SPONSOR: Rep. B. Short & Sen. Katz
Reps; Brady, Briggs King, George, Hudson, Jaques, Q. Johnson, Lavelle, Longhurst, Mulrooney, Schooley, Schwartzkopf, Scott, Viola, D.E. Williams, D.P. Williams; Sens. Booth, Bushweller, McBride, Simpson, Sorenson

HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 35

AN ACT TO AMEND TITLES 1, 11, 16 AND 29 OF THE DELAWARE CODE RELATING TO THE DISSOLUTION OF THE BOARD OF PAROLE AND TRANSFER OF THE BOARD'S RESPONSIBILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4341 in its entirety.

Section 2. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4342 in its entirety and replacing the following "§4342 Repealed." in lieu thereof.

Section 3. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4343 in its entirety and replacing the following "§4343 Repealed." in lieu thereof.

Section 4. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4344 in its entirety and replacing the following "§4344 Repealed." in lieu thereof.

Section 5. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4345 in its entirety and replacing the following "§4345 Repealed." in lieu thereof.

Section 6. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4346 in its entirety and replacing the following "§4346 Repealed." in lieu thereof.

Section 7. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4347 in its entirety and replacing the following "§4347 Repealed." in lieu thereof.

Section 8. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4349 in its entirety and replacing the following "§4349 Repealed." in lieu thereof.

Section 9. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4350 in its entirety and replacing the following "§4350 Repealed." in lieu thereof.

Section 10. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4351 in its entirety and replacing the following "§4351 Repealed." in lieu thereof.

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Section 11. Amend Chapter 43, Title 11 of the Delaware Code by deleting §4353 in its entirety and replacing the following “§4353 Repealed.” in lieu thereof.

Section 12. Amend §4354 of Title 11 of the Delaware Code thereof by deleting the word “subchapter.” and inserting “Title.” in lieu thereof.

Section 13. Amend Chapter 43 of Title 11 of the Delaware Code by adding thereto a new section comprised entirely of the following:

"§4341 Parole Revocation; Jurisdiction and Authority.

(a) The court may issue a warrant for the arrest of a parolee for violation of any of the conditions of parole or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the parolee. The warrant shall authorize officers to return the parolee to the custody of the court or to the Department.

(b) The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of parole, may arrest such parolee without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the parolee has, in the judgment of the Commissioner or probation officer, violated the conditions of parole. The written statement delivered with the parolee by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the parolee. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall not be applicable to the parolee arrested under these provisions and any parolee arrested under these provisions shall not be entitled to bail. Pending hearing, as hereinafter provided, upon any charge of violation, the person shall remain incarcerated.

(c) Notwithstanding any provision of any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of parole or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of parole by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at Level IV pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is considered by the court. For the purposes of this subsection, the term “technical and minor violations of the conditions of probation or supervision” shall not include arrests or convictions for new criminal

offenses. For the purposes of this subsection, the limits pertaining to the use of Level IV as administrative sanction for technical and minor parole violations shall not apply to the use of home confinement for such purposes.

(d) A parolee for whose return a warrant cannot be served shall be deemed a fugitive from justice or to have fled from justice. If it shall appear that parolee has violated parole, the court shall determine whether the time from issuing of the warrant to the date of the parolee's arrest, or any part of it, shall be counted as time served on probation, parole, or suspended sentence.

(e) The sentencing court shall retain exclusive jurisdiction over any and all alleged parole violations and parole revocations which arise out of sentences imposed by that court.

(f) Any person who commits a crime while at large on parole or conditional release and is convicted and sentenced therefor shall serve the unexpired portion of the term under which the person was released consecutively after any new sentence for the new offense.".

Section 14. Amend Chapter 43 of Title 11 of the Delaware Code by adding thereto a new section comprised entirely of the following:

"§ 4342 Parole Revocation; Procedure.

When it has been alleged that an offender has violated of any condition of parole:

(a) A written statement of the basis and circumstances of said violation shall be provided to the parolee at the time the parolee is taken into custody.

(b) Following the arrest of the parolee, the Department shall promptly schedule a preliminary hearing regarding any alleged violation of parole.

