

# THE GENERAL ASSEMBLY

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART VIII. CRIMINAL SENTENCING COMMISSION ON SENTENCING [ 204 PA. CODE CH. 309 ] Proposed State Parole Guidelines

The Pennsylvania Commission on Sentencing hereby publishes for public comment proposed State Parole Guidelines, 204 Pa. Code Chapter 309, Subchapter A, §§ 309.1—309.5. The proposed State Parole Guidelines are set forth in Annex A.

The Commission was authorized by 42 Pa.C.S. § 2154.5, to adopt guidelines that shall be considered by the Pennsylvania Parole Board and any other paroling entity when exercising its power to parole and reparole all persons sentenced by any court in this Commonwealth to imprisonment in any correctional institution. The guidelines are to:

- (1) Give primary consideration to the protection of the public and to victim safety;
- (2) Provide for due consideration of victim input;
- (3) Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules of conduct set forth by the department or other prison facilities and the board;
- (4) Be designed to encourage inmates and parolees to participate in programs that have been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs;
- (5) Provide for prioritization of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety; and
- (6) Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.

There is no right to parole in the Commonwealth. There is, however, the right to consideration of parole. The State Parole Guidelines are advisory and do not remove the discretionary authority of the Pennsylvania Parole Board.

On June 4, 2020, the Commission approved for the purpose of public comment proposed State Parole Guidelines.

In accordance with 42 Pa.C.S. § 2155, the Commission shall publish in the *Pennsylvania Bulletin* all proposed sentencing guidelines and risk assessment instruments and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- (i) Pennsylvania District Attorneys Association
- (ii) Chiefs of Police Associations
- (iii) Fraternal Order of Police
- (iv) Public Defenders Organization
- (v) Law School faculty members

- (vi) Pennsylvania Parole Board
- (vii) Pennsylvania Department of Corrections
- (viii) Pennsylvania Bar Association
- (ix) Pennsylvania Wardens Association
- (x) Pennsylvania Association on Probation, Parole and Corrections
- (xi) Pennsylvania Conference of State Trial Judges
- (xii) Any other interested person or organization

The Commission has scheduled the following public hearings, to be held using Zoom Webinar, and providing limited opportunities for on-site testimony consistent with COVID-19 social distancing safeguards:

#### Hearing I.

<i>Date:</i>	Monday, August 31, 2020
<i>Time:</i>	10:00 a.m.
<i>Zoom:</i>	Webinar Registration Link: <a href="https://bit.ly/PCSPUBPAR1">https://bit.ly/PCSPUBPAR1</a>
<i>Onsite Location:</i>	SCI-Benner Township, 301 Institution Drive, Bellefonte, PA 16823

Testimony and in-person attendance during Hearing I is limited to inmates of the Pennsylvania Department of Corrections. Those wishing to attend Hearing I via Zoom Webinar may register at the link provided above.

#### Hearing II.

<i>Date:</i>	Wednesday, September 9, 2020
<i>Time:</i>	2:00 p.m.
<i>Zoom:</i>	Webinar Registration Link: <a href="https://bit.ly/PCSPUBPAR2">https://bit.ly/PCSPUBPAR2</a>
<i>Onsite Location:</i>	Pennsylvania Commission on Sentencing (State College Office), 204 East Calder Way, Suite 400, State College, PA 16801

Those wishing to attend Hearing II and/or testify during Hearing II via Zoom Webinar may register at the link provided above. Those wishing to testify in person during Hearing II may register by contacting the Commission (Cathy Dittman—814-863-5729 or [cwd2@psu.edu](mailto:cwd2@psu.edu)) to schedule a specific time for on-site testimony.

Persons or organizations wishing to testify are asked to register at least five business days prior to the hearing and to provide an electronic copy of any testimony. Written comments from persons or organizations not wishing to testify should be received by the Commission at least five business days before the last-scheduled public hearing. Forward all testimony and documents to Cathy Dittman ([CWD2@PSU.EDU](mailto:CWD2@PSU.EDU)).

The Commission will evaluate the proposed State Parole Guidelines after consideration of the testimony and written comments received. The Commission anticipates addressing these proposals at its next quarterly meeting, which will be held on Thursday, September 10, 2020.

All Commission meetings are open to the public. Any proposals adopted by the Commission will be submitted to the General Assembly for review by way of publication in

the *Pennsylvania Bulletin*, and will become effective 90 days after publication unless rejected by concurrent resolution of the General Assembly.

REPRESENTATIVE TODD STEPHENS,  
Chair

### Commentary

This Commentary provides selected highlights of the proposed State Parole Guidelines. The proposed State Parole Guidelines are set forth in Annex A.

As provided in statute, 61 Pa.C.S. § 6102 (relating to operation of parole system generally):

The parole system shall operate consistently with the following provisions:

(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.

(2) 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.

(3) In addition to this goal, the board and any other paroling entity shall address input by crime victims, 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 commission and shall ensure that parole proceedings, release and recommitment are administered in an efficient and timely manner.

Act 81 of 2008 requires the Commission to adopt guidelines for parole that consider the following:

(1) Give primary consideration to the protection of the public and to victim safety;

(2) Provide for due consideration of victim input;

(3) Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules of conduct set forth by the department or other prison facilities and the board;

(4) Be designed to encourage inmates and parolees to participate in programs that have been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs;

(5) Provide for prioritization of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety; and

(6) Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.

Act 83 of 2008 requires the Board to consider guidelines for parole and reparole established by the Commission, and to report to the Commission the parole and reparole decision and provide a contemporaneous written statement of reasons for any deviation from the guidelines. In addition to consideration of the guidelines, the Board may develop and use internal decisional instruments.

The guidelines for parole established by the Commission are advisory guidelines, which must be considered by the Board but for which the Board may exercise discretion in deviating from the guidelines. The guidelines do not remove the discretionary authority of the Pennsylvania

Parole Board, and do not prevent the Board from developing policies and procedures related to parole decision-making.

### *Development of State Parole Guidelines*

Development of the guidelines for parole involved a research collaboration between the Commission, the Pennsylvania Parole Board, and Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota Law School. The research focused on the Board's use of an internal decisional instrument and studied two outcomes: the decision-makers' conformity with the recommendations, and the successes or failures of those decisions based on revocations for technical violations or new convictions. Analysis showed that overall, the Board's internal decisional instrument suggested parole in 83% of cases while the Board's overall grant rate is 58%. The Board conformed with its instrument in 66% of the cases. Variation was found based on the type of offense and the type of interview. The highest percentage of conformity to its internal instrument was for drug offenses (78%) and the lowest level of conformity was found in violent (60%) and sex offense (53%) cases. RRRI cases agreed with the instrument in 81% of cases while application cases only conformed in 23% of cases.

Commission staff analyzed the significance of weighted factors in the internal decisional instrument and evaluated the point value assigned to each factor. Each of the four actual factors were significantly related to parole release, supporting the inclusion of these factors in the internal instrument. For the most part, the point values assigned to those factors were appropriate, with higher point values assigned to categories with a decreased likelihood of parole release.

Analysis identified additional unweighted factors predictive of parole release. Inclusion of these factors would improve conformity to the existing decisional instrument. They included development of a parole release plan, placement in a treatment program, and a detainer and/or transfer of supervision to another state.

Commission staff next analyzed the accuracy of the existing internal decisional instrument in predicting recidivism. Analysis found that the existing instrument has a small predictive value for recidivism (AUC value of .57 out of a score of 0 to 1). The two weighted factors most important for parole decisions (programming and behavior) are least predictive. Risk assessments alone have better predictive value.

