

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2347 Session of 2022

INTRODUCED BY KINSEY, BURGOS, CURRY, HOHENSTEIN, MADDEN, HILL-
EVANS, SIMS, ISAACSON, T. DAVIS, WARREN, SCHLOSSBERG, GUENST,
D. WILLIAMS, BRIGGS, BULLOCK, SANCHEZ, PARKER, WEBSTER,
HARRIS, INNAMORATO AND McCLINTON, MARCH 8, 2022

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 8, 2022

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 61
2 (Prisons and Parole) of the Pennsylvania Consolidated
3 Statutes, in sentencing, repealing provisions relating to
4 transfer of inmates in need of medical treatment; in
5 Pennsylvania Board of Probation and Parole, providing for
6 parole for reasons of age or illness and for medical parole
7 due to public or disaster emergency related to health or
8 contagious disease outbreak; and abrogating regulations.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 9777 of Title 42 of the Pennsylvania
12 Consolidated Statutes, amended June 30, 2021 (P.L.260, No.59),
13 is repealed:

14 [§ 9777. Transfer of inmates in need of medical treatment.

15 (a) Inmates committed to custody of department.--If an
16 inmate is committed to the custody of the department, the
17 department, the inmate or a person to whom the court grants
18 standing to act on behalf of the inmate may petition the
19 sentencing court to temporarily defer service of the sentence of
20 confinement and temporarily remove the inmate committed to the

1 custody of the department, or other facility, for placement in a
2 hospital, long-term care nursing facility or hospice care
3 location. The following shall apply:

4 (1) The sentencing court may approve the petitioner's
5 request to temporarily defer service of the sentence of
6 confinement and place the inmate in a hospital or long-term
7 care nursing facility under electronic monitoring by the
8 department upon clear and convincing proof that all of the
9 following apply:

10 (i) The medical needs of the inmate can be more
11 appropriately addressed in the hospital or long-term care
12 nursing facility.

13 (ii) The hospital or long-term care nursing facility
14 requested by the petitioner has agreed to accept the
15 placement of the inmate and to provide necessary medical
16 care.

17 (iii) The inmate is seriously ill and is expected by
18 a treating physician to not live for more than one year.

19 (iv) There are no writs filed or detainers lodged
20 against the inmate and the inmate is not subject to any
21 court order requiring the inmate's presence.

22 (v) The placement in the hospital or long-term care
23 nursing facility does not pose an undue risk of escape or
24 danger to the community. In making this determination,
25 the sentencing court shall consider the inmate's
26 institutional conduct record, whether the inmate was ever
27 convicted of a crime of violence, the length of time that
28 the inmate has been imprisoned and any other factors the
29 sentencing court deems relevant.

30 (vi) The hospital or long-term care nursing facility

1 has agreed to notify the department and the court of any
2 material changes in the health status of the inmate, the
3 nature of the care provided or other information required
4 by the department.

5 (vii) Each agency representing the Commonwealth at a
6 proceeding which resulted in an order committing or
7 detaining the inmate, the State or local correctional
8 facility housing the inmate and any registered crime
9 victim have been given notice and an opportunity to be
10 heard on the petition.

11 (2) The sentencing court may approve the petitioner's
12 request to temporarily defer service of the sentence of
13 confinement in order for the inmate to receive care from a
14 licensed hospice care provider, proposed by the petitioner
15 and subject to electronic monitoring by the department, if
16 all of the following are established by clear and convincing
17 proof:

18 (i) The inmate is terminally ill, not ambulatory and
19 likely to die in the near future.

20 (ii) The licensed hospice care provider can provide
21 the inmate with more appropriate care.

22 (iii) Appropriate medical care and palliative and
23 supportive services will be provided by the licensed
24 hospice care provider at the proposed hospice care
25 location.

