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PUBLIC DEFENDER ASSOCIATION *of* PENNSYLVANIA
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David Crowley, Esquire
President

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON COURTS

Mr. Chairman and Members of the Committee, on behalf of the Public Defender Association of Pennsylvania, we would like to thank you for giving us this opportunity to express our views on the Pennsylvania Board of Probation and Parole. I am the Chief Public Defender of Centre County where the State Correctional Institution at Rockview is located. Shortly after the Pennsylvania Supreme Court determined that parole violators had the right to counsel at a Revocation Hearing, the Commonwealth Court determined that the attorney responsible for representing the parolee would be the Public Defender of the County where the parolee was incarcerated. As a result, the majority of parole violators are represented by one Public Defender in each of the Counties with a State Prison. In my 14 years in Bellefonte, I have personally represented approximately 2,000 parole violators in Hearings and appeals before the Parole Board and the Commonwealth Court.

The Board is an enigma. Individually it consists of bright, talented, well-intentioned men and women. Collectively, it is this politically charged bureaucracy which thrives on archaic rules and form over substance. I have seen one Chairman of the Parole Board dismissed because he was perceived as paroling too few inmates, and I saw his successor dismissed because he was perceived as paroling too many. The Board's reaction to these two events was to embark upon a policy of not making any decision with respect to parole. In *Sanders v. the Pennsylvania Board of Probation and Parole*, we had to sue the Board in a Mandamus action to require the Board to enter a decision from a Revocation Hearing held nine months earlier. The Commonwealth Court was amazed that it could take that long for the Board to make a decision when Common Pleas Judges make their decisions from the Bench in County parole cases.

It was not surprising to a long-time observer. The Board subsists on a diet of delays in responding to Administrative Appeals and conducting Hearings. Thirty years ago the United States Supreme Court in *Morrissey v. Brewer* held that due process required the State to conduct a timely Parole Revocation Hearing. Regulations were passed in Pennsylvania requiring the Board to hold that Hearing within four months of a new conviction. It is important not only to the inmate, but also the Department of Corrections that the Hearings be conducted and the revocation decisions be handed down in an timely manner. As the Commonwealth Court recognized in *O'Hara v. Pennsylvania Board of Probation and Parole*, an inmate detained as a parole violator pending a Recommitment Order cannot be classified for treatment. If he cannot receive treatment, how can he hope to make parole? The Board always responds that the inmate doesn't have a due process right to treatment or parole and continually attacks its own regulatory

deadline. This year in *Williams v. Pennsylvania Board of Probation and Parole* the 120-day rule narrowly survived yet another challenge by the Parole Board.

One does not have to condone the actions of criminals to recognize that there is something fundamentally unfair and counter-productive in the way the system treats its State sentenced inmates. Every week I get letters from inmates saying: ". . . the Board wants me to participate in this program but the Department of Corrections won't let me in it." "The Board wants me to complete a sex offender treatment program, but my counselor tells me you can't complete it." It is not coddling criminals to say that they have a right to know what is expected of them and at least a chance to succeed.

Nor is it coddling criminals to say that we have a moral obligation to be truthful with them. No one will admit that we have adopted Truth in Sentencing in Pennsylvania, but we seem to be receiving Federal money targeted to that ideology, and violent offenders do appear to be serving at least 85% of their maximum sentence. A full analysis of this phenomena is hampered by the fact that the Board has not published an annual report since 1993. Pennsylvania is one of the last States to require indeterminant sentences. The Sentencing Code requirement that every sentence have a maximum and a minimum and that the maximum be at least twice the minimum is archaic as it is premised on a belief that, like County sentenced inmates, most State sentenced inmates will be released on parole at their minimum sentence and be supervised in the community for at least as long as they were incarcerated. We know this is no longer the case. This sentencing philosophy is continually undermined by Truth in Sentencing, Board policies, and mandatory minimum sentences which exceed half the statutory maximum allowed on the offense. A sentence of 8 ½ to 10 years on a violent offense is more honest than a 5 to 10. The

Sentencing Guidelines and mandatories address what minimum sentence a Judge is to impose. That Sentencing Judge should have the discretion as to what if any tail he wants to put on his sentence.