Robina conducted two qualitative studies involving interviewing Board Members and inmates previously denied parole. The studies identified Board Members' primary concerns: 1) ensuring public safety; 2) rehabilitation of the offender; and 3) offering second chances. Members rely on a wide variety of information reviewed prior to interviews and consider input from victims, Department of Corrections staff, sentencing judges, and district attorneys. The parole interview itself carries weight in making a release decision. Inmate interviews illustrated how individuals viewed the parole release process.

With the Commission's analyses and Robina study results in mind, the Commission surveyed both Board Members and Hearing Examiners to ascertain the importance of underlying factors considered in the parole decision. They were asked to provide their opinions on the importance of various parole decisional factors for different types of cases and offenses. The survey found that the type of case does not impact the perceived importance of parole decisional factors.

One deficiency identified with the use of the internal decisional instrument was the lack of objective criteria and the weighting of factors identified during the parole interview, as well as a mechanism for communicating this information to other decision-makers. Another factor not captured effectively in the internal decisional instrument was the role of statutory mandates or efficacious practices that may require or suggest a decision counter to the recommendation. To address these concerns, the Commission created a scoring mechanism for assessing readiness based on key factors considered during the interview and identified common override factors linked to statute or practice.

Based on its evidence-driven data findings, the Commission proposes a new two-dimensional approach to parole guidelines. As the primary factor considered in the parole decision is public and victim safety, the first factor or dimension considered is risk. A score is assigned to this factor based on a single validated risk assessment tool. The second factor or dimension is preparedness. Preparedness is how well an offender is prepared for parole release. It based on pre-interview factors and interview factors.

The intersection of risk and preparedness is the parole recommendation to grant or refuse parole. The recommendations differ between violent and non-violent offenders.

#### *Commentary on Annex A*

##### *§ 309.1(1). Preliminary provisions.*

The Commission is authorized to adopt parole guidelines by statute: 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole). The guidelines give primary consideration to public and victim safety. They provide for consideration of victim input. The guidelines should be designed to encourage good conduct by offenders and their participation in programming. The guidelines will use validated risk assessment instruments and will prioritize criminal justice resources.

Section (b) provides definitions of terms used in the State Parole Guidelines, as obtained from the Pennsylvania Parole Board, Department of Corrections, and Commission on Sentencing.

##### *§ 309.2(a). Parole guidelines standards.*

The Pennsylvania Parole Board has authority to parole offenders sentenced to state incarceration. The State Parole Guidelines are advisory and will be considered by the Board. In every case, the Board will make reasons to grant or refuse parole as part of the record. Any reasons for overrides or reasons for departure from the State Parole Guidelines will be recorded on the Parole Guidelines Worksheet.

The Commission's JNET-based Sentencing Guidelines Software application will be used at Board's direction to prepare and submit all guideline-required parole decision information.

State Parole Guidelines apply to all state incarceration sentences imposed on or after July 1, 2021.

##### *§ 309.3. Procedure for determining parole guidelines.*

The State Parole Guidelines categorize offenders into two groups: 1) a current or previous violent offense conviction and 2) no current or previous violent offense conviction. Recommendations for parole vary slightly between the two groups.

The State Parole Guidelines include two dimensions: 1) the risk to public safety, as measured by the risk of recidivism and 2) an assessment of an offender's preparedness for parole release, as measured by pre-interview and interview factors. Both dimensions were developed based on data analysis of past parole decisions, recidivism, and decision makers' policies and philosophies.

The risk score utilizes the ten criminogenic domains of the Level of Services Inventory-Revised (LSI-R). Scores range from 0 to 54, with higher scores indicating a higher rate of recidivism risk. The State Parole Guidelines group this risk score as low (0—19), medium (20—33), and high (34 and greater).

The preparedness scores are based on seven pre-interview factors and four interview factors. Each is scored as a '1' or '0,' with '1' being more positive or indicating success. Pre-interview factors are a combination of actuarial and dynamic factors and include the Department of Corrections recommendation. Interview factors are grounded in the professional judgement of the decision makers. The preparedness score is grouped as low (0—7), medium (8-9), and high (10-11).

The recommendation to grant or refuse parole is based on the intersection of the risk and preparedness categories. These slightly vary depending upon whether the offender has a current or past conviction for a violent offense.

The State Parole Guidelines are advisory. Decision makers may deviate from the recommendation of the guidelines. Reasons for departing from the recommendations are required and placed in the record. Override factors are individually substantial and may justify a departure from the recommendations. They include an inmate's mental health or medication compliance status, an inmate's negative interest in parole, an outstanding detainer, judicial, prosecution or public safety input, and if the maximum sentence date occurs in less than one year.

The State Parole Guidelines will apply to parole decisions for offenders initially being considered for parole and to those previously denied parole. They also apply to parole violators being considered for re-parole.

##### *§ 309.4. Parole Guidelines Recommendations Matrices.*

The matrices are grids made of up the Risk Categories and Preparedness Categories. Each cell recommends either 'grant' or 'refuse' parole. One matrix (a) applies to offenders with a current (instant) or previous conviction for a violent offense. The other matrix (b) applies to offenders without a current (instant) or previous conviction for a violent offense. The differences between the two matrices is based on recidivism analysis and grant rates. The divergence between the two may be found at the intersection of the medium preparedness and medium risk categories.

##### *§ 309.5. Parole Guidelines Worksheets.*

The Worksheets reflect the scoring for overall risk category and the pre-interview and interview categories. Override factors and reasons for departure are included. The recommendation matrices differ based on whether the offender is categorized as violent (a) or non-violent (b).

## Annex A

## TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

## PART VIII. CRIMINAL SENTENCING

## CHAPTER 309. PAROLE GUIDELINES

## Subchapter A. STATE PAROLE GUIDELINES

(*Editor's Note:* The following chapter is proposed to be added and is printed in regular type to enhance readability.)

Sec.	
309.1.	Preliminary provisions.
309.2.	Parole guidelines standards.
309.3.	Procedures for determining parole guidelines.
309.4(a).	State Parole Guidelines Recommendations for Violent Offenders.
309.4(b).	State Parole Guidelines Recommendations for Non-Violent Offenders.
309.5(a).	Parole Guidelines Worksheet for Violent Offenders.
309.5(b).	Parole Guidelines Worksheet for Non-Violent Offenders.

## § 309.1. Preliminary provisions.

(a) *Authorization.*

(1) As authorized by 42 Pa.C.S.A. § 2154.5 (relating to adoption of guidelines for parole), the Commission shall adopt guidelines that shall be considered by the Pennsylvania Parole Board and any other paroling entity when exercising its power to parole and reparole all persons sentenced by any court in this Commonwealth to imprisonment in any correctional institution.

## (i) The guidelines shall do all of the following:

(A) Give primary consideration to the protection of the public and to victim safety;

(B) Provide for due consideration of victim input;

(C) Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules of conduct set forth by the department or other prison facilities and the board;

(D) Be designed to encourage inmates and parolees to participate in programs that have been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs;

(E) Provide for prioritization of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety; and

(F) Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.

(ii) Notwithstanding any other provision of law, this section shall not remove the discretionary parole authority of the board and any other paroling entity when exercising its power to parole and reparole.

(b) *Definitions.* For purposes of this chapter:

*“Aggregated Sentence.”* Two or more consecutive sentences that have been combined whereby the aggregate minimum term is the sum of the consecutive minimum terms and the aggregate maximum term is the sum of the consecutive maximum terms.

*“Conviction Offense.”* Offense for which the original sentence was imposed.

*“Court.”* A court of record.

*“Detainer.”* A written order of the court or paroling authority to hold a person in custody in a correctional institution pending further legal action.

