

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1072 Session of  
2006

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, M. WHITE, O'PAKE,  
EARLL, FONTANA AND KITCHEN, JANUARY 24, 2006

REFERRED TO JUDICIARY, JANUARY 24, 2006

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for medical  
3 release of inmates; and making a related repeal.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 9775. Medical release.

9 (a) Legislative findings.--The General Assembly finds and  
10 declares as follows:

11 (1) The number of inmates 50 years of age or older in  
12 State correctional institutions is increasing and by December  
13 2004 represented more than 12% of the total inmate population  
14 in State correctional institutions.

15 (2) A number of inmates suffer from serious or terminal  
16 illnesses that require costly care.

17 (3) Because of serious or terminal illness, inmates of  
18 any age may no longer pose a threat to the safety of the

1 community.

2 (4) Recidivism is inversely related to the age of the  
3 inmate at the time of release, that is, the older the inmate,  
4 the lower the rate of recidivism.

5 (5) As the inmate population increases, the number of  
6 inmates with serious or terminal illness increases and  
7 strains the facilities and resources of Pennsylvania's State  
8 correctional institutions.

9 (6) Alternatives must be found outside Pennsylvania's  
10 State correctional institutions for providing medical or  
11 hospice care for inmates with serious or terminal illness.

12 (7) Victim and community safety must be given the  
13 highest priority before an inmate is released to receive  
14 medical or hospice care outside Pennsylvania's State  
15 correctional institutions.

16 (b) Medical release.--

17 (1) Notwithstanding any other provision of law to the  
18 contrary, upon petition for the medical release of an inmate,  
19 the court shall hold an expedited hearing and determine  
20 whether a medical release will be granted as provided in this  
21 section.

22 (2) An inmate who is under a sentence of death shall not  
23 be eligible for medical release under this section.

24 (c) Procedure.--

25 (1) Upon diagnosing an inmate with a serious illness or  
26 terminal illness, the attending physician shall report the  
27 diagnosis to the department or county correctional  
28 institution.

29 (2) A petition for medical release of a seriously or  
30 terminally ill inmate may be filed with the sentencing judge

1 by the following:

2 (i) The inmate or the inmate's designee as shown in  
3 the correctional institution's records.

4 (ii) The department or county correctional  
5 institution upon the request of one or more of the  
6 following:

7 (A) The attending physician, with the support of  
8 the superintendent of the correctional institution  
9 housing the inmate.

10 (B) A staff member in the correctional  
11 institution housing the inmate, with the support of  
12 the superintendent of that correctional institution.

13 (C) The superintendent of the correctional  
14 institution on behalf of the inmate.

15 (3) When a petition for medical release is filed by an  
16 individual designated in paragraph (2) a waiver of the  
17 inmate's medical confidentiality is presumed.

18 (4) Upon the petition of an inmate or the inmate's  
19 designee under paragraph (2)(i) or the request of an  
20 individual under paragraph (2)(ii), the department or county  
21 correctional institution may assess whether the inmate is  
22 seriously or terminally ill and perform the standardized  
23 needs and risk assessment on the inmate. If the medical  
24 assessment and needs and risk assessment are performed, the  
25 following apply:

26 (i) If the inmate is determined to be seriously or  
27 terminally ill and the needs and risk assessment is  
28 satisfactory, either:

29 (A) the petition under paragraph (2)(i) may  
30 continue; or

1           (B) the department or county correctional  
2           institution shall file the petition requested under  
3           paragraph (2)(ii).

4           (ii) If the inmate is determined not to be seriously  
5           or terminally ill or the needs and risk assessment is  
6           unsatisfactory, no further action shall be required from  
7           the department or county correctional institution.

8           (5) Government agencies shall cooperate with the  
9           department or county correctional institution in performing a  
10          medical assessment and developing a medical release plan.

11          (6) (i) If a petition is filed by an inmate or the  
12          inmate's designee under paragraph (2)(i), the inmate is  
13          determined to be seriously or terminally ill and the  
14          needs and risk assessment under paragraph (4) is  
15          satisfactory, documents containing evidence of the  
16          following shall be requested of the department or county  
17          correctional institution by the court:

18               (A) The inmate's medical condition and  
19               prognosis.

20               (B) The inmate's institutional performance.

21               (C) The inmate's classification according to the  
22               department or county correctional institution.

23               (D) The inmate's needs and risk assessment.

24               (E) A medical release plan for the inmate, which  
25               shall state the following, among other things:

26                       (I) Whether the inmate will be placed with  
27                       an individual, in a facility in the community or  
28                       in a facility operated by a government agency.

29                       (II) The date when the placement under  
30                       subclause (I) can be accomplished.

