

**CHAPTER 75. PRESUMPTIVE RANGES FOR RECOMMITMENTS  
OF PAROLE VIOLATORS**

- Sec.  
75.1. Application of presumptive ranges to convicted parole violators.  
75.2. Presumptive ranges for convicted parole violators.  
75.3. Application of presumptive ranges to technical parole violators.  
75.4. Presumptive ranges for technical parole violators.

**Authority**

The provisions of this Chapter 75 issued under section 506 of The Administrative Code of 1929 (71 P. S. § 186), unless otherwise noted.

**Source**

The provisions of this Chapter 75 adopted August 17, 1979, effective August 18, 1979, 9 Pa.B. 2687, unless otherwise noted.

**Notes of Decisions**

Written justification is necessary before deviating from the presumptive range for recommitment of parole violators. *Kilpatrick v. Board of Probation and Parole*, 521 A.2d 978 (Pa. Cmwlth. 1987).

**§ 75.1. Application of presumptive ranges to convicted parole violators.**

(a) Presumptive ranges of parole backtime to be served will 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 appropriate revocation hearing.

(b) The presumptive ranges of parole backtime 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.

(c) The Board may deviate from the presumptive range or determine that recommitment should not occur, provided written justification is given.

(d) The presumptive ranges are intended to directly relate to the severity of the crime for which the parolee has been convicted.

(e) The severity ranking of crimes listed in § 75.2 (relating to presumptive ranges for convicted parole violations) is not intended to be exhaustive, and the most closely related crime category in terms of severity and the presumptive range will be followed if the specific crime which resulted in conviction is not contained within the listing.

**Source**

The provisions of this § 75.1 adopted August 17, 1979, effective August 18, 1979, 9 Pa.B. 2687.

**Notes of Decisions**

*Calculating Backtime*

In ascertaining the most closely related offense to calculate backtime for a convicted parole violator, the Board of Probation and Parole must look to the conduct for which the parolee was convicted, determine what crime that conduct would constitute if it occurred in Pennsylvania, and apply the presumptive range for the Pennsylvania crime. *Abrams v. Board of Probation*, 935 A.2d 604, 607 (Pa. Cmwlth. 2007)

*Presumptive Range—Deviation*

The Board of Probation and Parole in recommitting petitioner, on probation for third degree murder, deviated from the applicable presumptive range but provided sufficient written justification where

it noted “Convicted for sexually assaulting a young child. Client is extreme danger to the community and his conduct is abhorrent.” This justification was supported by substantial evidence of aggravating circumstances. *Green v. Board of Probation and Parole*, 664 A.2d 667 (Pa. Cmwlth. 1995); appeal denied 674 A.2d 1077 (Pa. 1996).

The Board of Probation and Parole may, on a case-by-case basis, exceed the presumptive range when determining recommitment if written justification is presented. *Bradley v. Board of Probation and Parole*, 587 A.2d 839 (Pa. Cmwlth. 1991).

Where the Board exceeds the maximum presumptive range in awarding back time for parole violations, the Board is required to provide written justification for imposing that excessive back time; those aggravating reasons must also be supported by substantial evidence contained in the record. *Bandy v. Board of Probation and Parole*, 530 A.2d 507 (Pa. Cmwlth. 1987); appeal denied 540 A.2d 535 (Pa. 1988).

Where written justification for exceeding presumptive range was given, and parolee’s testimony supported Board’s conclusion that parolee had negative attitude and interest in parole, Board did not abuse its discretion in exceeding presumptive range for violation. *Clark v. Board of Probation and Parole*, 527 A.2d 1085 (Pa. Cmwlth. 1987); appeal denied 538 A.2d 880 (Pa. 1987).

The Board did not abuse its discretion, where written justification was given for exceeding presumptive range, to the effect that petitioner, while on parole after murder conviction, had engaged in assaultive behavior and possessed a knife less than 1 month following release. *Pounds v. Board of Probation and Parole*, 527 A.2d 180 (Pa. Cmwlth. 1987); decision vacated 558 A.2d 859 (Pa. 1988)

Written justification must be given for deviations from the presumptive ranges for recommitment of a parole violator and where mitigating factors previously cited no longer exist, no written justification is deemed given. *Kilpatrick v. Board of Probation and Parole*, 521 A.2d 978 (Pa. Cmwlth. 1987).

Board did not abuse its discretion by imposing twice the maximum of the presumptive range since the Board found several aggravating circumstances: (1) client on parole for serious offense; (2) violation related to current offense; (3) evidence of crimes within client’s control; (4) possession of firearm involved; and (5) client a threat to community. *Greco v. Board of Probation and Parole*, 513 A.2d 493 (Pa. Cmwlth. 1986).

Where parolee had plead guilty to 29 counts of welfare fraud and one count of criminal conspiracy offenses which had cost the Commonwealth over \$400,000, the Board did not err in analyzing those offenses to “Theft by Deception Over \$200” rather than to “Theft-Misdemeanor of the Third Degree” and, even if it had applied the wrong category, the Board would have been justified in exceeding the presumptive range by the aggravating circumstances. *Caldwell v. Board of Probation and Parole*, 511 A.2d 884 (Pa. Cmwlth. 1986).

The fact that Nevada imposes less severe punishment for carrying a concealed weapon than does Pennsylvania does not require that a lesser presumptive range for recommitment be applied since it is the severity of the criminal conduct and not the severity of the punishment that determines the presumptive range. *Harrington v. Board of Probation and Parole*, 507 A.2d 1313 (Pa. Cmwlth. 1986).

