

REMOVAL OF CERTAIN SERIOUSLY ILL CONVICTS

Act of Sep. 25, 2008, P.L. 1062, No. 84

Cl. 61

Session of 2008

No. 2008-84

HB 7

AN ACT

Amending the act of May 31, 1919 (P.L.356, No.170), entitled, as amended, "An act authorizing courts of record to remove convicts and persons confined in jails, workhouses, reformatories, reform or industrial schools, penitentiaries, prisons, houses of correction or any other penal institutions, who are seriously ill, to other institutions; and providing penalties for breach of prison," further providing for removal of certain convicts who are seriously ill.

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

Section 1. Section 1 of the act of May 31, 1919 (P.L.356, No.170), entitled "An act authorizing courts of record to remove convicts and persons confined in jails, workhouses, reformatories, reform or industrial schools, penitentiaries, prisons, houses of correction or any other penal institutions, who are seriously ill, to other institutions; and providing penalties for breach of prison," amended January 26, 1966 (1965 P.L.1593, No.561), is amended to read:

[Section 1. Be it enacted, &c., That whenever any convict or person is confined in any jail, workhouse, reformatory, or reform or industrial school, penitentiary, prison, house of correction or any other penal institution, under conviction or sentence of a court, or is so confined while awaiting trial or confined for any other reason or purpose and it is shown to a court of record by due proof that such convict or person is seriously ill, and that it is necessary that he or she be removed from such penal institution, the court shall have power to modify its sentence, impose a suitable sentence, or modify the order of confinement for trial, as the case may be, and provide for the confinement or care of such convict or person in some other suitable institution where proper treatment may be administered. Upon the recovery of such person, the court shall recommit him or her to the institution from which he or she was removed.]

Section 1. Removal.

(a) **Prisoners committed to custody of department.--**If a prisoner is committed to the custody of the department, the department, the prisoner or a person to whom the court grants standing to act on behalf of the prisoner may petition the sentencing court to temporarily defer service of the sentence of confinement and temporarily remove the prisoner committed to the custody of the department, or other facilities, for placement in a hospital, long-term care nursing facility or hospice care location. The following shall apply:

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

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

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

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

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

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

(vi) The hospital or long-term care nursing facility has agreed to notify the department and the court of any material changes in the health status of the prisoner, the nature of the care provided or other information required by the department.

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

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

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

(ii) The licensed hospice care provider can provide the prisoner with more appropriate care.

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

(iv) The placement of the prisoner in the proposed licensed hospice care location does not pose an undue risk of escape or danger to the community. In making this determination, the sentencing court shall consider the prisoner's institutional conduct record, whether the prisoner was ever convicted of a crime of violence, the length of time that the prisoner has been imprisoned and any other factors the sentencing court deems relevant.

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

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

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

(4) The sentencing court may terminate at any time its order authorizing the temporary deferral of the service of a prisoner's sentence of confinement entered pursuant to this subsection. A prisoner taken into custody pursuant to an order directing the prisoner's detention or recommitment under this subsection shall be delivered to the nearest State correctional institution to be housed by the department pending a hearing on the matter.

(b) Prisoners committed to the custody of other facilities.--A prisoner not committed to the custody of the department but confined in a correctional facility, jail or other institution authorized to incarcerate or detain persons for criminal sentences, violations of criminal law or orders of parole, probation, bail or other order related to a civil or criminal matter may have service of his sentence of confinement deferred and may be placed in a hospital, long-term care nursing facility or licensed hospice care location, subject to electronic monitoring, by order of the judge that committed the person to a facility, jail or other institution or by another available judge designated to preside if all of the following are established by clear and convincing proof:

(1) The chief administrator of the correctional facility, jail or other institution or the chief administrator's designee or the prisoner or a person to whom the court grants standing to act on behalf of the prisoner petitions the court or has given written consent to the grant of a petition under this section filed on behalf of the prisoner.

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

(3) An entry of an order pursuant to this subsection temporarily deferring service of a prisoner's sentence of confinement shall include a provision that the administrator of the local correctional facility or the prosecuting attorney may, at any time, petition the sentencing court seeking the issuance of a bench warrant directing that the prisoner be recommitted to the custody of the local correctional facility if the circumstances under which the prisoner was released change or for previously unknown circumstances, including a change in the prisoner's medical status, the prisoner's risk of escape, the prisoner's danger to the community or the nature of the medical or other care provided by the hospital, long-term care nursing facility or hospice care provider.

(4) The sentencing court may terminate, at any time, its order authorizing the temporary deferral of the service of a prisoner's sentence of confinement entered pursuant to this subsection. A prisoner taken into custody pursuant to an order directing his detention or recommitment under this subsection shall be delivered to the county correctional facility, jail or other institution at which he was confined prior to the entry

of the order deferring the service of his sentence of confinement pending a hearing on the matter.

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

(d) Notice.--

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

(2) The sentencing court shall forward notice of any order entered under this section placing a prisoner in a hospital, long-term care nursing facility or hospice care location to the hospital, long-term care nursing facility or hospice care location and to the Department of Public Welfare.

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

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

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

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

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

"Hospice care location." A home, independent living environment or inpatient setting that will provide a coordinated program of palliative and supportive services through a licensed hospice care provider.

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

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

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

"Prosecuting attorney." The Office of Attorney General or the office of a district attorney of a county who represented the Commonwealth at the most recent sentencing of the prisoner.

"Sentencing court." The trial judge who most recently sentenced a prisoner or the president judge of the county court of common pleas if the trial judge is no longer serving as a judge of that court.

Section 2. Section 2 of the act is amended to read:

[Section 2. If any person so removed under an order of court, as provided in the first section of this act, shall escape, he or she, so offending, shall, upon conviction thereof, be guilty of the crime of breach of prison.]

Section 2. Removal from placement.

If any person placed in a hospital, long-term care nursing facility or hospice care location pursuant to this act removes himself from the hospital, long-term care nursing facility or hospice care location, he shall be subject to arrest upon probable cause and shall, upon conviction thereof, be guilty of criminal contempt.

Section 3. This act shall take effect in 60 days.

APPROVED--The 25th day of September, A. D. 2008.

EDWARD G. RENDELL