(c) Prior to the preliminary hearing, the parolee shall be provided notice of:

(1) the parolee’s right to written notice of the alleged violation;

(2) the parolee’s right to a timely preliminary hearing at which time an independent preliminary hearing officer will determine whether there exists probable cause for the revocation of the offender’s parole;

(3) the parolee’s right to written notice of the decision following the preliminary hearing;

(4) the parolee’s right to waive the preliminary hearing;

(5) the parolee’s right to a violation of parole hearing following: (a) any waiver of preliminary hearing, or (b) determination that there exists probable cause for the revocation of the offender’s parole;

(6) the parolee’s right to present witnesses and supporting documentation at any preliminary hearing unless the exercise of such right would require the disclosure of the identity of a confidential informant; and

(7) the parolee's qualified right to be represented by counsel or have counsel appointed at any preliminary hearing.

(d) Jurisdiction to conduct hearings in relation to alleged violations of parole is hereby granted upon any court which has imposed the criminal sentence giving rise to the grant of parole.

(e) After any preliminary hearing, if the Institutional Release Classification Board determines that probable cause exists that a parolee has violated any condition of parole, the Department shall provide written notice of such decision and promptly schedule a violation of parole hearing before a court of competent jurisdiction.".

Section 15. Amend Chapter 43 of Title 11 of the Delaware Code by deleting § 4352 in its entirety and replacing it with the following:

"§ 4352 Return of violator of parole or conditional release; procedure and action on violation.

(a) At any time during release on parole or conditional release under parole the Institutional Release Classification Board or any member thereof may issue a warrant for the arrest of a released person for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the person. The warrant shall authorize any officer authorized to serve process in this State to return the person to the actual custody of the correctional facility from which the person was released, or to any other suitable detention facility designated by the Institutional Release Classification Board or Department. When, in the judgment of the Commissioner or of any probation and parole officer, there has been a violation of the conditions of release, the Commissioner or the probation and parole officer may arrest such parolee or releasee without a warrant, or the Commissioner or the probation and parole officer may deputize any other officer with power of arrest to do so by giving officer a written statement setting forth that the parolee or releasee has, in the judgment of the Commissioner or probation and parole officer, violated the conditions of parolee's release. The written statement delivered with the person by the arresting officers to the official in charge of the facility to which the person is brought for detention shall be sufficient warrant for detaining the parolee.

(b) After making an arrest the Department shall present to the detaining authorities a statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the person shall remain incarcerated in the institution and shall not be permitted bail.

(c) Upon such arrest and detention, the Department shall immediately notify the Institutional Release Classification Board and shall submit a report showing in what manner the person had violated the conditions of release. The Department shall conduct a preliminary hearing as set forth at 11 Del. C. § 4342(b) before the Institutional Release Classification Board. Should the Board determine that there exists probable cause that a violation of any condition of

parole has occurred, the Department will schedule the matter for a violation hearing before a court of competent jurisdiction.

(d) If a violation is established by a court of competent jurisdiction following a hearing in accordance with 11 Del. C. §4342(e), such court may continue or revoke the parole or conditional release, modify the conditions of parole or conditional release, or enter such other order as it may see fit.

(e) A person for whose return a warrant has been issued by the Institutional Release Classification Board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice.

(f) If it shall appear that the person has violated the provisions of the person's release, the court shall determine whether the time from the issuing of the warrant to the date of the person's arrest, or any part of it, shall be counted as time under the sentence.".

Section 16. Amend Chapter 65 of Title 11 of the Delaware Code by deleting § 6529A in its entirety and replacing it with the following:

"§ 6529A Institutional Release Classification Board.

(a) The Institutional Release Classification Board shall classify any and all inmates seeking release from an institution for whatever reason and shall have the discretion to grant parole and set conditions of parole for eligible offenders.

(b) The Institutional Release Classification Board shall consist of seven members, including four members appointed by and serving at the pleasure of the Commissioner of Corrections; one member appointed by and serving at the pleasure of the Chair of the Senate Adult & Juvenile Corrections Committee; one member appointed by and serving at the pleasure of the Chair of the House Corrections Committee; and one member who shall be a representative of the victims' advocacy community agreed upon, appointed by and serving at the pleasure of the Speaker of the House and the President Pro Tem of the Senate.

(c) The wardens of Department of Correction facilities shall possess veto power over the non-parole decisions of the Institutional Release Classification Board and also shall possess discretionary authority to grant a furlough in the event of the sudden death of a member in an inmate's immediate family. The wardens shall not possess veto authority over any decision of the Institutional Release Classification Board relating to the granting of parole or findings regarding probable cause that a parolee has violated any condition of parole.

