

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 7

Session of 2007

INTRODUCED BY CALTAGIRONE, D. O'BRIEN, BENNINGHOFF, BLACKWELL, CAPPELLI, HALUSKA, HARPER, M. O'BRIEN, PARKER, ROEBUCK, SIPTROTH, WALKO, WATERS, WHEATLEY, BRENNAN, MELIO, JAMES, GEIST, YOUNGBLOOD AND THOMAS, NOVEMBER 27, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 2, 2008

AN ACT

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

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

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

20 [Section 1. †Be it enacted, &c., That whenever any convict

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1 or person is confined in any jail, workhouse, reformatory, or
2 reform or industrial school, penitentiary, prison, house of
3 correction or any other penal institution, under conviction or
4 sentence of a court, or is so confined while awaiting trial or
5 confined for any other reason or purpose, and it is shown to a
6 court of record by due proof that such convict or person is
7 seriously ill, and that it is necessary that he or she be
8 removed from such penal institution, the court shall have power
9 to modify its sentence, impose a suitable sentence, or modify
10 the order of confinement for trial, as the case may be, and
11 provide for the confinement or care of such convict or person in
12 some other suitable institution where proper treatment may be
13 administered. Upon the recovery of such person, the court shall
14 recommit him or her to the institution from which he or she was
15 removed.] Transfer.

<—

16 REMOVED.]

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17 SECTION 1. REMOVAL.

18 (a) ~~Petition~~ PRISONERS COMMITTED TO CUSTODY OF THE
19 DEPARTMENT OF CORRECTIONS.--If a prisoner is committed to the
20 custody of the Department of Corrections, the Department of
21 Corrections, THE PRISONER OR A PERSON TO WHOM THE COURT GRANTS
22 STANDING TO ACT ON BEHALF OF THE PRISONER may petition the
23 sentencing court to ~~approve the proposed removal of~~ TEMPORARILY
24 DEFER SERVICE OF THE SENTENCE OF CONFINEMENT AND TEMPORARILY
25 REMOVE the prisoner committed to the custody of the Department
26 of Corrections for placement in a hospital, long-term nursing
27 care facility or hospice care location. The following shall
28 apply:

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29 (1) The sentencing court may approve the ~~Department of~~
30 Corrections' request to PETITIONER'S REQUEST TO TEMPORARILY

<—

<—

1 DEFER SERVICE OF THE SENTENCE OF CONFINEMENT AND place the
2 prisoner in a hospital or long-term nursing care facility
3 upon CLEAR AND CONVINCING proof that all of the following <—
4 apply:

5 (i) The Department of Corrections reasonably <—
6 believes that the medical needs of the prisoner can be
7 more appropriately addressed in the hospital or long-term
8 care nursing facility.

9 (ii) The hospital or long-term care nursing facility
10 requested by the Department of Corrections PETITIONER has <—
11 agreed to accept the placement of the prisoner and to
12 provide necessary medical care.

13 (iii) The prisoner is seriously ill.

14 (iv) The Department of Corrections reasonably <—
15 believes that there THERE are no writs filed or detainers <—
16 lodged against the prisoner and the prisoner is not
17 subject to any court order requiring the prisoner's
18 presence.

19 (v) The placement in the hospital or long-term care
20 nursing facility does not pose an undue risk of escape or
21 danger to the community. IN MAKING THIS DETERMINATION THE <—
22 SENTENCING COURT SHALL CONSIDER THE PRISONER'S
23 INSTITUTIONAL CONDUCT RECORD, WHETHER THE PRISONER WAS
24 EVER CONVICTED OF A CRIME OF VIOLENCE, THE LENGTH OF TIME
25 THAT THE PRISONER HAS BEEN IMPRISONED AND ANY OTHER
26 FACTORS THE SENTENCING COURT DEEMS RELEVANT.

27 (vi) The hospital or long-term nursing care facility
28 has agreed to notify the Department of Corrections and
29 the court of any material changes in the health status of
30 the prisoner, the nature of the care provided or other

1 information required by the Department of Corrections.

2 (VII) EACH AGENCY REPRESENTING THE COMMONWEALTH AT A <—
3 PROCEEDING WHICH RESULTED IN AN ORDER COMMITTING OR
4 DETAINING THE PRISONER, THE STATE OR LOCAL CORRECTIONAL
5 FACILITY HOUSING THE INMATE AND ANY REGISTERED CRIME
6 VICTIM HAVE BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE
7 HEARD ON THE PETITION.