*“Hearing Examiner.”* An agent of the Parole Board who is empowered to sit on parole revocation panels, conduct parole hearings in lieu of panels and conduct parole interviews on behalf of the Parole Board.

*“Judicial Proceeding.”* A sentencing hearing in which all offenses for which the offender is convicted are pending before the court for sentencing at the same time. A judicial proceeding may include multiple OTNs.

*“Non-Violent Offender.”* An offender not currently or previously convicted of a violent offense, for which Parole Guidelines for Non-Violent Offenders applies. Non-violent offenders include the following:

*“Rebuttable Parole.”* A statutorily designated non-violent inmate who has been certified by the DOC based on a good conduct record and nonviolent history.

*“Recidivism Risk Reduction Incentive (RRRI).”* A sentence imposed upon a non-violent inmate that can allow them the opportunity to reduce their minimum sentence upon completion of recommended programming, and while maintaining a good conduct record.

*“Short Sentence Parole.”* Offenders sentenced to state incarceration with an aggregate minimum sentence of two years or less or a recidivism risk reduction incentive minimum sentence of two years or less, excluding ineligibility as defined in 61 Pa.C.S. § 6137.1, may be approved by the Board for parole without requiring an interview. If an offender is committed to the Department of Corrections after the expiration of the minimum sentence, parole may be approved within 30 days after commitment.

*“Original Sentence.”* The sentence resulting from the original conviction. It is from this sentence the Board paroles the inmate and the parolee serves the remaining time on the street unless recommitted by the Board.

*“Override Factors.”* A number of common reasons found for deviation from parole guidelines, including: mental health/medication compliance, negative interest in parole, judicial input, prosecution/public safety input, detainer status, and less than one year until maximum sentence reached. Based on the identification of one or more overriding factors, parole decision makers may deviate from the parole guidelines recommendation.

*“Panel.”* A two-member unit of the Parole Board comprised of either two Board Members or one Board Member and one Hearing Examiner, empowered to make parole release decisions and recommitment decisions.

*“Parole.”* The conditional release from imprisonment of an inmate from a correctional facility to serve the remainder of his/her unexpired sentence in the community under supervision as long as (s)he satisfactorily complies with all terms and conditions provided in the parole order.

*“Parole Guideline Recommendation.”* Advisory guidelines adopted by the Pennsylvania Commission on Sentencing and considered by the Pennsylvania Parole Board as part of the parole review process. The parole guidelines take into account the risk of recidivism and preparedness for reentry in determining a parole recommendation. Separate guidelines have been adopted for Violent Offenders and Non-Violent Offenders.

*“Parole Preparedness Category.”* One of two factors used to determine the parole guidelines recommendation. The parole preparedness category is a scale based on 11 factors identified prior to and during the parole interview, intended to measure an inmate’s readiness for parole release. A higher score indicates greater preparedness. One point is assigned for each positive assessment; 0 points for each negative assessment.

*“Parole Risk Category.”* One of two factors used to determine the parole guidelines recommendation. The parole risk category is determined through the Level of Service Inventory-Revised (LSI-R). The LSI-R is a validated risk-screening instrument used by the Department of Corrections. LSI-R assesses an inmate’s general risk based on each of 10 criminogenic domains. Scores range from 0 to 54, with scores of 0 to 19 designated as low risk, scores of 20 to 33 designated as medium risk, and scores of 34 to 54 designated high risk.

*“Pennsylvania Parole Board (Board).”* An independent executive branch agency comprised of nine members appointed by the Governor and confirmed by the Senate for six-year terms.

*“Sentencing Guidelines Software Web Application (SGS Web).”* A JNET-based application operated by the Commission which includes the modules for Sentencing, Resentencing, and Parole Guidelines. SGS Web serves as the source of data for the original reported sentence and associated information and the reporting source for revocations and resentences.

*“State Parole.”* The Pennsylvania Parole Board has paroling authority for offenders sentenced to state incarceration.

*“Underlapping Concurrent Sentence.”* A sentence that is served at the same time as the controlling sentence but has a shorter minimum and/or maximum sentence than the controlling sentence

*“Violent Offender.”* An offender with a current or previous conviction as provided below, or an offense otherwise designated by the Pennsylvania Parole Board as violent offense, for which Parole Guidelines for Violent Offenders applies:

42 Pa.C.S.A. § 9714(g)

42 Pa.C.S.A. § 9718.1

42 Pa.C.S.A. § 9799.14

44 Pa.C.S.A. § 2301

### § 309.2. Parole guidelines standards.

(a) *Guidelines.* The Board shall consider the parole guidelines in the parole decision.

(b) *Effective Date.* The parole guidelines apply to consideration of parole for all state incarceration sentences effective July 1, 2021. Amendments to the parole guidelines shall apply to consideration of parole for all state incarceration sentences on or after the effective date of the Amendment.

(c) *Reasons.* In every case in which the Board renders a parole decision, the Board shall make as part of the

record a statement of the reason or reasons for the decision to grant or refuse parole.

(d) *Deviation from the Guidelines.* In every case in which the Board deviates from the guidelines, the Board shall identify override factors or reasons for departure from the guidelines, and the factors or reasons for the deviation from the guidelines shall be recorded on the Parole Guidelines Worksheet, a copy of which shall be electronically transmitted to the Pennsylvania Commission on Sentencing in the manner described in § 309.2(e).

(e) *Reporting decision.* Unless otherwise provided by the Commission, the JNET-based Sentencing Guidelines Software application (SGS Web) shall be used at the Board’s direction to prepare and submit all guideline-required parole decision information.

(1) The completed Parole Guidelines Worksheet shall be made a part of the record and the information electronically submitted to the Commission via SGS Web no later than 30 days after the date of the parole decision.

(2) The completed Parole Guidelines Worksheet shall be used to report any and all subsequent revocations of parole and any and all subsequent decision to reparole an offender and made part of the record in manner described in § 309.2(e)(1).

### § 309.3. Procedures for determining parole guidelines.

(a) The Parole Guidelines categorizes offenders into two groups:

(1) *Violent offenders.* Inmates with convictions for current (instant) or past violent offense(s), and

(2) *Non-violent offenders.* Inmates with no convictions for current or no past violent offenses.

(b) The Parole Guidelines recommendation is based upon two categories.

(1) The first measure is Risk of Recidivism.

(i) The LSI-R score is calculated prior to the interview.

(ii) The LSI-R score is grouped into three categories:

(A) High Risk (scores 34 and greater)

(B) Medium Risk (scores of 20 to 33)

(C) Low Risk (scores 19 and less)

(2) The second measure is Preparedness Score.

(i) The pre-interview factors are scored as a ‘1’ or a ‘0,’ with 1 being successful or positive.

(A) Factors directly related to the offender’s behavior and compliance include:

(I) Completion of required programs or current enrollment in required programs;

(II) Misconduct free for the past 12 months;

(III) Free of criminal or assaultive misdeeds for the past 12 months;

(IV) One or no prior probation or parole revocations;

(V) Free of alcohol or drug dependence; and

(VI) Compliance with all prescribed medications.

(B) Factor related to the recommendation of the Department of Corrections.

(ii) The interview preparedness factors are based on the professional judgement of the decision maker(s) and scored as a ‘1’ or a ‘0,’ with 1 being positive or successful.

- (A) Motivation for success.
- (B) Acceptance of responsibility.
- (C) Insight and positive response to address criminal behavior.
- (D) Stable release plan (community and/or family support).

(iii) The overall Preparedness Score is the total of the pre-interview and interview factors and ranges from 0 to 11

- (A) Low preparedness: Score 0 to 7.
- (B) Medium preparedness: Score 8 to 9.
- (C) High preparedness: Score 10 to 11.

