

No. 1986-134

## AN ACT

HB 447

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 employees; 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 employees thereof; making violations of certain provisions of this act misdemeanors; providing penalties therefor; and for other cognate purposes, and making an appropriation," further providing for membership, vacancies, salaries, qualifications and confirmation of board members; further providing for an advisory committee; reestablishing the board for a period of time; further providing for notification of victims and for consideration of their opinions prior to granting parole; and further providing for powers and duties of the board.

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

Section 1. Sections 2 and 3 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, amended December 27, 1965 (P.L.1230, No.501), are amended to read:

Section 2. There shall be and there is hereby established an independent administrative board for the administration of the probation and parole laws of this Commonwealth which shall be known as the "Pennsylvania Board of Probation and Parole," and which is hereinafter referred to as the "board." Said board shall consist of five members who shall be appointed by the Governor, by and with the advice and consent of **[two-thirds] a majority** of all the members of the Senate, and each of whom shall hold office for a term of six years, or until his successor shall have been duly appointed and qualified: **Provided, however, That in making the additional appointments to said board under this amendment, the two additional members shall be appointed for terms to expire two years after the end of the longest terms of the present members of the board, but in no event more than ninety days beyond the expiration of his appointed term.** Vacancies occurring in an office of member of the board by expiration of term, death, resignation, removal or for any other reason shall be filled in the manner **[aforesaid] provided by section 8 of Article IV of the Constitution of Pennsylvania** for the remainder of the term. **Whenever a board member's term expires, that member's position shall be immediately deemed a vacancy and the Governor shall nominate a person to fill that membership position on the board within ninety days of the date of expiration, even if the member continues to remain**

*on the board. To be eligible to be appointed by the Governor for membership on the board, an individual shall have at least six years of professional experience in parole, probation, social work or related areas, including one year in a supervisory or administrative capacity and a bachelor's degree. Any equivalent combination of experience and training shall be acceptable.*

Subject to the provisions of this act, the board shall have all the powers and shall perform the duties generally vested in and imposed upon independent administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws, one hundred seventy-seven), designated as "The Administrative Code of 1929," and its amendments, and shall be subject to all the provisions of such code which apply generally to independent administrative boards and commissions.

Section 3. The Governor shall from time to time, as the occasion may arise, designate one of the members of the board to be its chairman who shall direct the operations of the board and fulfill the functions established by this act, secure the effective application of the probation system in all of the courts of the State and the enforcement of the probation laws. He shall preside at all meetings of the board and perform all the duties and functions of chairman thereof, *including organizing, staffing, controlling, directing and administering the work of the staff.* The board may designate one of its members to act as chairman during the absence or incapacity of the chairman and, when so acting, the member so designated shall have and perform all the powers and duties of chairman of the board, but shall not receive any additional compensation for so acting. The chairman, in performing his duties *as they relate to parole, reparole and violation and revocation proceedings*, shall act in accordance with the policies and procedures established by the board.

Section 2. Section 4 of the act is amended to read:

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

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

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

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

Section 3. Section 5 of the act, amended August 24, 1951 (P.L.1401, No.337), is amended to read:

Section 5. **[The chairman of the board shall receive a salary of twelve thousand five hundred dollars (\$12,500) per annum and each of the other members of the board shall receive a salary of eleven thousand five hundred dollars (\$11,500) per annum.] The executive board shall determine the salaries to be paid to the members of the board.**

Section 4. Sections 16.1, 16.2(a), 17.1 and 19 of the act, added or amended December 27, 1965 (P.L.1230, No.501), are amended to read:

Section 16.1. (a) An Advisory Committee on probation is hereby created to assist the board. It shall consist of nine members **[to], seven of whom shall** be appointed by the Governor, with the **[advice and]** consent of **[two-thirds] a majority of all the members** of the Senate. At **[least two of the members shall be members of the General Assembly, at]** least two shall be judges of courts of record of this Commonwealth, at least one shall be a county commissioner and the remaining members shall be qualified in the field of probation and parole either by training or experience. **[Two shall be appointed for terms of one year, two for terms of two years, two for terms of three years and three for terms of four years.] The President pro tempore of the Senate and the Speaker of the House of Representatives shall each appoint a member of their respective houses to serve as members of the committee.** The term of a member hereafter appointed, except to fill a vacancy shall be for four years and until their successors have been appointed and qualified, *but in no event more than ninety days beyond the expiration of their appointed term*: Provided, however, That the terms of members of the committee who are appointed by virtue of holding an office as a member of the General Assembly, as a judge, or as a county commissioner shall continue only so long as he remains in that office. *Vacancies occurring in an office of a member of the Advisory Committee by expiration of term, death, resignation, removal or for any other reason shall be filled in the manner provided by section 8 of Article IV of the Constitution of Pennsylvania for the remainder of the term. Whenever the term of an Advisory Committee member, other than one who is a member of the General Assembly, expires, that member's position shall be immediately deemed a vacancy and the Governor shall nominate a person to fill that membership position on the committee within ninety days of the date of expiration, even if the member continues to remain on the committee.* The Governor shall designate one of the members of the committee as its chairman.