In computing length of recommitment as convicted parole violator, the appellant was recommitted as a technical violator for acts constituting new crimes for which he was convicted, which was beyond the authority of the board. *Massey v. Board of Probation and Parole*, 501 A.2d 1114 (Pa. 1985).

Since subsection (e) provides that the listing of crimes and presumptive ranges in § 75.2 is not exhaustive, the Board acted properly in recommitting petitioner as convicted parole violator even though New Jersey crime had no direct Pennsylvania analog. *Morris v. Board of Probation and Parole*, 500 A.2d 1286 (Pa. Cmwlth. 1985).

Omission of a multiple conviction provision from this section indicates that the board has discretion to recommit for each separate criminal conviction. *Perry v. Board of Probation and Parole*, 485 A.2d 1231 (Pa. Cmwlth. 1984).

The Board's adoption of presumptive ranges of 48 months backtime for violation of conditions of parole pertaining to ownership of firearms and assaultive behavior was within its discretion of this section and was supported by substantial evidence in the record. *Chapman v. Board of Probation and Parole*, 484 A.2d 413 (Pa. Cmwlth. 1984).

Due process does not require that a parole violator be given credit against backtime for confinement time served on a prior unrelated and unproven parole violation, but rather requires only that such confinement time be credited to the parolee's maximum term. *Krantz v. Board of Probation and Parole*, 483 A.2d 1044 (Pa. Cmwlth. 1984).

The omission of multiple conviction provisions from this section indicates that the board has discretion to recommit for each separate criminal conviction. *Corley v. Board of Probation and Parole*, 478 A.2d 146 (Pa. Cmwlth. 1984).

Although the Code does not explicitly state that the Board may consider each criminal conviction as a separate parole violation and may aggregate backtime accordingly, that interpretation is implicit in a comparison of the regulations governing the application of presumptive ranges for convicted parole violators, this section, with those governing technical parole violators, 37 Pa. Code § 75.4. *Corley v. Board of Probation and Parole*, 478 A.2d 146 (Pa. Cmwlth. 1984).

A reasonable interpretation of subsections (b) and (c) is that the board may consider mitigating and aggravating circumstances to arrive at a recommitment time within the presumptive range, but need only set forth those circumstances when consideration of them leads to an order deviating from the presumptive range. *Corley v. Board of Probation and Parole*, 478 A.2d 146 (Pa. Cmwlth. 1984).

The Board adopted the presumptive ranges found in this chapter in an attempt to structure the discretion of the Board while allowing deviation for individual circumstances. *Gundy v. Board of Probation and Parole*, 478 A.2d 139 (Pa. Cmwlth. 1984).

In upholding a 10 month recommitment for a parolee's conviction of the summary offense harassment, the court noted that the Board should clearly articulate its reasons for deviating from the presumptive range for criminal convictions under 37 Pa. Code § 75.1(c). *Lewis v. Board of Probation and Parole*, 459 A.2d 1339 (Pa. Cmwlth. 1983).

The regulations for backtime recommitment are sufficiently specific so that parolee's recommitment for backtime is not violative of due process if the recommitment is within the presumptive range and if the parolee does not allege any mitigating factors which the Board has refused to consider. *Macon v. Board of Probation and Parole*, 455 A.2d 1279 (Pa. Cmwlth. 1983).

**§ 75.2. Presumptive ranges for convicted parole violators.**

If the Board orders the recommitment of a parolee as a convicted parole violator, the parolee shall be recommitted to serve an additional part of the term which the parolee would have been compelled to serve had he not been paroled, in accordance with the following presumptive ranges:

<i>Offense Categories</i>	<i>Presumptive Ranges</i>
Murder	36 months to expiration of maximum sentence
Criminal Conspiracy (Murder)	24 months to 48 months
Voluntary Manslaughter	24 months to 48 months
Involuntary Manslaughter	12 months to 18 months
Homicide by Vehicle	12 months to 18 months
Driving Under Influence	3 months to 6 months

<i>Offense Categories</i>	<i>Presumptive Ranges</i>
Violation No Fault Motor Vehicle Insurance Act	3 months to 6 months
Accident Involving Death or Personal Injury (Hit and Run)	1 month to 6 months
Reckless Driving	0 months to 6 months
Aggravated Assault: Felony of the Second Degree	24 months to 40 months
Misdemeanor of the First Degree	15 months to 28 months
Assault by Prisoner	24 months to 33 months
Recklessly Endangering Another Person	12 months to 18 months
Simple Assault	9 months to 15 months
Terroristic Threats	6 months to 12 months
Harrassment	1 month to 6 months
Kidnapping	30 months to expiration of maximum sentence
False Imprisonment	6 months to 12 months
Rape (Forcible)	30 months to 48 months
Involuntary Deviate Sexual Intercourse	27 months to 40 months
Statutory Rape	18 months to 24 months
Indecent Assault	12 months to 18 months
Indecent Exposure	6 months to 12 months
Arson	27 months to 40 months
Criminal Mischief: Felony of the Third Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree or Summary Offense	1 month to 3 months
Burglary	15 months to 24 months
Criminal Trespass: Felony of the Second Degree	12 months to 18 months
Felony of the Third Degree	6 months to 12 months

