

No. 1995-35 (SS1)

AN ACT

HB 115

Amending the act of August 6, 1941 (P.L.861, No.323), entitled, as amended, "An act to create a uniform and exclusive system for the administration of parole in this Commonwealth; providing state probation services; establishing the 'Pennsylvania Board of Probation and Parole'; conferring and defining its jurisdiction, duties, powers and functions; including the supervision of persons placed upon probation and parole in certain designated cases; providing for the method of appointment of its members; regulating the appointment, removal and discharge of its officers, clerks and employes; dividing the Commonwealth into administrative districts for purposes of probation and parole; fixing the salaries of members of the board and of certain other officers and employes thereof; making violations of certain provisions of this act misdemeanors; providing penalties therefor; and for other cognate purposes, and making an appropriation," providing for powers of parole and probation officers relating to searches.

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

Section 1. The act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, is amended by adding sections to read:

Section 27.1. (a) State parole agents are in a supervisory relationship with their offenders. The purpose of this supervision is to assist the offenders in their rehabilitation and reassimilation into the community and to protect the public.

(b) State parole agents are authorized to search the person and property of State offenders in accordance with the provisions of this section. Nothing in this section shall be construed to permit searches or seizures in violation of the Constitution of the United States or section 8 of Article I of the Constitution of Pennsylvania.

(c) No violation of this section shall constitute an independent ground for suppression of evidence in any probation/parole or criminal proceeding.

(d) (1) A personal search of an offender may be conducted by any agent:

(i) if there is a reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision;

(ii) when an offender is transported or taken into custody; or

(iii) upon an offender entering or leaving the securing enclosure of a correctional institution, jail or detention facility.

(2) A property search may be conducted by any agent if there is reasonable suspicion to believe that the real or other property in the

possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

(3) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances. No prior approval shall be required for a personal search.

(4) A written report of every property search conducted without prior approval shall be prepared by the agent who conducted the search and filed in the offender's case record. The exigent circumstances shall be stated in the report.

(5) The offender may be detained if he is present during a property search. If the offender is not present during a property search, the agent in charge of the search shall make a reasonable effort to provide the offender with notice of the search, including a list of the items seized, after the search is completed.

(6) The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:

- (i) The observations of agents.*
- (ii) Information provided by others.*
- (iii) The activities of the offender.*
- (iv) Information provided by the offender.*
- (v) The experience of agents with the offender.*
- (vi) The experience of agents in similar circumstances.*
- (vii) The prior criminal and supervisory history of the offender.*
- (viii) The need to verify compliance with the conditions of supervision.*

(e) No agent shall conduct a personal or property search of an offender who is residing in a foreign state, except for the limited purposes permitted under the Interstate Compact for the Supervision of Offenders and Probationers. The offender is held accountable to the rules of both the sending state and the receiving state. Any personal or property search of an offender residing in another state shall be conducted by an agent of the receiving state.

(f) The authority granted to agents under this section shall be effective upon enactment, without the necessity of any further regulation by the board.

(g) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Agent." A parole officer appointed by the board.

"Conditions of supervision." Any terms or conditions of the offender's supervision, whether imposed by the court, the board or an agent, including compliance with all requirements of Federal, State and local law.

"Contraband." Any item that the offender is not permitted to possess under the conditions of supervision, including any item whose possession is forbidden by any Federal, State or local law.

"Court." *The court of common pleas or any judge thereof, the Philadelphia Municipal Court or any judge thereof, the Pittsburgh Magistrates Court or any judge thereof or any district justice.*

"Exigent circumstances." *Includes, but is not limited to, suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used. Exigent circumstances always exist with respect to a vehicle.*

"Offender." *Any person subject to the parole or probationary supervision of the board.*

"Personal search." *A warrantless search of an offender's person, including, but not limited to, the offender's clothing and any personal property which is in the possession, within the reach or under the control of the offender.*

"Property search." *A warrantless search of real property, vehicle or personal property which is in the possession or under the control of the offender.*

"Real property." *Any residence or business property of the offender, including all portions of the property to which the offender has access.*

"Supervisor." *Any individual acting in a supervisory or administrative capacity.*