26 (iv) The placement of the inmate in the proposed,
27 licensed hospice care location does not pose an undue
28 risk of escape or danger to the community. In making this
29 determination, the sentencing court shall consider the
30 inmate's institutional conduct record, whether the inmate

1 was ever convicted of a crime of violence, the length of
2 time that the inmate has been imprisoned and any other
3 factors the sentencing court deems relevant.

4 (v) The licensed hospice care provider has agreed to
5 notify the department and the sentencing court of any
6 material changes in the health status of the inmate, the
7 nature of the hospice care provided or other information
8 required by the department or the sentencing court.

9 (vi) Each agency representing the Commonwealth at a
10 proceeding which resulted in an order committing or
11 detaining the inmate, the State or local correctional
12 facility housing the inmate and any registered crime
13 victim have been given notice and an opportunity to be
14 heard on the petition.

15 (3) Any order entered pursuant to this subsection
16 temporarily deferring service of an inmate's sentence of
17 confinement shall include a provision that the department or
18 prosecuting attorney may at any time petition the sentencing
19 court for an order directing that the inmate be recommitted
20 to the custody of the department if the circumstances under
21 which the inmate was released change or for any previously
22 unknown circumstances, including a change in the inmate's
23 medical status, the inmate's risk of escape, the inmate's
24 danger to the community or the nature of the medical or other
25 care provided by the hospital, long-term care nursing
26 facility or hospice care provider.

27 (4) The sentencing court may terminate at any time its
28 order authorizing the temporary deferral of the service of an
29 inmate's sentence of confinement entered pursuant to this
30 subsection. An inmate taken into custody pursuant to an order

1 directing the inmate's detention or recommitment under this
2 subsection shall be delivered to the nearest State
3 correctional institution pending a hearing on the matter.

4 (b) Inmates committed to custody of other facilities.--An
5 inmate not committed to the custody of the department but
6 confined in an institution authorized to incarcerate or detain
7 persons for criminal sentences, violations of criminal law or
8 orders of parole, probation, bail or other order related to a
9 civil or criminal matter may have service of the sentence of
10 confinement deferred and may be placed in a hospital, long-term
11 care nursing facility or licensed hospice care location, subject
12 to electronic monitoring, by order of the judge that committed
13 the inmate to the facility or institution or by another
14 available judge designated to preside if all of the following
15 are established by clear and convincing proof:

16 (1) The chief administrator, the chief administrator's
17 designee, the inmate or a person to whom the court grants
18 standing to act on behalf of the inmate petitions the court
19 or has given written consent to the grant of a petition under
20 this section filed on behalf of the inmate.

21 (2) There is sufficient proof to establish the
22 requirements for a placement to a hospital or long-term care
23 nursing facility under subsection (a)(1) or a placement to a
24 hospice care location under subsection (a)(2).

25 (3) An entry of an order pursuant to this subsection
26 temporarily deferring service of an inmate's sentence of
27 confinement shall include a provision that the chief
28 administrator or the prosecuting attorney may at any time
29 petition the sentencing court seeking the issuance of a bench
30 warrant directing that the inmate be recommitted to the

1 custody of the appropriate correctional institution if the
2 circumstances under which the inmate was released change or
3 for previously unknown circumstances, including a change in
4 the inmate's medical status, the inmate's risk of escape, the
5 inmate's danger to the community or the nature of the medical
6 or other care provided by the hospital, long-term care
7 nursing facility or hospice care provider.

8 (4) The sentencing court may terminate at any time its
9 order authorizing the temporary deferral of the service of an
10 inmate's sentence of confinement entered pursuant to this
11 subsection. An inmate taken into custody pursuant to an order
12 directing detention or recommitment under this subsection
13 shall be delivered to the county correctional institution or
14 other institution at which the inmate was confined prior to
15 the entry of the order deferring the service of the sentence
16 of confinement pending a hearing on the matter.