<i>Offense Categories</i>	<i>Presumptive Ranges</i>
Misdemeanor of the Third Degree or Summary Offense	1 month to 6 months
Robbery:	
Felony of the First Degree	30 months to 48 months
Felony of the Second or Third Degree	24 months to 40 months
Theft:	
Felony of the Third Degree or Misdemeanor of the First Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree	1 month to 6 months
Theft by Deception:	
Felony of the Third Degree or Misdemeanor of the First Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree	1 month to 6 months
Receiving Stolen Property:	
Felony of the Third Degree or Misdemeanor of the First Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree	1 month to 6 months
Theft of Services:	6 months to 12 months
Felony of the Third Degree or Misdemeanor of the First Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree or Summary Offense	1 month to 6 months

<i>Offense Categories</i>	<i>Presumptive Ranges</i>
Unauthorized Use of Auto or Other Vehicle	6 months to 12 months
Retail Theft:	
Felony of the Third Degree or Misdemeanor of the First Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Misdemeanor of the Third Degree or Summary Offense	1 month to 6 months
Forgery	6 months to 12 months
Bad Checks:	
Misdemeanor of the Second Degree	6 months to 12 months
Summary Offense	1 month to 6 months
Credit:	
Felony of the Third Degree	6 months to 12 months
Misdemeanor of the Second Degree	3 months to 6 months
Summary Offense	1 month to 6 months
Incest	12 months to 18 months
Unsworn Falsification to Authorities	3 months to 6 months
Obstructing Administration of Law or other Governmental Function	6 months to 12 months
Resisting Arrest	6 months to 12 months
Escape	6 months to 12 months
Default in Required Appearance	1 month to 6 months
Failure to Disperse Upon Official Order	3 months to 6 months
Disorderly Conduct	1 month to 6 months
Harassment by Communication or Address	1 month to 6 months
Loitering & Prowling at Night	6 months to 12 months
Open Lewdness	3 months to 6 months

<i>Offense Categories</i>	<i>Presumptive Ranges</i>
Prostitution	3 months to 6 months
Drug Law Violations:	
Felony with Statutory Maximum of 15 years	24 months to 36 months
Felony with Statutory Maximum of 10 years	18 months to 24 months
Felony with Statutory Maximum of 5 years	9 months to 15 months
Felony with Statutory Maximum of 3 years and Misdemeanors with Statutory Maximum of 2 or 3 years	6 months to 12 months
Misdemeanor with Statutory Maximum of 1 year	3 months to 6 months
Misdemeanor with Statutory Maximum of 30 days	1 month to 3 months
Violation of any Provision of the Pennsylvania Uniform Firearms Act	18 months to 24 months
Prohibited Offensive Weapons	12 months to 18 months
Possessing Instruments of Crime	6 months to 12 months
Corruption of Minors	18 months to 24 months
Criminal Attempt	Relate to Crime
Criminal Solicitation	Relate to Crime
Criminal Conspiracy	Relate to Crime

**Source**

The provisions of this § 75.2 adopted August 17, 1979, effective August 18, 1979, 9 Pa.B. 2687; amended January 16, 1981, effective January 17, 1981, 11 Pa.B. 353; amended June 1, 1984, effective June 2, 1984, 14 Pa.B. 1865; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122555) to (122558).

**Notes of Decisions**

*Acceptable Sentence*

Although this regulation contained no presumptive range for an F-1 aggravated assault, because 40 months falls within the presumptive range for an F-2 aggravated assault, that term was not excessive. *Hartage v. Board of Probation and Parole*, 662 A.2d 1157 (Pa. Cmwlth. 1995).

*Attorney*

Where a parole violator did not contest conviction for offense, and backtime imposed for conviction was within the presumptive range as provided under this section, the Board of Probation and Parole's discretion in imposing that backtime would not be reviewed, and therefore attorney may withdraw on grounds that appeal was frivolous. *Congo v. Board of Probation and Parole*, 522 A.2d 676 (Pa. Cmwlth. 1987).

*Backtime—Not Excessive*

Under this regulation, the presumptive range for simple assault is 9 to 15 months. The Board of Probation and Parole's 15 month imposition of backtime for parolee's simple assault conviction was within the presumptive range and should not be disturbed. *Houser v. Board of Probation and Parole*, 675 A.2d 787 (Pa. Cmwlth. 1996); affirmed 682 A.2d 1365 (Pa. 1996); appeal denied 692 A.2d 568 (Pa. 1997).

*Calculating Backtime*

In ascertaining the most closely related offense to calculate backtime for a convicted parole violator, the Board of Probation and Parole must look to the conduct for which the parolee was convicted, determine what crime that conduct would constitute if it occurred in Pennsylvania, and apply the presumptive range for the Pennsylvania crime. *Abrams v. Board of Probation*, 935 A.2d 604, 607 (Pa. Cmwlth. 2007)

*General Comment*

The Board of Probation and Parole cannot recommit a convicted parole violator to serve more than the balance of the parole's unexpired term. *Davenport v. Board of Probation and Parole*, 656 A.2d 581 (Pa. Cmwlth. 1995).

*Backtime*

The General Assembly specifically granted the Board of Probation and Parole discretion to return a parole violator to prison for the entire remaining balance of the unexpired term and where the Board's findings are supported by substantial evidence and the backtime imposed was within the published presumptive ranges, the Board's discretion would not be disturbed. *LaCourt v. Board of Probation and Parole*, 488 A.2d 70 (Pa. Cmwlth. 1985).