(d) The Institutional Release Classification Board shall:

(1) Be the paroling authority for the State;

(2) Establish rules and regulations for the conduct of its own proceedings, and rules of procedure for the effective enforcement of this chapter. Copies of said rules and regulations shall be published and may be obtained upon request;

(3) Meet at least once a month, for the transaction of business, and a sufficient other number of times as shall be necessary adequately to perform its duties under this chapter;

(4) Keep a record of its acts and notify each applicant for parole, the Department and such other parties as required under this Title of its decisions;

(5) Consult with the Department in the formulation and establishment of policies and procedures, fully to carry out the objectives of parole and correctional treatment in the best interests of the public;

(6) Cooperate with the Department in preparing an annual report regarding its parole functions to be submitted to the Governor and make available and submit to the Department all statistical and other data of its work and compilation and analysis of dispositions as it shall require. The Board may make a separate statement or include such statement in the report of the Department to the Governor;

(7) Act as advisory board to the Board of Pardons. When a person in legal custody of the Bureau of Prisons applies to the Board of Pardons for recommendation for a pardon or commutation of sentence, the Institutional Release Classification Board, upon request, shall furnish to each member of the Board of Pardons and to the Governor a report of the record of such person, which shall include its opinion as to the state of rehabilitation of such person.".

Section 17. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529B to be comprised entirely of the following:

"§6529B Eligibility for Parole.

(a) A person confined to any correctional facility administered by the Department may be released on parole by the Institutional Release Classification Board if the person has served 1/3 of the term imposed by the court, such term to be reduced by such merit and good behavior credits as have been earned, or 120 days, whichever is greater. For the purpose of this subchapter, "court" shall include any court committing an offender to the Department.

(b) Consistent with law, the Institutional Release Classification Board, upon written recommendation of the court which imposed the sentence, or the Department, may reduce the minimum term of eligibility when the Institutional Release Classification Board is satisfied that the best interest of the public and the welfare of the person will be served by such reduction. Such reduction in the minimum term of eligibility for parole shall be by order of the Institutional Release Classification Board stating the specific date when said person shall become eligible for parole; but

such reduction of the minimum term of eligibility for parole shall have no effect on the maximum limits of the sentence. The order of reduction by the Institutional Release Classification Board shall be made in open hearing.

(c) The Institutional Release Classification Board shall have authority to grant parole and determine whether there is probable cause that a parolee has violated any condition of parole where the maximum term has been commuted by the Governor. For all purposes of this section, a person sentenced to imprisonment for life shall be considered as having been sentenced to a fixed term of 45 years.

(d) Consistent with law, the Institutional Release Classification Board may adopt such other rules as it deems proper or necessary with respect to the eligibility of persons for parole, the conduct of parole hearings or conditions to be imposed upon parolees.

(e) Whenever the physical or mental condition of any person confined in any institution demands treatment which the Department cannot furnish, the Department may, if such action seems necessary for the well-being of such person, recommend the case be considered by the Institutional Release Classification Board at a regular or special meeting. When such case is so considered, the Institutional Release Classification Board, if satisfied that removal from the institution is necessary for the well-being of such person, may order the release of such person on parole without regard to the time already served by such person. The Institutional Release Classification Board shall parole in such case only when arrangements have been made for the treatment of the person in some institution. The Institutional Release Classification Board may impose any conditions of parole in such case.".

Section 18. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529C to be comprised entirely of the following:

"§ 6529C Parole Authority and Procedure.

(a) A person committed to the custody of the Department who will be eligible for parole within 180 days may apply for a parole hearing on forms promulgated by the Institutional Release Classification Board. Upon receipt of such application, the Institutional Release Classification Board shall notify the Bureau Chief of Prisons of said application and request verification of parole eligibility and the information required in subsection (d) of this section which shall be provided the Institutional Release Classification Board within 30 days. Upon receipt of the foregoing information, the Institutional Release Classification Board shall determine within 30 days if a parole hearing will be scheduled. If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Institutional Release Classification Board of the earliest date, not sooner than 6 months for an applicant with a good-time release date of 3 years or less and not sooner than 1 year for an applicant with a good-time release date of more than 3 years, upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section.

