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GENERAL ASSEMBLY

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

COMMISSION ON SENTENCING

PART VIII. CRIMINAL SENTENCING

[204 PA. CODE CH. 311]

Proposed State Parole Recommitment Ranges

[53 Pa.B. 260]

[Saturday, January 7, 2023]

The Pennsylvania Commission on Sentencing hereby publishes for public comment proposed State Parole Recommitment Ranges, 204 Pa. Code §§ 311.1—311.6. The proposed State Parole Recommitment Ranges are set forth in Annex A. Previous versions of proposed recommitment ranges were published in the *Pennsylvania Bulletin* on July 11, 2020 (50 Pa.B. 3417) and April 23, 2022 (52 Pa.B. 2357) for public comment.

The Commission is authorized by 42 Pa.C.S. § 2154.6 (relating to adoption of recommitment ranges following revocation of parole by Board) 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.

Following public hearings held on May 30, 2022 and June 1, 2022, the Commission voted on June 2, 2022 to defer action on adoption, providing staff with an opportunity to address the following issues: consideration of the seriousness of the initial conviction offense, as required by statute; consideration of the rehabilitative needs of the defendant, as required by statute; concerns that recommendations for technical violators included a minimum period of time, and did not address disciplinary infractions or recommitments to non-correctional facilities; and concerns that recommendations for convicted violators were linked to the current sentencing guidelines, which would be inconsistent with proposals the Commission was preparing for new sentencing guidelines. Staff reviewed revised proposals with the Parole Board and drafted revised recommitment ranges which included tables for clearer presentation of recommendations.

On December 8, 2022, the Commission approved for the purpose of public comment the proposed State Parole Recommitment Ranges applicable to all parole violation hearings initiated on or after January 1, 2024.

In accordance with 42 Pa.C.S. § 2155 (relating to publication of guidelines for sentencing, resentencing and parole, risk assessment instrument and recommitment ranges following revocation), the Commission shall publish in the *Pennsylvania Bulletin* the proposed sentencing guidelines 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:

Pennsylvania District Attorneys Association
 Chiefs of Police Associations
 Fraternal Order of Police
 Public Defenders Organization
 Law School faculty members
 Pennsylvania Parole Board
 Pennsylvania Department of Corrections
 Pennsylvania Bar Association
 Pennsylvania Wardens Association
 Pennsylvania Association on Probation, Parole and
 Corrections
 Pennsylvania Conference of State Trial Judges

Any other interested person or organization

The Commission has scheduled the following hearings to receive public comment on the proposed sentencing guidelines:

Justice Juanita Kidd Stout Center for Criminal Justice
 Courtroom 507
 1301 Filbert Street

Philadelphia, PA
Wednesday, February 8, 2023, at 1:30 p.m.

Northampton County Courthouse
Courtroom 1
669 Washington Street
Easton, PA
Friday, February 17, 2023, at 10:00 a.m.

Duquesne University Thomas R. Kline School of Law
208 Hanley Hall
900 Locust Street
Pittsburgh, PA
Wednesday, February 22, 2023, at 1:30 p.m.

Pennsylvania Department of Corrections (remote hearing)
Registration open to the public; testimony limited to incarcerated individuals
Zoom Webinar (registration for public access):
<https://bit.ly/DOCPubHrng2023Feb27>
Monday, February 27, 2023, at 10:00 a.m.

Erie County Courthouse
Courtroom D-214
140 West 6th Street
Erie, PA
Thursday, March 2, 2023, at 10:00 a.m.

K. Leroy Irvis Office Building (hybrid hearing)
Room 523
450 Commonwealth Avenue
Harrisburg, PA
Zoom Webinar (registration for public access):
<https://bit.ly/PCSPubHrng2023March8>
Wednesday, March 8, 2023, at 9:00 a.m.

