THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 1158 Session of 2020

INTRODUCED BY ARNOLD, ARGALL, J. WARD, AUMENT, REGAN, YUDICHAK, BROWNE, YAW, MARTIN, PITTMAN AND STEFANO, MAY 18, 2020

SENATOR BAKER, JUDICIARY, AS AMENDED, JUNE 24, 2020

AN ACT

Amending Title 35 (Health and Safety) of the Pennsylvania Consolidated Statutes, in Commonwealth services, further providing for general authority of Governor.

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

Section 1. Section 7301(f) of Title 35 of the Pennsylvania Consolidated Statutes is amended by adding paragraphs to read:

§ 7301. General authority of Governor.

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(f) Additional powers. In addition to any other powers conferred upon the Governor by law, the Governor may:

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(7.1) Control under paragraph (7), when applied to individuals in a State correctional facility, shall require successful completion of all prescribed Department of Corrections programs prior to release or transfer.

(7.2) The Department of Corrections shall develop temporary guidelines until the department has promulgated and—

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finalized regulations as follows:

(i) Develop a process and procedure for the supervision of all released inmates under paragraph (7) including, but not be limited to:

(A) exclusion of an inmate convicted of or who has a prior conviction involving a personal injury crime as defined under section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, a crime listed under 42 Pa.C.S. §9714(g) (relating to sentences for second and subsequent offenses), 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) or I (relating to continued registration of sexual offenders) or any other crime involving domestic or sexual abuse or violence or involving child abuse.

(B) monitoring of inmates using an electronic global positioning system or other monitoring;

(C) drug and alcohol testing;

(D) scope and depth of supervision; and

(E) physical location and any exceptions;

(ii) How the department will address domestic violence, sexual violence and child abuse when considering placement.

(iii) Develop a process and procedure for notifying victims consistent with the Crime Victims Act.

SECTION 1. SECTION 7301 OF TITLE 35 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBSECTION TO READ:

§ 7301. GENERAL AUTHORITY OF GOVERNOR.

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(G) RELEASE OF INCARCERATED INDIVIDUALS.--

(1) IN THE EVENT THAT THE GOVERNOR, BY EXECUTIVE ORDER, PROCLAMATION, REGULATION OR OTHERWISE SEeks TO RELEASE, TRANSFER OR OTHERWISE MOVE AN INMATE FROM THE CUSTODY OF A STATE CORRECTIONAL INSTITUTION OR COUNTY CORRECTIONAL INSTITUTION AS A RESULT OF THE AUTHORITY VESTED IN THE GOVERNOR PURSUANT TO THIS TITLE, THE GOVERNOR MUST FIRST IDENTIFY SPECIFIC CONDITIONS OF THE DISASTER THAT CREATE A SPECIFIC AND SUBSTANTIAL DANGER TO THE INMATE IF THE INMATE REMAINS INCARCERATED AND WHICH SPECIFIC AND SUBSTANTIAL DANGER WOULD BE REDUCED OR ELIMINATED IF THE INMATE WAS RELEASED.

(2) THE OFFICE OF VICTIM ADVOCATE, EITHER THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL WHO HAD JURISDICTION OVER THE SENTENCE FOR WHICH THE INMATE WAS INCARCERATED, AND THE SENTENCING COURT SHALL BE PROVIDED NOTICE OF THE INMATE WHOM THE GOVERNOR SEeks TO RELEASE, TRANSFER OR OTHERWISE MOVE UNDER PARAGRAPH (1) AND SHALL BE GIVEN NO LESS THAN 72 HOURS AFTER RECEIPT OF THE NOTICE TO OBJECT OR OTHERWISE COMMENT ON THE RELEASE, TRANSFER OR OTHER MOVEMENT OF THE INMATE. IN THE EVENT THAT THE INMATE IS INCARCERATED IN A COUNTY CORRECTIONAL INSTITUTION, THE NOTICE SHALL ALSO BE PROVIDED TO THE BOARD OF COMMISSIONERS OR THE COUNTY EXECUTIVE OF THE COUNTY IN WHICH THE INSTITUTION IS LOCATED, AND THE BOARD OF COMMISSIONERS OR COUNTY EXECUTIVE SHALL BE GIVEN AN OPPORTUNITY TO OBJECT OR OTHERWISE COMMENT. NO INDIVIDUAL MAY BE RELEASED, TRANSFERRED OR OTHERWISE MOVED UNDER PARAGRAPH (1) FOR WHICH AN OBJECTION IS TIMELY RECEIVED.

