

No. 1990-114

AN ACT

HB 2221

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 the cost of pre-parole drug screening tests; and further providing for notice of parole hearings.

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

Section 1. Section 16.2(a) of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, amended October 9, 1986 (P.L.1424, No.134), is amended to read:

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;

(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[.]; **and**

(9) To pay the cost of pre-parole drug screening tests for inmates within the parole release jurisdiction of the board, who are confined in a State or local correctional facility, as required under section 21.

* * *

Section 2. Section 21 of the act, amended December 22, 1989 (P.L.724, No.97), is amended to read:

Section 21. The board is hereby authorized to release on parole any convict confined in any penal institution of this Commonwealth as to whom power to parole is herein granted to said 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. 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: Provided, however, That if the Board of Parole refuse to parole the prisoner at the expiration of any minimum term fixed by the Pardon Board, it shall, within ten days after the date when the minimum term expired, transmit to the Pardon Board a written statement of the reasons for refusal to parole the prisoner at the expiration of the minimum term fixed by the Pardon Board. Thereafter, the Pardon Board may either accept the action of the Board of Parole, or order the immediate release of the prisoner on parole, under the supervision of the Board of Parole. The board may not release a person on parole unless the person achieves a negative result within one week 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 respon-

sible 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. Said 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 said 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.

Section 3. Section 22.1 of the act, added October 9, 1986 (P.L.1424, No.134), 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 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.

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 4. Sections 1 and 2 of this act shall be retroactive to February 20, 1990.

Section 5. This act shall take effect immediately.

APPROVED—The 11th day of July, A. D. 1990.

ROBERT P. CASEY