Those wishing to attend or testify at Zoom Webinar hearings may register at the link provided. Those wishing to testify in person may register by contacting the Commission (Cathy Dittman, (814) 863-5729 or cwd2@psu.edu).

Persons or organizations wishing to testify in-person or via Zoom Webinar are asked to register and provide an electronic copy of any testimony at least five business days prior to the hearing. 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).

JUDGE TAMARA R. BERNSTEIN,
Chair

Commentary on 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.

Regarding recommitment following violation of terms, 61 Pa.C.S. § 6137(h) (relating to parole power), 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.

(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) (relating to powers and duties of commission).

42 Pa.C.S. § 2154.6 requires the Commission to adopt recommitment ranges for violations of parole that consider all of 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.

A recommitment range is a recommendation for a period of time for 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 may be reviewed for parole or, without further review, shall be reparaoled.

61 Pa.C.S. § 6137 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.

The proposed recommitment ranges standardize current practices, improve the consistency and transparency of decisions, and enhance data collection and analysis. By linking the recommitment ranges to both the recently enacted parole guidelines and the proposed 8th Edition Sentencing Guidelines, the Commission is promoting coordination of information and decision-making.

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

Section 311.1. Preliminary provisions.

This section addresses the statutory authorization to adopt recommitment ranges and includes a list of definitions of words and phrases used in the recommitment ranges.

Section 311.2. Parole violator recommitment range standards.

This section addresses the requirements related to the consideration of the recommitment ranges and the reporting of decisions to the Commission.

Section 311.3. Procedure for determining parole violator recommitment range.

This section defines the two types of violators: technical parole violator and convicted parole violator; and describes the general procedures for determining the applicable range and consideration of aggravating or mitigating circumstances.

Section 311.4. Technical parole violator recommitment ranges.

This section includes general provisions for consideration of ranges for technical parole violators, including the description of specified violation conditions for which individuals are recommitted to correctional facilities, and those otherwise recommitted to non-correctional facilities; and the specific provisions for determining the recommitment ranges for technical parole violators.

Section 311.5. Convicted parole violator recommitment ranges.

This section includes general provisions for consideration of ranges for convicted parole violators, including the specific provisions related to the recommended range determined in part on the seriousness of the new conviction offense based on the corresponding level of the proposed 8th Edition Sentencing Guidelines.

Section 311.6. Parole violator tables.

This section includes two tables that display recommitment ranges. Table 1 addresses technical parole violator recommitment ranges; Table 2 addresses convicted parole violator recommitment ranges.

Annex A**TITLE 204. JUDICIAL SYSTEM
GENERAL PROVISIONS****PART VIII. CRIMINAL SENTENCING****CHAPTER 311. STATE PAROLE
RECOMMITMENT RANGES**

Sec.

- 311.1. Preliminary provisions.
- 311.2. Parole violator recommitment range standards.
- 311.3. Procedure for determining parole violator recommitment range.
- 311.4. Technical parole violator recommitment ranges.
- 311.5. Convicted parole violator recommitment ranges.
- 311.6. Parole violator tables.

§ 311.1. Preliminary provisions.*(a) Authorization.*

(1) As authorized by 42 Pa.C.S. § 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 recommittal period, the parole violator shall be reviewed for parole or, without further review, shall be reparaoled.

(b) Definitions. For purposes of this chapter, the following words and phrases shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"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 maximum term is the sum of the consecutive maximum terms.

"At liberty on parole." 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.

"Automatic reparole." An immediate release from a state correctional institution, contracted county jail, community corrections center, or community corrections facility based on the date stated on the board action. Disciplinary infractions result in removal of automatic parole.

"Board." Pennsylvania Parole Board (PB). An independent executive branch agency comprised of nine members appointed by the Governor and confirmed by the Senate for six-year terms. The Board has the responsibility to parole, recommit for violations of parole, and to discharge from parole offenders sentenced to two years or more.

"Commission." Pennsylvania Commission on Sentencing. A criminal justice agency of the General Assembly authorized to adopt guidelines for parole and recommitment ranges following revocation of parole to be considered by the Board.