(3) REGARDLESS OF THE SENTENCE IMPOSED, AN INMATE MAY NOT BE RELEASED, TRANSFERRED OR OTHERWISE MOVED UNDER
PARAGRAPH (1) IF THE INMATE WAS OR IS:

   (I) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING A PERSONAL INJURY CRIME OR A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT A PERSONAL INJURY CRIME AS DEFINED IN SECTION 103 OF THE ACT OF NOVEMBER 24, 1998 (P.L.882, NO.111), KNOWN AS THE CRIME VICTIMS ACT;

   (II) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING A CRIME OF VIOLENCE OR A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT A CRIME OF VIOLENCE AS DEFINED IN 42 PA.C.S. § 9714(G) (RELATING TO SENTENCES FOR SECOND OR SUBSEQUENT OFFENSES);

   (III) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING AN OFFENSE UNDER 18 PA.C.S. CH. 61 (RELATING TO FIREARMS AND OTHER DANGEROUS ARTICLES) OR A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT THE OFFENSE;

   (IV) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING AN ENHANCEMENT FOR THE USE OF A DEADLY WEAPON AS DEFINED UNDER LAW OR THE SENTENCING GUIDELINES PROMULGATED BY THE PENNSYLVANIA COMMISSION ON SENTENCING OR WHERE THE ATTORNEY FOR THE COMMONWEALTH HAS DEMONSTRATED THAT THE DEFENDANT HAS BEEN FOUND GUILTY OF OR WAS CONVICTED OF AN OFFENSE INVOLVING A DEADLY WEAPON OR A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT THE OFFENSE OR AN EQUIVALENT OFFENSE UNDER THE LAWS OF THE UNITED STATES OR ONE OF ITS TERRITORIES OR POSSESSIONS, ANOTHER STATE, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO OR A FOREIGN
(V) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING A VIOLATION OF ANY OF THE FOLLOWING PROVISIONS OR AN EQUIVALENT OFFENSE UNDER THE LAWS OF THE UNITED STATES OR ONE OF ITS TERRITORIES OR POSSESSIONS, ANOTHER STATE, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO OR A FOREIGN NATION, INCLUDING A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT THE OFFENSE:

18 PA.C.S. § 4302(A) (RELATING TO INCEST).
18 PA.C.S. § 6312 (RELATING TO SEXUAL ABUSE OF CHILDREN).
18 PA.C.S. CH. 76 SUBCH. C (RELATING TO INTERNET CHILD PORNOGRAPHY).

A CRIMINAL SENTENCE UNDER 42 PA.C.S. § 9712.1 (RELATING TO SENTENCES FOR CERTAIN DRUG OFFENSES COMMITTED WITH FIREARMS).

AN OFFENSE LISTED UNDER 42 PA.C.S. CH. 97 SUBCH. H (RELATING TO REGISTRATION OF SEXUAL OFFENDERS).

AN OFFENSE LISTED UNDER 42 PA.C.S. CH. 97 SUBCH. I (RELATING TO CONTINUED REGISTRATION OF SEXUAL OFFENDERS).

(VI) COMMITTED FOR OR WITH AN AGGREGATE SENTENCE CONTAINING AN OFFENSE OF DRUG TRAFFICKING AS DEFINED IN 61 PA.C.S. § 4103 (RELATING TO DEFINITIONS) OR A CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY TO COMMIT DRUG TRAFFICKING AS DEFINED IN 61 PA.C.S. § 4103;

(VII) AT THE TIME OF RELEASE, TRANSFER OR OTHER MOVEMENT UNDER PARAGRAPH (1), IS SUBJECT TO A PENDING FELONY OR MISDEMEANOR ARREST WARRANT OR DETAINER;