(c) The Parole Guidelines recommendation is based upon the Risk Category and Preparedness Category in § 309.4(a) and (b), depending upon whether the offender is classified as violent or non-violent.

(d) *Deviations from the Guidelines.* The Parole Guidelines are advisory. Decision makers may deviate from the recommendation of the Parole Guidelines.

(1) Reasons for deviations from the Parole Guideline recommendations are placed on the record.

(2) Override factors are substantial individual factors that may justifying a departure from the parole guidelines recommendation:

- (i) Mental health or medication compliance;
- (ii) An inmate’s negative interest in parole;
- (iii) Judicial, prosecution and public safety input;
- (iv) Outstanding detainer;

(vi) Maximum sentence date is less than one year from interview date.

(3) Departure reasons are required for decisions contrary to the Parole Guidelines recommendations when an overriding factor is not identified:

(e) *Additional Applications.*

(1) The Parole Guidelines must be considered in all cases for which the Board is authorized to exercise discretionary parole, including all initial and subsequent parole decisions.

(2) For individuals recommitted as parole violators, the Parole Guidelines must be considered prior to re-parole.


**§ 309.4(a). State Parole Guidelines Recommendations for Violent Offenders.**

**§ 309.4(b). State Parole Guidelines Recommendations for Non-Violent Offenders.**


		<i>Preparedness Category</i>		
		Low (0–7)	Medium (8-9)	High (10-11)
<i>Risk Category</i>	High (=>33)	Refuse	Refuse	Grant
	Medium (22–33)	Refuse	Grant	Grant
	Low (0–19)	Refuse	Grant	Grant

		<i>Preparedness Category</i>		
		Low (0–7)	Medium (8-9)	High (10-11)
<i>Risk Category</i>	High (=>33)	Refuse	Refuse	Grant
	Medium (22–33)	Refuse	Refuse	Grant
	Low (0–19)	Refuse	Grant	Grant

§ 309.5(a). Parole Guidelines Worksheet for Violent Offenders.

 <b>Pennsylvania Commission on Sentencing</b> <b>PAROLE GUIDELINES WORKSHEET FOR VIOLENT OFFENDERS</b>		Commission ID: Date Risk Score Calculated:																													
Offender Name:	State ID Number:	Type of Case:	V/NV/RRRI																												
Date of Birth:	Parole ID Number:	Type of Interview:	Min/Min Subseq																												
Age at Interview:	Inmate Number:	Reparole/Reparole Subseq	Application																												
	Institution:	Date of Interview:																													
Current Offense:		Violence Indicator:																													
Total Sentence:		Requires SORNA Registration:																													
Minimum Date:		Alcohol or Drug Related:																													
Maximum Date:		Firearm/Other Weapon Used:																													
<b>Summary of Risk: Level of Service Inventory-Revised</b>		<b>Overall Rating</b>	<b>Overall Risk Category</b>																												
LSI-R Score:																															
<b>Summary of Preparedness Factors</b>		<b>Overall Rating</b>	<b>Overall Preparedness Category:</b>																												
Pre-Interview																															
Are required programs completed or in progress?	-	<u>Out of 11 Factors</u>																													
Misconduct free for the past year?	-	0 - 7	Low																												
Free of assaultive/criminal misconducts for the past year?	-	8 - 9	Medium																												
Free of prior probation/parole revocations?	-	10 - 11	High																												
Free of alcohol or drug dependence?	-																														
Compliant with all prescribed medications?	-																														
Postive recommendation from DOC?	-																														
Interview																															
Expressed motivation for success	-																														
Expressed acceptance of responsibility	-																														
Expressed insight and postive response to criminal behavior?	-																														
Stable release plan (community and/or family support)?	-	Total Score = _____																													
<b>Parole Guidelines Recommendation (Violent):</b>		Suggest Parole	Suggest Refusal																												
<table border="1" style="margin: auto;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;"><u>Preparedness Category</u></td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">Low</td> <td style="text-align: center;">Medium</td> <td style="text-align: center;">High</td> </tr> <tr> <td colspan="2"></td> <td style="text-align: center;">(0-7)</td> <td style="text-align: center;">(8-9)</td> <td style="text-align: center;">(10-11)</td> </tr> <tr> <td rowspan="3" style="vertical-align: middle;">Risk Category</td> <td style="text-align: center;">High (=&gt;33)</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> </tr> <tr> <td style="text-align: center;">Medium (22-33)</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> </tr> <tr> <td style="text-align: center;">Low (0-19)</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> <td style="text-align: center;">Grant</td> </tr> </table>						<u>Preparedness Category</u>					Low	Medium	High			(0-7)	(8-9)	(10-11)	Risk Category	High (=>33)	Refuse	Refuse	Grant	Medium (22-33)	Refuse	Refuse	Grant	Low (0-19)	Refuse	Grant	Grant
		<u>Preparedness Category</u>																													
		Low	Medium	High																											
		(0-7)	(8-9)	(10-11)																											
Risk Category	High (=>33)	Refuse	Refuse	Grant																											
	Medium (22-33)	Refuse	Refuse	Grant																											
	Low (0-19)	Refuse	Grant	Grant																											
<b>Parole Decision:</b>		Grant Parole	Refuse Parole																												
Does this decision deviate from the Parole Guidelines recommendation?		Yes	No																												
<b>Override Factors</b>																															
Mental Health / Medication Compliance	Yes/No	Detainer Status	Yes/No																												
Negative Interest in Parole	Yes/No	Approaching Maximum Sentence (less than 1 year)	Yes/No																												
Judicial Input	Yes/No																														
Prosecution/Public Safety Input	Yes/No																														
<b>Reasons for Departure</b>																															
If the parole decision deviates from the guidelines recommendation for reasons other than override factors indicate reason below.																															

§ 309.5(b). Parole Guidelines Worksheet for Non-Violent Offenders.

