

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, YUDICHAK, J. WHITE, WALKO AND JAMES, AUGUST 21, 2007

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, DECEMBER 4, 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,

1 No.323), referred to as the Pennsylvania Board of Probation and
2 Parole Law, amended December 18, 1996 (P.L.1098, No.164), is
3 amended to read:

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

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

18 Section 2. Sections 3 and 4 of the act, amended October 9,
19 1986 (P.L.1424, No.134), are amended to read:

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

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

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

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

24 (c) If there is disagreement on a decision to parole between
25 the members of a panel, the matter shall be decided by a board
26 member appointed by the chairman or the chairman's designee, who
27 shall concur with one of the original panel members. If there is
28 disagreement on a revocation decision between the members of the
29 panel, the matter shall be decided by three board members
30 appointed by the chairman or the chairman's designee; at least

1 two of these members must not have been on the disagreeing
2 panel, if practicable.

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

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

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

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

19 * * *

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

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

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

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

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

1 ~~deviation from the guidelines.~~ YEARS.[, AND NOTHING]

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2 (B) NOTHING HEREIN CONTAINED SHALL PREVENT [ANY] A COURT OF
3 THIS COMMONWEALTH FROM PAROLING ANY PERSON SENTENCED BY IT FOR A
4 MAXIMUM PERIOD OF LESS THAN TWO [YEARS: AND PROVIDED FURTHER,
5 THAT THE] YEARS.

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

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

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

1 but only after, the expiration of the minimum term of
2 imprisonment fixed by the court in its sentence or by the Pardon
3 Board in a sentence which has been reduced by commutation.

4 (a.1) In each case in which the board deviates from the
5 guidelines established under 42 Pa.C.S. § 2154.4, the board
6 shall provide a contemporaneous written statement of the reason
7 for the deviation from the guidelines. The board may develop and
8 use appropriate forms and documentation methods for compliance
9 with this subsection, including internal decisional instruments.
10 This subsection shall not be construed to prevent the board from
11 developing detailed guideline forms or other documents, policies
12 and procedures consistent with this act.

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

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

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

22 (B) there is no substantial information indicating
23 dangerousness or that placement on administrative parole would
24 compromise public safety.

25 (2) An eligible offender placed on administrative parole
26 shall continue to be subject to recommitment at the board's
27 discretion and shall be subject to the board's power to recommit
28 and reparole, recommit and review or otherwise impose sanctions
29 at its discretion until the eligible offender's maximum sentence
30 date.

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

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

4 (ii) Provide updated contact information upon a change in
5 residence or employment.

6 (iii) Continue to pay any restitution owed.

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

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

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

1 performed at the discretion of the board, and the parolee
2 undergoing the tests shall be responsible for the costs of the
3 tests. The funds collected for the tests shall be applied
4 against the contract for such testing between the board and a
5 testing laboratory approved by the Department of Health.

6 (b.1) The board may not release a person who is serving a
7 sentence for a crime of violence as defined in 42 Pa.C.S. §
8 9714(g) (relating to sentences for second and subsequent
9 offenses) on parole unless the person has received instruction
10 from the Department of Corrections on the impact of crime on
11 victims and the community.

12 (b.2) (1) The department shall identify all prisoners
13 committed to the custody of the department that meet the
14 definition of an eligible offender.

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

27 (3) Within 60 days of receipt of notice under paragraph (2),
28 the court or prosecuting attorney may file a written objection
29 to the department's preliminary identification of the prisoner
30 as an eligible offender. Notice of the objection shall be

1 provided to the department and the board.

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

6 (i) The department certified that the prisoner has
7 maintained a good conduct record and continues to remain an
8 eligible offender.

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

10 (iii) Individual conditions and requirements for parole have
11 been established.

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

14 (5) If the court or prosecuting attorney files a timely
15 objection under paragraph (3), the board shall make a
16 determination as to whether the prisoner is an eligible
17 offender. The board shall notify the department, prosecuting
18 attorney and court of its determination no later than 60 days
19 prior to the minimum parole date. If the board determines that
20 the prisoner is an eligible offender under this act, the board
21 shall follow the provisions of paragraph (4). If the board
22 determines that the prisoner is not an eligible offender under
23 44 Pa.C.S. § 5303, the board shall retain exclusive jurisdiction
24 to grant parole and shall determine whether the offender should
25 be paroled at the minimum date, paroled at a later date or
26 denied parole.

27 (6) Nothing in this subsection shall be interpreted as
28 granting a right to be paroled to any person, and any decision
29 by the board and its designees or the department, under this
30 section, shall not be considered an adjudication under 2 Pa.C.S.

1 Ch. 5 Subch. A (relating to practice and procedure of
2 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial
3 review of Commonwealth agency action).

4 (7) Except as provided under this subsection, nothing in
5 this act shall otherwise affect the powers and duties of the
6 board or the department.

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

20 (d) When the board releases a parolee from a State or local
21 correctional facility, the board shall provide written notice to
22 the probation department located in the county where the
23 sentencing order was imposed of the release and new address of
24 the parolee.

25 (e) For the purposes of this section, the term "eligible
26 offender" shall have the same meaning as the term is given under
27 44 Pa.C.S § 5303 (relating to definitions).

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

30 Section 21.1. * * *

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

4 (1) If paroled from a county penal or correctional
5 institution, to the same institution or to any other institution
6 to which legally transferred.

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

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

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

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

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