(VIII) AT THE TIME OF THE RELEASE, TRANSFER OR OTHER
MOVEMENT UNDER PARAGRAPH (1), IS SERVING A SENTENCE TO A STATE CORRECTIONAL INSTITUTION AND HAS BEEN DENIED PAROLE ON THE SENTENCE;

(IX) CONVICTED OF ANY CRIMINAL OFFENSE COMMITTED WHILE INCARCERATED;

(X) POSES AN IDENTIFIABLE RISK TO PUBLIC SAFETY; OR

(XI) WAS CONVICTED OF ANY CRIMINAL OFFENSE CONTAINED UNDER SUBPARAGRAPH (I), (II), (III), (IV), (V) OR (VI) WITHIN THE PAST 10 YEARS.

(4) AN INMATE RELEASED, TRANSFERRED OR OTHERWISE MOVED UNDER PARAGRAPH (1) MUST:

(I) EITHER:

(A) SUCCESSFULLY COMPLETE PRIOR TO RELEASE, TRANSFER OR OTHER MOVEMENT ALL PROGRAMS PRESCRIBED BY THE DEPARTMENT OF CORRECTIONS, THE PAROLE BOARD OR, AT THE TIME OF SENTENCING, THE SENTENCING COURT; OR

(B) CONTINUE THE PROGRAMMING AS A CONDITION OF RELEASE, TRANSFER OR OTHER MOVEMENT.

(II) BE SUPERVISED.

(III) BE TESTED FOR DRUG AND ALCOHOL USE, AS APPROPRIATE.

(5) AN INMATE RELEASED, TRANSFERRED OR OTHERWISE MOVED

UNDER PARAGRAPH (1) MAY BE RELEASED TO A COMMUNITY CORRECTIONS CENTER, A COMMUNITY CORRECTIONS FACILITY OR TO HOME CONFINEMENT. AN INMATE RELEASED TO HOME CONFINEMENT SHALL BE MONITORED USING AN ELECTRONIC GLOBAL POSITIONING SYSTEM OR OTHER REAL-TIME MONITORING SYSTEM.

(6) AN INMATE RELEASED, TRANSFERRED OR OTHERWISE MOVED FROM A STATE CORRECTIONAL INSTITUTION UNDER PARAGRAPH (1) SHALL BE RECOMMITTED TO A STATE CORRECTIONAL INSTITUTION UPON
THE EXPIRATION OF THE DECLARED DISASTER EMERGENCY, OR SOONER
AS DEEMED APPROPRIATE BY THE DEPARTMENT OF CORRECTIONS.

(7) THE PROVISIONS OF PARAGRAPH (6) DO NOT APPLY IF THE
INMATE HAS LESS THAN ONE MONTH TO SERVE ON THE INMATE'S
MINIMUM SENTENCE.

(8) THE DEPARTMENT OF CORRECTIONS MAY PROMULGATE
REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SUBSECTION.
IN ORDER TO FACILITATE THE PROMPT IMPLEMENTATION OF THIS
SUBSECTION, REGULATIONS PROMULGATED BY THE DEPARTMENT OF
CORRECTIONS UNDER THIS SUBSECTION SHALL BE DEEMED TEMPORARY
REGULATIONS WHICH SHALL NOT EXPIRE FOR A PERIOD OF ONE YEAR
FOLLOWING PUBLICATION. TEMPORARY REGULATIONS PROMULGATED
UNDER THIS SUBSECTION SHALL NOT BE SUBJECT TO:

(I) SECTION 612 OF THE ACT OF APRIL 9, 1929
(P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF
1929.

(II) SECTIONS 201, 202, 203, 204 AND 205 OF THE ACT
OF JULY 31, 1968 (P.L.769, NO.240), REFERRED TO AS THE
COMMONWEALTH DOCUMENTS LAW.

(III) SECTIONS 204(B) AND 301(10) OF THE ACT OF
OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
COMMONWEALTH ATTORNEYS ACT.

(IV) THE ACT OF JUNE 25, 1982 (P.L.633, NO.181),
KNOWN AS THE REGULATORY REVIEW ACT.

Section 2. This act shall take effect immediately.