 <b>Pennsylvania Commission on Sentencing</b> <b>PAROLE GUIDELINES WORKSHEET FOR NON-VIOLENT OFFENDERS</b>		Commission ID: Date Risk Score Calculated:																				
Offender Name:	State ID Number:	Type of Case: V/NV/RRRI																				
Date of Birth:	Parole ID Number:	Type of Interview: Min/Min Subseq																				
Age at Interview:	Inmate Number:	Reparole/Reparole Subseq Application																				
	Institution:	Date of Interview:																				
Current Offense:		Violence Indicator:																				
Total Sentence:		Requires SORNA Registration:																				
Minimum Date:		Alcohol or Drug Related:																				
Maximum Date:		Firearm/Other Weapon Used:																				
<b>Summary of Risk: Level of Service Inventory-Revised</b>																						
Overall Rating	Overall Risk Category																					
LSI-R Score: _____																						
<b>Summary of Preparedness Factors</b>																						
Overall Rating	Overall Preparedness Category:																					
Pre-Interview																						
Are required programs completed or in progress?	-	<u>Out of 11 Factors</u>																				
Misconduct free for the past year?	-	0 - 7 Low																				
Free of assaultive/criminal misconducts for the past year?	-	8 - 9 Medium																				
Free of prior probation/parole revocations?	-	10 - 11 High																				
Free of alcohol or drug dependence?	-																					
Compliant with all prescribed medications?	-																					
Postive recommendation from DOC?	-																					
Interview																						
Expressed motivation for success	-																					
Expressed acceptance of responsibility	-																					
Expressed insight and postive response to criminal behavior?	-																					
Stable release plan (community and/or family support)?	-	Total Score = _____																				
<b>Parole Guidelines Recommendation (Non-Violent):</b>																						
	Suggest Parole	Suggest Refusal																				
	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="4" style="text-align: center;">Preparedness Category</th> </tr> <tr> <th></th> <th style="text-align: center;">Low (0-7)</th> <th style="text-align: center;">Medium (8-9)</th> <th style="text-align: center;">High (10-11)</th> </tr> </thead> <tbody> <tr> <th style="text-align: center;">High (&gt;=33)</th> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> </tr> <tr> <th style="text-align: center;">Medium (22-33)</th> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> <td style="text-align: center;">Grant</td> </tr> <tr> <th style="text-align: center;">Low (0-19)</th> <td style="text-align: center;">Refuse</td> <td style="text-align: center;">Grant</td> <td style="text-align: center;">Grant</td> </tr> </tbody> </table>		Preparedness Category					Low (0-7)	Medium (8-9)	High (10-11)	High (>=33)	Refuse	Refuse	Grant	Medium (22-33)	Refuse	Grant	Grant	Low (0-19)	Refuse	Grant	Grant
Preparedness Category																						
	Low (0-7)	Medium (8-9)	High (10-11)																			
High (>=33)	Refuse	Refuse	Grant																			
Medium (22-33)	Refuse	Grant	Grant																			
Low (0-19)	Refuse	Grant	Grant																			
<b>Parole Decision:</b>																						
	Grant Parole	Refuse Parole																				
Does this decision deviate from the Parole Guidelines recommendation?	Yes	No																				
<b>Override Factors</b>																						
Mental Health / Medication Compliance	Yes/No	Detainer Status	Yes/No																			
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Judicial Input	Yes/No																					
Prosecution/Public Safety Input	Yes/No																					
<b>Reasons for Departure</b>																						
If the parole decision deviates from the guidelines recommendation for reasons other than override factors indicate reason below.																						
_____																						
_____																						
_____																						

[Pa.B. Doc. No. 20-895. Filed for public inspection July 10, 2020, 9:00 a.m.]



**Title 204—JUDICIAL SYSTEM  
GENERAL PROVISIONS**

**PART VIII. CRIMINAL SENTENCING  
COMMISSION ON SENTENCING  
[ 204 PA. CODE CH. 311 ]**

**Proposed State Parole Recommitment Ranges**

The Pennsylvania Commission on Sentencing hereby publishes for public comment proposed State Parole Recommitment Ranges, 204 Pa. Code §§ 311.1—311.5. The proposed State Parole Recommitment Ranges are set forth in Annex A.

The Commission was authorized by 42 Pa.C.S. § 2154.6 to adopt recommitment ranges following revocation of parole to be considered by the Pennsylvania Parole Board when exercising its power to reparole, commit, and recommit for parole violations. Recommitment ranges shall take into account the: 1) seriousness of the initial conviction offense, 2) the level of seriousness of the violation, and 3) rehabilitative needs of the defendant.

The State Parole Recommitment Ranges are advisory and do not remove the discretionary authority of the Pennsylvania Parole Board.

On June 4, 2020, the Commission approved for the purpose of public comment proposed State Parole Recommitment Ranges.

In accordance with 42 Pa.C.S. § 2155, the Commission shall publish in the *Pennsylvania Bulletin* all proposed sentencing guidelines and risk assessment instruments and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- (i) Pennsylvania District Attorneys Association
- (ii) Chiefs of Police Associations
- (iii) Fraternal Order of Police
- (iv) Public Defenders Organization
- (v) Law School faculty members
- (vi) Pennsylvania Parole Board
- (vii) Pennsylvania Department of Corrections
- (viii) Pennsylvania Bar Association
- (ix) Pennsylvania Wardens Association
- (x) Pennsylvania Association on Probation, Parole and Corrections
- (xi) Pennsylvania Conference of State Trial Judges
- (xii) Any other interested person or organization

The Commission has scheduled the following public hearings, to be held using Zoom Webinar, and providing limited opportunities for on-site testimony consistent with COVID-19 social distancing safeguards:

*Hearing I.*

<i>Date:</i>	Monday, August 31, 2020
<i>Time:</i>	10:00 a.m.
<i>Zoom:</i>	Webinar Registration Link: <a href="https://bit.ly/PCSPUBPAR1">https://bit.ly/PCSPUBPAR1</a>
<i>Onsite Location:</i>	SCI-Benner Township, 301 Institution Drive, Bellefonte, PA 16823

Testimony and in-person attendance during Hearing I is limited to inmates of the Pennsylvania Department of Corrections. Those wishing to attend Hearing I via Zoom Webinar may register at the link provided above.

*Hearing II.*

<i>Date:</i>	Wednesday, September 9, 2020
<i>Time</i>	2:00 p.m.
<i>Zoom:</i>	Webinar Registration Link: <a href="https://bit.ly/PCSPUBPAR2">https://bit.ly/PCSPUBPAR2</a>
<i>Onsite Location:</i>	Pennsylvania Commission on Sentencing (State College Office), 204 East Calder Way, Suite 400, State College, PA 16801

Those wishing to attend Hearing II and/or testify during Hearing II via Zoom Webinar may register at the link provided above. Those wishing to testify in person during Hearing II may register by contacting the Commission (Cathy Dittman—814-863-5729 or [cwd2@psu.edu](mailto:cwd2@psu.edu)) to schedule a specific time for on-site testimony.

Persons or organizations wishing to testify are asked to register at least five business days prior to the hearing and to provide an electronic copy of any testimony. Written comments from persons or organizations not wishing to testify should be received by the Commission at least five business days before the last-scheduled public hearing. Forward all testimony and documents to Cathy Dittman ([CWD2@PSU.EDU](mailto:CWD2@PSU.EDU)).

The Commission will evaluate the proposed State Parole Recommitment Ranges after consideration of the testimony and written comments received. The Commission anticipates addressing these proposals at its next quarterly meeting, which will be held on Thursday, September 10, 2020.

All Commission meetings are open to the public. Any proposals adopted by the Commission will be submitted to the General Assembly for review by way of publication in the *Pennsylvania Bulletin*, and will become effective 90 days after publication unless rejected by concurrent resolution of the General Assembly.

REPRESENTATIVE TODD STEPHENS,  
*Chair*

**Commentary**

This Commentary provides selected highlights of the proposed State Parole Recommitment Ranges. The proposed State Parole Recommitment Ranges are set forth in Annex A.

As provided in statute, 61 Pa.C.S. § 6102 (relating to operation of parole system generally), the parole system shall operate consistently with the following provisions:

(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.

(2) 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.

(3) In addition to this goal, the board and any other paroling entity shall address input by crime victims, 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

commission and shall ensure that parole proceedings, release and recommitment are administered in an efficient and timely manner.

With regard to recommitment following violation of terms, 61 Pa.C.S. § 6137(h) (relating to power to recommit), authorizes:

(1) The board may, during the period for which an inmate shall have been sentenced, recommit the inmate, if 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:

(i) There is a reasonable probability that the inmate will be benefited by paroling the inmate again.

(ii) It does not appear that the interests of the Commonwealth will be injured by paroling the inmate again.

(2) In exercising these powers, the board shall consider any applicable recommitment ranges established by the commission under 42 Pa.C.S. § 2154.6 (relating to adoption of recommitment ranges following revocation of parole by board).

(i) *Cases involving deviations from guidelines.*—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 commission, as established under 42 Pa.C.S. § 2153(a)(14).

Act 81 of 2008 requires the Commission to adopt recommitment ranges following revocation of parole by the Board when exercising its power to reparole, commit and recommit for violations of parole that consider the following:

- (1) the seriousness of the initial conviction offense;
- (2) the level of seriousness of the violation; and
- (3) the rehabilitative needs of the defendant.

