



MEMORANDUM

TO: The Pennsylvania House of Representatives and the Pennsylvania Senate

FROM: Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

DATE: October 21, 2020

RE: OPPOSITION TO HOUSE BILL 1538 P.N. 3666 (WHITE)

Under [current law](#),¹ people are entitled to parole consideration once a year, except for those convicted of murder of an unborn child or law enforcement officer, which the parole board may elect to hear every five years. [HB 1538](#) would amend this statute to require that people convicted of one of thirteen different offenses wait three years from the date of their current application to reapply for parole if parole was previously denied. The bill also clarifies that a hearing examiner, hearing officer or member of the board charged with making the parole release decision shall be required to hear and see in person, without the use of videoconferencing or similar virtual presence technology, any in-person victim testimony.

On behalf of over 100,000 members and supporters of the ACLU of Pennsylvania, I respectfully urge you to oppose House Bill 1538 for the following reasons:

Intent behind HB 1538 erodes the statutory right to a parole hearing

In her [co-sponsorship memo](#), Representative White stated that HB 1538's provision to delay parole is intended to prevent "having the victim re-appear at parole proceedings every year" because it "only serves to cause the victim further emotional distress."² Senator Sabatina, who introduced [SB 123](#), the companion bill to HB 1538, similarly noted in his [co-sponsorship memo](#) that the intent of the bill is to "mitigate the revictimization survivors face within the Commonwealth's current parole system."³

While we understand that the parole process can be painful for those survivors who choose to testify, mitigating distress should not supersede the statutory right to an annual parole hearing. The goal of parole hearings is to determine whether applicants meet the [criteria](#)⁴ that permit them to complete the remainder of their sentence under supervision in the community instead of in prison. But HB 1538 would establish a new goal for parole – limit the potential revictimization of survivors by limiting access to parole hearings. Achieving this goal necessarily comes at the expense of the right to a hearing and erodes the state's obligation to consider an application for release.

In addition, arbitrarily prohibiting the use of videoconferencing for the purpose of considering testimony will likely delay hearings indefinitely for the duration of the pandemic.

¹ Title 61 Pa.C.S.A. Prisons and Parole § 6139, at <https://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/61/00.061.039.000..HTM>

² Representative Martina White, House Co-Sponsorship Memorandum, *Amending the Parole Code*, (May 28, 2019), at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20190&cosponId=29665>

³ Senator John Sabatina, Senate Co-Sponsorship Memorandum, *Karen's Law - Decreasing Revictimization for Survivors of Sexually Violent Crimes* (December 3, 2018), at <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20190&cosponId=26570>

⁴ Pennsylvania Board of Probation and Parole - 361 Parole Decisional Instrument, at <https://www.parole.pa.gov/Parole%20Process/Documents/PDI%20361%2009-2014.pdf>

HB 1538 is an arbitrary enhancement, enforced at parole rather than at sentencing

There are thirteen different offenses covered by this bill, offenses that are attributable to different root causes, may require different types of treatment, and have different rates of recidivism. It is not at all clear why all these offenses should be treated in the same way or similarly exempted from the requirement to hear parole applications annually. Because this bill uses a one-size-fits-all approach, people will likely have their term of incarceration arbitrarily extended – not on the basis of an assessment of their individual applications, but because of the type of offense for which they were convicted.

HB 1538 is excessively punitive

Many of the crimes covered by HB 1538 are sex offenses. Most people convicted of a sex offense are denied parole, especially the first time. The Parole Board considers [numerous factors](#) when deciding whether to approve an application.⁵ One weighted factor is programming. Many are denied for not having completed prescriptive programming, which almost always includes sex offender programming. But due to long waiting lists for treatment, failure to participate in or complete programming is out of their control. And other criteria, such as employment and housing, are particularly difficult to secure. This bill targets a population of people who are almost always denied parole the first time and permits the Board to deny them re-consideration *on the basis of that denial*. But regardless of conviction type, prison terms should be proportionate and sufficient and the Board's decisions to grant parole should be individualized in order to ensure that people are not needlessly incarcerated.

HB 1538 squanders limited corrections resources

HB 1538 will likely keep people in prison years longer than may be necessary. Pennsylvania currently spends approximately [\\$42,700 per year](#) to incarcerate one person.⁶ Arbitrarily extending incarceration before reapplying for parole needlessly wastes limited corrections resources.

HB 1538 permits the Parole Board to delay parole consideration based not on the merits of an individual's application, but on offense type. By doing so, it permits arbitrary and excessive punishment, resulting in longer prison stays and needless squandering of corrections resources with no discernible benefit to public safety.

For these reasons, we urge you to oppose House Bill 1538.

⁵ Pennsylvania Board of Probation and Parole - 361 Parole Decisional Instrument, *at* <https://www.parole.pa.gov/Parole%20Process/Documents/PDI%20361%2009-2014.pdf>

⁶ Pennsylvania Department of Corrections, FY 2019-2020 Budget Testimony, *at* <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/Budget%20Testimony%202019-20.pdf>