"Concurrent sentence." Sentences imposed to be served simultaneously or at the same time.

"Consecutive sentence." Sentences imposed to be served one after another. State law requires that consecutive sentences be aggregated into one sentence structure with one minimum and one maximum sentence.

"Constructive parole." A grant of parole when an inmate is released from one sentence but remains confined while serving another sentence, rather than being released from confinement.

"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, as provided in 61 Pa.C.S. § 6138(a)(1) and (1.1) (relating to convicted violators).

"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.

"Department." Pennsylvania Department of Corrections (DOC). An executive branch agency responsible for operating the state prison system and providing parole supervision of reentrants. The following facilities are provided in statute for recommitment:

PVC—parole violator centers. Secure facilities operated or contracted by the Department to address violation behavior, which may be located at correctional facilities or group facilities. A CCC or CCF may be used for technical parole violators to provide immediate treatment and programming to address violation behavior using a Community Based Life Skills (CBLS) program. Participation is for a maximum period of six months with automatic reparole. An SCI or CCJ may be used for technical parole violators who are not eligible to be placed in a CCC or CCF to receive the treatment and programming otherwise provided in a CCC or CCF.

Correctional facilities. Secure facilities operated or contracted by the Department, including SCI and CCJ.

CCJ—contracted county jail. Secure county facilities contracted by the Department for confinement of certain offenders.

SCI—State correctional institution. Secure facilities maintained by the Department for confinement of offenders, classified into four security levels: minimum, medium, close, and maximum; and including special facilities for diagnostics and classification, substance abuse treatment, psychiatric care and treatment, capital case inmates, and a motivational boot camp.

Group facilities. Residential facilities operated or contracted by the Department, including CCC and CCF.

CCC—community corrections center. A residential facility operated and staffed by the Department of Corrections, Bureau of Community Corrections, to provide supportive, transitional, and accountable reentry by positively influencing individual behavior through professional interactions.

CCF—community corrections facility or community contracted facility. A residential facility contracted by the Department and operated by a private or public entity to provide supportive, transitional, and accountable reentry by positively influencing individual behavior through professional interactions.

"Detainer." A written order of the Department to hold a person in custody in a correctional institution pending further legal action.

"Direct violation." Commission of a new offense during the period of parole resulting in a conviction, as provided in 61 Pa.C.S. § 6138(a)(1) and (1.1), whether or not judgement of sentence has been imposed. Also see conviction violation.

"Hearing examiner." An agent of the 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 Board.

"Hearings." Include the following:

Cox hearing. An evidentiary hearing to determine if a parolee's stay at a CCC/CCF is the equivalence of incarceration.

Detention hearing. A first-level, probable cause hearing to determine whether there is probable cause that a parolee should be detained or returned pending disposition of a new criminal charge.

Preliminary hearing. A first-level, probable cause hearing to determine whether there is probable cause to believe that a parolee has committed a violation of a condition of parole.

Rescission hearing. A hearing to decide whether there is good cause for rescinding parole.

Revocation hearing. A second-level, fact-finding hearing held by the Board to determine whether a parolee violated the terms and conditions of parole and, if so, should be recommitted as a convicted parole violator.

Violation hearing. A second-level, fact-finding hearing held by the Board to determine whether a parolee violated the terms and conditions of parole and, if so, should be recommitted as a technical violator.

"Indirect violation." A violation of parole by a breach of the terms and conditions of parole other than the commission of a new criminal offense of which the offender is found guilty or pleads guilty or nolo contendere. Also see technical violation.

"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.

"NV—non-violent offender." An offender who is not currently nor was previously convicted of a violent offense, used to determine the parole guidelines and the seriousness of the initial conviction offense for a conviction violation. Also see 204 Pa. Code Chapter

309 (relating to parole guidelines).