8 (2) The sentencing court may approve the Department of <—
9 Corrections' request to place the prisoner in a hospice care
10 location proposed by the Department of Corrections upon proof
11 that all of the following apply: PETITIONER'S REQUEST TO <—
12 TEMPORARILY DEFER SERVICE OF THE SENTENCE OF CONFINEMENT IN
13 ORDER FOR THE PRISONER TO RECEIVE CARE FROM A LICENSED
14 HOSPICE CARE PROVIDER PROPOSED BY THE PETITIONER IF ALL OF
15 THE FOLLOWING ARE ESTABLISHED BY CLEAR AND CONVINCING PROOF:

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

18 (ii) The Department of Corrections reasonably <—
19 believes that the licensed hospice provider and the
20 proposed hospice care location can provide more
21 appropriate care for the prisoner than the care available
22 in a State correctional institution.

23 (II) THE LICENSED HOSPICE CARE PROVIDER CAN PROVIDE <—
24 THE PRISONER WITH MORE APPROPRIATE CARE.

25 (iii) Appropriate medical care and palliative and
26 supportive services will be provided by the licensed
27 hospice CARE provider at the proposed hospice care <—
28 location.

29 (iv) The placement of the prisoner in the hospice <—
30 PROPOSED, LICENSED HOSPICE CARE location does not pose an <—

1 undue risk of escape or danger to the community. IN <—
2 MAKING THIS DETERMINATION THE SENTENCING COURT SHALL
3 CONSIDER THE PRISONER'S INSTITUTIONAL CONDUCT RECORD,
4 WHETHER THE PRISONER WAS EVER CONVICTED OF A CRIME OF
5 VIOLENCE, THE LENGTH OF TIME THAT THE PRISONER HAS BEEN
6 IMPRISONED AND ANY OTHER FACTORS THE SENTENCING COURT
7 DEEMS RELEVANT.

8 (v) The licensed hospice CARE provider has agreed to <—
9 notify the Department of Corrections and the court of any
10 material changes in the health status of the prisoner,
11 the nature of the hospice care provided or other
12 information required by the Department of Corrections or
13 the court.

14 (VI) EACH AGENCY REPRESENTING THE COMMONWEALTH AT A <—
15 PROCEEDING WHICH RESULTED IN AN ORDER COMMITTING OR
16 DETAINING THE PRISONER, THE STATE OR LOCAL CORRECTIONAL
17 FACILITY HOUSING THE PRISONER AND ANY REGISTERED CRIME
18 VICTIM HAVE BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE
19 HEARD ON THE PETITION.

20 ~~(3) Any entry of an order under this section shall~~ <—
21 ~~include a provision that the Department of Corrections may~~
22 ~~detain and recommit the released prisoner for changed or~~
23 ~~previously unknown circumstances, including a change in the~~
24 ~~prisoner's medical status, the prisoner's risk of escape, the~~
25 ~~prisoner's danger to the community, the nature of the medical~~
26 ~~or other care provided by the hospital, long term care~~
27 ~~nursing facility or hospice provider or the Department of~~
28 ~~Corrections lack of continued consent to the placement. The~~
29 ~~Department of Corrections shall develop guidelines to~~
30 ~~implement this section.~~

1 (3) ANY ORDER ENTERED PURSUANT TO THIS SUBSECTION <—
2 TEMPORARILY DEFERRING SERVICE OF A PRISONER'S SENTENCE OF
3 CONFINEMENT SHALL INCLUDE A PROVISION THAT THE DEPARTMENT OF
4 CORRECTIONS OR PROSECUTING ATTORNEY MAY AT ANY TIME PETITION
5 THE SENTENCING COURT FOR AN ORDER DIRECTING THAT THE PRISONER
6 BE RECOMMITTED TO THE CUSTODY OF THE DEPARTMENT OF
7 CORRECTIONS IF THE CIRCUMSTANCES UNDER WHICH THE PRISONER WAS
8 RELEASED CHANGE OR FOR ANY PREVIOUSLY UNKNOWN CIRCUMSTANCES,
9 INCLUDING A CHANGE IN THE PRISONER'S MEDICAL STATUS, THE
10 PRISONER'S RISK OF ESCAPE, THE PRISONER'S DANGER TO THE
11 COMMUNITY, OR THE NATURE OF THE MEDICAL OR OTHER CARE
12 PROVIDED BY THE HOSPITAL, LONG-TERM CARE NURSING FACILITY OR
13 HOSPICE CARE PROVIDER.

14 (4) THE SENTENCING COURT MAY TERMINATE AT ANY TIME ITS
15 ORDER AUTHORIZING THE TEMPORARY DEFERRAL OF THE SERVICE OF A
16 PRISONER'S SENTENCE OF CONFINEMENT ENTERED PURSUANT TO THIS
17 SUBSECTION. A PRISONER TAKEN INTO CUSTODY PURSUANT TO AN
18 ORDER DIRECTING THE PRISONER'S DETENTION OR RECOMMITMENT
19 UNDER THIS SUBSECTION SHALL BE DELIVERED TO THE NEAREST STATE
20 CORRECTIONAL INSTITUTION TO BE HOUSED BY THE DEPARTMENT OF
21 CORRECTIONS PENDING A HEARING ON THE MATTER.