*—Computation*

There was insufficient foundation to compute backtime where there was no court record of degree of crime committed. *Allen v. Board of Probation and Parole*, 567 A.2d 345 (Pa. Cmwlth. 1989).

Although Code did not explicitly state, the Board of Probation and Parole may aggregate backtime for various offenses, and where recommitment order was within presumptive range when taken in the aggregate, it was not excessive. *Pierce v. Board of Probation and Parole*, 525 A.2d 1281 (Pa. Cmwlth. 1987); appeal denied 535 A.2d 1059 (1987).

A 33 month backtime recommitment was consistent with the presumptive range for aggravated assault under this section. *Macon v. Board of Probation and Parole*, 455 A.2d 1279 (Pa. Cmwlth. 1983).

*—Not Excessive*

Backtime of 24 months was not excessive and the parolee was properly committed as a technical violator for consumption of alcohol and conviction for driving under the influence. *Amaker v. Board of Probation and Parole*, 544 A.2d 111 (Pa. Cmwlth. 1988); affirmed in part, reversed in part 576 A.2d 50 (Pa. 1990).

*Offenses**—Assault*

The presumptive range for aggravated assault, graded as a first degree misdemeanor, was 15 to 24 months; for simple assault, 9 to 15 months; for attempted theft by unlawful taking or disposition, graded as a first degree misdemeanor, 6 to 12 months. *Bandy v. Board of Probation and Parole*, 530 A.2d 507 (Pa. Cmwlth. 1987); appeal denied 540 A.2d 535 (Pa. 1988).

—*Conspiracy*

Where parolee had been convicted on Federal charges of aiding and abetting a bank robbery, and of conspiracy to rob a bank, the Board of Probation and Parole did not abuse its discretion by imposing 36 months back time, which was well within the presumptive range for the conspiracy alone. *Cameron v. Board of Probation and Parole*, 496 A.2d 419 (Pa. Cmwlth. 1985).

—*Robbery*

The presumptive range for the offense of robbery did not violate a parole violator's right to equal protection because the presumptive range for robbery was correlative with the presumptive ranges for other felonies; there need not be separate presumptive ranges for different degrees of robbery to satisfy equal protection. *McClinton v. Board of Probation and Parole*, 546 A.2d 759 (Pa. Cmwlth. 1988).

Since the presumptive backtime range for convicted parole violators for robbery was 24 to 40 months and for burglary was 15 to 42 months and the Board of Probation and Parole had discretion to recommit for each separate criminal conviction, it was proper for the Board to set petitioner's backtime at 48 months, given a maximum cumulative range of 64 months and minimum cumulative range of 39 months based on convictions for burglary and robbery. *Garris v. Board of Probation and Parole*, 516 A.2d 808 (Pa. Cmwlth. 1986); appeal denied 526 A.2d 1191 (Pa. 1987).

—*Trespass*

In holding that the imposition of 9 months backtime for a conviction of criminal trespass was supported by sufficient justification, the court noted that this section gives a presumptive backtime range of 3 to 6 months for criminal trespass. *Robinson v. Board of Probation and Parole*, 461 A.2d 903 (Pa. Cmwlth. 1983).

—*Unlisted*

The list of offenses set forth in this section and the assignment of a presumptive range of recommitment time in terms of months for each offense was not exhaustive; and in those cases where a parolee was convicted out-of-State of an offense not listed, then the presumptive range of the offense most clearly related in terms of severity was used. *Simpson v. Board of Probation and Parole*, 556 A.2d 542 (Pa. Cmwlth. 1989); appeal denied 575 A.2d 117 (Pa. 1990).

*Presumptive Range*

The presumptive ranges established by this Board of Probation and Parole to structure the Board's discretion to assign a range in terms of months for various parole conditions and various crimes for which a parolee may be connected. *Krantz v. Board of Probation and Parole*, 483 A.2d 1044 (Pa. Cmwlth. 1984).

Recommitment for 12 months as a technical parole violator and 60 months as a convicted parole violator was appropriate even though petitioner argued that sentence reflected eleven, not twelve, first degree felonies; the term of recommitment would have been within the presumptuous range even if convicted of only one robbery and one burglary in addition to the technical violation. *Ralph v. Board of Probation and Parole*, 488 A.2d 377 (Pa. Cmwlth. 1985).

The presumptive range of recommitment incarceration directed by this section was not applied where the Board ordered a parolee to service the remainder of his unexpired term for violating a special condition of his parole. *Lewis v. Board of Probation and Parole*, 459 A.2d 1339 (Pa. Cmwlth. 1983).

—*Deviation*

The Board of Probation and Parole did not abuse its discretion, where written justification was given for exceeding presumptive range, to the effect that petitioner, while on parole after murder con-

viction, had engaged in assaultive behavior and possessed a knife less than 1 month following release. *Pounds v. Board of Probation and Parole*, 527 A.2d 180 (Pa. Cmwlth. 1987); decision vacated 558 A.2d 859 (Pa. 1989).

Written justification must be given for deviations from the presumptive ranges for recommitment of a parole violator and where mitigating factors previously cited no longer existed, no written justification was deemed given. *Kilpatrick v. Board of Probation and Parole*, 521 A.2d 978 (Pa. Cmwlth. 1987).

