



*Dennis Papp*

*Bill Analysis*  
*Legislative Service Commission*

**S.B. 149**  
123rd General Assembly  
(As Introduced)

**Sen. Blessing**

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**BILL SUMMARY**

- Requires the Adult Parole Authority to consider specified factors and information in determining whether to recommend the pardon, commutation of sentence, or reprieve of a convict or prisoner or whether to grant a parole to a prisoner.
- Requires the Parole Board to consider specified factors and information in determining whether to grant a parole to a prisoner, permits the Board to consider other specified factors and information.
- Specifies that the Parole Board must determine whether it is appropriate to release a prisoner on parole at the end of the prisoner's minimum term of imprisonment when the prisoner is not a first offender or a prisoner whose criminal record includes an offense of violence.
- Requires the Department of Rehabilitation and Correction to develop a risk assessment instrument that the Parole Board can use in making parole decisions.
- Requires that the Parole Board set forth in a written statement the reasons for its decision either to grant or deny parole to a prisoner.
- Except when the prisoner is serving a sentence of life imprisonment or a sentence for murder, a felony of the first or second degree, or an offense of violence, requires the Parole Board to conduct parole hearings for a prisoner at intervals of not greater than five years.
- Specifies that, not later than seven days prior to the date of a parole release hearing for a prisoner, the Parole Board must give that prisoner a copy of the prisoner's risk assessment instrument form and a copy of the

- institution summary report for the prisoner that the Board will consider, but prohibits giving the prisoner any statement by or letter from any prosecutor, judge, or victim under this provision.
- Requires the Parole Board to adopt guidelines for parole hearing schedules.
  - Repeals existing provisions that require the Parole Board's Chairperson to submit to the Adult Parole Authority's Chief all determinations for or against parole that the Board makes, and that specify that parole determinations are final and are not subject to review or change by the Chief.
  - Requires the Chief of the Division of Parole and Community Services in consultation with the Director of the Department of Rehabilitation and Correction to appoint nine members of the Parole Board to six-year terms, and requires the Director, in consultation with the Governor, to appoint three members of the Board to four-year terms.
  - Provides that any hearing conducted by the Parole Board must be open to members of the Correctional Institution Inspection Committee.

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## **CONTENT AND OPERATION**

### **Background**

The Parole Board is an entity established within the Adult Parole Authority (the APA). The APA is a regular administrative unit, on the bureau level, of the Department of Rehabilitation and Correction (DRC). Under the existing Corrections Law, the duties of the Parole Board include the granting of paroles to convicted felons who are eligible for parole (since July 1996, most convicted felons sentenced to a prison term are given definite terms and do not have parole eligibility), the setting of conditions of post-release control for convicted felons who are released from prison and are subject to a period of post-release control, the imposition of sanctions upon convicted felons who violate a post-release control sanction, the adding of "bad time" to the prison term of a convicted felon serving a prison term, and the control over, and termination of control over, the service of a prison term imposed upon a sexually violent predator. (R.C. 2967.03, 2967.28, and 2971.03, 5149.02.)

Certain other duties, including duties relative to recommending pardons, commutations of sentence, and reprieves, are required by law of the APA (R.C. 2967.03); the Parole Board, as an entity within the APA, might perform some of these duties.

**Parole, pardon, commutation of sentence, and reprieve decisions of the APA and the Parole Board**

**Existing law**

Existing law specifies that the APA may exercise its functions and duties in relation to the pardon, commutation of sentence, or reprieve of a convict upon Governor's direction or upon its own initiative, and that it may exercise its functions and duties in relation to the parole of a prisoner who is eligible for parole upon the initiative of the head of the institution in which the prisoner is confined or upon its own initiative. When a prisoner becomes eligible for parole, the head of the institution in which the prisoner is confined must notify the APA. The APA may investigate and examine, or cause the investigation and examination of, prisoners confined in state correctional institutions concerning their conduct in the institutions, their mental and moral qualities and characteristics, their knowledge of a trade or profession, their former means of livelihood, their family relationships, and any other matters affecting their fitness to be at liberty without being a threat to society.

