AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, providing for medical parole and early release of elderly inmates; and imposing duties on the Department of Corrections, the Pennsylvania Board of Probation and Parole and the Department of Aging.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 61 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 33A
MEDICAL PAROLE AND EARLY RELEASE OF CERTAIN INMATES

Sec.

33A01. Legislative findings and declaration.
33A02. Definitions.
33A03. Establishment of program.
33A04. Medical parole.
33A05. Conditional early release of elderly inmates.
The General Assembly:

(1) Finds that:

(i) Statistics reveal that the number of individuals 55 years of age and older who are incarcerated in Federal and state prisons in the United States has increased by 1,400% since 1981 and is expected to triple by 2030.

(ii) A Department of Corrections report revealed that in 2001 there were 1,892 inmates 55 years of age or older. By September 2017, the geriatric population tripled to 6,458.

(iii) If these geriatric incarceration trends continue, by 2030 it is estimated that inmates 55 years of age and older will make up one-third of the United States prison population.

(iv) The incarceration of aging and elderly inmates is costly as these inmates require more medical and supportive services than younger inmates. The average health care cost of incarcerating aging and elderly inmates with a chronic illness over the age of 50 is at least twice as much as the cost of incarcerating younger inmates.

(v) The incarceration of geriatric inmates forces
the Commonwealth's correctional system to open more geriatric-care units and expand existing resources to house aging and elderly inmates with dementia, diabetes, heart disease, cancer and other physical, behavioral and cognitive disabilities associated with aging.

(vi) Contemporary research reveals that aging and elderly inmates who have served extensive sentences present the lowest risk of recidivism of any other population of inmates.

(2) Further finds that providing an avenue for the review and parole of aging and infirm inmates is both cost-effective and consistent with public safety.

(3) Declares that any decision to parole an aging and infirm inmate or elderly inmate shall be based on rigorous criteria established under this act, which must ensure that public safety is the highest priority and take into account rehabilitation, remorse and input from crime victims and the community.

§ 33A02. Definitions.
The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Aging and infirm inmate." An inmate who is 55 years of age or older, who has no current or prior convictions for a violent offense and who has been determined to be a permanently medically incapacitated inmate or a terminally ill inmate by a health care practitioner employed by or associated with the correctional facility where the inmate is incarcerated.


"Correctional facility." A State correctional institution.
"Early release." The release of an elderly inmate from the custody of the department before the inmate's original release date due to the age of the inmate.

"Elderly inmate." An inmate who is 65 years of age or older and who has no current or prior convictions for a violent offense.

"Eligible offender." An aging and infirm inmate.

"Health care practitioner." The term shall have the meaning given to it under section 103 of the act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

"Inmate." An individual committed to a term of imprisonment or otherwise committed to the custody of the department in a State correctional facility.

"Medical diagnosis." A diagnosis by a health care practitioner that an aging and infirm inmate is a permanently medically incapacitated inmate or a terminally ill inmate. The diagnosis shall include, but not be limited to:

(1) A description of the injury, disease, syndrome, illness or terminal condition.

(2) A prognosis concerning the likelihood of recovery from the disease, syndrome or terminal condition.

(3) A description of the inmate's mental or physical incapacity.

(4) A description of the type of ongoing medical treatment that would be required if the inmate was released on medical parole.

"Medical information or data." Information or data, whether oral or recorded, in any form or medium, created by or derived from a health care practitioner that relates to:

(1) A medical diagnosis.
(2) The past, present or future physical, mental or behavioral health or condition of an aging and infirm inmate.

(3) The provision of health care to an aging and infirm inmate by a health care practitioner employed by or associated with a correctional facility.

"Medical parole." The release of an aging and infirm inmate from the custody of the department due to the inmate's status as a permanently medically incapacitated inmate or a terminally ill inmate.

"Permanently medically incapacitated inmate." An aging and infirm inmate:

(1) Who has a condition caused by injury, disease, syndrome or illness which, to a reasonable degree of medical certainty as determined by a health care practitioner, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate is permanently unable to perform activities of daily living and results in the inmate requiring 24-hour care.

(2) Whose incapacitation under paragraph (1) did not exist at the time of sentencing.

(3) Who is not a danger to the inmate or others.

"Petition." An application submitted to the board by an aging and infirm inmate or an elderly inmate seeking medical parole or early release from a correctional facility.

"Program." The Medical Parole and Early Release Program established under section 33A03 (relating to establishment of program).

"Terminally ill inmate." An aging and infirm inmate who:

(1) has a condition caused by injury, disease, syndrome or illness which, to a reasonable degree of medical certainty
as determined by a health care practitioner, renders the aging and infirm inmate terminally ill to the extent that there can be no recovery and death is imminent; and

(2) is not a danger to the inmate or others.