(b) If any person eligible for parole fails to make an application as specified in subsection (a) of this section, the Department shall have no duty to such person to provide the Institutional Release Classification Board with the information otherwise required by this chapter and the Institutional Release Classification Board shall have no duty to such person to consider such person for parole. Notwithstanding the failure of a person to apply for parole, the Department is permitted to provide the Institutional Release Classification Board with the information otherwise required by this chapter and the Institutional Release Classification Board may, in turn, consider such person for parole.

(c) A parole may be granted when in the opinion of the Institutional Release Classification Board there is reasonable probability that the person can be released without detriment to the community or to person, and where, in the Institutional Release Classification Board 's opinion, parole supervision would be in the best interest of society and an aid to rehabilitation of the offender as a law-abiding citizen. A parole shall be ordered only in the best interest of society, not as an award of clemency, and shall not be considered as a reduction of sentence or a pardon. A person shall be placed on parole only when the Institutional Release Classification Board believes that the person is able and willing to fulfill the obligations of a law-abiding citizen. Among the factors the Institutional Release Classification Board shall consider when determining if a defendant shall be placed on parole are as follows: job skills, progress towards or achievement of a general equivalency diploma, substance abuse treatment and anger management and conflict resolution.

(d) Within 1 month prior to the time an offender is scheduled for a parole hearing, the Department shall submit a progress report with parole recommendations to the Institutional Release Classification Board, and the Department shall submit a carefully evaluated parole plan with recommendations. At the same time a copy of the progress report and the parole plan and recommendations shall also be submitted to the Delaware State Police and to the arresting public police organization, along with the date and location of the scheduled parole hearing. Moreover, whenever possible and feasible, the Department shall notify the aggrieved party of the crime or crimes for which the offender was sentenced and the date and location of the scheduled parole hearing.

(e) The Institutional Release Classification Board shall have no obligation to allow a person eligible for parole to appear before it, and the Institutional Release Classification Board may deny a parole application without having interviewed the applicant. In no case, however, shall the Institutional Release Classification Board grant a parole without having first had the applicant personally appear before the Institutional Release Classification Board and be interviewed by it.

(f) All paroles shall issue upon order of the Institutional Release Classification Board duly adopted by a majority of those present and voting; provided, however, no person who has been convicted of and imprisoned for murder in the first or second degree, rape in the first, second or third degree, unlawful sexual intercourse in the first or second

degree, kidnapping or any offense relating to the sale, attempt to sell, delivery or possession with intent to sell or deliver a narcotic drug shall be granted a parole except by order of the Institutional Release Classification Board duly adopted by at least 6 of the 7 members of the Institutional Release Classification Board. A quorum shall be a minimum of 4 members. No parole shall be issued to any prisoner who has been convicted in a court of law and sentenced for committing or attempting to commit the offense of "escape after conviction" as set forth in § 1253 of this title until such time as that prisoner has served the amount of time equivalent to and commensurate with that imposed in the sentence set forth by the court for said escape or attempt to escape. No parole shall be issued to any prisoner who has been convicted and sentenced in a court of law for the offense of "conspiracy in the second degree" as defined in § 512 of this title with respect to directly and actively aiding or abetting an escape as defined in § 1253 of this title until such time as an equivalent amount of time commensurate with that which has been imposed under the sentence set forth by the court for said conspiracy has been served.

(g) Every person while on parole shall remain in the legal custody of the Department but shall be subject to the orders of the Institutional Release Classification Board.

(h) Where civil rights would otherwise be forfeited, they shall be forfeited only during any period of incarceration.

(i) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in § 4352 of this title, relating to a person who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a person on parole or conditional release has performed the obligations of that person's release for such time as shall satisfy the Institutional Release Classification Board that the person's final release is not incompatible with the best interest of society and the welfare of the individual, the Institutional Release Classification Board may make a final order of discharge and issue a certificate of discharge to the person; but no such order of discharge shall be made within 1 year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of a person who has served person's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment. Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.

(j) Each person who is eligible for parole or conditional release under this subchapter is eligible to be a candidate for appointment to the house arrest program for nonviolent offenders. A person shall be eligible for consideration to participate in the house arrest program if such person meets all of the requirements of subsection (c) of this section and in addition:

(1) Makes regular payments, per month, toward the costs incurred by the State in maintaining the program;

(2) Performs such stipulated number of hours of public service work as are directed by the court or by the Department;

(3) Makes restitution to any victim or victims in such amounts as the court shall determine. Full or partial restitution, in such manner as the court determines, is a requirement for participation, or continued participation, in the program.