The APA may recommend to the Governor the pardon, commutation of sentence, or reprieve of any convict or prisoner or grant a parole to any prisoner for whom parole is authorized, if in its judgment there is reasonable ground to believe that granting a pardon, commutation, or reprieve to the convict or paroling the prisoner *would further the interests of justice and be consistent with the welfare and security of society*. The APA may not recommend a pardon or commutation of sentence of, or grant a parole to, any convict or prisoner until it has complied with notice requirements contained in R.C. 2930.16 and 2967.12 and until it has considered any relevant statement made by a victim or a victim's representative that was sent to the APA under R.C. 2930.17 and any other relevant statement made by a victim or a victim's representative that was received by the APA authority after it provided notice of the pendency of the action.

If a victim or victim's representative appears at a full Board hearing and gives testimony as authorized by R.C. 5149.101 (see below), the APA must consider the testimony in determining whether to grant a parole. The trial judge and prosecuting attorney of the trial court in which a person was convicted must furnish to the APA, at its request, a summarized statement of the facts proved at the trial and of all other facts having reference to the propriety of recommending a

pardon or commutation, or granting a parole, together with a recommendation for or against a pardon, commutation, or parole, and the reasons for the recommendation. The trial judge and the prosecuting attorney in the trial in which a prisoner was convicted may appear at a full Board hearing and give testimony in regard to the grant of a parole to the prisoner as authorized by R.C. 5149.101 (see below). All state and local officials must furnish the APA with any information it requests in the performance of its duties. (R.C. 2967.03.)

### **Operation of the bill**

The bill revises the factors, criteria, and procedures relevant to the parole, pardon, commutation of sentence, and reprieve decisions of the APA and the Parole Board.

**Consideration of factors--in general.** Under the bill, all of the following apply regarding the APA's determination as to whether to recommend the pardon, commutation of sentence, or reprieve of a convict or prisoner or whether to grant a parole to a prisoner (R.C. 2967.03(B)(1)):

(1) The APA must consider all information concerning the impact of the crime on the victim and the community, the seriousness of the crime, the offender's criminal record and other information that relates to the likelihood of the offender engaging in criminal conduct if released, the offender's conduct and participation in programming while imprisoned, statements and recommendations provided by the sentencing judge and prosecuting attorney, and information concerning prospective plans if released;

(2) In relation to a parole, the APA must consider the testimony taken at a full Board hearing (see below), if any, under R.C. 5120.101, and all the information and factors the Board is required to consider under R.C. 5149.103, as enacted by the bill (see below);

(3) The APA must consider all other information that it determines is relevant;

(4) In relation to a parole, the Parole Board, in addition to all other information and factors, may consider the information and factors identified in R.C. 5149.103(D), as enacted in the bill (see below).

**Parole determinations--in general.** The bill specifies that the Parole Board must determine whether it is appropriate to release a prisoner on parole at the end of the prisoner's minimum term of imprisonment when the prisoner is not a first

offender or a prisoner whose criminal record includes an offense of violence (see **COMMENT**) (R.C. 5149.103(B)).

**Mandatory factors regarding parole.** In determining whether to place a prisoner on parole, the Parole Board must consider all of the following (R.C. 5149.103(C)):

(1) The nature of the offense for which the prisoner is serving a term of imprisonment;

(2) The prisoner's ability and readiness to assume obligations and to undertake responsibilities, as well as the prisoner's own goals and needs;

(3) The prisoner's employment history and occupational skills;

(4) The prisoner's vocational, educational, and other training;

(5) The prisoner's conduct during imprisonment;

(6) The prisoner's participation in programs and projects sponsored by DRC;

(7) Reports prepared by DRC staff members that relate to the prisoner's personality, social history, and adjustment to institutional programs and assignments;