"OGS—offense gravity score." An assignment in the sentencing guidelines reflecting the seriousness of a conviction offense, which is used to determine the sentencing level of a new conviction violation offense. Also see 204 Pa. Code Chapter 303a (relating to sentencing guidelines).

"Order of service of sentence." As provided in 61 Pa.C.S. § 6138(a)(5) and (5.1), if a new sentence of confinement is imposed on a convicted parole violator, the service of the balance of the original sentence shall precede the commencement of the service of the new sentence imposed, if the person was paroled from an SCI and is sentenced to an SCI or by a foreign jurisdiction, or the person was paroled from a county jail and is sentenced to the same county jail or by a foreign jurisdiction. Otherwise, the service of the new confinement sentence shall precede the service of the recommitment on the original sentence.

"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 recommitment by the Board.

"Panel." A two-member unit of the 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 confinement of an inmate from a correctional facility, to serve the remainder of the unserved balance of the maximum term in the community under supervision, as long as the parolee satisfactorily complies with all terms and conditions provided in the parole order. There is no right to parole in Pennsylvania.

"Parole decision." A decision by the Board 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.

Conviction violation. Commission of a new offense during the period of parole resulting in a conviction, as provided in 61 Pa.C.S. § 6138(a)(1) and (1.1), whether or not judgement of sentence has been imposed. Violations including both technical and conviction violation are considered conviction violations. Also see direct violation.

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. Also see technical parole violation. Also see indirect violation.

"Parole violator." An offender under parole supervision in the community who commits a technical violation or conviction violation. Also see convicted parole violator and technical parole violator.

"Recommitment range." A recommended range of time for which a parole violator may be recommitment, to serve all or part of the unserved balance of the sentence for which the offender was paroled, based on the seriousness of the initial conviction, the seriousness of the violation, and the rehabilitative needs of the offender.

"Rescission." The revocation of a grant of parole based upon an inmate's conduct occurring prior to release on parole which conduct is unknown to the Board at the time parole was granted.

"Revocation." A decision to revoke parole and to recommit an offender after a revocation or violation hearing.

"SGS Web—sentencing guidelines software web application." 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.

"Sentencing level." A category of offense gravity scores, determined by the sentencing guidelines, which is used to determine the recommitment ranges of a new conviction violation offense. Also see 204 Pa. Code Chapter 303a (relating to sentencing guidelines).

"Technical parole violator." 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, as provided in 61 Pa.C.S. § 6138(c).

"Unexpired term." The period of time the person has remaining on the unserved portion of his or her original sentence.

"V—violent offender." A designation used in the parole guidelines, based on a current or previous conviction for an offense identified in 42 Pa.C.S. §§ 9714(g), 9718.1, and 9799.14, or for an offense otherwise designated by the Board as a violent offense. Also see 204 Pa. Code Chapter 309.

§ 311.2. Parole violator recommitment range standards.

(a) The Board shall consider recommitment ranges in determining the recommitment time recommended for technical and convicted parole violators.

(b) In every case in which the 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 recommitment ranges apply to revocations of parole when recommitment is ordered by the Board.

(d) The recommitment ranges shall apply to all state parole violation hearings initiated on or after January 1, 2024. Amendments to the recommitment ranges shall apply to all state parole violation hearings initiated on or after the effective date of the amendment to the recommitment ranges.

(e) Unless otherwise provided by the Commission, the SGS Web application shall be used by the Board to do the following:

(1) Provide required information on the violation used to determine the recommended recommitment range.

(2) Provide details on the recommitment order, including the type of facility (i.e., correctional facility, group facility, and/or parole violator center) and the duration of the recommitment.

(3) Report the date of recommitment and date of eligibility for re-parole or automatic release.

(4) Attach a copy of the completed State Parole Guidelines Form used to report the grant of parole.

§ 311.3. Procedure for determining parole violator recommitment range.