Section 27.2. (a) *County probation and parole officers are in a supervisory relationship with their offenders. The purpose of this supervision is to assist the offenders in their rehabilitation and reassimilation into the community and to protect the public.*

(b) *County probation and parole officers and, where they are responsible for the supervision of county offenders, State parole agents are authorized to search the person and property of county offenders in accordance with the provisions of this section. County probation officers are authorized to search, in accordance with the provisions of this section, the person and property of any offender who accepts Accelerated Rehabilitative Disposition (ARD) as a result of a charge of a violation of 18 Pa.C.S. Ch. 31 (relating to sexual offenses) if the court has determined that the offender shall be subject to personal and property searches as a condition of the offender's participation in the ARD program. The court shall notify each offender so offered ARD, prior to admission to an ARD program, that the offender shall be subject to searches in accordance with this section. Nothing in this section shall be construed to permit searches or seizures in violation of the Constitution of the United States or section 8 of Article I of the Constitution of Pennsylvania.*

(c) *No violation of this section shall constitute an independent ground for suppression of evidence in any probation and parole or criminal proceeding.*

(d) (1) *A personal search of an offender may be conducted by any officer:*

(i) if there is a reasonable suspicion to believe that the offender possesses contraband or other evidence of violations of the conditions of supervision;

(ii) when an offender is transported or taken into custody; or

(iii) upon an offender entering or leaving the securing enclosure of a correctional institution, jail or detention facility.

(2) A property search may be conducted by any officer if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.

(3) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances. No prior approval shall be required for a personal search.

(4) A written report of every property search conducted without prior approval shall be prepared by the officer who conducted the search and filed in the offender's case record. The exigent circumstances shall be stated in the report.

(5) The offender may be detained if he is present during a property search. If the offender is not present during a property search, the officer in charge of the search shall make a reasonable effort to provide the offender with notice of the search, including a list of the items seized, after the search is completed.

(6) The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:

(i) The observations of officers.

(ii) Information provided by others.

(iii) The activities of the offender.

(iv) Information provided by the offender.

(v) The experience of the officers with the offender.

(vi) The experience of officers in similar circumstances.

(vii) The prior criminal and supervisory history of the offender.

(viii) The need to verify compliance with the conditions of supervision.

(e) No officer shall conduct a personal or property search of an offender who is residing in a foreign state, except for the limited purposes permitted under the Interstate Compact for the Supervision of Parolees and Probationers. The offender is held accountable to the rules of both the sending state and the receiving state. Any personal or property search of an offender residing in another state shall be conducted by an officer of the receiving state.

(f) The authority granted to the officers under this section shall be effective upon enactment, without the necessity of any further regulation by the board.

(g) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Conditions of supervision.” Any terms or conditions of the offender’s supervision, whether imposed by the court or an officer, including compliance with all requirements of Federal, State and local law.

“Contraband.” Any item that the offender is not permitted to possess under the conditions of supervision, including any item whose possession is forbidden by any Federal, State or local law.

“Court.” The court of common pleas or any judge thereof, the Philadelphia Municipal Court or any judge thereof, the Pittsburgh Magistrates Court or any judge thereof or any district justice.

“Exigent circumstances.” Includes, but is not limited to, suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used. Exigent circumstances always exist with respect to a vehicle.

“Offender.” Any person released on county probation, intermediate punishment or county parole. The term shall not include any person serving a period of probation pursuant to Accelerated Rehabilitative Disposition, except as authorized under subsection (b).

“Officer.” A probation or parole officer appointed or employed by any court or by any county department of probation and parole to supervise persons released on county probation or parole.

“Personal search.” A warrantless search of an offender’s person, including, but not limited to, the offender’s clothing and any personal property which is in the possession, within the reach or under the control of the offender.

“Property search.” A warrantless search of real property, vehicle or personal property which is in the possession or under the control of the offender.

“Real property.” Any residence or business property of the offender, including all portions of the property to which the offender has access.

“Supervisor.” Any individual acting in a supervisory or administrative capacity.

Section 2. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. This act shall take effect in 60 days.

APPROVED—The 17th day of November, A.D. 1995.

THOMAS J. RIDGE