(b) Each member of the Advisory Committee shall be paid all reasonable and necessary travel and other expenses incurred by him in the performance of his duties.

(c) The Advisory Committee shall aid the chairman and the board in formulating and reviewing standards for probation personnel and probation services in the counties.

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

(1) To supervise and make pre-sentence investigations and reports as provided by law;

(2) To collect and maintain copies of all pre-sentence investigations and reports;

(3) To collect and maintain a record of all persons who are placed on probation and parole after the effective date of this amendment;

(4) To collect, compile and publish statistical and other information relating to probation and parole work in all courts and such other information the board may deem of value in probation service; **[and]**

(5) To establish, *by regulation*, uniform statewide standards for (i) pre-sentence investigations; (ii) the supervision of probationers; (iii) the qualifications for probation personnel; (iv) minimum salaries; and (v) quality of probation service. The standards for the qualifications of probation personnel shall only apply to probation personnel appointed after the date the standards are established. Should any probation personnel appointed prior to the date the standards were established fail to meet the standards, the court having jurisdiction of such personnel may request the board to establish in-service training for such personnel in accordance with the standards[.];

*(6) To adopt regulations establishing specific composition, functions and responsibilities for the Citizens Advisory Committees, and to receive reports, recommendations or other input concerning parole policies and parole-related concerns from these committees on a regular basis;*

*(7) To adopt regulations establishing criteria for board acceptance of cases for supervision and pre-sentence investigations from counties that on December 31, 1985, maintained adult probation offices and parole systems; and*

*(8) To enter into contracts for purchasing community services to assist parolees and to supplement existing programs.*

\* \* \*

Section 17.1. (a) The board shall have exclusive power to supervise any person hereafter placed on probation by any judge of a court having criminal jurisdiction, when the court may by special order direct supervision by the board.

(b) The board shall make pre-sentence investigations, when requested to do so by the court.

(c) Any county which provides additional probation staff for pre-sentence investigations and for improved probation supervision and program, shall receive a grant-in-aid from the Commonwealth through the board for the additional cost incurred thereby but only to the extent that the additional staff and program meet the qualifications and standards established by the board. *For the fiscal year 1986-1987, the grant-in-aid shall provide sixty-five percent (65%) of the personnel salary costs incurred by a county to administer these additional services and programs. For the fiscal year 1987-1988 and*

*thereafter, the grant-in-aid shall provide eighty percent (80%) of the personnel salary costs incurred by a county to administer these additional services and programs. If insufficient funds are appropriated, each county shall receive a prorated reduction in the grant-in-aid.* The board shall establish rules and regulations for the allocation of funds available for such grants-in-aid.

(d) The board shall provide in-service training for personnel of county probation offices when requested to do so by the court having jurisdiction of the probation office.

Section 19. It shall be the duty of the board, upon the commitment to prison of any person whom said board is herein given the power to parole, to investigate and inform itself respecting the circumstances of the offense for which said person shall have been sentenced, and, in addition thereto, it shall procure information as full and complete as may be obtainable with regard to the character, mental characteristics, habits, antecedents, connections and environment of such person. The board shall further procure the stenographic record, if any, of the trial, conviction and sentence, together with such additional information regarding the crime for which sentence was imposed as may be available. The board shall further cause the conduct of the person while in prison and his physical, mental and behavior condition and history, *his history of family violence* and his complete criminal record, as far as the same may be known, to be investigated and reported. All public officials having possession of such records or information are hereby required and directed to furnish the same to the board upon its request and without charge therefor. Said investigation shall be made by the board so far as may be practicable while the case is recent, and in granting paroles the board shall consider the nature and character of the offense committed [and], any recommendation made by the trial judge [as well as], the general character and history of the prisoner *and the written or personal statement or testimony of the victim or the victim's family submitted pursuant to section 22.1 of this act.*

The board shall, in all cases, consider the recommendations of the trial judge and of the district attorney and of each warden or superintendent, as the case may be, who has had charge of an applicant, each of whom is directed to submit to the board his recommendation and the reasons therefor, with respect to each parole application.