"Violent offense." The term includes:

(1) An offense under 18 Pa.C.S. (relating to crimes and offenses) which is subject to a sentence, the calculation of which includes an enhancement for the use of a deadly weapon, as defined pursuant to law or the sentencing guidelines promulgated by the commission.

(2) An offense for which registration is required under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

(3) A conviction under any of the following:

   (i) 18 Pa.C.S. § 2502 (relating to murder).
   (ii) 18 Pa.C.S. § 2503 (relating to voluntary manslaughter).
   (iii) 18 Pa.C.S. § 2506 (relating to drug delivery resulting in death).
   (iv) 18 Pa.C.S. § 2507 (relating to criminal homicide of law enforcement officer).
   (v) 18 Pa.C.S. § 2604(c) (relating to murder of unborn child).
   (vi) 18 Pa.C.S. § 2606 (relating to aggravated assault of unborn child).
   (vii) 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).
   (viii) 18 Pa.C.S. § 2702.1 (relating to assault of law enforcement officer).
   (ix) 18 Pa.C.S. § 2716(b) (relating to weapons of...
mass destruction).

(x) 18 Pa.C.S. § 2717(b)(2) (relating to terrorism).

(xi) 18 Pa.C.S. § 2901(a) (relating to kidnapping).

(xii) 18 Pa.C.S. § 3011 (relating to trafficking in individuals), if the offense is graded as a felony.


(xiv) 18 Pa.C.S. § 3502 (relating to burglary), if the offense was committed in a structure adapted for overnight accommodation and an individual was present.

(xv) 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(xvi) 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

(xvii) 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)(iii) or (4)(iii) (relating to drug trafficking sentencing and penalties).

(4) A criminal attempt, a criminal conspiracy or a criminal solicitation to commit an offense listed under paragraph (3) or an equivalent offense under the laws of this Commonwealth in effect at the time of commission of that offense or an equivalent crime in another jurisdiction.

§ 33A03. Establishment of program.

The department, in consultation with the board and the Department of Aging, shall establish the Medical Parole and Early Release Program. In establishing the program, the department shall:

(1) Examine and consider the needs of aging and infirm inmates and elderly inmates.

(2) Adopt health care standards unique to aging and
infirm inmates and elderly inmates.

(3) Examine and evaluate the systemic barriers to community reintegration by elderly inmates, including the relevance, accessibility and applicability of prescribed programming models for elderly inmates.

(4) Determine specific accommodations that elderly inmates may require to participate in prescribed programming, including prioritizing reintegrative and rehabilitative programming or vocational training.

§ 33A04. Medical parole.

(a) Authority to grant.--Notwithstanding any other provision of this title or any other law, regulation or guideline to the contrary, if a health care practitioner of a correctional facility in which an aging and infirm inmate is incarcerated concludes in a medical diagnosis that the inmate is an eligible offender, the department shall advise the eligible offender of the program if the department determines that the medical diagnosis limits the aging and infirm inmate's ability to pose a threat to public safety.

(b) Procedure.--

(1) The following apply:

   (i) The department shall identify all eligible inmates committed to the custody of the department.

   (ii) The department shall notify the inmate of the inmate's status as an eligible offender.

   (iii) Upon identification of an inmate as an eligible offender under subparagraph (i) and notification under subparagraph (ii), the department shall send notice to the board.

   (iv) Upon receipt of the notice under subparagraph
(iii), the board shall send notice to the prosecuting attorney and the sentencing court indicating that the department has preliminarily identified the inmate as an eligible offender. The notice shall be sent by United States mail unless the board, the sentencing court and the prosecuting attorney have consented to receipt of notice via electronic mail.

(v) Within 30 days of receipt of the notice under subparagraph (iv), the court or prosecuting attorney may file a written objection to the department's preliminary identification of the inmate as an eligible offender. Notice of the objection shall be provided to both the department and the board.

(vi) If no notice of objection has been filed under subparagraph (v), the board or the board's designee may approve an eligible offender's petition for medical parole upon a determination that all of the following apply:

   (A) The department has certified that the eligible offender has a good conduct record and continues to remain an eligible offender.

   (B) The reentry plan for the eligible offender is adequate.

   (C) The eligible offender's conditions and requirements for medical parole have been established.

   (D) There is no reasonable indication that the eligible offender poses a risk to public safety.

(vii) If the court or prosecuting attorney files a timely objection under subparagraph (v), the board shall
make a determination whether the inmate's status as an
eligible offender shall be rescinded. The board shall
notify the department, the prosecuting attorney and the
sentencing court of the board's determination no later
than 60 days after receipt of the objection.

(viii) If the board determines that the inmate is an
eligible offender under this chapter, the board shall
follow the requirements under subparagraph (vi).