(a) For each parole recommitment of an offender under the jurisdiction of the Board, the procedure for determining the recommended recommitment range is as follows:

(1) Determine if the offender is a technical parole violator or a convicted parole violator:

(i) A technical parole violator is a parolee under the jurisdiction of the Board who violates the terms and conditions of 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, as provided in 61 Pa.C.S. § 6138(c) (relating violation of terms of parole).

(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, as provided in 61 Pa.C.S. § 6138(a).

(2) Consider the recommitment ranges as follows:

(i) For a technical parole violator, consider the recommendations provided at § 311.6 (relating to parole violator tables) in TABLE 1, based on the following:

(A) Determine if the offender is a violent offender, as provided in the parole guidelines, based on a current or previous conviction for an offense identified in 42 Pa.C.S. §§ 9714(g), 9718.1, and 9799.14, or for an offense otherwise designated by the Board as a violent offense.

(B) Determine if the offender is being recommitted to a correctional facility, as provided in 61 Pa.C.S. § 6138(d), or to a group facility or parole violator center, as provided in 61 Pa.C.S. § 6138(e), and the number of recommitments to a correctional facility.

(C) Determine if any disciplinary infractions provided in 61 Pa.C.S. § 6138(d)(5) or (e)(3) apply to the offender.

(D) Identify the recommended recommitment range.

(ii) For a convicted parole violator, consider the recommendations provided at § 311.6 in TABLE 2, based on the following:

(A) Determine if the offender is a violent offender, as provided in the parole guidelines based on a current or previous conviction for an offense identified in 42 Pa.C.S. §§ 9714(g), 9718.1, and 9799.14, or for an offense otherwise designated by the Board as a violent offense.

(B) Determine the offense gravity score and the corresponding sentencing level of the most serious new conviction offense.

(C) Identify the recommended recommitment range.

(b) Consider any aggravating and mitigating circumstances, including progress on parole prior to revocation and the rehabilitative needs of the offender, when determining the duration of recommitment and prescribed treatment and programming.

(c) Determine the recommitment period, and report the decision, reasons for deviation, and other required information to the Commission, as provided in § 311.2 (relating to parole violator recommitment range standards).

§ 311.4. Technical parole violator recommitment ranges.

(a) *General provisions.*

(1) Recommitment ranges shall be considered by the Board when a parolee violates a general or specific condition of parole and the Board orders recommitment as a technical parole violator after the necessary violation hearing(s).

(2) The Board shall determine if any of the following specified violation conditions, as provided in 61 Pa.C.S. § 6138(c)(1.3) (relating to violation of terms of parole), are present:

- (i) Violation 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) As provided in 61 Pa.C.S. § 6138(c)(1), unless the Board determines a specified violation condition is present, a technical parole violator shall be committed to a group facility or secured facility, and the following shall apply:

- (i) The Board shall consider the applicable recommitment ranges described in subsection (b).
- (ii) Except as provided in subparagraph (iii), a technical parole violator shall be recommitted, as provided in 61 Pa.C.S. § 6138(e), for a maximum period of six months, after which the offender shall automatically be reparaole without further action by the Board.
- (iii) The maximum period of recommitment and automatic reparaole shall not be applicable to an offender if any of the following apply:
 - (A) Commits a disciplinary infraction involving assaultive behavior, sexual assault, a weapon, or a controlled substance.
 - (B) Spends more than 61 days in segregated housing due to one or more disciplinary infractions.
 - (C) Refuses programming or a work assignment.
 - (D) Is not in compliance with all legal requirements applicable to the offender, including but not limited to, maintaining registration in any applicable sex offender registry.