Where the petitioner's only proven conviction was for burglary, using the presumptive recommitment range for a robbery conviction was a violation of petitioner's right to due process, unless written justification for the deviation from the proper presumptive range is provided by the Board of Probation and Parole. *Zazo v. Board of Probation and Parole*, 470 A.2d 1135 (Pa. Cmwlth. 1984).

#### Cross References

This section cited in 37 Pa. Code § 75.1 (relating to application of presumptive ranges to convicted parole violators).

### § 75.3. Application of presumptive ranges to technical parole violators.

(a) Presumptive ranges of parole backtime to be served shall be utilized if a parolee violates a general or special condition of parole, and the Board orders recommitment as a technical violator after the appropriate violation hearing.

(b) The presumptive ranges of parole backtime 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.

(c) The Board may deviate from the presumptive range or determine that recommitment should not occur provided sufficient written justification is given.

(d) The presumptive ranges are intended to directly relate to the severity of the technical violation, both singly and in combination.

(e) When multiple violations occur, the presumptive range will be used which has the highest backtime range of those conditions violated.

(f) Backtime for a violation of a special condition shall be aggregated with other backtime, unless the revocation decision states otherwise.

#### Authority

The provisions of this § 75.3 amended under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. §§ 331.1—331.34).

#### Source

The provisions of this § 75.3 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 353; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122559) to (122560).

#### Notes of Decisions

##### *Backtime*

Subsection (f), when read in light of subsection (e) and § 75.4, does not imply that a technical violation of a general condition must be applied to run concurrently with other backtime. *Mione v. Board of Probation and Parole*, 709 A.2d 440 (Pa. Cmwlth. 1998).

The Board was justified in imposing backtime in the 3 to 18 month range when a parolee admitted at the parole hearing that he had quit his job in anticipation of securing a higher paying position which was a condition of parole. *Smith v. Board of Probation and Parole*, 543 A.2d 221 (Pa. Cmwlth. 1988); appeal granted 557 A.2d 728 (Pa. 1989); affirmed 574 A.2d 558 (Pa. 1990).

#### *Computation of Time*

Board of Probation and Parole did not exceed its presumptive range in imposing backtime for parole violation where the backtime imposed for violation of special condition of parole, unexpired term, was in effect only 9 days, since total unexpired term was 1 year and 9 days, Board had imposed 12 months for violations of general parole conditions and backtime imposed for general parole condition violations and special parole condition violations are aggregated to compute a reparole eligibility date. *Lawson v. Board of Probation and Parole*, 524 A.2d 1053 (Pa. Cmwlth. 1987).

This section provided presumptive recommitment ranges only for violations of general conditions. There were no presumptive ranges to be followed when a parolee violated a special condition of parole and special condition violations must be dealt with at least as severely as the least serious of the general conditions, according to subsection (f). *Lewis v. Board of Probation and Parole*, 459 A.2d 1339 (Pa. Cmwlth. 1983).

#### *Evidence*

Court did not rule on issue of whether evidence concerning criminal charges obtained without the warning required by § 71.2(1) must be excluded from parole violation hearings as parole revocation hearings are not conducted with the same evidentiary rules as would apply to trial on criminal charges; even statements taken in violation of *Miranda* rights are admissible as evidence during revocation hearings. *Coleman v. Board of Probation and Parole*, 515 A.2d 1004 (Pa. Cmwlth. 1986).

#### *Presumptive Range Exceeded*

Where defendant had been paroled on three different occasions and on the last occasion again violated a special condition of probation, there was sufficient justification for exceeding the maximum presumptive range. *Moroz v. Board of Probation and Parole*, 660 A.2d 131 (Pa. Cmwlth. 1995).

Board of Probation and Parole did not abuse its discretion, where written justification was given for exceeding presumptive range, to the effect that petitioner, while on parole after murder conviction, had engaged in assaultive behavior and possessed a knife less than 1 month following release. *Pounds v. Board of Probation and Parole*, 527 A.2d 180 (Pa. Cmwlth. 1987); decision vacated 558 A.2d 859 (Pa. 1989).

#### *Procedure*

Under 37 Pa. Code § 75.4, the applicable presumptive range for violating a special condition imposed by the Board of Probation and Parole or the parole agent was 3 to 18 months. Where the Board imposed backtime in excess of the maximum presumptive range, the Board was required to provide written justification for the increased backtime listing any aggravating reasons. Additionally, the aggravating reasons found by the Board must be supported by substantial evidence in the record. *Moroz v. Board of Probation and Parole*, 660 A.2d 131 (Pa. Cmwlth. 1995).

Written justification must be given for deviations from the presumptive ranges for recommitment of a parole violator and where mitigating factors previously cited no longer exist, no written justification was deemed given. *Kilpatrick v. Board of Probation and Parole*, 521 A.2d 978 (Pa. Cmwlth. 1987).

Without additional explanation or supporting evidence in the record, the Board of Probation and Parole's statement, "Aggravating: pattern of parole failure," did not constitute sufficient written justification for deviating from the presumptive recommitment ranges for technical violation of parole. *Carthon v. Board of Probation and Parole*, 512 A.2d 799 (Pa. Cmwlth. 1986).

Where the Board of Probation and Parole varied from the presumptive ranges, by either increasing or decreasing backtime, it was required to state in writing the mitigating or aggravating reasons. *Krantz v. Board of Probation and Parole*, 483 A.2d 1044 (Pa. Cmwlth. 1984).