(ix) If the board determines that the inmate is not
an eligible offender, the board shall retain exclusive
jurisdiction to grant parole and shall determine whether
the inmate shall be eligible for medical parole at a
later date or if medical parole should be denied.

(2) Nothing in this subsection shall be construed as
granting a right to medical parole to an eligible offender,
and any decision by the board or the department under this
section shall not be considered an adjudication under 2
Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
Commonwealth agencies) or Ch. 7 Subch. A (relating to
judicial review of Commonwealth agency action).

(3) Except as provided under this subsection, nothing in
this chapter shall otherwise affect the powers and duties of
the board or the department.

(c) Special consideration.--When considering an aging and
infirm inmate for medical parole, the board shall give special
consideration to whether age, time served and diminished
capacity or physical condition have reduced the aging and infirm
inmate's risk for future violence. The board may also consider
whether the inmate demonstrates the following:

(1) Successful participation in programs designed to
restore the inmate as a productive individual in the
community upon release.

(2) Reform and behavior change over a period of years.

(3) A renunciation of criminal activity and criminal
affiliations, if applicable.

(4) Remorse for criminal activity.

§ 33A05. Conditional early release of elderly inmates.

(a) Authority to petition for early release.--The following
apply:

(1) Notwithstanding any other provision of this title or
any other law, regulation or guideline to the contrary, an
erly inmate convicted of one or more crimes may petition
the board for early release after serving no less than 20
years of total confinement or reaching 65 years of age,
whichever is later, if the inmate has not committed a
disqualifying serious infraction as defined by the department
in the 12 months prior to filing the petition for early
release and the current sentence was not imposed for the
commission of a violent offense.

(2) No later than five years prior to the date that an
erly inmate will be eligible to petition for early
release, the department shall conduct an assessment of the
erly inmate and identify programming and services that
would be appropriate to prepare the inmate for and assist the
inmate with reentry into the community. To the extent
possible, the department shall make programming available as
identified by the assessment.

(3) No later than 90 days from receipt of a petition for
early release from an elderly inmate, the department shall
conduct, and the elderly inmate shall participate in, an
examination of the inmate, incorporating methodologies that
are recognized by experts in the prediction of dangerousness,
including a prediction of the probability that the elderly
inmate will engage in future criminal behavior, if released
on conditions to be set by the board.

(b) Submission of information to board.--The results of all
assessments, examinations, evaluations and any other information
pertaining to an elderly inmate who files a petition in
accordance with subsection (a) shall be transmitted to the board
at such time and in such form or manner as the board, in
consultation with the department, requires.

(c) Procedure.--The board:

(1) Shall give public safety considerations the highest
priority when making all decisions regarding early release
and conditions of early release. The board's decision to
grant early release to an elderly inmate under this section
is discretionary based on consideration of the criteria
established under section 33A08 (relating to duties of
board).

(2) Shall, before reviewing a petition, give written
notice of the petition to all interested parties, including,
but not limited to, the following:

(i) Law enforcement.

(ii) Any department personnel involved in the case.

(iii) The sentencing court.

(iv) The county district attorney's office which
prosecuted the case.

(v) The victims of a crime perpetrated by an elderly
inmate, if any, who have indicated a desire to be
notified.
(vi) The Office of Victim Advocate.

(vii) The Attorney General, if determined necessary and appropriate.

(3) Shall conduct a hearing on each petition filed under this section for early release in accordance with rules and regulations adopted under section 6139(a)(4) (relating to parole procedure). In conducting the hearing, the board shall provide an opportunity for victims and for survivors of victims of any crimes for which an elderly inmate has been convicted to present victim statements. The procedures to govern the presentation of victim statements shall be in accordance with section 6140 (relating to victim statements, testimony and participating in hearing). To facilitate victim and survivor of victim involvement, each district attorney shall ensure that any victim statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(4) May, after a hearing conducted under paragraph (3), order the elderly inmate released under conditions the board determines appropriate. If the board grants or denies a petition, it may specify the reasons for the decision. An elderly inmate granted early release by the board shall be subject to supervision by the board for a period to be determined by the board. The board shall monitor the elderly inmate's compliance with conditions of early release imposed by the sentencing court or board and promptly report any violations to the department. Any violation of conditions of early release established or modified by the board shall be subject to section 6138 (relating to violation of terms of parole).
(5) When making a decision for early release, shall consider any written statement addressing the appropriateness of early release from the department, the prosecuting attorney, the sentencing judge, law enforcement and correctional personnel involved in the case, if applicable, the victim and any survivor of the victim and any other interested party.

(6) Shall impose appropriate conditions of early release and provide appropriate supervision for the elderly inmate in the same manner as inmates given supervised release in accordance with the rules and regulations adopted by the board under section 6141 (relating to general rules and special regulations).