(8) Official reports or summaries of the prisoner's prior criminal record, including reports, summaries, or records of a prior release on probation, parole, or post-release control;

(9) The prisoner's behavior and attitude during a prior period of probation, furlough, parole, post-release control, or other administrative release, and the recency of that period;

(10) Presentence or postsentence reports;

(11) Recommendations made at the time of the prisoner's sentencing or subsequently by the sentencing judge, presiding judge, prosecuting attorney, or defense counsel regarding the prisoner's release;

(12) Relevant, nonprivileged information concerning a physical, mental, or psychiatric examination of the prisoner;

(13) Written or oral statements submitted by the victim of the offense for which the prisoner is serving a term of imprisonment or by the victim's representative;

(14) Written or oral statements submitted by the prisoner or a member of the prisoner's family;

(15) Other relevant, reasonably available written information concerning the prisoner, except that the Board cannot consider a document related to a prisoner's filing of a grievance under DRC's prisoner grievance procedure.

**Permissive factors.** In determining whether to place a prisoner on parole, the Parole Board is permitted to consider all of the following (R.C. 5149.103(D)):

(1) The prisoner's family status, including whether the prisoner's relatives display an interest in the prisoner or whether the prisoner has other close and constructive associations in the community;

(2) The type of residence, neighborhood, or community in which the prisoner plans to live upon release on parole;

(3) The availability of community resources to assist the prisoner upon release on parole;

(4) The prisoner's pattern of criminal or delinquent behavior prior to the current term of imprisonment;

(5) The prisoner's ability to perform the plan of release;

(6) The presence of outstanding detainers against the prisoner;

(7) Any recommendations made by staff of DRC or any of its divisions;

(8) Any other information the Board determines is relevant.

**Risk assessment instrument regarding parole.** The bill requires DRC to develop a risk assessment instrument that the Parole Board can use to evaluate the risks related to a person's release on parole. The Board must use the risk assessment instrument as an aid in determining whether to release a prisoner on parole. (R.C. 5149.103(A).)

**Written statement regarding parole determination and scheduling next parole hearing.** At the conclusion of a hearing on whether to release on parole a prisoner, the Parole Board must set forth in a written statement the reasons for its decision either to grant parole or to deny parole to the prisoner.

When the Parole Board denies parole for a prisoner, it must set a date for the next parole hearing for that prisoner that is not more than five years from the date of the denial. The Board must conduct a review hearing to evaluate the prisoner's progress in rehabilitation on a date that is halfway between the date on which parole was denied and the date scheduled for the next parole hearing. This provision does not apply to a prisoner who is serving a sentence of life imprisonment or a sentence for the offense of murder, a felony of the first or second degree, or an offense of violence (see **COMMENT**).

The bill also requires, not later than ten years after the bill's effective date, that the Parole Board hold a parole hearing for any prisoner, other than a prisoner serving a term of life imprisonment or a term of imprisonment for murder, whose next parole hearing is scheduled on a date that is more than ten years after the effective date of the bill. (Sec. 5149.103(E), (F), and (G).)

**Provision of information to prisoner under consideration for a parole.**

The bill specifies that, not later than seven days prior to the date of a parole release hearing for a prisoner, the Parole Board must give that prisoner a copy of the risk assessment instrument form the prisoner completed and a copy of the institution summary report for the prisoner that the Board will consider in determining whether to release the prisoner on parole. A prisoner cannot be given any statement by or letter from any prosecutor, judge, or victim under this provision. (R.C. 5149.102.)

**Parole hearing schedule guidelines.** The bill requires the Parole Board to adopt guidelines for parole hearing schedules (R.C. 2967.03(B)(3)).

**Transmission of determinations; finality.** The bill repeals provisions of existing law that require the Parole Board's Chairperson to submit to the APA's Chief all determinations for or against parole that the Board makes, and that specify that parole determinations are final and are not subject to review or change by the Chief (repeal of R.C. 5149.10(D)).