22 (b) Placement. — An inmate PRISONERS COMMITTED TO THE CUSTODY <—
23 OF OTHER FACILITIES.--A PRISONER not committed to the custody of
24 the Department of Corrections but confined in a correctional
25 facility, jail or other institution authorized to incarcerate or
26 detain persons for criminal sentences, violations of criminal
27 law or orders of parole, probation, bail or other order related
28 to a civil or criminal matter may HAVE SERVICE OF HIS SENTENCE <—
29 OF CONFINEMENT DEFERRED AND MAY be placed in a hospital, long-
30 term care nursing facility or hospice care location by order of

1 the judge that committed the person to a facility, jail or other
2 institution or by another available judge designated to preside
3 if all of the following apply ARE ESTABLISHED BY CLEAR AND ←
4 CONVINCING PROOF:

5 (1) The chief administrator of the correctional
6 facility, jail or other institution or the chief
7 administrator's designee OR THE PRISONER OR A PERSON TO WHOM ←
8 THE COURT GRANTS STANDING TO ACT ON BEHALF OF THE PRISONER
9 petitions the court or has given written consent to the grant
10 of a petition under this section filed on behalf of the
11 person confined PRISONER. ←

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

16 ~~(3) The placement order shall specify the conditions~~ ←
17 ~~under which the person shall be returned.~~

18 (3) AN ENTRY OF AN ORDER PURSUANT TO THIS SUBSECTION ←
19 TEMPORARILY DEFERRING SERVICE OF A PRISONER'S SENTENCE OF
20 CONFINEMENT SHALL INCLUDE A PROVISION THAT THE ADMINISTRATOR
21 OF THE LOCAL CORRECTIONAL FACILITY OR THE PROSECUTING
22 ATTORNEY MAY AT ANY TIME PETITION THE SENTENCING COURT
23 SEEKING THE ISSUANCE OF A BENCH WARRANT DIRECTING THAT THE
24 PRISONER BE RECOMMITTED TO THE CUSTODY OF THE LOCAL
25 CORRECTIONAL FACILITY IF THE CIRCUMSTANCES UNDER WHICH THE
26 PRISONER WAS RELEASED CHANGE OR FOR PREVIOUSLY UNKNOWN
27 CIRCUMSTANCES, INCLUDING A CHANGE IN THE PRISONER'S MEDICAL
28 STATUS, THE PRISONER'S RISK OF ESCAPE, THE PRISONER'S DANGER
29 TO THE COMMUNITY OR THE NATURE OF THE MEDICAL OR OTHER CARE
30 PROVIDED BY THE HOSPITAL, LONG-TERM CARE NURSING FACILITY OR

1 HOSPICE CARE PROVIDER.

2 (4) THE SENTENCING COURT MAY TERMINATE AT ANY TIME ITS
3 ORDER AUTHORIZING THE TEMPORARY DEFERRAL OF THE SERVICE OF A
4 PRISONER'S SENTENCE OF CONFINEMENT ENTERED PURSUANT TO THIS
5 SUBSECTION. A PRISONER TAKEN INTO CUSTODY PURSUANT TO AN
6 ORDER DIRECTING HIS DETENTION OR RECOMMITMENT UNDER THIS
7 SUBSECTION SHALL BE DELIVERED TO THE COUNTY CORRECTIONAL
8 FACILITY, JAIL OR OTHER INSTITUTION AT WHICH HE WAS CONFINED
9 PRIOR TO THE ENTRY OF THE ORDER DEFERRING THE SERVICE OF HIS
10 SENTENCE OF CONFINEMENT PENDING A HEARING ON THE MATTER.

11 (c) Service.--Any petition filed under this section shall be
12 served on each agency representing the Commonwealth at each
13 proceeding which resulted in an order by which the inmate ←
14 PRISONER is committed or detained AND TO THE STATE OR LOCAL ←
15 CORRECTIONAL FACILITY RESPONSIBLE FOR HOUSING THE PRISONER. Each
16 party shall have an opportunity to object and be heard as to the
17 petition for alternative placement, the circumstances of
18 placement, the conditions of return or any other relevant issue.
19 The court shall ensure that any crime victim entitled to
20 notification under section 201(7) or (8) of the act of November
21 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, has
22 been given notice and the opportunity to be heard on the
23 petition. All parties served or notified under this subsection
24 shall receive a copy of the final order adjudicating the
25 petition.

