

No. 1998-143

AN ACT

SB 1239

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 transmission of record to the board, for reporting and investigation, for release and for supervision of persons paroled or on probation in other states; providing for proceedings subsequent to parole; and imposing a penalty.

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

Section 1. Section 18 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, is amended to read:

Section 18. It shall be the duty of the court sentencing any person for a term, as to which power to parole is herein given to the board, to transmit to the said board, within thirty days after the imposition of such sentence, a **[full and complete copy of the record upon which sentence is imposed, including any notes of testimony]** *copy of the notes of testimony of the sentencing hearing* which may have been filed of record in the case, together with copies of any criminal identification records secured from the Federal Bureau of Investigation, copies of presentence investigation reports and of behavior clinic reports, if any were submitted to the court, the last two of which records, being confidential records of the court, are to be treated confidentially by the members of the board, who shall not permit examination of the same by any one other than its duly appointed agents or representatives, except upon court order. A judge in his discretion may make at any time any recommendation he may desire to the board respecting the person sentenced and the term of imprisonment said judge believes such person should be required to serve before a parole is granted to him, but a recommendation made by a judge as aforesaid respecting the parole or terms of parole of such person shall be advisory only, and no order in respect thereto made or attempted to be made as a part of a sentence shall be binding

upon the board in performing the duties and functions herein conferred upon it.

Section 2. Section 19 of the act, amended October 9, 1986 (P.L.1424, No.134), is amended to read:

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.]** *consider the nature and circumstances of the offense committed, any recommendations made by the trial judge and prosecuting attorney, the general character and background of the prisoner, participation by a prisoner 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) in a victim impact education program offered by the Department of Corrections and the written or personal statement of the testimony of the victim or the victim's family submitted pursuant to section 22.1.* The board shall further **[procure]** *consider* the **[stenographic record]** *notes of testimony of the sentencing hearing, if any, [of the trial, conviction and sentence,] together with such additional information regarding the [crime] nature and circumstances of the offense committed* 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 *and investigated*. 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, any recommendation made by the trial judge, 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 3. Section 21 of the act, amended June 11, 1998 (P.L.461, No.66), is amended to read:

Section 21. (a) 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 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.

(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.

(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.

(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.

Section 4. Section 21.1 of the act is amended by adding a subsection to read:

Section 21.1. * * *

(a.1) Subsequent Arrest. The formal filing of a charge after parole against any parolee within this Commonwealth for any violation of the statutes of this Commonwealth shall constitute an automatic detainer and permit him to be taken into and held in custody. The automatic detainer shall dissolve on the fifteenth day after he is taken into custody unless sooner waived or otherwise superseded by direction of the supervising parole office. The automatic detainer shall be in addition to and not in lieu of any other detainer that heretofore may have been lodged in such circumstances.

* * *

Section 5. Section 33 of the act, amended December 18, 1996 (P.L.1098, No.164), is amended to read:

Section 33. (a) In compliance with the Federal Interstate Compact Laws and the provisions of this section, the [Parole Board] *Pennsylvania Board of Probation and Parole* is authorized to supervise persons paroled by other states and now residing in Pennsylvania, where such other states agree to perform similar services for the Pennsylvania Board of *Probation and Parole*.

(b) Additionally, the [Parole Board] *Pennsylvania Board of Probation and Parole* is authorized to relinquish jurisdiction over a parolee to the proper Federal authorities where the parolee is placed into the [Federal] Witness Protection Program of the *United States Department of Justice*.

Section 6. The act is amended by adding a section to read:

Section 33.1. Any person who is on parole or probation in another state and who resides in this Commonwealth in violation of section 33 commits a misdemeanor of the first degree and shall be sentenced to pay a fine of not more than ten thousand dollars (\$10,000) or to imprisonment for not more than five years, or both.

Section 7. The following provisions shall apply to individuals sentenced on or after the effective date of this act:

(1) The amendment of section 19 of the act which requires consideration of participation in Department of Corrections victim impact education programs by individuals sentenced for crimes of violence under 42 Pa.C.S. § 9714(g).

(2) The addition of section 21(b.1) of the act.

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

APPROVED—The 21st day of December, A.D. 1998.

THOMAS J. RIDGE