

No. 2008-83

AN ACT

HB 6

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," further providing for intent, for business of the Pennsylvania Board of Probation and Parole, for powers and duties of the board, for duties of the chairman of the board, for supervision of parole and probation, for power to parole, for commission of crime during parole and for victim of the offense.

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

Section 1. Section 1 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 18, 1996 (P.L.1098, No.164), is amended to read:

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

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

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

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, *management and administration* 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] *The chairman* 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 chairman shall administer the proceedings of the board to ensure efficient and timely procedures for parole board decisions, parole releases, discharges and recommitments.* 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 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. Except as provided in subsections (b), (c) [and (d)], (d) and (e) and 44 Pa.C.S. Ch. 53 (relating to recidivism risk reduction incentive), 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.

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

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

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

* * *

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

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

Section 17. (a) The board shall have exclusive power to parole and reparole, commit and recommit for violations of parole, and to discharge from parole all persons heretofore or hereafter sentenced by any court in this Commonwealth to imprisonment in any prison or penal institution thereof, whether the same be a state or county penitentiary, prison or penal institution, as hereinafter provided. It is further provided that the board shall have exclusive power to supervise any person hereafter placed on parole (when sentenced to a maximum period of less than two years) by any judge of a court having criminal jurisdiction, when the court may by special order direct supervision by the board, in which case the parole case shall be known as a special case and the authority of the board with regard thereto shall be the same as herein provided with regard to parole cases within one of the classifications above set forth: Provided, however, That, except for such special cases, the powers and duties herein conferred shall not extend to persons sentenced for a maximum period of less than two years[, and nothing] *and shall not extend to those persons committed to county confinement within the jurisdiction of the court pursuant to 42 Pa.C.S. § 9762(b)(2) (relating to sentencing proceeding; place of confinement).*

(b) Nothing herein contained shall prevent [any] a court of this Commonwealth from paroling any person sentenced by it for a maximum period of less than two [years; And provided further, That the] years or from paroling a person committed to county confinement within the jurisdiction of the court pursuant to 42 Pa.C.S. § 9762(b)(2). Prior to making a decision to parole a person committed to county confinement within the jurisdiction of the court pursuant to 42 Pa.C.S. § 9762(b)(2) from a sentence of imprisonment imposed following conviction for a personal injury crime, each victim who has registered to receive victim services in connection with the personal injury crime shall be given an opportunity by the court to submit a preparole statement to the court expressing concerns or recommendations regarding the parole or parole supervision of the person. The district attorney shall, immediately following sentence in cases where a sentence of confinement has been imposed and the sentenced person remains within the jurisdiction of the court pursuant to section 9762(b)(2), notify each registered victim that they shall have the opportunity to submit a preparole statement to the court. Each victim shall have the responsibility of notifying the court of their intention to submit a preparole statement and shall provide and keep current an appropriate mailing address. Preparole statements submitted

pursuant to this subsection shall be subject to the confidentiality provisions contained in section 22.1 applicable to preparole statements submitted to the board, shall be considered by the court prior to any parole decision, and each victim submitting a preparole statement shall be given notice of the court's parole decision. If a court paroles or reparoles a person, the court shall also report the parole decision to the Pennsylvania Commission on Sentencing pursuant to 42 Pa.C.S. § 2153(a)(14) (relating to powers and duties). For purposes of this subsection, the phrase "personal injury crime" shall have the meaning set forth in section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the "Crime Victims Act," and the term "victim" shall mean, in addition to the meaning set forth in section 103 of the "Crime Victims Act," a member of the victim's family if the victim is incapable of communicating or has died.