The effect of the Board policies and practices is not limited to inmates incarcerated in State Correctional Institutions. The Board has jurisdiction over all sentences with a maximum sentence of two years or more. Sentences with a maximum of less than two years must be served in a County Jail with release on parole at the discretion of the Sentencing Judge. A sentence with a maximum of five years or more must be served in a State Correctional Institution. A sentence with a maximum between two years and five years may, at the discretion of the Sentencing Judge, be served in a County Jail, but the decision to release on parole is vested in the Parole Board. This is a source of headaches for Criminal Court Judges across the State in dealing with local Prison overcrowding. Mandatory minimum sentences require the lengthy incarceration of first time and non-violent offenders. The State has committed vast amounts of money to individual counties to develop Intermediate Punishment Programs to keep offenders who would ordinarily be sentenced to a State Prison in a local setting. The Counties have accepted this challenge and have been quite creative in developing work release, in-home detention, and intensive parole supervision for their County sentenced inmates. Unfortunately the Sentencing Courts lack the ability to try these programs on the inmates they kept in the jail with a maximum sentence between two and five years. The Sentencing Court should have the discretion to parole or furlough any individual serving a sentence in a County Prison.

On behalf of the Public Defender Association of Pennsylvania, I wish to thank the Chair and the Committee for its time.

David Crowley, President
Public Defender Association of Pennsylvania

***56621 42 Pa.C.S.A. § 9756**

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES ANNOTATED
PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED
TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE
PART VIII. CRIMINAL PROCEEDINGS
CHAPTER 97. SENTENCING
SUBCHAPTER E. IMPOSITION OF SENTENCE

Current through End of the 1999 Reg. Sess.

§ 9756. Sentence of total confinement

(a) General rule.--In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.--The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(c) Prohibition of parole.--Except in the case of murder of the first degree, the court may impose a sentence to imprisonment without the right to parole only when:

(1) a summary offense is charged;
(2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and
(3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.

(d) Prisoner release plans.--This section shall not be interpreted as limiting the authority of the Bureau of Correction as set forth in the act of July 16, 1968 (P.L. 351, No. 173), as amended, [FN1] relating to prisoner pre-release centers and release plans, or the authority of the court as set forth in the act of August 13, 1963 (P.L. 774, No. 390), as amended, [FN2] relating to prisoner release for occupational and other purposes.

CREDIT(S)

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1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Amended 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days; 1982, Dec. 20, P.L. 1409, No. 326, art. II, § 201, effective in 60 days.

[FN1] 61 P.S. §§ 1051 to 1054.

*56618 42 Pa.C.S.A. § 9755

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES ANNOTATED
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SUBCHAPTER E. IMPOSITION OF SENTENCE

Current through End of the 1999 Reg. Sess.

§ 9755. Sentence of partial confinement

(a) General rule.--In imposing a sentence involving partial confinement the court shall specify at the time of sentencing the length of the term during which the defendant is to be partially confined, which term may not exceed the maximum term for which he could be totally confined, and whether the confinement shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.--The court shall impose a minimum sentence of partial confinement which shall not exceed one-half of the maximum sentence imposed.

(c) Purpose for partial release.--The court may in its order grant the defendant the privilege of leaving the institution during necessary and reasonable hours for any of the following purposes:

(1) To work at his employment.
(2) To seek employment.
(3) To conduct his own business or to engage in other self-employment, including housekeeping and attending to the needs of the family.
(4) To attend an educational institution or participate in a course of vocational training.
(5) To obtain medical treatment.
(6) To devote time to any other purpose approved by the court.

(d) Conditions to release.--The court may in addition include in its order such of the conditions as are enumerated in section 9754 (relating to order of probation) as may be reasonably related to the sentence.

(e) Duties of correctional authorities.--The correctional authorities shall be responsible for arranging a plan consistent with the order issued under this section whereby the objectives of partial confinement may be achieved and they shall determine when and under what conditions consistent with the order issued under this section the defendant shall be permitted to be absent from the correctional institution.

*56318 42 Pa.C.S.A. § 9714

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES ANNOTATED
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CHAPTER 97. SENTENCING
SUBCHAPTER B. SENTENCING AUTHORITY

Current through End of the 1999 Reg. Sess.

§ 9714. Sentences for second and subsequent offenses

(a) Mandatory sentence.--

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence and has not rebutted the presumption of high risk dangerous offender as provided in subsection (c), be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. If at the time of the commission of the current offense the person has previously been convicted of a crime of violence and has rebutted the presumption of high risk dangerous offender as provided in subsection (c), the person shall be sentenced to a minimum sentence of at least five years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

(2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

*56319 (a.1) Mandatory maximum.--An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.

(b) Presumption of high risk dangerous offender.--For the purposes of subsection (a), an offender shall be presumed to be a high risk dangerous offender and shall be deemed to have prior convictions for crimes of violence if both of the following conditions hold:

(1) The offender was previously convicted of a crime of violence. The previous conviction need not be for the same crime as the instant offense for this section to be applicable.

(2) The previous conviction occurred within seven years of the date of the commission of the instant offense, except that any time during which the offender was incarcerated in any penitentiary, prison or other place of detention or on probation or parole shall not be considered in computing the relevant seven-year period. Convictions for other offenses arising from the same criminal transaction as the instant offense shall not be considered