The recommitment range is a range of time within which a parole violator may be recommitted to serve an additional part of the term the parole violator would have been compelled to serve had the parole violator not been paroled. At the end of the recommitment period, the parole violator shall be reviewed for parole or, without further review, shall be repared.

Act 83 of 2008 requires the Board to consider recommitment ranges established by the Commission, and to report to the Commission the recommitment decision and provide a contemporaneous written statement of reasons for any deviation from the recommitment ranges. In addition to consideration of the guidelines, the Board may develop and use internal decisional instruments.

The recommitment ranges established by the Commission are advisory recommendations, which must be considered by the Board but for which the Board may exercise discretion in deviating from the recommendations. The recommitment ranges do not remove the discretionary authority of the Pennsylvania Parole Board, and do not prevent the Board from developing policies and procedures related to recommitment decisions.

#### *Development of State Parole Reccommitment Ranges*

Development of the state parole recommitment ranges began in 2013 and included a review of the existing statutes, practices, and policies followed by the Parole Board in assigning recommitment time. The review in-

cluded analyses of parole data and recidivism data prepared by the Board. A more recent review of statutes and practices occurred in 2019 in concert with the final development of the proposed parole guidelines.

For conviction violations, in order to provide proportionality in consideration of the seriousness of the violation, the Commission's proposal links the offense gravity scores of the new conviction with the recommended recommitment range. For repeat violations, the Commission has proposed a one-point increase in the offense gravity score for a second conviction violation and a two-point increase in the offense gravity score for a third or subsequent conviction violation.

For technical violation, while statute controls the maximum period of recommitments, the Commission's proposal includes a minimum period for the more serious technical violators who, by statute, are housed in a state correctional facility or contracted county jail.

#### *Commentary on Annex A*

##### *§ 311.1(a). Preliminary Provisions. Authorization.*

Statute 42 Pa.C.S. § 2154.6 authorizes the Commission to adopt recommitment ranges following revocation of parole by the Pennsylvania Board of Parole.

##### *§ 311.1(b). Preliminary Provisions. Definitions.*

This section provides definitions of terms used in the proposed State Parole Reccommitment Ranges, as obtained from the PA Parole Board, PA Department of Corrections, and Pennsylvania Commission on Sentencing.

##### *§ 311.2. State Parole Violator Reccommitment Range Standards.*

The recommitment ranges are advisory and will be considered by the Pennsylvania Parole Board. They apply to revocations of parole following the appropriate hearings. The State Parole Reccommitment Ranges will apply to any violations and hearings initiated on or after the effective date of the State Parole Reccommitment Ranges.

The Parole Board will provide to the Commission a contemporaneous written statement of reasons for any deviations from the State Parole Reccommitment Ranges. The Commissions JNET-based Sentencing Guidelines Software Web application will be used to report identify or calculate the appropriate recommitment range, report the recommitment time ordered, and report the recommitment and repared or release of an offender.

##### *§ 311.3. Procedure for Determining State Parole Violator Reccommitment Range.*

The Parole Board will determine if the revocation is due to a technical or conviction violation. Conviction violations include those circumstances involving both a technical and conviction violation.

The Board will determine recommitment time considering the seriousness of the initial conviction offense, the seriousness of the technical violation or the new offense, and the rehabilitative needs of the offender.

##### *§ 311.4. Technical State Parole Violator Ranges: General.*

Recommitment ranges for technical state parole violations is first based upon whether it meets the criteria for incarceration in a state correctional institution or contracted county jail 61 Pa.C.S. § 6138(c)(1.3). A technical offender is recommitted to a state correctional institution or contracted county jail if the violation was of a sexual nature, assaultive or had a threat of bodily harm, involved a weapon, or a threat to public safety. Additional criteria include if the offender absconded or cannot be

diverted to a community center or if the violation included an intentional or unexcused failure to adhere to programming or conditions on more than three occasions.

If it meets those criteria set forth in 61 Pa.C.S. § 6138(c)(1.3), statute caps recommitment at six months (61 Pa.C.S. § 6138(d)(3)(i)) for the first recommitment. Statute caps the second recommitment on the initial sentence at 9 months (61 Pa.C.S. § 6138(d)(3)(ii)); the State Parole Recommitment Ranges recommend a recommitment of not less than 6 months. A third or subsequent revocation on the initial sentence is capped at 12 months by statute (61 Pa.C.S. § 6138(d)(3)(iii)); the State Parole Recommitment Ranges recommends not less than 9 months recommitment. Statute also states that these caps are not applicable if there are disciplinary infractions or if an offender spent more than 90 days in segregated housing or refused programming or work assignments.

If the technical violation does not meet those criteria in 61 Pa.C.S. § 6138(c)(1.3), recommitment time may be served at another facility operated or contracted by the Department of Corrections. Statute recommends not more than six months recommitment time (61 Pa.C.S. § 6138(e)).

§ 311.5. *Convicted State Parole Recommitment Ranges: General.*

If a parolee is convicted of a new criminal offense while on parole, the Parole Board orders recommitment of the offender after a revocation hearing. A convicted parole violator is subject to recommitment in a state correctional facility. The Board will order the offender to serve an additional part of the term which the offender would have been compelled to serve if not paroled.

The recommitment time is determined using the recommitment ranges based on the offense gravity score of the new offense. Ranges increase for the second revocation and third/subsequent revocation of the initial offense if there is a new offense conviction. If the balance of the original sentence is less than the recommitment time, the balance of the sentence is the minimum recommitment time.

The Board has discretion to decrease or increase recommitment time as provided in aggravating and mitigating ranges also based on the offense gravity score of the new conviction offense. Statute 61 Pa.C.S. § 6138(a)(2.1) provides the Board discretion to award credit time to a parolee for paroled time based on criteria set forth.

An offender completes the original sentence, including recommitment time, prior to completion of the sentence for the new crime.

**Annex A**

**TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

**PART VIII. CRIMINAL SENTENCING**

**CHAPTER 311. STATE PAROLE RECOMMITMENT RANGES**

(*Editor's Note:* The following chapter is proposed to be added and is printed in regular type to enhance readability.)

Sec.	
311.1.	Preliminary provisions.
311.2.	State Parole Violator Recommitment Range standards.
311.3.	Procedure for Determining State Parole Violator Recommitment Range.
311.4.	Technical State Parole Violator Recommitment Ranges: General.
311.5.	Convicted State Parole Violator Recommitment Rages: General.

**§ 311.1. Preliminary provisions.**

(a) *Authorization.*

(1) As authorized by 42 Pa.C.S.A. § 2154.6 (relating to recommitment ranges following revocation of parole by the Board), the Commission shall adopt recommitment ranges that shall be considered by the Board when exercising its power to reparole, commit and recommit for violations of parole any person sentenced by a court in this Commonwealth to imprisonment in any correctional institution.

(i) The recommitment ranges shall take into account:

- (A) The seriousness of the initial conviction offense;
- (B) The level of seriousness of the violation; and
- (C) The rehabilitative needs of the defendant.

(ii) At the end of the recommitment period, the parole violator shall be reviewed for parole or, without further review, shall be reparaed.

(b) *Definitions.* For purposes of this chapter:

*“Convicted Parole Violator.”* Parolee under the jurisdiction of the Board who, during the period of parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty or nolo contendere at any time thereafter in a court of record, may at the discretion of the board be recommitted as a parole violator (61 Pa.C.S. § 6138(a)).