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

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

Section 21. (a) *The board is hereby authorized to parole subject to consideration of guidelines established under 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole), to release on parole any convict confined in any penal institution of this Commonwealth as to whom power to parole is herein granted to the board, except convicts condemned to death or serving life imprisonment, whenever in its opinion the best interests of the convict justify or require his being paroled and it does not appear that the interests of the Commonwealth will be injured thereby. Parole shall be subject in every instance to the Commonwealth's right to immediately retake and hold in custody without further proceedings any parolee charged after his parole with an additional offense until a determination can be made whether to continue his parole status. The power to parole herein granted to the Board of Parole may not be exercised in the board's discretion at any time before, but only after, the expiration of the minimum term of imprisonment fixed by the court in its sentence or by the Pardon Board in a sentence which has been reduced by commutation.*

(a.1) *In each case in which the board deviates from the guidelines established under 42 Pa.C.S. § 2154.5, the board shall provide a contemporaneous written statement of the reason for the deviation from the guidelines to the Pennsylvania Commission on Sentencing, as established under 42 Pa.C.S. § 2153(a)(14) (relating to powers and duties). The board may develop and use internal decisional instruments. This subsection shall not be construed to prevent the board from also*

developing forms or other documents, policies and procedures consistent with this act, including internal decisional instruments.

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

(B) 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

(ii) 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.

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

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

tests. The funds collected for the tests shall be applied against the contract for such testing between the board and a testing laboratory approved by the Department of Health.

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

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

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

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

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

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

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

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

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

(5) If the court or prosecuting attorney files a timely objection under paragraph (3), the board shall make a determination as to whether the prisoner is an eligible offender. The board shall notify the department, prosecuting attorney and court of its determination no later than 60 days prior to the minimum parole date. If the board determines that the prisoner is an eligible offender under this act, the board shall follow the provisions of paragraph (4). If the board determines that the prisoner is not an eligible offender under 44 Pa.C.S. § 5303 (relating to definitions), the board shall retain exclusive jurisdiction to grant parole and shall

determine whether the offender should be paroled at the minimum date, paroled at a later date or denied parole.

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

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

(c) The board shall have the power during the period for which a person shall have been sentenced to recommit one paroled for violation of the terms and conditions of his parole and from time to time to reparole and recommit in the same manner and with the same procedure as in the case of an original parole or recommitment, if, in the judgment of the board, there is a reasonable probability that the convict will be benefited by again according him liberty and it does not appear that the interests of the Commonwealth will be injured thereby. *In exercising these powers, the board shall consider any applicable recommitment ranges established by the Pennsylvania Commission on Sentencing under 42 Pa.C.S. § 2154.6 (relating to adoption of recommitment ranges following revocation of parole by board).*

(c.1) In each case in which the board deviates from the recommitment ranges established under 42 Pa.C.S. § 2154.6, the board shall provide a contemporaneous written statement of the reason for the deviation from the recommitment ranges to the Pennsylvania Commission on Sentencing, as established under 42 Pa.C.S. § 2153(a)(14).

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

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

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

Section 21.1. * * *

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

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

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

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

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

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

Section 7. Section 22.1 of the act, amended July 11, 1990 (P.L.476, No.114), is amended 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] Except as otherwise provided by law or this section, 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.]:

- (1) Be deemed confidential and privileged.**
- (2) Not be subject to subpoena or discovery.**

(3) Not be introduced into evidence in any judicial or administrative proceeding.

(4) Not be released to the prisoner.

All records maintained by the board pertaining to victims shall be kept separate[, and current address information of the victim or]. *Current address, telephone numbers and any other personal information of the victim and family members shall be deemed confidential.*

Except as otherwise provided by law, no person who has had access to a report, record or any other information under this section shall disclose the content of the report, record or other information or testify in a judicial or administrative proceeding without the written consent of the victim.

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.

If the final decision is to not release the prisoner and if, subsequent to that decision, additional parole release hearings are conducted for that same prisoner, then the victim or family member who has submitted a written statement for the parole report or who has testified at a hearing pursuant to this section shall be notified by the board at the last known address if and when additional parole hearings are scheduled by the board.

Section 8. This act shall take effect in 60 days.

APPROVED—The 25th day of September, A.D. 2008.

EDWARD G. RENDELL