
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 642 Session of
2019

INTRODUCED BY KINSEY, BURGOS, KENYATTA, HILL-EVANS, MURT,
CALTAGIRONE, ULLMAN, SCHLOSSBERG, SOLOMON, DALEY, KIRKLAND,
T. DAVIS, NEILSON, WARREN, STRUZZI, KIM AND McCLINTON,
MARCH 1, 2019

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 1, 2019

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, providing for medical parole and early
3 release of elderly inmates; and imposing duties on the
4 Department of Corrections, the Pennsylvania Board of
5 Probation and Parole and the Department of Aging.

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

8 Section 1. Title 61 of the Pennsylvania Consolidated
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 33A

11 MEDICAL PAROLE AND EARLY

12 RELEASE OF CERTAIN INMATES

13 Sec.

14 33A01. Legislative findings and declaration.

15 33A02. Definitions.

16 33A03. Establishment of program.

17 33A04. Medical parole.

18 33A05. Conditional early release of elderly inmates.

1 33A06. Provisions applicable to medical parole and early
2 release.

3 33A07. Duties of department.

4 33A08. Duties of board.

5 33A09. Department of Aging.

6 33A10. Regulations.

7 33A11. Applicability and construction.

8 § 33A01. Legislative findings and declaration.

9 The General Assembly:

10 (1) Finds that:

11 (i) Statistics reveal that the number of individuals
12 55 years of age and older who are incarcerated in Federal
13 and state prisons in the United States has increased by
14 1,400% since 1981 and is expected to triple by 2030.

15 (ii) A Department of Corrections report revealed
16 that in 2001 there were 1,892 inmates 55 years of age or
17 older. By September 2017, the geriatric population
18 tripled to 6,458.

19 (iii) If these geriatric incarceration trends
20 continue, by 2030 it is estimated that inmates 55 years
21 of age and older will make up one-third of the United
22 States prison population.

23 (iv) The incarceration of aging and elderly inmates
24 is costly as these inmates require more medical and
25 supportive services than younger inmates. The average
26 health care cost of incarcerating aging and elderly
27 inmates with a chronic illness over the age of 50 is at
28 least twice as much as the cost of incarcerating younger
29 inmates.

30 (v) The incarceration of geriatric inmates forces

1 the Commonwealth's correctional system to open more
2 geriatric-care units and expand existing resources to
3 house aging and elderly inmates with dementia, diabetes,
4 heart disease, cancer and other physical, behavioral and
5 cognitive disabilities associated with aging.

6 (vi) Contemporary research reveals that aging and
7 elderly inmates who have served extensive sentences
8 present the lowest risk of recidivism of any other
9 population of inmates.

10 (2) Further finds that providing an avenue for the
11 review and parole of aging and infirm inmates is both cost-
12 effective and consistent with public safety.

13 (3) Declares that any decision to parole an aging and
14 infirm inmate or elderly inmate shall be based on rigorous
15 criteria established under this act, which must ensure that
16 public safety is the highest priority and take into account
17 rehabilitation, remorse and input from crime victims and the
18 community.

19 § 33A02. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

23 "Aging and infirm inmate." An inmate who is 55 years of age
24 or older, who has no current or prior convictions for a violent
25 offense and who has been determined to be a permanently
26 medically incapacitated inmate or a terminally ill inmate by a
27 health care practitioner employed by or associated with the
28 correctional facility where the inmate is incarcerated.

29 "Commission." The Pennsylvania Commission on Sentencing.

30 "Correctional facility." A State correctional institution.

1 "Early release." The release of an elderly inmate from the
2 custody of the department before the inmate's original release
3 date due to the age of the inmate.

4 "Elderly inmate." An inmate who is 65 years of age or older
5 and who has no current or prior convictions for a violent
6 offense.

7 "Eligible offender." An aging and infirm inmate.

8 "Health care practitioner." The term shall have the meaning
9 given to it under section 103 of the act of July 19, 1979
10 (P.L.130, No.48), known as the Health Care Facilities Act.

11 "Inmate." An individual committed to a term of imprisonment
12 or otherwise committed to the custody of the department in a
13 State correctional facility.

14 "Medical diagnosis." A diagnosis by a health care
15 practitioner that an aging and infirm inmate is a permanently
16 medically incapacitated inmate or a terminally ill inmate. The
17 diagnosis shall include, but not be limited to:

18 (1) A description of the injury, disease, syndrome,
19 illness or terminal condition.