**Manner of appointment to the Parole Board and duration of the term of appointment**

**Existing law**

Under existing law, the Parole Board consists of 12 members, one of whom is designated as chairperson by the Director of DRC and who must continue as chairperson until a successor is designated, and any other personnel that are necessary for the orderly performance of the duties of the Board. Of the 12 Parole Board members, 11 are appointed by the Chief of the Division of Parole and

Community Services in accordance with the Civil Service Laws. (R.C. 5149.09 and 5149.10(A).)

The Director of DRC, in consultation with the Governor, appoints the final member of the Parole Board, who must be a person who has been a victim of crime or who is a member of a victim's family or who represents an organization that advocates for the rights of victims of crime. After appointment, this victim representative member is an unclassified employee of DRC. The victim representative member's term is for four years, and the victim representative member may be reappointed. Vacancies must be filled in the manner provided for original appointments. Any victim representative member appointed to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed holds office as a member for the remainder of the predecessor's term. The victim representative member must continue in office subsequent to the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first. (R.C. 5149.10(B).)

#### **Operation of the bill**

Under the bill, the Parole Board still consists of 12 members, but it includes nine appointed by the Chief of DRC's Division of Parole and Community Services in consultation with DRC's Director, and three appointed by DRC's Director, in consultation with the Governor.

**Appointments by Chief.** Specifically, under the bill, the Chief, in consultation with DRC's Director, appoints nine members of the Board as described in this paragraph. Terms of office of the members so appointed by the Chief under this division are for six years. The Chief must make the initial appointment under this provision on and after the bills' effective date, in the manner and at the time specified in this paragraph and in "**Time of appointments,**" below. Each member appointed by the Chief is to hold office from the date of appointment until the end of the term for which that member is appointed. The Chief may reappoint a member, but no member may serve more than two consecutive terms. After serving two consecutive terms, a member appointed by the Chief may not be reappointed by the Chief until six years have elapsed after the end of the member's second term. Vacancies will be filled in the manner provided for original appointments. Any member the Chief appoints to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed will hold office as a member for the remainder of that term. Members appointed by the Chief are in the unclassified civil service. (R.C. 5149.10(A) and (B)(1).)

**Appointments by Director.** Under the bill, DRC's Director, in consultation with the Governor, appoints three members of the Board who are qualified by education, knowledge, skill, or experience. One member appointed by the Director must represent crime victims, one must represent the community at large, and one must be experienced in correctional treatment modalities, including, but not limited to, education programming, substance abuse treatment, counseling, and similar skills. The Director must make the initial appointments on and after the bill's effective date of this amendment, in the manner and at the time specified in this paragraph and in "**Time of appointments,**" below. The crime victim representative must be a person who has been a victim of crime or who is a member of a victim's family or who represents an organization that advocates for the rights of victims of crime.

Terms of office of members appointed by the Director under this provision are for four years. At the conclusion of a member's term, the member may be reappointed or may remain a Board member until the appointment of a successor by the Director. The Director may fill a vacancy occurring before the expiration of a term for the remainder of that term in the manner described above for original appointments. Any member appointed by the Director to fill a vacancy occurring prior to the expiration date of the term for which the member's predecessor was appointed will hold office as a member for the remainder of that term.

The Director must designate one of the members the Director appoints as Chairperson of the Board. A member may serve as Chairperson for one four-year term and may not be reappointed as Chairperson until four years have elapsed after the end of the member's service as Chairperson.

Parole Board members appointed by the Director as described above, including the Chairperson, are to be compensated in the same manner as other Board members, must be reimbursed for actual and necessary expenses incurred in the performance of the members' duties, and may be removed from office as a member under the same DRC rules and policies that apply regarding unclassified employees. The members have the same duties and powers as other Board members, including any duties that are assigned by the Board's Chairperson. (R.C. 5149.02, and 5149.10(A) and (B)(2).)