The Board of Probation and Parole adopted the presumptive ranges found in this chapter in an attempt to structure the discretion of the Board while allowing deviation for individual circumstances. *Gundy v. Board of Probation and Parole*, 478 A.2d 139 (Pa. Cmwlth. 1984).

#### *Sentence within Range*

The general condition which the parolee was found to have violated, having the highest back time range had a presumptive range of 5 to 12 months. Aggregating that back time with the back time for violation of three special conditions, the presumptive range became 14 to 66 months. The amount of back time imposed by the Board of Probation and Parole was 24 months, a period of time within the presumptive range. *Kelly v. Board of Probation and Parole*, 669 A.2d 436 (Pa. Cmwlth. 1995).

Where defendant had been on parole after serving a 9 to 60 month sentence and was subsequently arrested for receiving stolen property and multiple technical parole violations, the Board of Probation and Parole's order that petitioner serve 18 months backtime was in accord with the appropriate range for multiple violations. *Coleman v. Board of Probation and Parole*, 515 A.2d 1004 (Pa. Cmwlth. 1986).

The Board of Probation and Parole's imposition of 48 months backtime for violation of conditions of parole pertaining to ownership of firearms and assaultive behavior was within the presumptive ranges authorized by subsection (b) and was supported by substantial evidence in the record. *Chapman v. Board of Probation and Parole*, 484 A.2d 413 (Pa. Cmwlth. 1984).

#### *Special Conditions*

The Board of Probation and Parole can aggregate the recommitment period for a parolee's violation of a special condition of parole along with multiple violations of general conditions of parole. *Williams v. Board of Probation and Parole*, 701 A.2d 279 (Pa. Cmwlth. 1997).

Fifteen month imposition of back time by the Board of Probation and Parole was within the presumptive range for violating special conditions of parole relating to consumption of alcohol and therefore was not disturbed as an abuse of discretion by the Board. *Lotz v. Board of Probation and Parole*, 548 A.2d 1295 (Pa. Cmwlth. 1988); affirmed 583 A.2d 427 (Pa. 1990).

The minimum and maximum recommended recommitment periods set forth in this section provide a rationale for the Board of Probation and Parole's choice of minimum and maximum presumptive ranges for violations of special conditions. *Johnson v. Board of Probation and Parole*, 527 A.2d 1107 (Pa. Cmwlth. 1987).

While the presumptive ranges for recommitment of technical parole violators did not apply to a violation of a special condition of parole, such a violation must be dealt with at least as severely as the least serious of the general conditions, so that a recommitment which exceeded the minimum by only 6 months was not an abuse of the Board of Probation and Parole's discretion. *Marsh v. Board of Probation and Parole*, 485 A.2d 853 (Pa. Cmwlth. 1984).

The imposition of a special condition that duplicated a general condition, and the use of it as a foundation for an aggregation and extension of the time periods, was an increase of the possible recommitment time in the absence of any express justification in violation of subsection (c). *Gartner v. Board of Probation and Parole*, 469 A.2d 697 (Pa. Cmwlth. 1983).

The Board of Probation and Parole, upon a finding of a violation of a special condition, had authority under this section to recommit a parolee and aggregate time periods for a period in excess of the presumptive ranges. *Gartner v. Board of Probation and Parole*, 469 A.2d 697 (Pa. Cmwlth. 1983).

*Special Conditions*

—*Sentence within Range*

In order to give effect to subsection (f) of this regulation, subsection (e) must be interpreted to refer only to multiple violations of general parole conditions. Interpreting subsection (e) as including special conditions would render subsection (f) a nullity. If a parolee violates a general condition in addition to a special condition, under a strict reading of subsection (e), the amount of back time assessed would be in the range of 3 to 18 months. This interpretation would conflict with the requirement in subsection (f) that back time for a violation of a special condition be aggregated with other back time. *Kelly v. Board of Probation and Parole*, 669 A.2d 436 (Pa. Cmwlth. 1995).

Parolee’s back time recommitment of 18 months for violation of a special condition relating to consumption of alcohol fell within presumptive range under this section and thus was not excessive; overruling *Knight v. Board of Probation and Parole*, 510 A.2d 402 (Pa. Cmwlth. 1986); overruled 527 A.2d 1107 (Pa. Cmwlth. 1987), *Johnson v. Board of Probation and Parole*, 527 A.2d 1107 (Pa. Cmwlth. 1987).

The Board of Probation and Parole’s denial of administrative relief would be affirmed where the backtime given for a special condition violation was within the Board’s three to eighteen months presumptive range. *Lantzy v. Board of Probation and Parole*, 477 A.2d 18 (Pa. Cmwlth. 1984).

A Board of Probation and Parole’s order of 36 months of backtime for a violation of a special condition that had a 6 to 18 months presumptive range was not an abuse of discretion where the Board provided sufficient written justification under subsection (c). *Fahlfeder v. Board of Probation and Parole*, 470 A.2d 1130 (Pa. Cmwlth. 1984).

*Technical Violations*

The imposition of a sentence of 18 months backtime for four technical parole violations was the proper maximum sentence under the presumptive ranges. *Lewis v. Board of Probation and Parole*, 515 A.2d 1033 (Pa. Cmwlth. 1986).

The Board of Probation and Parole may not impose additional time beyond the presumptive range for multiple technical violations solely on the basis of there being multiple technical violations. *Robinson v. Board of Probation and Parole*, 503 A.2d 1048 (Pa. Cmwlth. 1986); appeal after remand 520 A.2d 1230 (Pa. Cmwlth. 1987).