20 (2) A prognosis concerning the likelihood of recovery
21 from the disease, syndrome or terminal condition.

22 (3) A description of the inmate's mental or physical
23 incapacity.

24 (4) A description of the type of ongoing medical
25 treatment that would be required if the inmate was released
26 on medical parole.

27 "Medical information or data." Information or data, whether
28 oral or recorded, in any form or medium, created by or derived
29 from a health care practitioner that relates to:

30 (1) A medical diagnosis.

1 (2) The past, present or future physical, mental or
2 behavioral health or condition of an aging and infirm inmate.

3 (3) The provision of health care to an aging and infirm
4 inmate by a health care practitioner employed by or
5 associated with a correctional facility.

6 "Medical parole." The release of an aging and infirm inmate
7 from the custody of the department due to the inmate's status as
8 a permanently medically incapacitated inmate or a terminally ill
9 inmate.

10 "Permanently medically incapacitated inmate." An aging and
11 infirm inmate:

12 (1) Who has a condition caused by injury, disease,
13 syndrome or illness which, to a reasonable degree of medical
14 certainty as determined by a health care practitioner,
15 renders the inmate permanently and irreversibly physically
16 incapacitated to the extent that the inmate is permanently
17 unable to perform activities of daily living and results in
18 the inmate requiring 24-hour care.

19 (2) Whose incapacitation under paragraph (1) did not
20 exist at the time of sentencing.

21 (3) Who is not a danger to the inmate or others.

22 "Petition." An application submitted to the board by an
23 aging and infirm inmate or an elderly inmate seeking medical
24 parole or early release from a correctional facility.

25 "Program." The Medical Parole and Early Release Program
26 established under section 33A03 (relating to establishment of
27 program).

28 "Terminally ill inmate." An aging and infirm inmate who:

29 (1) has a condition caused by injury, disease, syndrome
30 or illness which, to a reasonable degree of medical certainty

1 as determined by a health care practitioner, renders the
2 aging and infirm inmate terminally ill to the extent that
3 there can be no recovery and death is imminent; and

4 (2) is not a danger to the inmate or others.

5 "Violent offense." The term includes:

6 (1) An offense under 18 Pa.C.S. (relating to crimes and
7 offenses) which is subject to a sentence, the calculation of
8 which includes an enhancement for the use of a deadly weapon,
9 as defined pursuant to law or the sentencing guidelines
10 promulgated by the commission.

11 (2) An offense for which registration is required under
12 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
13 sexual offenders).

14 (3) A conviction under any of the following:

15 (i) 18 Pa.C.S. § 2502 (relating to murder).

16 (ii) 18 Pa.C.S. § 2503 (relating to voluntary
17 manslaughter).

18 (iii) 18 Pa.C.S. § 2506 (relating to drug delivery
19 resulting in death).

20 (iv) 18 Pa.C.S. § 2507 (relating to criminal
21 homicide of law enforcement officer).

22 (v) 18 Pa.C.S. § 2604(c) (relating to murder of
23 unborn child).

24 (vi) 18 Pa.C.S. § 2606 (relating to aggravated
25 assault of unborn child).

26 (vii) 18 Pa.C.S. § 2702(a)(1) or (2) (relating to
27 aggravated assault).

28 (viii) 18 Pa.C.S. § 2702.1 (relating to assault of
29 law enforcement officer).

30 (ix) 18 Pa.C.S. § 2716(b) (relating to weapons of

1 mass destruction).

2 (x) 18 Pa.C.S. § 2717(b)(2) (relating to terrorism).

3 (xi) 18 Pa.C.S. § 2901(a) (relating to kidnapping).

4 (xii) 18 Pa.C.S. § 3011 (relating to trafficking in
5 individuals), if the offense is graded as a felony.

6 (xiii) 18 Pa.C.S. § 3301(a)(1)(i) (relating to arson
7 and related offenses).

8 (xiv) 18 Pa.C.S. § 3502 (relating to burglary), if
9 the offense was committed in a structure adapted for
10 overnight accommodation and an individual was present.

11 (xv) 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii)
12 (relating to robbery).

13 (xvi) 18 Pa.C.S. § 3702 (relating to robbery of
14 motor vehicle).

15 (xvii) 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)
16 (iii) or (4)(iii) (relating to drug trafficking
17 sentencing and penalties).