26 (D) NOTICE.-- ←

27 (1) ANY ORDER ENTERED UNDER THIS SECTION PLACING A
28 PRISONER IN A HOSPITAL, LONG-TERM CARE NURSING FACILITY OR
29 HOSPICE CARE LOCATION WHICH PROVIDES CARE TO PERSONS WHO WERE
30 NOT PLACED THEREIN PURSUANT TO AN ORDER ENTERED UNDER THIS

1 SECTION SHALL DIRECT THE INDIVIDUAL IN CHARGE OF THE
2 HOSPITAL, LONG-TERM CARE NURSING FACILITY OR HOSPICE CARE
3 LOCATION TO ENSURE THAT EACH PERSON RECEIVING CARE AT, AND
4 EACH EMPLOYEE OR CONTRACTOR WORKING IN, THE HOSPITAL, LONG-
5 TERM CARE NURSING FACILITY OR HOSPICE CARE LOCATION IS
6 NOTIFIED THAT THE PLACEMENT WAS ORDERED IF IT IS FORESEEABLE
7 THAT THE PERSON, EMPLOYEE OR CONTRACTOR WILL COME INTO
8 CONTACT WITH THE PRISONER DURING THE PLACEMENT.

9 (2) THE SENTENCING COURT SHALL FORWARD NOTICE OF ANY
10 ORDER ENTERED UNDER THIS SECTION PLACING A PRISONER IN A
11 HOSPITAL, LONG-TERM CARE NURSING FACILITY OR HOSPICE CARE
12 LOCATION TO THE HOSPITAL, LONG-TERM CARE NURSING FACILITY OR
13 HOSPICE CARE LOCATION AND TO THE DEPARTMENT OF PUBLIC
14 WELFARE.

15 (E) PETITION REQUIREMENTS.--ANY PETITION FILED PURSUANT TO
16 THIS SECTION MUST AVER:

17 (1) THE NAME OF THE HOSPITAL, LONG-TERM CARE NURSING
18 FACILITY OR HOSPICE CARE LOCATION PROPOSED FOR PLACEMENT.

19 (2) THAT THE PETITIONER REASONABLY BELIEVES THE NAMED
20 HOSPITAL, LONG-TERM CARE NURSING FACILITY OR HOSPICE CARE
21 LOCATION HAS AGREED TO ACCEPT THE PLACEMENT OF THE PRISONER
22 AND THE FACTS UPON WHICH THAT BELIEF IS BASED.

23 ~~(d)~~ (F) Definitions.--As used in this section, the following <—
24 words and phrases shall have the meanings given to them in this
25 subsection unless the context clearly indicates otherwise:

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

30 "Hospital." An entity licensed as an acute-care general

1 hospital, a specialty hospital or a rehabilitation hospital
2 under the act of July 19, 1979 (P.L.130, No.48), known as the
3 Health Care Facilities Act.

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

7 "Long-term care nursing facility." A long-term care nursing
8 facility as defined under section 802.1 of the act of July 19,
9 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

10 ~~"Sentencing court." Any court that has imposed a sentence~~ <—
11 ~~for which the prisoner is currently serving, committed or~~
12 ~~detained.~~

13 "PROSECUTING ATTORNEY." THE DISTRICT ATTORNEY OF THE COUNTY <—
14 THAT MOST RECENTLY SENTENCED A PRISONER, OR A DESIGNEE OF THE
15 DISTRICT ATTORNEY.

16 "SENTENCING COURT." THE TRIAL JUDGE WHO MOST RECENTLY
17 SENTENCED A PRISONER OR THE PRESIDENT JUDGE OF THE COUNTY COURT
18 OF COMMON PLEAS IF THE TRIAL JUDGE IS NO LONGER SERVING AS A
19 JUDGE OF THAT COURT.

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

21 ~~Section 2. Escape.~~ <—

22 ~~If any person so removed under an order of court, as provided~~
23 ~~in the first section of this act, shall escape, he or she, so~~
24 ~~offending, shall, upon conviction thereof, be guilty of the~~
25 ~~crime of breach of prison.~~

26 [SECTION 2. IF ANY PERSON SO REMOVED UNDER AN ORDER OF <—
27 COURT, AS PROVIDED IN THE FIRST SECTION OF THIS ACT, SHALL
28 ESCAPE, HE OR SHE, SO OFFENDING, SHALL, UPON CONVICTION THEREOF,
29 BE GUILTY OF THE CRIME OF BREACH OF PRISON.]

30 SECTION 2. REMOVAL FROM PLACEMENT.

1 IF ANY PERSON PLACED IN A HOSPITAL, LONG-TERM CARE NURSING
2 FACILITY OR HOSPICE CARE LOCATION PURSUANT TO THIS ACT REMOVES
3 HIMSELF FROM THE HOSPITAL, LONG-TERM CARE NURSING FACILITY OR
4 HOSPICE CARE LOCATION, HE SHALL BE SUBJECT TO ARREST UPON
5 PROBABLE CAUSE AND SHALL, UPON CONVICTION THEREOF, BE GUILTY OF
6 CRIMINAL CONTEMPT.

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