(4) As provided in 61 Pa.C.S. § 6138(c)(1.3), when the Board determines that one or more specified violation conditions are present, a technical parole violator shall be committed to a correctional facility, and the following shall apply:

- (i) The Board shall consider the applicable recommitment ranges described in subsection (b).
- (ii) Except as provided in subparagraph (iii), a technical parole violator shall be recommitted, as provided in 61 Pa.C.S. § 6138(d), for a maximum period as described below, after which the offender shall automatically be reparaole without further action by the Board:
 - (A) For the first recommitment, a technical parole violator shall serve not more than six months.
 - (B) For the second recommitment for the same sentence, a technical parole violator shall serve not more than nine months.
 - (C) For the third and subsequent recommitment for the same sentence, a technical parole violator shall serve not more than one year.
- (iii) The maximum period of recommitment and automatic reparaole shall not be applicable to an offender if any of the following apply:
 - (A) Committed a disciplinary infraction involving assaultive behavior, sexual assault, a weapon, or a controlled substance.
 - (B) Spent more than 90 days in segregated housing due to one or more disciplinary infractions.
 - (C) Refused programming or a work assignment.
- (b) *Specific provisions.*

(1) Technical violator recommitment ranges are to be considered by the Board in the exercise of its discretion, while accounting for the following factors:

- (i) The seriousness of the initial conviction offense. Seriousness is based on the determination under the state parole guidelines whether the offender is designated as a violent offender or non-violent offender.

(ii) The type of facility to which the offender is being recommitted. Type of facility includes a correctional facility, as provided in 61 Pa.C.S. § 6138(d), and a group facility or parole violator center, as provided in 61 Pa.C.S. § 6138(e).

(iii) The number of recommitments for the same sentence. When recommitted to a correctional facility, the maximum period of a recommitment is determined by the number of recommitments, as provided in 61 Pa.C.S. § 6138(d)(3). For recommitment to a group facility or parole violator center, the maximum period is six months, notwithstanding the number of recommitments for the same sentence, as provided in 61 Pa.C.S. § 6138(e)(2).

(iv) Any disciplinary infractions committed by the offender. The time limits and automatic reparole provided in statute are not applicable in the case of an offender who commits certain disciplinary infractions, and separate recommitment recommendations are provided. The types of disciplinary infractions in a correctional facility are provided in 61 Pa.C.S. § 6138(d)(5); the types of disciplinary infractions in a group facility or parole violator center are provided in 61 Pa.C.S. § 6138(e)(3).

(v) The time required to receive treatment and programming to meet the rehabilitative needs of the offender. The corrective programming required to address the needs of the offender associated with the recommitment, which begins after a hearing or waiver of a hearing, may require a recommitment period shorter or longer than the recommended recommitment range.

(2) The technical parole violator recommitment ranges, as described below, are provided at § 311.6 in TABLE 1.

(i) When applied to offenders recommitted to group facilities:

(A) The recommended recommitment range for a non-violent offender placed in a group facility or parole violator center, except for those with disciplinary infractions, is a maximum of six months. Reparole is automatic without further action by the Board.

(B) The recommended recommitment range for a violent offender placed in a group facility or parole violator center, except for those with disciplinary infractions, is a maximum of nine months. Reparole is automatic without further action by the Board.

(C) The recommended recommitment range for an offender placed in a group facility or parole violator center with disciplinary infractions is 12 months. Reparole requires action by the Board.

(ii) When applied to offenders recommitted to correctional facilities:

(A) The recommended recommitment range for a non-violent offender placed in a correctional facility, except for those with disciplinary infractions, for a first violation is a maximum of six months; for a second violation a maximum of nine months; and for a third or subsequent violation is a maximum of 12 months. Reparole is automatic without further action by the Board.

(B) The recommended recommitment range for a violent offender placed in a correctional facility, except for those with disciplinary infractions, for a first violation is a range of three to six months; for a second violation a range of six to nine months; and for a third or subsequent violation is a range of nine to 12 months. Reparole is automatic without further action by the Board.

(C) The recommended recommitment range for an offender with disciplinary infractions placed in a correctional facility is a maximum of 12 months for a first violation; a maximum of 18 months for a second violation; and a maximum of 24 months for a third or subsequent violation. Reparole requires action by the Board.