(k) Notification of parole eligibility –

(1) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Institutional Release Classification Board shall, whenever possible and feasible, notify the victim or the immediate family of the victim of the date, time and place of the scheduled hearing. A copy of any rules developed pursuant to § 6529E of this title shall be included with the notice. However, at any time, the victim or the victim's immediate family can request that no notification be sent.

(2) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Institutional Release Classification Board shall send a notice of the date, time and place of the scheduled hearing to the attorney general.

(3) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Institutional Release Classification Board shall cause notice of the date, time and place of the scheduled hearing to be published in a newspaper with an average daily statewide circulation of at least 15,000 copies, of which at least 5,000 copies shall be in the county in which the offense occurred.

(l) Notification of Parole Decision –

(1) At the same time as the Institutional Release Classification Board sends notice of its decision to the inmate, the Institutional Release Classification Board shall send notice of its decision to those who received notice under paragraphs (k)(1) and/or (2) of this section.

(2) No later than 10 days after a parole hearing resulting in parole of an applicant, the Institutional Release Classification Board shall cause notice of its decision to be published in the same newspaper in which the notice of the hearing was published.

(m) Prior to a parole hearing, a party to whom the Institutional Release Classification Board failed to notify as required in paragraphs (k)(1) or (2) of this section may request that the Institutional Release Classification Board postpone the scheduled hearing in order to provide a reasonable opportunity for the party to attend the hearing, and/or

submit a written statement. However, in no event shall the hearing be postponed more than 45 days from the original scheduled date.

(n) Any notice required to be provided to the victim or to the victim's immediate family shall be mailed to the last known address of the victim or family member. It is the responsibility of the victim or the victim's immediate family to provide the Institutional Release Classification Board with a current mailing address.".

Section 19. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529D to be comprised entirely of the following:

"§6529D Information from the Department and others.

The Department shall grant to the Institutional Release Classification Board or its representatives access to any person over whom the Institutional Release Classification Board has jurisdiction under this chapter, and shall provide facilities for communicating with and observing such person, and make available to the Institutional Release Classification Board such reports as the Institutional Release Classification Board shall require concerning the conduct and character of any person in the custody of the Department, the institutional plan of treatment for such person or any other facts deemed by the Institutional Release Classification Board pertinent in determining whether the person shall be paroled. The Department shall furnish to the Institutional Release Classification Board such reports as the Institutional Release Classification Board shall require concerning casework performed in the community with relatives or others connected with the person, investigations of parole plans or other reports or facts deemed by the Institutional Release Classification Board pertinent in determining whether or not the person shall be paroled. All police agencies of this State, upon request, shall furnish the Institutional Release Classification Board with any information at their disposal in regard to any person to be considered for parole.".

Section 20. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529E to be comprised entirely of the following:

"§ 6529E Conduct of hearings on applications for parole.

(a) The Institutional Release Classification Board shall adopt rules for hearing oral statements or arguments by persons not connected with the Department of Correction when hearing applications for parole. In developing those rules, the Institutional Release Classification Board shall reserve for itself the right to:

(1) Limit the length of each statement;

(2) Restrict the number of individuals allowed to attend parole hearings in accordance with physical limitations or security requirements of the hearing facilities; and

(3) Deny admission or continued attendance to individuals who threaten or present a danger to the attendees or participants or who disrupt the hearing.

The Institutional Release Classification Board shall also accept written statements.

(b) The Institutional Release Classification Board may take formal action to close their proceedings upon a majority vote of members present for the following reasons:

(1) To protect ongoing law enforcement investigations, upon written request of the attorney general or law enforcement agency;

(2) To deliberate upon oral or written arguments received;

(3) To provide opportunity for applicants to challenge confidential information which they believe is detrimental to their applications; or

(4) At the request of the victim or, in the case of first-degree murder, the immediate family of the victim.

(c) The Department of Correction may appear personally before the Institutional Release Classification Board to advise and be heard by the Institutional Release Classification Board with respect to any application for parole being considered.

(d) When the Institutional Release Classification Board is hearing an application for parole made by an offender, the victim or immediate family of the victim of such crime or their duly appointed representatives may make oral statements or arguments before the Institutional Release Classification Board with respect to the application for parole being considered. Victims or their representatives shall have priority in making statements before the Institutional Release Classification Board.

