph
28 (3), the board or its designee shall approve for parole at the
29 expiration of the eligible offender's minimum date upon a
30 determination that all of the following apply:

1 (i) The department certified that the prisoner has
2 maintained a good conduct record and continues to remain an
3 eligible offender.

4 (ii) The reentry plan for the prisoner is adequate.

5 (iii) Individual conditions and requirements for parole have
6 been established.

7 (iv) There is no reasonable indication that the prisoner
8 poses a risk to public safety.

9 (5) If the court or prosecuting attorney files a timely
10 objection under paragraph (3), the board shall make a
11 determination as to whether the prisoner is an eligible
12 offender. The board shall notify the department, prosecuting
13 attorney and court of its determination no later than 60 days
14 prior to the minimum parole date. If the board determines that
15 the prisoner is an eligible offender under this act, the board
16 shall follow the provisions of paragraph (4). If the board
17 determines that the prisoner is not an eligible offender under
18 44 Pa.C.S. § 5303, the board shall retain exclusive jurisdiction
19 to grant parole and shall determine whether the offender should
20 be paroled at the minimum date, paroled at a later date or
21 denied parole.

22 (6) Nothing in this subsection shall be interpreted as
23 granting a right to be paroled to any person, and any decision
24 by the board and its designees or the department, under this
25 section, shall not be considered an adjudication under 2 Pa.C.S.
26 Ch. 5 Subch. A (relating to practice and procedure of
27 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial
28 review of Commonwealth agency action).

29 (7) Except as provided under this subsection, nothing in
30 this act shall otherwise affect the powers and duties of the

1 board or the department.

2 (c) The board shall have the power during the period for
3 which a person shall have been sentenced to recommit one paroled
4 for violation of the terms and conditions of his parole and from
5 time to time to reparole and recommit in the same manner and
6 with the same procedure as in the case of an original parole or
7 recommitment, if, in the judgment of the board, there is a
8 reasonable probability that the convict will be benefited by
9 again according him liberty and it does not appear that the
10 interests of the Commonwealth will be injured thereby. In
11 exercising these powers, the board shall consider any applicable
12 recommitment ranges established by the Pennsylvania Commission
13 on Sentencing under 42 Pa.C.S. § 2154.5 (relating to adoption of
14 recommitment ranges following revocation of parole by board).

15 (d) When the board releases a parolee from a State or local
16 correctional facility, the board shall provide written notice to
17 the probation department located in the county where the
18 sentencing order was imposed of the release and new address of
19 the parolee.

20 (e) For the purposes of this section, the term "eligible
21 offender" shall have the same meaning as the term is given under
22 44 Pa.C.S § 5303 (relating to definitions).

23 Section 6. Section 21.1(c) of the act, amended June 28, 1957
24 (P.L.429, No.235), is amended to read:

25 Section 21.1. * * *

26 (c) Recommitment. Technical violators shall be recommitted
27 for service of the balance of said term originally imposed to
28 penal or correctional institutions as follows:

29 (1) If paroled from a county penal or correctional
30 institution, to the same institution or to any other institution

1 to which legally transferred.

2 [(2) If paroled from the Pennsylvania Industrial School at
3 Camp Hill and upon recommitment such person has not attained the
4 age of twenty-one years, to the same institution.

5 (3) If paroled from the State Industrial Home for Women at
6 Muncy, to the same institution.

7 (4) If paroled from any other State penal or correctional
8 institution under the control and supervision of the Department
9 of Justice, to the nearest Correctional Diagnostic and
10 Classification Center wherein the person shall be classified for
11 service of the balance of the term in such institution as shall
12 be designated by the Deputy Commissioner for Treatment in the
13 Bureau of Correction.]

14 (5) If paroled from a penal or correctional institution
15 under the control and supervision of the Department of
16 Corrections, any male person upon recommitment shall be sent to
17 the nearest State correctional institution for service of the
18 remainder of the original term at the institution as shall be
19 designated by the Department of Corrections. Any female person
20 shall be recommitted to the State Correctional Institution at
21 Muncy or other State correctional institution as designated by
22 the Department of Corrections.

23 Section 7. This act shall take effect in 60 days.