17 (c) Service.--Any petition filed under this section shall be
18 served on each agency representing the Commonwealth at each
19 proceeding which resulted in an order by which the inmate is
20 committed or detained and to the correctional institution or
21 institution responsible for housing the inmate. Each party shall
22 have an opportunity to object and be heard as to the petition
23 for alternative placement, the circumstances of placement, the
24 conditions of return or any other relevant issue. The court
25 shall ensure that any crime victim entitled to notification
26 under section 201(7) or (8) of the act of November 24, 1998
27 (P.L.882, No.111), known as the Crime Victims Act, has been
28 given notice and the opportunity to be heard on the petition.
29 All parties served or notified under this subsection shall
30 receive a copy of the final order adjudicating the petition.

1 (d) Notice.--

2 (1) Any order entered under this section placing an
3 inmate in a hospital, long-term care nursing facility or
4 hospice care location which provides care to persons who were
5 not placed therein pursuant to an order entered under this
6 section shall direct the individual in charge of the
7 hospital, long-term care nursing facility or hospice care
8 location to ensure that each person receiving care at, and
9 each employee or contractor working in, the hospital, long-
10 term care nursing facility or hospice care location is
11 notified that the placement was ordered if it is foreseeable
12 that the person, employee or contractor will come into
13 contact with the inmate during the placement.

14 (2) The sentencing court shall forward notice of any
15 order entered under this section placing an inmate in a
16 hospital, long-term care nursing facility or hospice care
17 location to the hospital, long-term care nursing facility or
18 hospice care location and to the Department of Human
19 Services.

20 (e) Petition requirements.--Any petition filed pursuant to
21 this section must aver:

22 (1) The name of the hospital, long-term care nursing
23 facility or hospice care location proposed for placement.

24 (2) That the petitioner reasonably believes the named
25 hospital, long-term care nursing facility or hospice care
26 location has agreed to accept the placement of the inmate and
27 the facts upon which that belief is based.

28 (f) Removal from placement.--If an inmate placed in a
29 hospital, long-term care nursing facility or hospice care
30 location pursuant to this chapter removes himself from the

1 hospital, long-term care nursing facility or hospice care
2 location, the inmate shall be subject to arrest upon probable
3 cause and shall, upon conviction thereof, be guilty of criminal
4 contempt.

5 (g) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection unless the context clearly indicates otherwise:

8 "Chief administrator." As defined under 61 Pa.C.S. § 102
9 (relating to definitions).

10 "Department." The Department of Corrections of the
11 Commonwealth.

12 "Hospice care location." A home, independent living
13 environment or inpatient setting that provides a coordinated
14 program of palliative and supportive services through a licensed
15 hospice care provider.

16 "Hospital." An entity licensed as an acute-care general
17 hospital, a specialty hospital or a rehabilitation hospital
18 under the act of July 19, 1979 (P.L.130, No.48), known as the
19 Health Care Facilities Act.

20 "Licensed hospice care provider." A hospice as defined under
21 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
22 known as the Health Care Facilities Act.

23 "Long-term care nursing facility." A long-term care nursing
24 facility as defined under section 802.1 of the act of July 19,
25 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

26 "Prosecuting attorney." The Office of Attorney General of
27 the Commonwealth or the office of a district attorney of a
28 county who represented the Commonwealth at the most recent
29 sentencing of an inmate.

30 "Sentencing court." The trial judge who most recently

1 sentenced an inmate or, if the trial judge is no longer serving
2 as a judge of that court, the president judge of the county
3 court of common pleas.]

4 Section 2. Title 61 is amended by adding sections to read:
5 § 6144. Parole for reasons of age or illness.

6 (a) General rule.--Notwithstanding any other provision of
7 law, the board may grant parole to an incarcerated individual
8 upon petition by the department or the incarcerated individual
9 when any of the following apply:

10 (1) The incarcerated individual has a substantially
11 diminished ability to function in a correctional institution
12 due to any of the following:

13 (i) A terminal illness.

14 (ii) A chronic and debilitating physical or medical
15 condition or disease.

16 (iii) A serious functional or cognitive impairment.

17 (iv) Deteriorating physical or mental health due to
18 the aging process.