(e) As used in this section, the phrase "immediate family" shall mean widow, widower, parents, children, brothers and sisters of the victim.".

Section 21. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529F to be comprised entirely of the following:

"§ 6529F Witnesses; Production of Records.

The Institutional Release Classification Board may issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Institutional Release Classification Board. Subpoenas so issued may be served by Department employees or by any person authorized to serve subpoenas by the Rules of Civil Procedure of the Superior Court and shall be served and returned as provided by said Rules. The fees of witnesses shall be the same as allowed in the Superior Court and shall be paid by the State Treasurer from any moneys in the Treasury

of the State not otherwise appropriated, upon a warrant signed by a member of the Institutional Release Classification Board and its Secretary. Any person who testifies falsely or fails to appear when subpoenaed, or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before said Court is subject. The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Institutional Release Classification Board by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such Superior Court.".

Section 22. Amend Chapter 65 of Title 11 of the Delaware Code by creating a new section 6529G to be comprised entirely of the following:

"§ 6529G Mental health evaluations required prior to parole.

(a) No person who has been convicted of and imprisoned for any class A felony, felony sex offense or any felony wherein death or assault to a victim occurred shall be released from incarceration by the Institutional Release Classification Board until the Institutional Release Classification Board has considered a mental health evaluation of such person. The Institutional Release Classification Board, in its discretion, may request mental health evaluations on persons convicted and imprisoned for any offense not enumerated above.

(b) The Department of Correction shall ensure that mental health evaluations required by subsection (a) of this section are available to the Institutional Release Classification Board at the time of the hearing in those cases wherein a favorable recommendation is made by the Department to the Institutional Release Classification Board .

In cases wherein a favorable recommendation is not made by the Department but the Institutional Release Classification Board has determined that the person is otherwise suitable for release on parole, the Institutional Release Classification Board must request a mental health evaluation, pursuant to this section.

(c) The Institutional Release Classification Board may consider any mental health evaluation conducted within 12 months prior to the person's parole hearing in lieu of requesting a new mental health evaluation. However, for persons convicted and imprisoned for any of the offenses listed in subsection (a) of this section, the Institutional Release Classification Board may determine that it requires additional information. In such case as additional information is required, no person shall be released from incarceration until such additional information has been considered by the Institutional Release Classification Board.

(d) Mental health evaluations conducted pursuant to this section will be administered by a person with professional education and training. The mental health evaluation to the Institutional Release Classification Board shall consist of:

(1) Background information or historical information about the person's mental health;

(2) Information about the person's functioning in the prison or institutional setting;

(3) A description of the person's current mental health; and

(4) A summary with a prognosis of expected behavior if the person were paroled, including any specific recommendations for mental health care.

(e) Any mental health evaluations prepared pursuant to this section will be provided to each member of the Institutional Release Classification Board for their consideration in determining whether the person should be released from prison.

(f) Nothing in this section shall preclude the parole of a person for treatment to another institution because of a physical or mental condition, as provided in § 6529B of this title.".

Section 23. Amend §108(a)(10) of Title 1 of the Delaware Code by deleting the phrase “Board of Parole,” therefrom.

Section 24. Amend § 408(c) of Title 11 of the Delaware Code by deleting the phrase “Parole Board” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 25. Amend § 2523(b) of Title 11 of the Delaware Code by deleting the phrase “parole board” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 26. Amend § 2523(c) of Title 11 of the Delaware Code by deleting the phrase “parole board” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 27. Amend § 4120A(c)(1)(d) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Repealed.” in lieu thereof.

Section 28. Amend § 4120A(d)(2) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 29. Amend § 4120A(d)(4) of Title 11 of the Delaware Code by deleting the phrase “State Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 30. Amend § 4120A(f) of Title 11 of the Delaware Code by inserting the phrase “or Institutional Release Classification Board” immediately following the word “Parole” and before the word “on” as they appear therein.

Section 31. Amend § 4122(c) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Sex Offender Management Board” in lieu thereof.

Section 32. Amend § 4122(d) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Sex Offender Management Board” in lieu thereof.

Section 33. Amend § 4122(e) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 34. Amend § 4217(d)(1) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 35. Amend § 4217(d)(2) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof and deleting the phrase “§4350(a)” and inserting the phrase “§ 6529E” in lieu thereof.