18 (4) A criminal attempt, a criminal conspiracy or a
19 criminal solicitation to commit an offense listed under
20 paragraph (3) or an equivalent offense under the laws of this
21 Commonwealth in effect at the time of commission of that
22 offense or an equivalent crime in another jurisdiction.

23 § 33A03. Establishment of program.

24 The department, in consultation with the board and the
25 Department of Aging, shall establish the Medical Parole and
26 Early Release Program. In establishing the program, the
27 department shall:

28 (1) Examine and consider the needs of aging and infirm
29 inmates and elderly inmates.

30 (2) Adopt health care standards unique to aging and

1 infirm inmates and elderly inmates.

2 (3) Examine and evaluate the systemic barriers to
3 community reintegration by elderly inmates, including the
4 relevance, accessibility and applicability of prescribed
5 programming models for elderly inmates.

6 (4) Determine specific accommodations that elderly
7 inmates may require to participate in prescribed programming,
8 including prioritizing reintegrative and rehabilitative
9 programming or vocational training.

10 § 33A04. Medical parole.

11 (a) Authority to grant.--Notwithstanding any other provision
12 of this title or any other law, regulation or guideline to the
13 contrary, if a health care practitioner of a correctional
14 facility in which an aging and infirm inmate is incarcerated
15 concludes in a medical diagnosis that the inmate is an eligible
16 offender, the department shall advise the eligible offender of
17 the program if the department determines that the medical
18 diagnosis limits the aging and infirm inmate's ability to pose a
19 threat to public safety.

20 (b) Procedure.--

21 (1) The following apply:

22 (i) The department shall identify all eligible
23 inmates committed to the custody of the department.

24 (ii) The department shall notify the inmate of the
25 inmate's status as an eligible offender.

26 (iii) Upon identification of an inmate as an
27 eligible offender under subparagraph (i) and notification
28 under subparagraph (ii), the department shall send notice
29 to the board.

30 (iv) Upon receipt of the notice under subparagraph

1 (iii), the board shall send notice to the prosecuting
2 attorney and the sentencing court indicating that the
3 department has preliminarily identified the inmate as an
4 eligible offender. The notice shall be sent by United
5 States mail unless the board, the sentencing court and
6 the prosecuting attorney have consented to receipt of
7 notice via electronic mail.

8 (v) Within 30 days of receipt of the notice under
9 subparagraph (iv), the court or prosecuting attorney may
10 file a written objection to the department's preliminary
11 identification of the inmate as an eligible offender.
12 Notice of the objection shall be provided to both the
13 department and the board.

14 (vi) If no notice of objection has been filed under
15 subparagraph (v), the board or the board's designee may
16 approve an eligible offender's petition for medical
17 parole upon a determination that all of the following
18 apply:

19 (A) The department has certified that the
20 eligible offender has a good conduct record and
21 continues to remain an eligible offender.

22 (B) The reentry plan for the eligible offender
23 is adequate.

24 (C) The eligible offender's conditions and
25 requirements for medical parole have been
26 established.

27 (D) There is no reasonable indication that the
28 eligible offender poses a risk to public safety.

29 (vii) If the court or prosecuting attorney files a
30 timely objection under subparagraph (v), the board shall

1 make a determination whether the inmate's status as an
2 eligible offender shall be rescinded. The board shall
3 notify the department, the prosecuting attorney and the
4 sentencing court of the board's determination no later
5 than 60 days after receipt of the objection.

6 (viii) If the board determines that the inmate is an
7 eligible offender under this chapter, the board shall
8 follow the requirements under subparagraph (vi).

9 (ix) If the board determines that the inmate is not
10 an eligible offender, the board shall retain exclusive
11 jurisdiction to grant parole and shall determine whether
12 the inmate shall be eligible for medical parole at a
13 later date or if medical parole should be denied.

14 (2) Nothing in this subsection shall be construed as
15 granting a right to medical parole to an eligible offender,
16 and any decision by the board or the department under this
17 section shall not be considered an adjudication under 2
18 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
19 Commonwealth agencies) or Ch. 7 Subch. A (relating to
20 judicial review of Commonwealth agency action).

21 (3) Except as provided under this subsection, nothing in
22 this chapter shall otherwise affect the powers and duties of
23 the board or the department.

24 (c) Special consideration.--When considering an aging and
25 infirm inmate for medical parole, the board shall give special
26 consideration to whether age, time served and diminished
27 capacity or physical condition have reduced the aging and infirm
28 inmate's risk for future violence. The board may also consider
29 whether the inmate demonstrates the following:

30 (1) Successful participation in programs designed to

1 restore the inmate as a productive individual in the
2 community upon release.