19 (2) All of the following criteria are met:

20 (i) The incarcerated individual is at least 55 years
21 of age and has served the lesser of 25 years in prison or
22 one-half of the minimum term imposed for the offense for
23 which the incarcerated individual is currently
24 imprisoned.

25 (ii) The board determines that the incarcerated
26 individual would not presently pose a danger to others or
27 the general public if released.

28 (a.1) Medical records.--The medical records of an
29 incarcerated individual shall be made readily available to the
30 incarcerated individual for purposes of filing a petition under

1 subsection (a).

2 (b) Department notification.--If the petition for parole is
3 filed by the incarcerated individual under subsection (a), the
4 incarcerated individual shall provide a copy of the petition to
5 the department within seven business days of filing the
6 petition.

7 (c) Victim notification.--Within three business days of
8 receiving an incarcerated individual's petition for parole or of
9 the department's filing of a petition for parole on behalf of an
10 incarcerated individual under subsection (a), the board shall,
11 subject to any applicable confidentiality requirements, take all
12 of the following actions:

13 (1) Notify the Office of Victim Advocate and any
14 registered victim of the incarcerated individual's offense of
15 the petition and the general reasons for the petition.

16 (2) Provide the Office of Victim Advocate and any
17 registered victims an opportunity to respond within seven
18 days in writing to the board.

19 (d) Family and incarcerated individual notification.--The
20 following shall apply:

21 (1) No later than 72 hours after an incarcerated
22 individual is diagnosed with a terminal illness, the
23 department shall, subject to any applicable confidentiality
24 requirements, take all of the following actions:

25 (i) Notify the attorney, spouse or partner or an
26 immediate family member of the incarcerated individual of
27 the incarcerated individual's condition.

28 (ii) Inform the attorney, spouse or partner or an
29 immediate family member of the incarcerated individual
30 that the attorney, spouse or partner or immediate family

1 member may prepare and submit on the incarcerated
2 individual's behalf a petition for parole in accordance
3 with subsection (a).

4 (iii) Provide the incarcerated individual's medical
5 records to the incarcerated individual and the attorney,
6 spouse or partner or an immediate family member of the
7 incarcerated individual.

8 (2) No later than seven days after the date an
9 incarcerated individual is diagnosed with a terminal illness,
10 provide the spouse or partner and family members of the
11 incarcerated individual, including extended family, with an
12 opportunity to visit the incarcerated individual in person
13 unless compelling reasons exist for denying visitation and
14 the reasons are provided in writing.

15 (3) Upon request from an incarcerated individual or the
16 attorney, spouse or partner or a family member of the
17 incarcerated individual, ensure that department employees
18 assist the incarcerated individual in the preparation,
19 drafting and submission of a petition for parole in
20 accordance with subsection (a). In the case of an
21 incarcerated individual who is physically or mentally unable
22 to prepare or file a petition for parole under subsection
23 (a), the department shall have all of the following duties:

24 (i) Inform the attorney, spouse or partner or an
25 immediate family member of the incarcerated individual
26 that the attorney, spouse or partner or immediate family
27 member may prepare and submit on the incarcerated
28 individual's behalf a petition for parole under
29 subsection (a).

30 (ii) Upon request from the incarcerated individual

1 or the attorney, spouse or partner or an immediate family
2 member of the incarcerated individual, take all of the
3 following actions:

4 (A) Ensure that department employees assist the
5 incarcerated individual in the preparation, drafting
6 and submission of a petition for parole under
7 subsection (a).

8 (B) Within three days of the request, provide
9 the incarcerated individual's medical records to the
10 incarcerated individual and the attorney, spouse or
11 partner or an immediate family member of the
12 incarcerated individual.

13 (4) Ensure that employees at all correctional
14 institutions regularly and visibly post, including in
15 incarcerated individual handbooks, staff training materials,
16 law libraries and medical and hospice facilities, and make
17 available to incarcerated individuals upon demand, notice of
18 all of the following:

19 (i) An incarcerated individual's right to petition
20 for parole under subsection (a).