(3) Determine the recommitment period and provide reasons if a deviation from the recommitment ranges.

§ 311.5. Convicted parole violator recommitment ranges.

(a) *General provisions.*

(1) Recommitment ranges shall be considered by the Board when a parolee is convicted of a new offense committed while on parole and the Board orders recommitment as a convicted parole violator after the necessary violation hearing(s).

(2) As provided in 61 Pa.C.S. § 6138(a) (relating to violation of terms of parole), the Board may, at its discretion, revoke the parole of an offender convicted of a crime committed while on parole, and including certain enumerated summary offenses.

(i) If the offender's parole is revoked, the offender shall be recommitted to a correctional facility to serve the remainder of the term which the offender would have been compelled to serve had the parole not been granted, and the Board shall determine whether any credit shall be granted for time at liberty on parole.

(ii) The Board may, in its discretion, reparole a convicted parole violator whenever the best interests of the offender justify or require the offender's release on parole and it does not appear that the interests of the Commonwealth will be injured.

(iii) The period of time for which the offender is required to serve shall be computed by the Board.

(3) The Board shall consider the applicable recommitment ranges described in subsection (b).

(b) *Specific provisions.*

(1) Convicted violator recommitment ranges are to be considered by the Board in the exercise of its discretion, while accounting for the following factors:

(i) The seriousness of the initial conviction offense. Seriousness is based on the determination under the state parole guidelines whether the offender is designated as a violent offender or non-violent offender.

(ii) The level of seriousness of the new conviction offense. The seriousness of the new conviction offense is determined by identifying the highest offense gravity score assignment under the Pennsylvania sentencing guidelines of all new conviction offenses, and then determining the corresponding sentencing level. For out-of-state convictions, the current equivalent Pennsylvania offense under the sentencing guidelines applies. Summary offenses are assigned the lowest offense gravity score (OGS 1) and the corresponding sentencing level (Level A). Murder of the first degree and murder of the second degree are assigned the highest offense gravity scores (Murder 1 A/B/C, Murder 2 A/B/C) and the corresponding sentencing level (Level H).

(iii) The time required to receive treatment and programming to meet the rehabilitative needs of the offender. The corrective programming required to address the needs of the offender associated with the recommitment, which begins after a hearing or waiver of a hearing, may require a recommitment period shorter or longer than the recommended recommitment range.

(2) The convicted parole violator recommitment ranges, as described below, are provided at § 311.6 (relating to parole violator tables) in TABLE 2.

(i) The recommended recommitment range for a non-violent offender placed in a correctional facility shall be:

(A) When the most serious new conviction offense is Level A (OGS 1—OGS 3), a range of one to six months.

(B) When the most serious new conviction offense is Level B (OGS 4—OGS 7), a range of six to 12 months.

(C) When the most serious new conviction offense is Level C (OGS 8—OGS 12), a range of 12 to 18 months.

(D) When the most serious new conviction offense is Level D (OGS 13—OGS 16), a range of 18 to 30 months.

(E) When the most serious new conviction offense is Level E (OGS 17—OGS 26), a range of 24 to 36 months.

(F) When the most serious new conviction offense is Level F (OGS 27—OGS 30), a range of 48 months to the unserved balance of the sentence from which the offender was paroled.

(G) When the most serious new conviction offense is Level G (OGS G-1-OGS G-2), a range of 48 months to the unserved balance of the sentence from which the offender was paroled.

(H) When the most serious new conviction offense is Level H (OGS H-1—OGS H-6), the range is limited to the unserved balance of the sentence from which the offender was paroled.

(ii) The recommended recommitment range for a violent offender placed in a correctional facility shall be:

(A) When the most serious new conviction offense is Level A (OGS 1—OGS 3), a range of one to six months.

(B) When the most serious new conviction offense is Level B (OGS 4—OGS 7), a range of six to 12 months.

