

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1207 Session of  
2007

INTRODUCED BY COSTA, WASHINGTON, FERLO, STOUT, HUGHES,  
TARTAGLIONE, KITCHEN AND FONTANA, DECEMBER 7, 2007

REFERRED TO JUDICIARY, DECEMBER 7, 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 board, for powers and duties of the board, for duties of  
19 the chairman of the board, for supervision of parole and  
20 probation, for power to parole and for commission of crime  
21 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  
26 Parole Law, amended December 18, 1996 (P.L.1098, No.164), is  
27 amended to read:

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

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

15 Section 2. Sections 3 and 4 of the act, amended October 9,  
16 1986 (P.L.1424, No.134), are amended to read:

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

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

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

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

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

30 (d) An interested party may appeal a revocation decision

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

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

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

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

16 \* \* \*

17 (12) To provide information as required under 42 Pa.C.S. §  
18 2153(a)(14) (relating to powers and duties) as requested by the  
19 Pennsylvania Commission on Sentencing.

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

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

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

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

29 (c) The period of two years herein referred to shall mean  
30 the entire continuous term of sentence to which a person is

1 subject, whether the same be by one or more sentences, either to  
2 simple imprisonment or to an indeterminate imprisonment at hard  
3 labor, as now or hereafter authorized by law to be imposed for  
4 criminal offenses. The power of the board to parole shall extend  
5 to prisoners sentenced to definite or flat sentences.

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

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

27 (a.1) In each case in which the board deviates from the  
28 guidelines established under 42 Pa.C.S. § 2154.4, the board  
29 shall provide a contemporaneous written statement of the reason  
30 for the deviation from the guidelines. The board may develop and

use appropriate forms and documentation methods for compliance with this subsection, including internal decisional instruments. This subsection shall not be construed to prevent the board from developing detailed guideline forms or other documents, policies and procedures consistent with this act.

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

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

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

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

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

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

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

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

(iii) Continue to pay any restitution owed.

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

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

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

29     (b.1) The board may not release a person who is serving a  
30 sentence for a crime of violence as defined in 42 Pa.C.S. §

1 9714(g) (relating to sentences for second and subsequent  
2 offenses) on parole unless the person has received instruction  
3 from the Department of Corrections on the impact of crime on  
4 victims and the community.

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

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

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

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

29 (i) The department certified that the prisoner has  
30 maintained a good conduct record and continues to remain an

1 eligible offender.

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

3 (iii) Individual conditions and requirements for parole have  
4 been established.

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

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

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

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

30 (c) The board shall have the power during the period for

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

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

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

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

23 Section 21.1. \* \* \*

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

27 (1) If paroled from a county penal or correctional  
28 institution, to the same institution or to any other institution  
29 to which legally transferred.

30 [(2) If paroled from the Pennsylvania Industrial School at

1 Camp Hill and upon recommitment such person has not attained the  
2 age of twenty-one years, to the same institution.

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

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

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

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