1           (ii) If a petition is filed by the department or  
2           county correctional institution under paragraph (2)(ii),  
3           documents containing evidence of the items listed under  
4           subparagraph (i) shall be attached to the petition.

5           (7) If an inmate is determined to be seriously or  
6           terminally ill and the needs and risk assessment is  
7           satisfactory, the petitioner shall provide notice of the  
8           petition for medical release and the impending hearing to the  
9           following:

10           (i) The district attorney of the county of record  
11           who shall provide notice of the petition to the victim.

12           (ii) The public defender or defense counsel.

13           (iii) The Office of Victim Advocate.

14           (iv) The Pennsylvania Board of Probation and Parole.

15           (v) The county probation officer.

16           (vi) The sentencing judge of each judicial district  
17           in which the inmate was sentenced.

18           (8) The petitioner shall include with the notice  
19           provided under paragraph (7) a request for comments and  
20           testimony. The request for comments shall state that comments  
21           must be received by the district attorney of the county of  
22           record and the court no later than the specified date, which  
23           shall be 30 days after the date of the request. If the inmate  
24           is in a State correctional institution, the notice shall also  
25           state that victim's comments shall also be submitted to the  
26           Office of Victim Advocate.

27           (d) Hearing and order.--The court shall schedule an  
28           expedited hearing to take place within five business days after  
29           the date specified for the receipt of comments under subsection  
30           (c)(8). If more than one sentencing court is involved, the

1 courts shall coordinate the scheduling of the hearings. The  
2 court shall consider the documents presented under subsection  
3 (c)(6), comments received under subsection (c)(8) and testimony  
4 presented during the hearing. At the conclusion of the hearing,  
5 the court shall enter an order granting or denying the petition.  
6 If the petition is granted, the order shall:

7       (1) modify the inmate's place of confinement to  
8       effectuate the inmate's release in accordance with the  
9       medical release plan;

10       (2) specify how the inmate will be supervised;

11       (3) specify whether periodic status reports and medical  
12       assessments are required; and

13       (4) specify that, upon recovery, the inmate shall be  
14       recommitted to a State or county correctional institution.

15       (e) Monthly report.--

16       (1) Beginning one year after the effective date of this  
17       section, the monthly statistical report of the department  
18       shall include:

19               (i) The number of petitions that have been brought  
20               under this section.

21               (ii) The number granted.

22               (iii) The number denied.

23               (iv) The nature of the illnesses involved in the  
24               petitions.

25               (v) The types of placements involved for granted  
26               petitions.

27               (vi) The nature of the placement plans.

28               (vii) The reasons for petition denials.

29       (2) The counties shall submit to the department similar  
30       statistical information which will be included in the monthly

1 statistical report of the department.

2 (f) Rules and regulations.--The department shall promulgate  
3 the rules and regulations necessary to implement this section.

4 (g) Definitions.--As used in this section, the following  
5 words and phrases shall have the meanings given to them in this  
6 subsection:

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

9 "Hospice." A special concept of care designed to provide  
10 comfort and support to a patient with a terminal illness that  
11 addresses all symptoms of a disease, with special emphasis on  
12 controlling pain and discomfort, and the emotional, social and  
13 spiritual impact of the disease on the patient.

14 "Inmate." An individual confined in a State or county  
15 correctional institution.

16 "Medical release." The release of an inmate with a serious  
17 illness or terminal illness, through modification of sentencing,  
18 for medical or hospice care.

19 "Serious illness." A disease process or injury, including  
20 chronic illness, whether due to a physical or cognitive  
21 impairment or mental condition, that requires care and treatment  
22 over a long period of time, is usually not cured and has  
23 progressed to the degree that the inmate meets Department of  
24 Aging area agency on aging criteria for nursing facility  
25 clinical eligibility. The disease process or injury may have  
26 existed before incarceration.

27 "Terminal illness." An incurable, irreversible medical  
28 condition in an advanced state which will, in the opinion of the  
29 attending physician to a reasonable degree of medical certainty,  
30 result in death regardless of the continued application of life-

1 sustaining treatment and has progressed to the degree that the  
2 inmate meets Department of Aging area agency on aging criteria  
3 for nursing facility clinical eligibility.

4 Section 2. Repeals are as follows:

5 (1) The General Assembly declares that the repeal under  
6 subsection (b) is necessary to effectuate the addition of 42  
7 Pa.C.S. § 9775.

8 (2) The act of May 31, 1919 (P.L.356, No.170), entitled "An  
9 act authorizing courts of record to remove convicts and persons  
10 confined in jails, workhouses, reformatories, reform or  
11 industrial schools, penitentiaries, prisons, houses of  
12 correction or any other penal institutions, who are seriously  
13 ill, to other institutions; and providing penalties for breach  
14 of prison," is repealed.

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