21 (ii) The procedures and deadlines for initiating and
22 resolving petitions made under this subsection and
23 subsections (c) and (e).

24 (e) Duties of board.--The following shall apply:

25 (1) Within two days of receipt of a petition for parole
26 under subsection (a), the board shall notify the secretary of
27 the receipt of the petition and offer the secretary an
28 opportunity to make a recommendation on the petition. No
29 later than 10 days after receipt of notice that the board has
30 received a petition, the secretary may offer a recommendation

1 in writing to the board.

2 (2) The board shall issue a decision on a petition for
3 parole under subsection (a) and state the reasons for the
4 decision as follows:

5 (i) Within 15 days for a petition made based on the
6 criteria under subsection (a)(1).

7 (ii) Within 30 days for a petition made based on the
8 criteria under subsection (a)(2).

9 (3) The board shall immediately provide a copy of the
10 decision under paragraph (2) to all of the following:

11 (i) The incarcerated individual.

12 (ii) The incarcerated individual's attorney.

13 (iii) The Office of Victim Advocate and any
14 registered victim of the incarcerated individual's
15 offense.

16 (iv) The secretary.

17 (4) The board shall, when issuing a decision on the
18 petition under paragraph (2), consider all of the following:

19 (i) A response to the petition by the Office of
20 Victim Advocate and any registered victim of the
21 incarcerated individual's offense.

22 (ii) Recommendations by the secretary, if any.

23 (iii) The incarcerated individual's offense that
24 resulted in the conviction.

25 (iv) The incarcerated individual's sentence and time
26 served for the conviction.

27 (v) The incarcerated individual's current age,
28 physical and mental condition and ability to function
29 within a correctional environment.

30 (vi) The incarcerated individual's postrelease care

1 plan if a plan exists.

2 (vii) The incarcerated individual's disciplinary
3 record, a full set of records of accomplishments and any
4 records demonstrating rehabilitation while incarcerated.

5 (viii) The likelihood that the incarcerated
6 individual would pose a danger to others or the general
7 public if released.

8 (5) In granting parole under paragraph (2), the board
9 may impose any reasonable terms and conditions of parole
10 specifically tailored to the circumstances relating to the
11 sentence that is the least restrictive of the incarcerated
12 individual's individual liberty.

13 (e.1) Denial of petition.--Notwithstanding any other
14 provision of law, if the board denies a petition for parole
15 under subsection (e):

16 (1) The following shall apply:

17 (i) The incarcerated individual may file a State
18 court habeas corpus petition challenging the denial. The
19 court shall act upon a petition by holding a hearing
20 within 60 days of receipt of the petition.

21 (ii) The incarcerated individual or the department
22 may submit another petition for parole under subsection
23 (a) for reconsideration by the board:

24 (A) within 30 days of receipt of notice of the
25 denial; or

26 (B) if the incarcerated individual's medical
27 condition demonstrably worsens.

28 (2) In addition to paragraph (1), the incarcerated
29 individual or the department may submit another petition for
30 parole under subsection (a) one year after the date that the

1 initial petition was filed.

2 (f) Right to counsel.--Notwithstanding any other provision
3 of law, an incarcerated individual who submits a petition under
4 subsection (a) or (e.1)(1)(ii) shall have the right to
5 assistance of counsel, including appointment of counsel if the
6 incarcerated individual is indigent, for proceedings in front of
7 the board and for any State court habeas petition filed under
8 subsection (e.1).

9 (g) Reports.--No later than September 1, 2022, and each
10 September 1 thereafter, the secretary shall submit to the
11 chairperson and minority chairperson of the Judiciary Committee
12 of the Senate and the chairperson and minority chairperson of
13 the Judiciary Committee of the House of Representatives a report
14 on petitions for parole under subsection (a) and shall make the
15 report available on the department's publicly accessible
16 Internet website. The report shall include a description of all
17 of the following for the previous year:

18 (1) The number of incarcerated individuals granted and
19 denied parole, categorized by the criteria relied on as the
20 grounds for parole.