Section 5. The act is amended by adding a section to read:

*Section 22.1. The victim of the offense for which a defendant is sentenced, or a member of the immediate family of the victim if the victim is a juvenile, is incapable of testifying or died as a result of the defendant's conduct, shall be notified by the district attorney immediately following sentencing, in cases where the defendant has been sentenced to a term of imprisonment, that he shall have the opportunity to present a statement for the parole report to be considered at the parole hearing or to testify to the parole board expressing his opinion concerning the release of the defendant. Each victim or relative shall be responsible for notifying the board of his intention to submit such a statement and to provide and keep current an appropriate mailing address.*

*The report may include a statement concerning the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family. At the time public notice is given that an inmate is being considered for parole pursuant to this section, the board shall also notify any victim or nearest relative who has previously contacted the board of the availability to provide a statement for inclusion in the parole report or to present testimony for inclusion at the parole hearing.*

*The board shall notify such person at his last known mailing address. The notification required by this section shall be given by the board, in the case of a parole to be granted pursuant to section 22 of this act, or by the court, in the case of a parole to be granted pursuant to section 17 of this act.*

*The victim or family member shall notify the board within thirty days from the date of the notice of his intent to present testimony for a parole hearing. This time period may be waived by the board for good cause.*

*Upon the victim or family member submitting a written statement to the board subsequent to notice, the statement shall be made a part of the board's file on the inmate, and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings.*

*Upon the victim or family member informing the board subsequent to notice being provided that such person intends to testify, the chairperson shall assign the inmate's case to a hearing examiner for the purpose of receiving such person's testimony.*

*The assigned hearing examiner shall conduct a hearing within thirty days from the date the board received notification of the intent to offer testimony.*

*The hearing shall be conducted at a time and place and on a date determined by the chairperson or designee. Notice of the time, place and date of the hearing shall be provided to the victim or family member, in writing, and shall be mailed at least ten days prior to the hearing date.*

*The hearing shall be recorded by an electronic recording device.*

*The hearing examiner shall prepare a written report within a reasonable amount of time prior to the hearing date. A copy of the report shall be forwarded to the person offering testimony. A copy of the report shall be made a part of the board's file on the prisoner.*

*Upon completion of the written report, the prisoner's case shall be referred to a hearing examiner designated to conduct parole release hearings.*

*The hearing scheduled pursuant to this section shall be conducted, when possible, prior to a parole release hearing and prior to the board rendering a decision. However, nothing herein shall be construed to preclude the board from conducting a timely parole release hearing.*

*After submission of the report, the board shall within a reasonable amount of time:*

- (1) evaluate the information provided;*
- (2) determine whether the decision shall be affirmed or modified;*
- (3) determine whether a rescission hearing shall be conducted; and*

**(4) notify the prisoner in writing of its decision.**

*Any and all statements or testimony of the victim or family member submitted to the board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall not be deemed confidential and shall be released to the prisoner unless the withholding of the statements or testimony is requested by the victim and the hearing officer determines that the release of the statements or testimony would endanger the safety of the person providing the statements or testifying. The board on its own motion may for good cause identify all or part of the statements or testimony as confidential.*

*All records maintained by the board pertaining to victims shall be kept separate, and current address information of the victim or family members shall be deemed confidential.*

*A victim or the family member who has submitted a written statement for the parole report or testified at a hearing pursuant to this section shall be notified by the board of the final decision rendered in the prisoner's case.*

Section 6. This act, with respect to the Pennsylvania Board of Probation and Parole, shall constitute the legislation required to reestablish an agency under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 7. The act of September 2, 1961 (P.L.1177, No.525), entitled "An act fixing the salaries and compensation of members of certain boards and commissions, and repealing inconsistent acts," is repealed insofar as it provides any salary for the chairman and other members of the Pennsylvania Board of Probation and Parole which is inconsistent with the salaries established by the Executive Board.

Section 8. The presently confirmed members of the Pennsylvania Board of Probation and Parole as of the effective date of this act shall continue to serve as members of their respective bodies until their present terms of office expire. The present members of the Advisory Committee as of the effective date of this act shall continue to serve until their successors are appointed and qualified.

Section 9. Each rule and regulation of the board in effect as of the effective date of this act shall remain in effect after such date until repealed or amended by the board.

Section 10. This act shall take effect immediately.

APPROVED—The 9th day of October, A. D. 1986.

DICK THORNBURGH