(7) May refuse to review a petition for any reason and may not be required to state a reason for the board's refusal to review.

(d) Denial of petition and violations.--The following apply:

(1) An elderly inmate whose petition for early release is denied may file a new petition for early release three years from the date of denial or at an earlier date as may be established by the board.

(2) An elderly inmate granted early release in accordance with this section may be returned to a correctional facility at the discretion of the board if the released inmate is found to have violated a condition of early release. The released elderly inmate shall be entitled to a hearing under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies). If the board finds that the elderly inmate has reoffended, the board may recommit the elderly inmate for up to the remainder of
the court-imposed term of incarceration. The elderly inmate may file a new petition for early release five years from the date of return to a correctional facility or at an earlier date as may be set by the board.

§ 33A06. Provisions applicable to medical parole and early release.

If an inmate is granted medical parole or early release under this chapter, the board may require, as a condition precedent to medical parole or early release, that the inmate's release plan include:

(1) The identification of a family member or community sponsor who will assist the aging and infirm inmate or elderly inmate with the activities of daily living.

(2) Verification of the availability of appropriate medical services sufficient to meet any ongoing treatment requirements, if any.

(3) Verification of appropriate housing, which may include, but not be limited to, a hospital, hospice, nursing home or other housing accommodation suitable to an aging and infirm inmate's medical needs.

§ 33A07. Duties of department.

The department shall:

(1) Develop and implement procedures to identify inmates who may be eligible for medical parole. The procedures shall:

   (i) be based upon all available medical information or data; and
   
   (ii) include a process for identified inmates to submit a petition for medical parole.

(2) Establish criteria for reviewing petitions for medical parole. The criteria must include consideration of:
(i) Public safety.

(ii) The seriousness of any offense committed by an aging and infirm inmate.

(iii) The victims and survivors of victims of crime for which the aging and infirm inmate was convicted and sentenced to incarceration.

(iv) The aging and infirm inmate's remorse and atonement for the offense for which the inmate was convicted and sentenced or the absence of remorse and atonement.

(v) The aging and infirm inmate's productivity and life changes while incarcerated.

(vi) The aging and infirm inmate's infraction history while incarcerated, if any.

(vii) The aging and infirm inmate's involvement in, completion of and responsiveness to programs and services made available to the inmate while incarcerated.

(viii) The aging and infirm inmate's behavioral health history, if applicable.

(ix) Any other criteria determined necessary and appropriate by the department and the board.

(3) Establish a uniform method for submitting petitions to the board in accordance with the requirements of this chapter.

(4) Consult with the board in developing the uniform method for submitting petitions to the board in accordance with paragraph (3).

(5) Consider and incorporate recommendations provided by the Department of Aging.
The board shall establish criteria for reviewing petitions under section 33A05 (relating to conditional early release of elderly inmates), which shall include consideration of the criteria established in accordance with section 33A03 (relating to establishment of program). In establishing the criteria, the board shall include an elderly inmate's failure to participate in an evaluation under section 33A05.

§ 33A09. Department of Aging.

(a) Consultations with the Department of Aging.--The department shall consult with the Department of Aging to determine the resources an eligible offender may need to transition from being an inmate to being a member of the community. The consultations shall focus on the role of the Department of Aging's area agencies on aging in assisting the department in determining the community-based options and factors necessary for successful reentry by eligible offenders who are granted medical parole, including, but not limited to, the following:

(1) Access to services such as transportation and housing, connection with a social support system, access to physical and mental health care and help with signing up for benefits.

(2) Finding appropriate placement for an eligible offender granted medical parole who is terminally ill.

(3) Help with identifying health care practitioners and securing medical records to safely manage illness or disease.

(b) Cooperation.--The Department of Aging shall cooperate with the department and the board in carrying out the requirements of this subsection.

§ 33A10. Regulations.
The following apply:

(1) The department and the board shall collaborate and each agency shall adopt and promulgate regulations necessary to carry out their respective duties under this chapter.

(2) Any rules, regulations or guidelines adopted by the board under this title or under 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole) may be used by the board to carry out its duties under this chapter.

§ 33A11. Applicability and construction.

(a) Applicability.--The provisions of this chapter shall not apply to an inmate who is sentenced to a term of imprisonment after a conviction for a violent offense.

(b) Construction.--Nothing in this chapter shall be construed to:

(1) Alter or diminish the rights conferred to victims under the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

(2) Limit the authority of the board to address violations of a condition of medical parole or early release under Subchapter C of Chapter 61 (relating to powers and duties).

(3) Convey a right to:

(i) medical parole;

(ii) an assessment for medical parole or any examination or evaluation to determine eligibility for medical parole; or

(iii) petition the board for early release from the custody of the department.

Section 2. This act shall take effect in 60 days.