21 (2) The number of petitions initiated by or on behalf of
22 incarcerated individuals, categorized by the criteria relied
23 on as the grounds for parole.

24 (3) The number of petitions that department
25 employees assisted incarcerated individuals in drafting,
26 preparing or filing, categorized by the criteria relied on as
27 the grounds for parole, and the final decision made in each
28 petition.

29 (4) The number of petitions that attorneys, spouses or
30 partners and immediate family members of incarcerated

1 individuals submitted on behalf of the incarcerated
2 individuals, categorized by the criteria relied on as the
3 grounds for parole, and the final decision made in each
4 petition.

5 (5) The number of petitions filed by the department,
6 categorized by the criteria relied on as the grounds for
7 parole, and the final decision made in each petition.

8 (6) For each petition filed by the department based on
9 the criteria under subsection (a)(1), the time elapsed
10 between the date the incarcerated individual was diagnosed
11 and the date the department filed the petition, categorized
12 by the criteria relied on as the grounds for parole, and the
13 final decision made in each petition.

14 (7) For each criteria specified under subsection (a),
15 the number of incarcerated individuals who died while a
16 petition for parole was pending.

17 (8) The number of notifications by the department to
18 attorneys, spouses or partners and family members of
19 incarcerated individuals of their right to visit terminally
20 ill incarcerated individuals as required under subsection (d)
21 (2), whether visits occurred and how much time elapsed
22 between the notifications and the visits.

23 (9) The number of visits to terminally ill incarcerated
24 individuals that were denied by the department due to
25 security or other concerns, and the reasons given for the
26 denials.

27 (h) Regulations.--The board and the department shall
28 promulgate regulations necessary to implement the provisions of
29 this section.

30 (i) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection unless the context clearly indicates otherwise:

3 "Chronic and debilitating physical or medical condition or
4 disease." A medical condition that is persistent or permanent,
5 requires medication or ongoing care from a physician or impairs
6 a person's ability to perform routine daily tasks or self-care.

7 "Deteriorating physical or mental health." A loss of
8 mobility in the limbs or body, an inability to walk without
9 assistance, incontinence, forgetfulness or disorientation, an
10 inability to perform routine daily tasks or self-care without
11 assistance or supervision or a similar health issue.

12 "Serious functional or cognitive impairment." A condition
13 that is persistent or permanent and limits the incarcerated
14 individual's ability to reason, perceive, comprehend or
15 communicate. The term includes, but is not limited to,
16 intellectual disability, mental illness, dementia or brain
17 damage from injury or stroke.

18 "Substantially diminished." The incarcerated individual is
19 unable or only partially able to perform one or more essential
20 daily tasks or self-care without partial or total assistance or
21 supervision.

22 "Terminal illness." A disease or condition with an end-of-
23 life trajectory, with or without a specific prognosis of life
24 expectancy. The term includes metastatic solid-tumor cancer,
25 amyotrophic lateral sclerosis (ALS), end-stage organ disease,
26 advanced dementia or a similar disease or condition.

27 § 6145. Medical parole due to public or disaster emergency
28 related to health or contagious disease outbreak.

29 Notwithstanding any other provision of law, when a public or
30 disaster emergency related to health is declared or a contagious

1 disease outbreak occurs in a department facility which the
2 facility is unable to contain or from which the facility cannot
3 protect vulnerable individuals, the board may grant medical
4 parole to incarcerated individuals who, due to the individual's
5 age or underlying health conditions, are at risk of serious
6 complications or death should the individual contract the
7 disease or virus. When granting medical parole under this
8 section, the board may use any expedited review process it deems
9 necessary and appropriate to release vulnerable individuals in a
10 timely fashion.

11 Section 3. All regulations and parts of regulations are
12 abrogated to the extent of any inconsistency with the provisions
13 of this act.

14 Section 4. This act shall take effect in 60 days.