The Board of Probation and Parole may not recommit for technical violations where technical violations are based upon acts which constitute new crimes upon which parolee had been convicted. *Robinson v. Board of Probation and Parole*, 503 A.2d 1048 (Pa. Cmwlth. 1986); appeal after remand 520 A.2d 1230 (Pa. Cmwlth. 1987).

**§ 75.4. Presumptive ranges for technical parole violators.**

The presumptive ranges for recommitment for the general conditions of parole are as follows:

<i>Violation of:</i>	<i>Single</i>	<i>Multiple</i>
Condition 1 (see § 63.4(1))	6 to 12 months	6 to 18 months
Condition 2 (see § 63.4(2))	6 to 9 months	6 to 18 months
Condition 3(a) (see § 63.4(3)(i))	3 to 6 months	6 to 18 months
Condition 3(b)	3 to 6 months	6 to 18 months

<i>Violation of:</i>	<i>Single</i>	<i>Multiple</i>
(see § 63.4(3)(ii))		
Condition 3(c) (see § 63.4(3)(iii))	3 to 6 months	6 to 18 months
Condition 4 (see § 63.4(4))	3 to 9 months	6 to 18 months
Condition 5(a) (see § 63.4(5)(i))	5 to 12 months	6 to 18 months
Condition 5(b) (see § 63.4(5)(ii))	6 to 12 months	6 to 18 months
Condition 5(c) (see § 63.4(5)(iii))	6 to 18 months	6 to 18 months
Condition 6 (see § 63.4(6))	0 to 6 months	
Special Condition (see § 63.5)	3 to 18 months	See § 75.3(f)

#### Authority

The provisions of this § 75.4 amended under section 506 of The Administrative Code of 1929 (71 P. S. § 186); and the act of August 6, 1941 (P. L. 861, No. 323) (61 P. S. §§ 331.1—331.34).

#### Source

The provisions of this § 75.4 adopted January 16, 1981, effective January 17, 1981, 11 Pa.B. 353; amended January 15, 1988, effective January 16, 1988, 18 Pa.B. 250. Immediately preceding text appears at serial pages (122562) to (122563).

#### Notes of Decisions

##### *Appeals*

The court will not interfere with the Board of Probation and Parole's exercise of discretion where the Board's finding of technical parole violation was supported by substantial evidence and the back-time imposed was within the presumptive range. *Hawkins v. Board of Probation and Parole*, 490 A.2d 942 (Pa. Cmwlth. 1985).

##### *Danger to Society Determinations*

Nothing in the record supported the Board of Probation and Parole's conclusion that the parolee was a danger to society when the parolee was charged with a single technical violation. Drug use alone did not justify deviation from the presumptive range and the fact that the parolee's underlying conviction was for third-degree murder did not make the parolee any more a threat to society than when the parolee was first paroled. *Duncan v. Board of Probation*, 687 A.2d 1179 (Pa. Cmwlth. 1996); appeal denied 704 A.2d 1383 (Pa. 1997).

##### *Evidence*

Although the Board of Probation and Parole is specifically permitted to review requests for administrative relief de novo, the panel must issue an order to that effect. Unless the Board expressly orders that the matter will be heard de novo, the revocation panel must only review the revocation decision

on a substantial evidence standard. On petition for administrative relief, without an order for de novo review, new or additional findings on aggravating circumstances cannot be made in order to support backtime imposed. Having determined that the finding of a violation of condition 2 was not supported by substantial evidence, as evidenced by the order removing all references to that condition from the Board's order, the backtime imposed, which was for a single violation of condition 5, should have been reduced. *Watkins v. Board of Probation and Parole*, 685 A.2d 226 (Pa. Cmwlth. 1996).

Where the Board of Probation and Parole imposed backtime in excess of the maximum presumptive range, the Board was required to provide written justification for the increased backtime listing any aggravating reasons. Additionally, the aggravating reasons found by the Board must be supported by substantial evidence in the record. *Moroz v. Board of Probation and Parole*, 660 A.2d 131 (Pa. Cmwlth. 1995).

There was substantial evidence to allow the Board of Probation and Parole to exceed the presumptive range for multiple violations of condition 5A where the Board stated the following aggravating circumstances: "Early failure on parole. Serious multiple convictions. Overall poor parole adjustment. On parole for similar charges." *Ward v. Board of Probation and Parole*, 538 A.2d 971 (Pa. Cmwlth. 1988).

If the Board of Probation and Parole imposes backtime in excess of the maximum presumptive range for a given violation, it must justify the increased backtime by listing the aggravating factors upon which it based its decision and these aggravating factors must be supported by substantial evidence contained in the record. *Harper v. Board of Probation and Parole*, 520 A.2d 518 (Pa. Cmwlth. 1987); appeal denied 531 A.2d 432 (Pa. 1987).

Court did not rule on issue of whether evidence concerning criminal charges obtained without warning required by § 71.2(1) must be excluded from parole violation hearings. These hearings do not need to be conducted with the same evidentiary rules as would apply to trial on criminal charges. Even statements taken in violation of *Miranda* rights are admissible as evidence during revocation hearing. *Coleman v. Board of Probation and Parole*, 515 A.2d 1004 (Pa. Cmwlth. 1986).

#### *General Comment*

This section sets forth presumptive ranges for recommitment of technical parole violators. *Marsh v. Board of Probation and Parole*, 485 A.2d 853 (Pa. Cmwlth. 1984).