*“Conviction.”* A finding of guilt or the entering of a plea of guilty or nolo contendere for a misdemeanor or felony offense in a court of record, whether or not judgement of sentence has been imposed.

*“Conviction Offense.”* Offense for which the original sentence was imposed.

*“Detainer.”* A written order of the court or paroling authority to hold a person in custody in a correctional institution pending further legal action.

*“Hearing Examiner.”* An agent of the Parole Board who is empowered to sit on parole revocation panels, conduct parole hearings in lieu of panels and conduct parole interviews on behalf of the Parole Board.

*“Hearings.”*

*Detention.* Held within 30 days of parolee's detention, unless waived or a criminal preliminary hearing has been previously held, to determine whether there is probable cause that a parolee should be detained or returned pending disposition of new criminal charge(s).

*Gagnon I Hearing.* A first-level, probable cause hearing held to determine whether there is sufficient evidence to charge an offender with a violation of parole.

*Gagnon II Hearing.* A second-level, fact finding hearing held by a Common Pleas Court to determine whether an offender has in fact violated the terms and conditions of parole, and if so, whether the offender should be sent to prison as a violator or continue on parole.

*Preliminary.* Held no later than 14 days after a parolee's detention, to determine whether there is probable cause to believe that a parolee committed a violation of a condition of parole.

*Rescission.* To decide whether there is good cause for rescinding parole.

*Revocation.* Held within 120 days of a plea of guilty, nolo contendere, or a guilty verdict, or from official notification of return to state institution, if detained elsewhere, to determine whether a parolee should be recommitted as a convicted parole violator.

*Violation.* Held no later than 120 days from the preliminary hearing, to determine whether a parolee should be recommitted as a technical violator.

*“Judicial Proceeding.”* A sentencing hearing in which all offenses for which the offender is convicted are pending before the court for sentencing at the same time. A judicial proceeding may include multiple OTNs.

*“Non-Violent Offender.”* An offender who is not currently or was previously convicted of a violent offense.

*“Offense Gravity Score (OGS).”* An assignment in the sentencing guidelines reflecting the seriousness of a conviction offense (see: 204 Pa. Code § 303.3 and § 303.15).

*“Order of Service of Sentence.”* The Parole Act specifies that a Convicted Parole Violator must serve any new sentence of confinement before his/her backtime, if the new sentence is to a prison other than the prison of original parole (all state prisons are considered to be one prison). If the new sentence is to the same prison, backtime must be served first.

*“Parole.”* The conditional release of an inmate from incarceration. There is no right to parole. An offender sentenced to state or county incarceration is eligible for parole upon reaching minimum sentence. Offenders may be paroled prior to their minimums if made eligible for county re-entry programs at the time of sentencing to county incarceration or upon reaching an RRRI minimum for state incarceration. Upon release to parole, the offender serves the balance of the sentence (maximum) in the community under supervision and with conditions imposed, unless the parole is revoked.

*“Parole Decision.”* The Board or the Court (sentencing judge) renders a decision to grant parole or refuse to grant parole.

*“Parole Violation.”* A finding following a hearing that the offender failed to comply with terms and conditions of parole.

*Technical Violation.* Failure to comply with the terms and conditions of parole, other than by the commission of a new offense of which the offender is convicted in a court of record.

*Conviction Violation.* Commission of a new offense during the period of parole, resulting in a conviction for a misdemeanor or felony in a court of record, whether or not judgement of sentence has been imposed. Violations including both technical and conviction violation are considered conviction violations.

*“Parole Violator.”* An offender under parole supervision in the community who commits a technical violation or conviction violation.

*“Pennsylvania Parole Board (Board).”* An independent executive branch agency comprised of nine members appointed by the Governor and confirmed by the Senate for six-year terms. The Board makes parole, parole revocation and recommitment, and reparole decisions.

*“Presumptive Range.”* A period of recommitment, set as a minimum and maximum term of months for each condition of parole as well as most criminal offenses, that a parolee who violates his/her parole may expect to spend in confinement prior to being eligible for reparole.

*“Prior record score (PRS).”* A category in the sentencing guidelines reflecting the seriousness of the criminal history of an offender (see: 204 Pa. Code § 303.4).

*“Recommitment.”* The return of a parolee to incarceration for violation of the conditions of his/her parole or because of a conviction for a new crime. It is an administrative determination that an offender, because he/she violated parole, should be returned to an institution to serve all or part of the unexpired term of the sentence.

*“Recommitment Range.”* A range of time within which a parole violator may be recommitted to serve an additional part of the term the parole violator would have been compelled to serve had the parole violator not been paroled.

*“Revocation.”* A decision to revoke parole and to recommit an offender to incarceration after a revocation or violation hearing.

*“Sentencing Guidelines Software Web Application (SGS Web).”* A JNET-based application operated by the Commission which includes the modules for Sentencing, Resentencing, and Parole Guidelines. SGS Web serves as the source of data for the original reported sentence and associated information and the reporting source for revocations and resentences.

*“Street Time.”* The period of conditional liberty and freedom from confinement on a particular sentence that a parolee enjoys during which time the parolee is in compliance with the terms and conditions of parole.

*“Technical Parole Violator.”* Parolee who violates the terms and conditions of his parole, other than by the commission of a new crime of which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty or nolo contendere in a court of record, may be detained pending a hearing before the board or waiver of the hearing or recommitted after a hearing before the board or a waiver of the hearing (61 Pa.C.S. § 6138(c)).

*“Violent Offender.”* An offender with a current or previous conviction as provided below, or an offenses otherwise designated by the Pennsylvania Parole Board as violent offense, for which Parole Guidelines for Violent Offenders applies:

42 Pa.C.S.A. § 9714(g)

42 Pa.C.S.A. § 9718.1

42 Pa.C.S.A. § 9799.14

44 Pa.C.S.A. § 2301

### § 311.2. State Parole Violator Reccommitment Range Standards.

(a) The Pennsylvania Parole Board shall consider recommitment ranges in determining the appropriate recommitment time for technical and convicted parole violators

(b) In every case in which the Pennsylvania Parole Board deviates from the recommitment ranges, the Board shall provide a contemporaneous written statement of the reasons for the deviation from the recommitment ranges to the Commission as established under 42 Pa.C.S. § 2153(a)(14) (relating to powers and duties).

(c) The parole violator recommitment ranges apply to revocations of parole following the appropriate hearing(s) and recommitment by the Pennsylvania Parole Board.

(d) The parole violator recommitment ranges shall apply to all state parole violation and revocation hearings initiated on or after the effective date of the recommitment ranges.

(e) Unless otherwise provided by the Commission, the JNET-based Sentencing Guideline Software Web application (SGS Web) shall be used by the Pennsylvania Parole Board to:

- (1) identify or calculate the appropriate recommitment range,
- (2) report recommitment time ordered, and
- (3) report the recommitment and re-parole or release of the offender.

**§ 311.3. Procedure for Determining State Parole Violator Recombitment Range.**

(a) For each state parole recommitment of an offender, the procedure for determining the appropriate recommitment range is as follows:

(1) Upon recommitment, determine if the offender is classified as a convicted parole violator (61 Pa.C.S. § 6138(a)(1) and (1.1)) or a technical parole violator (61 Pa.C.S. § 6138(c)(1) or (c)(1.3)).

(i) A technical parole violator is a parolee under the jurisdiction of the Board who violates the terms and conditions of his parole, other than by the commission of a new crime of which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty or nolo contendere in a court of record, may be detained pending a hearing before the board or waiver of the hearing or recommitment after a hearing before the board or a waiver of the hearing.