(C) When the most serious new conviction offense is Level C (OGS 8—OGS 12), a range of 12 to 18 months.

(D) When the most serious new conviction offense is Level D (OGS 13—OGS 16), a range of 24 to 36 months.

(E) When the most serious new conviction offense is Level E (OGS 17—OGS 26), a range of 36 to 48 months.

(F) When the most serious new conviction offense is Level F (OGS 27—OGS 30), a range of 60 months to the unserved balance of the sentence from which the offender was paroled.

(G) When the most serious new conviction offense is Level G (OGS G-1-OGS G-2), a range of 60 months to the unserved balance of the sentence from which the offender was paroled.

(H) When the most serious new conviction offense is Level H (OGS H-1—OGS H-6), the range is limited to the unserved balance of the sentence from which the offender was paroled.

(iii) When the Board determines that one or more aggravating circumstances are present, the Board may consider a recommitment period:

(A) For Level A (OGS 1—OGS 3), up to three months longer than the upper limit of the recommitment range.

(B) For Level B (OGS 4—OGS 7), up to six months longer than the upper limit of the recommitment range.

(C) For Level C (OGS 8—OGS 12), up to six months longer than the upper limit of the recommitment range.

(D) For Level D (OGS 13—OGS 16), up to 12 months longer than the upper limit of the recommitment range.

(E) For Level E (OGS 17—OGS 26), up to 12 months longer than the upper limit of the recommitment range.

(iv) When the Board determines that one or more mitigating circumstances are present, the Board may consider a recommitment period:

- (A) For Level B (OGS 4—OGS 7), up to six months shorter than the lower limit of the recommitment range.
- (B) For Level C (OGS 8—OGS 12), up to six months shorter than the lower limit of the recommitment range.
- (C) For Level D (OGS 13—OGS 16), up to 12 months shorter than the lower limit of the recommitment range.
- (D) For Level E (OGS 17—OGS 26), up to 12 months shorter than the lower limit of the recommitment range.
- (E) For Level F (OGS 27—OGS 30), up to 24 months shorter than the lower limit of the recommitment range.
- (F) For Level G (OGS G-1-OGS G-2), up to 24 months shorter than the lower limit of the recommitment range.

(3) Determine the recommitment period and provide reasons if an aggravated or mitigated duration or deviation from the recommitment ranges.

§ 311.6. Parole violator tables.

TABLE 1—Technical parole violator recommitment ranges

<i>Correctional Facility Recommitments</i>	<i>Non-violent (NV) recommitment range</i>	<i>Violent (V) recommitment range</i>	<i>Disciplinary Infractions 61 Pa.C.S. § 6138(d)(5) 61 Pa.C.S. § 6138(e)(3)</i>
1st violation	6 months maximum	3—6 months	12 months maximum
2nd violation	9 months maximum	6—9 months	18 months maximum
3rd/subseq. violation	12 months maximum	9—12 months	24 months maximum
<i>CCC/CCF/PVC Recommitments</i>	3 months maximum	6 months maximum	12 months maximum

TABLE 2—Convicted parole violator recommitment ranges

<i>Level</i>	<i>New Conviction</i>	<i>Non-violent (NV) recommitment range</i>	<i>Violent (V) recommitment range</i>	<i>Agg/Mit</i>
A	OGS 1—OGS 3	1—6 months	1—6 months	+ 3
B	OGS 4—OGS 7	6—12 months	6—12 months	+/- 6
C	OGS 8—OGS 12	12—18 months	12—18 months	+/- 6
D	OGS 13—OGS 16	18—30 months	24—36 months	+/- 12
E	OGS 17—OGS 26	24—36 months	36—48 months	+/- 12
F	OGS 27—OGS 30	N/A	60—unserved balance	- 24
G	OGS G-1-OGS G-2	N/A	60—unserved balance	- 24
H	OGS H-1—OGS H-6	N/A	Maximum/unserved balance	N/A

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