**Time of appointments.** The Chief of the Division of Parole and Community Services and DRC's Director must make their initial appointments of Parole Board members, as described above, in the manner and at the time specified in this paragraph. The persons who initially are appointed to the Board by the Chief or Director, and the successors to the persons who initially are appointed, shall serve six year terms of office if they are appointed by the Chief or four year terms of office if they are appointed by the Director. The persons who are

members of the Parole Board on the bill's effective date may be reappointed under the above-described provision of the bill to succeed themselves or to serve in a different position, for one six-year term or one four-year term. The persons who are members of the Board on the bill's effective date will be succeeded in office by the initial appointments of the Chief and Director as follows:

(1) The member who was appointed as a crime victims' representative under the law as it existed prior to the bill's effective date is to be replaced at the expiration of the member's term by the Director's appointment of the crime victims' representative made under the bill.

(2) The two members who, on the bill's effective date, are the two most senior members of the Board in time of service and who are not described in paragraph (1), above will be considered to be serving four-year terms that began on the bill's effective date and will be replaced at the expiration of that four-year term, or upon an earlier vacancy in the office, by an appointment of the Director made under the bill.

(3) The four members who, on the bill's effective date, are the four most senior members of the Board in time of service after the members described in paragraph (2), above, and who are not described in paragraph (1), above, are considered to be serving five-year terms that began on the bill's effective date and will be replaced at the expiration of that five-year term, or upon an earlier vacancy in the office, by an appointment of the Chief made under the bill;

(4) The five members who are not described in paragraph (1), (2), or (3), above, are considered to be serving six-year terms that began on the bill's effective date and will be replaced at the expiration of that six-year term, or upon an earlier vacancy in the office, by an appointment of the Chief made under the bill. (R.C. 5149.10(B)(3).)

**Hearings of the Parole Board--authority of members of the Correctional Institution Inspection Committee to attend**

**Existing law**

Under existing law, if the Parole Board holds a *full board hearing* relating to the proposed parole of a prisoner, the Board must permit specified persons to appear and to give testimony or to submit written statements. Generally, a full board hearing of the Parole Board is not subject to the Open Meeting Law. The persons who may attend a full board hearing are the persons authorized to appear and to give testimony or to submit written statements (i.e., the prosecutor and judge in the criminal case and the victim or victim's representative), and, generally,

representatives of the press, radio and television stations, and broadcasting networks who are members of a generally recognized professional media organization. At the request of the victim of the offense for which the prisoner is serving the sentence or the victim's representative, the representatives of the news media must be excluded from the hearing while that person is giving testimony at the hearing. The prisoner being considered for parole has no right to be present at the hearing, but may be represented by counsel or another person designated by the prisoner. (R.C. 5149.101(A), (B), and (C).)

### **Operation of the bill**

The bill provides that *any hearing* conducted by the Parole Board also must be open to members of the Correctional Institution Inspection Committee, and specifically provides that members of the Correctional Institution Inspection Committee may attend full board hearings of the Parole Board (R.C. 5149.101(C) and 5149.11(F)).

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## **COMMENT**

"Offense of violence," as defined in existing law for purposes of the Revised Code (sec. 2901.01(I)), means any of the following:

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault (a misdemeanor unless certain conditions are met), aggravated menacing (misd.), menacing by stalking (a misdemeanor unless the offender previously was convicted of menacing by stalking), menacing (misd.), kidnapping, abduction, extortion, rape, sexual battery (misd.), aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, inciting to violence, aggravated riot, riot (misd.), inducing panic (a misdemeanor except when the violation results in physical harm to a person), domestic violence (a misdemeanor unless the offender previously was convicted of domestic violence or certain assault or stalking offenses involving a household member), intimidation, intimidation of an attorney, victim, or witness in a criminal case, escape (a misdemeanor under certain circumstances), improperly discharging a firearm at or into a habitation or school, or burglary in certain instances;

(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (1);

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, any other state, or the United States,

committed purposely or knowingly, and involving physical harm to persons or a risk or serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense described in (1), (2), or (3).

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	06-02-99	p. 522

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