Section 36. Amend § 4217(d)(3) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 37. Amend § 4217(d)(4) of Title 11 of the Delaware Code by deleting the word “Board ” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 38. Amend § 4217(e) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 39. Amend § 4219(b) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 40. Amend § 4219(c) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole or the” as it is set forth therein.

Section 41. Amend § 6582(b)(5) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 42. Amend § 4302(11) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 43. Amend § 4302(12) of Title 11 of the Delaware Code by deleting the phrase “Parole Board” as it is set forth therein and inserting the phrase “Institutional Release Classification Board” in lieu thereof.

Section 44. Amend § 4302(13) of Title 11 of the Delaware Code by deleting the subsection in its entirety and inserting the following: “Institutional Release Classification Board ” means the duly established paroling authority for the State of Delaware as set forth at 11 Del. C. § 4301.” in lieu thereof.

Section 45. Amend § 4321(a) of Title 11 of the Delaware Code by deleting the phrase “Parole Board” as it is set forth therein and inserting the phrase “Institutional Release Classification Board” in lieu thereof.

Section 46. Amend § 4321(b)(4)(a) of Title 11 of the Delaware Code by deleting the phrase “Board of Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board” in lieu thereof.

Section 47. Amend § 4321(b)(4)(b) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 48. Amend § 4321(c) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 49. Amend § 4321(d) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 50. Amend § 4322(a) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 51. Amending Chapter 43, Title 11 of the Delaware Code by deleting § 4363 in its entirety.

Section 52. Amend § 6504(6) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 53. Amend §8701(b)(10) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Repealed." in lieu thereof.

Section 54. Amend § 9413(a)(3) of Title 11 of the Delaware Code by deleting the phrase "Parole Board" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 55. Amend § 9416 of Title 11 of the Delaware Code by deleting the word "Board of" as appears in the title thereof.

Section 56. Amend § 9416(a) of Title 11 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 57. Amend § 9416(a)(1) of Title 11 of the Delaware Code by deleting the phrase "Parole Board" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 58. Amend § 9416(a)(2) of Title 11 of the Delaware Code by deleting the phrase "Parole Board" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 59. Amend § 5134 of Title 16 of the Delaware Code by deleting the phrase "Parole Board" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof.

Section 60. Amend § 5134 of Title 16 of the Delaware Code by deleting the phrase "§4353" as it is set forth therein and inserting the phrase "§ 6529G"in lieu thereof.

Section 61. Amend § 8904(2) of Title 29 of the Delaware Code by deleting the phrase "Board of Parole" as it is set forth therein and inserting the phrase "Institutional Release Classification Board" in lieu thereof and deleting the phrase "pursuant to Chapter 43 of Title 11" as set forth therein.

Section 62. Amend § 10004(h)(5) of Title 29 of the Delaware Code by deleting the word “Parole” as it is set forth therein and inserting the phrase “Institutional Release Classification Board ” in lieu thereof.

Section 63. This Act shall become effective on July 1, 2011.

Section 64. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable

SYNOPSIS

This Act dissolves the State Board of Parole and transfers its statutory functions to the Institutional Release Classification Board ("IRCB") and the courts. This Act does not alter or narrow eligibility for parole, nor does it limit the procedural rights or remedies available to parolees. In addition, victims will have the same right of notice and opportunity to be heard as they currently have with respect to Board of Parole hearings.

Under the Truth in Sentencing (TIS) Act, the parole system was abolished for offenses committed after June 30, 1990. As a result, the caseload of the Board of Parole has decreased dramatically over the past two decades in its core areas of responsibility. As of November 2010, there were only 247 inmates in state prisons eligible for parole and 350 parolees under parole supervision. These numbers equate to approximately 5% of total incarcerated sentenced inmates and 2% of total offenders supervised in the community.

Under this Act, the Board of Parole’s authority to conduct parole and conditional release hearings will be transferred to the IRCB. In addition, the Board currently has the authority to determine whether an individual has violated the terms of his or her parole, and what sanctions to impose. Under this Act, the Department of Correction will hold a hearing to determine whether there is probable cause to believe a violation exists. If so, then the sentencing court will hold a full hearing to determine whether a violation actually occurred. In addition, the Board of Parole’s authority to hear appeals of certain sex offender tier designations will be transferred to the Sex Offender Management Board, which has significant expertise in this area. The Board’s advisory functions (*i.e.*, to the Board of Pardons) will be transferred to the IRCB.