The presumptive ranges established by this Board of Probation and Parole to structure its discretion assign a range in terms of months to various parole conditions and for various crimes for which a parolee may be connected. *Krantz v. Board of Probation and Parole*, 483 A.2d 1044 (Pa. Cmwlth.).

#### *Multiple Convictions*

The Board may impose separate recommitment terms for each conviction while on parole although the separate convictions involved arise out of the same criminal event, since the multiple conviction provision contained in this section does not appear in § 73.1. *Perry v. Board of Probation and Parole*, 485 A.2d 1231 (Pa. Cmwlth. 1984).

#### *Presumptive Range Exceeded*

Parolee failed to assert how the missing portion of the witnesses cross-examination testimony could negate the fact that substantial evidence existed in the transcribed portion of the witness's testimony, and in the record as a whole. Therefore, based on the parolee's history of sex offenses, violent behavior, danger to the community, and original conviction, parolee was properly recommitted for a length of time exceeding the presumptive range in imposing backtime. *Harris v. Board of Probation and Parole*, 680 A.2d 35 (Pa. Cmwlth. 1996).

*Procedure*

Under this section, the applicable presumptive range for violating a special condition imposed by the Board of Probation and Parole or the parole agent was 3 to 18 months. *Moroz v. Board of Probation and Parole*, 660 A.2d 131 (Pa. Cmwlth. 1995).

*Sentence within Range*

Where petitioner was found to have violated one count of a general condition of his parole which, under regulation of the Board of Probation and Parole, carries a presumptive range of 5 to 12 months, and because the recommitment fell within the presumptive range, the period of recommitment was proper. *Price v. Board of Probation and Parole*, 781 A.2d 212 (Pa. Cmwlth. 2001).

Parolee was recommitment within presumptive range following arrest by parole agent for possession of knife and multiple other violations of the conditions of parole. *Kyte v. Board of Probation and Parole*, 680 A.2d 14 (Pa. Cmwlth. 1996).

The general condition which the parolee was found to have violated, having the highest back time range had a presumptive range of 5 to 12 months. Aggregating that back time with the back time for violation of three special conditions, the presumptive range became 14 to 66 months. The amount of back time imposed by the Board of Probation and Parole was 24 months, a period of time within the presumptive range. *Kelly v. Board of Probation and Parole*, 669 A.2d 436 (Pa. Cmwlth. 1995).

The fact that petitioner had been repeatedly warned by parole agent not to associate with drug users, that a lab report indicated petitioner had ingested methamphetamine and petitioner admitted to taking the pill, was sufficient to warrant the Board of Probation and Parole to increase petitioner's recommitment from the 5—12 month presumptive range to 15 months. *Moore v. Board of Probation and Parole*, 530 A.2d 1011 (Pa. Cmwlth. 1987).

Where Board of Probation and Parole imposed backtime of 12 months for three technical parole violations and court deleted the finding of one of those violations, 12 months backtime was still well within the presumptive range for two technical parole violations, thus remand to Board for reconsideration of backtime imposed was not required. *Lawson v. Board of Probation and Parole*, 524 A.2d 1053 (Pa. Cmwlth. 1987).

Where defendant had been on parole after serving a 9 to 60 month sentence and was subsequently arrested for receiving stolen property and multiple technical parole violations, the Board of Probation and Parole order that petitioner serve 18 months backtime was in accord with the appropriate range for multiple violations. *Coleman v. Board of Probation and Parole*, 515 A.2d 1004 (Pa. Cmwlth. 1986).

Imposition of 18 months backtime for technical violation (engaging in assaultive behavior) is within the published presumptive range for general parole condition 5C. *LaCourt v. Board of Probation and Parole*, 488 A.2d 70 (Pa. Cmwlth. 1985).

Fifteen months backtime given by the Board of Probation and Parole was within the 6 to 18 months presumptive range for multiple violations of general parole conditions 1 (obtaining permission to leave parole district) and 5(ii) (refraining from owning or possessing any weapon). *Lantzy v. Board of Probation and Parole*, 477 A.2d 18 (Pa. Cmwlth. 1984).

The recommitment time specified in this section was a minimum time and the Board did not violate its own regulations where the range was exceeded because a parolee violated a special condition of parole. *Lewis v. Board of Probation and Parole*, 459 A.2d 1339 (Pa. Cmwlth. 1983).

*Treatment Programs*

Participation in required inpatient drug and alcohol treatment program need not be credited against unexpired prison term of parole violator where program lacked custodial aspects which are characteristic of confinement. *Jackson v. Board of Probation and Parole*, 568 A.2d 1004 (Pa. Cmwlth. 1990).

*Written Justification*

Written justification must be given for deviations from the presumptive ranges for recommitment of a parole violator and where mitigating factors previously cited no longer exist, no written justification was deemed given. *Kilpatrick v. Board of Probation and Parole*, 521 A.2d 978 (Pa. Cmwlth. 1987).

The Board of Probation and Parole did not abuse its discretion, where written justification was given for exceeding presumptive range, to the effect that petitioner, while on parole after murder conviction, had engaged in assaultive behavior and possessed a knife less than 1 month following release. *Pounds v. Board of Probation and Parole*, 527 A.2d 180 (Pa. Cmwlth. 1987); decision vacated 558 A.2d 859 (Pa. 1989).

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