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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 7**

Session of  
2007

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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

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SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, JUNE 23, 2008

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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:

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

17 Section 1. Removal.

18 (a) Prisoners committed to custody of the Department of  
19 Corrections.--If a prisoner is committed to the custody of the  
20 Department of Corrections, the Department of Corrections <—  
21 DEPARTMENT, 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 temporarily defer service of the sentence of  
24 confinement and temporarily remove the prisoner committed to the  
25 custody of the Department of Corrections DEPARTMENT, OR OTHER <—  
26 FACILITIES, for placement in a hospital, long-term nursing care  
27 facility or hospice care location. The following shall apply:

28 (1) The sentencing court may approve the petitioner's  
29 request to temporarily defer service of the sentence of  
30 confinement and place the prisoner in a hospital or long-term

1 nursing care facility UNDER ELECTRONIC MONITORING BY THE ←  
2 DEPARTMENT upon clear and convincing proof that all of the  
3 following apply:

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

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

11 (iii) The prisoner is seriously ill AND IS EXPECTED ←  
12 BY A TREATING PHYSICIAN TO NOT LIVE FOR MORE THAN ONE  
13 YEAR.

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

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

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

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

7           (2) The sentencing court may approve the petitioner's  
8           request to temporarily defer service of the sentence of  
9           confinement in order for the prisoner to receive care from a  
10          licensed hospice care provider, proposed by the petitioner     <—  
11          AND SUBJECT TO ELECTRONIC MONITORING BY THE DEPARTMENT if all     <—  
12          of the following are established by clear and convincing  
13          proof:

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

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

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

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

30           (v) The licensed hospice care provider has agreed to

1 notify the ~~Department of Corrections~~ DEPARTMENT and the <—  
2 court of any material changes in the health status of the  
3 prisoner, the nature of the hospice care provided or  
4 other information required by the ~~Department of~~ <—  
5 ~~Corrections~~ DEPARTMENT or the court. <—

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

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

25 (4) The sentencing court may terminate at any time its  
26 order authorizing the temporary deferral of the service of a  
27 prisoner's sentence of confinement entered pursuant to this  
28 subsection. A prisoner taken into custody pursuant to an  
29 order directing the prisoner's detention or recommitment  
30 under this subsection shall be delivered to the nearest State

1 correctional institution to be housed by the ~~Department of~~ <—  
2 ~~Corrections~~ DEPARTMENT pending a hearing on the matter. <—

3 (b) Prisoners committed to the custody of other  
4 facilities.--A prisoner not committed to the custody of the  
5 ~~Department of Corrections~~ DEPARTMENT but confined in a <—  
6 correctional facility, jail or other institution authorized to  
7 incarcerate or detain persons for criminal sentences, violations  
8 of criminal law or orders of parole, probation, bail or other  
9 order related to a civil or criminal matter may have service of  
10 his sentence of confinement deferred and may be placed in a  
11 hospital, long-term care nursing facility or LICENSED hospice <—  
12 care location, SUBJECT TO ELECTRONIC MONITORING, by order of the <—  
13 judge that committed the person to a facility, jail or other  
14 institution or by another available judge designated to preside  
15 if all of the following are established by clear and convincing  
16 proof:

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

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

28 (3) An entry of an order pursuant to this subsection  
29 temporarily deferring service of a prisoner's sentence of  
30 confinement shall include a provision that the administrator

1 of the local correctional facility or the prosecuting  
2 attorney may at any time petition the sentencing court  
3 seeking the issuance of a bench warrant directing that the  
4 prisoner be recommitted to the custody of the local  
5 correctional facility if the circumstances under which the  
6 prisoner was released change or for previously unknown  
7 circumstances, including a change in the prisoner's medical  
8 status, the prisoner's risk of escape, the prisoner's danger  
9 to the community or the nature of the medical or other care  
10 provided by the hospital, long-term care nursing facility or  
11 hospice care provider.

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

21 (c) Service.--Any petition filed under this section shall be  
22 served on each agency representing the Commonwealth at each  
23 proceeding which resulted in an order by which the prisoner is  
24 committed or detained and to the State or local correctional  
25 facility responsible for housing the prisoner. Each party shall  
26 have an opportunity to object and be heard as to the petition  
27 for alternative placement, the circumstances of placement, the  
28 conditions of return or any other relevant issue. The court  
29 shall ensure that any crime victim entitled to notification  
30 under section 201(7) or (8) of the act of November 24, 1998

1 (P.L.882, No.111), known as the Crime Victims Act, has been  
2 given notice and the opportunity to be heard on the petition.  
3 All parties served or notified under this subsection shall  
4 receive a copy of the final order adjudicating the petition.

5 (d) Notice.--

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

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

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

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

28 (2) That the petitioner reasonably believes the named  
29 hospital, long-term care nursing facility or hospice care  
30 location has agreed to accept the placement of the prisoner

1 and the facts upon which that belief is based.

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

5 "DEPARTMENT." THE DEPARTMENT OF CORRECTIONS OF THE <—  
6 COMMONWEALTH.

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

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

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

18 "Long-term care nursing facility." A long-term care nursing  
19 facility as defined under section 802.1 of the act of July 19,  
20 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

21 ~~"Prosecuting attorney." The district attorney of the county~~ <—  
22 ~~that most recently sentenced a prisoner, or a designee of the~~  
23 ~~district attorney.~~

24 "PROSECUTING ATTORNEY." THE OFFICE OF ATTORNEY GENERAL OR <—  
25 THE OFFICE OF A DISTRICT ATTORNEY OF A COUNTY WHO REPRESENTED  
26 THE COMMONWEALTH AT THE MOST RECENT SENTENCING OF THE PRISONER.

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

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

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

6 Section 2. Removal from placement.

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

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