(ii) A convicted parole violator is a parolee under the jurisdiction of the Board who, during the period of parole or while delinquent on parole, commits a crime punishable by imprisonment, for which the parolee is convicted or found guilty by a judge or jury or to which the parolee pleads guilty or nolo contendere at any time thereafter in a court of record, may at the discretion of the board be recommitment as a parole violator (61 Pa.C.S. § 6138(a)(1) and (1.1)).

(2) If the offender is a technical parole violator, determine if the offender meets criteria set forth in 61 Pa.C.S. § 6138(c)(1.3):

- (i) offense was sexual in nature;
- (ii) violation involved assaultive behavior or included a credible threat to cause bodily injury to another;
- (iii) violation involved possession or control of a weapon;
- (iv) parolee absconded and cannot be safely diverted to a community corrections center, community corrections facility, or any secured facility operated or contracted by the Department;
- (v) an identifiable threat exists to public safety and parolee cannot be safely diverted to a community corrections center, community corrections facility, or any secured facility operated or contracted by the Department;
- (vi) the violation involved an intentional and unexcused failure to adhere to recommended programming or conditions on more than three occasions, and the parolee cannot be safely diverted.

- (3) Identify the appropriate recommitment range.
  - (b) Determine recommitment time to be served, taking into account the
    - (1) seriousness of the initial conviction offense,
    - (2) the level of seriousness of the violation or new offense, and
    - (3) the rehabilitative needs of the defendant.

**§ 311.4. Technical State Parole Violator Recombitment Ranges: General.**

(a) Ranges of parole recommitment to be served shall be utilized if a parolee violates a general or specific condition of parole, and the Pennsylvania Parole Board orders recommitment as a technical violator after the appropriate violation hearing(s).

(b) Technical parole violators as defined in 61 Pa.C.S. § 6138(c)(1) are subject to revocation of state parole and recommitment. Recombitment is served in a community corrections center, community corrections facility, or any secured facility operated or contracted by the Department.

(1) Technical parole violators shall serve not more than six (6) months (61 Pa.C.S. § 6138(e)(1)).

(2) The Pennsylvania Parole Board may re-parole an offender prior to the six (6) months provided written justification is given (61 Pa.C.S. § 6138(e)(2)).

(3) Technical parole violators as defined in 61 Pa.C.S. § 6138(c)(1.3) are subject to revocation of state parole and recommitment. Recombitment is served in a state correctional institution or a contracted county jail.

(i) For the first recommitment, a technical parole violator shall serve not more than six (6) months (61 Pa.C.S. § 6138(d)(3)(i)). The Pennsylvania Parole Board may re-parole an offender prior to the six (6) months provided written justification is given (61 Pa.C.S. § 6138(d)(4)).

(ii) For the second recommitment for the same sentence, a technical parole violator shall serve not less than six (6) months and not more than nine (9) months (61 Pa.C.S. § 6138(d)(3)(ii)).

(iii) For the third and subsequent recommitment for the same sentence, a technical parole violator shall serve not less than nine (9) months and not more than one (1) year (61 Pa.C.S. § 6138(d)(3)(iii)).

(iv) Maximum recommitment time shall not be applicable (61 Pa.C.S. § 6138(d)(5)) for a recommitment technical parole violator who 1) commits a disciplinary infraction involving assaultive behavior, sexual assault, a weapon or controlled substance, 2) spent more than 90 days in segregated housing due to one or more disciplinary infractions, or 3) refused programming or work assignments.

**§ 311.5. Convicted State Parole Violator Recombitment Ranges: General.**

(a) Ranges of parole recommitment to be served shall be utilized if a parolee is convicted of a new criminal offense while on parole and the Board orders recommitment as a convicted parole violator after the revocation hearing.

(b) Convicted parole violators as defined in 61 Pa.C.S. § 6138(a)(1) and (1.1) are subject to revocation of state parole and recommitment. Recombitment time is served in a correctional facility.

(c) If the Board orders the recommitment of a convicted parole violator, the parolee shall be recommitment to serve an additional part of the term which the parolee would have been compelled to serve had the parolee not been paroled.

(d) The convicted parole violator will complete the original sentence, including recommitment time, and complete a sentence for the new crime in accordance with 61 Pa.C.S. § 6138(a)(5) and (a)(5.1).

(e) The Board may, at its discretion, award credit to a parolee recommitted for time spent at liberty on parole as established in criteria set forth in 61 Pa.C.S. § 6138(a)(2.1).

(f) The Board may, at its discretion, reparole a convicted parole violator (61 Pa.C.S. § 6138(a)(3)).

(g) The recommitment ranges for convicted parole violators are intended to structure the discretion of the Board while allowing for individual circumstances in terms of mitigation and aggravation to be considered in the final decision.

(h) The recommitment ranges for convicted state parole violators are based on the current Offense Gravity Score of the new offense as described below.

<i>Offense Gravity Score</i>	<i>Recommitment Range (in months)</i>
15	60—Expiration of maximum sentence
14	48—Expiration of maximum sentence
13	48—Expiration of maximum sentence
12	36—Expiration of maximum sentence
11	36—Expiration of maximum sentence
10	24—48
9	24—36
8	18—36
7	18—24
6	12—24
5	12—18
4	6—18
3	6—12
2	3—9
1	1—6

(i) For individuals convicted of out-of-state or federal offenses, the Board will determine the current equivalent Offense Gravity Score.

(j) If a convicted parole violator who is re-paroled is convicted of a second offense while on parole for the initial sentence, the Board will consider a recommitment range increased by one Offense Gravity Score for the instant offense.

(k) If a convicted parole violator who is re-paroled is convicted of a third or subsequent offense while on parole for the initial sentence, the Board will consider a recommitment range increased by two Offense Gravity Scores for the instant offense.

(l) When the Board determines that an aggravating circumstance(s) is present, it may impose a recommitment period as follows:

(1) For Offense Gravity Score of 15, the Board may impose a recommitment period up to 24 months longer than the upper limit of the recommitment range.

(2) For Offense Gravity Scores of 11, 12, 13, and 14, the Board may impose a recommitment period up to 12 months longer than the upper limit of the recommitment range.

(3) For Offense Gravity Score of 9 and 10, the Board may impose a recommitment period up to nine months longer than the upper limit of the recommitment range.

(4) For Offense Gravity Scores of 5, 6, 7, and 8, the Board may impose a recommitment period up to six months longer than the upper limit of the recommitment range.

(5) For Offense Gravity Scores of 1, 2, 3, and 4, the Board may impose a recommitment period up to three months longer than the upper limit of the recommitment range.

(m) When the Board determines that a mitigating circumstance(s) is present, it may impose a recommitment period as follows:

(1) For an Offense Gravity Score of 15, the Board may impose a recommitment period up to 24 months less than the lower limit of the recommitment range.

(2) For Offense Gravity Scores of 11, 12, 13, and 14, the Board may impose a recommitment period up to 12 months less than the lower limit of the recommitment range.

(3) For an Offense Gravity Score of 9 and 10, the Board may impose a recommitment period up to nine months less than the lower limit of the recommitment range.

(4) For Offense Gravity Scores of 5, 6, 7, and 8, the Board may impose a recommitment period up to six months less than the lower limit of the recommitment range.

(5) For Offense Gravity Scores of 1, 2, 3, and 4, the Board may impose a recommitment period up to three months less than the lower limit of the recommitment range.

(6) If a paroled offender is recommitted on two or more offenses for the same criminal incident while on parole, the Board will consider the recommitment range for the offense with the greater Offense Gravity Score.

(n) If a paroled offender is convicted of another offense while on parole and the balance of the original sentence is less than the recommended minimum recommitment time, the balance of the sentence is the minimum.

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