3 (2) Reform and behavior change over a period of years.

4 (3) A renunciation of criminal activity and criminal
5 affiliations, if applicable.

6 (4) Remorse for criminal activity.

7 § 33A05. Conditional early release of elderly inmates.

8 (a) Authority to petition for early release.--The following
9 apply:

10 (1) Notwithstanding any other provision of this title or
11 any other law, regulation or guideline to the contrary, an
12 elderly inmate convicted of one or more crimes may petition
13 the board for early release after serving no less than 20
14 years of total confinement or reaching 65 years of age,
15 whichever is later, if the inmate has not committed a
16 disqualifying serious infraction as defined by the department
17 in the 12 months prior to filing the petition for early
18 release and the current sentence was not imposed for the
19 commission of a violent offense.

20 (2) No later than five years prior to the date that an
21 elderly inmate will be eligible to petition for early
22 release, the department shall conduct an assessment of the
23 elderly inmate and identify programming and services that
24 would be appropriate to prepare the inmate for and assist the
25 inmate with reentry into the community. To the extent
26 possible, the department shall make programming available as
27 identified by the assessment.

28 (3) No later than 90 days from receipt of a petition for
29 early release from an elderly inmate, the department shall
30 conduct, and the elderly inmate shall participate in, an

1 examination of the inmate, incorporating methodologies that
2 are recognized by experts in the prediction of dangerousness,
3 including a prediction of the probability that the elderly
4 inmate will engage in future criminal behavior, if released
5 on conditions to be set by the board.

6 (b) Submission of information to board.--The results of all
7 assessments, examinations, evaluations and any other information
8 pertaining to an elderly inmate who files a petition in
9 accordance with subsection (a) shall be transmitted to the board
10 at such time and in such form or manner as the board, in
11 consultation with the department, requires.

12 (c) Procedure.--The board:

13 (1) Shall give public safety considerations the highest
14 priority when making all decisions regarding early release
15 and conditions of early release. The board's decision to
16 grant early release to an elderly inmate under this section
17 is discretionary based on consideration of the criteria
18 established under section 33A08 (relating to duties of
19 board).

20 (2) Shall, before reviewing a petition, give written
21 notice of the petition to all interested parties, including,
22 but not limited to, the following:

23 (i) Law enforcement.

24 (ii) Any department personnel involved in the case.

25 (iii) The sentencing court.

26 (iv) The county district attorney's office which
27 prosecuted the case.

28 (v) The victims of a crime perpetrated by an elderly
29 inmate, if any, who have indicated a desire to be
30 notified.

1 (vi) The Office of Victim Advocate.

2 (vii) The Attorney General, if determined necessary
3 and appropriate.

4 (3) Shall conduct a hearing on each petition filed under
5 this section for early release in accordance with rules and
6 regulations adopted under section 6139(a)(4) (relating to
7 parole procedure). In conducting the hearing, the board shall
8 provide an opportunity for victims and for survivors of
9 victims of any crimes for which an elderly inmate has been
10 convicted to present victim statements. The procedures to
11 govern the presentation of victim statements shall be in
12 accordance with section 6140 (relating to victim statements,
13 testimony and participating in hearing). To facilitate victim
14 and survivor of victim involvement, each district attorney
15 shall ensure that any victim statements and known contact
16 information for victims of record and survivors of victims
17 are forwarded as part of the judgment and sentence.

18 (4) May, after a hearing conducted under paragraph (3),
19 order the elderly inmate released under conditions the board
20 determines appropriate. If the board grants or denies a
21 petition, it may specify the reasons for the decision. An
22 elderly inmate granted early release by the board shall be
23 subject to supervision by the board for a period to be
24 determined by the board. The board shall monitor the elderly
25 inmate's compliance with conditions of early release imposed
26 by the sentencing court or board and promptly report any
27 violations to the department. Any violation of conditions of
28 early release established or modified by the board shall be
29 subject to section 6138 (relating to violation of terms of
30 parole).

1 (5) When making a decision for early release, shall
2 consider any written statement addressing the appropriateness
3 of early release from the department, the prosecuting
4 attorney, the sentencing judge, law enforcement and
5 correctional personnel involved in the case, if applicable,
6 the victim and any survivor of the victim and any other
7 interested party.

8 (6) Shall impose appropriate conditions of early release
9 and provide appropriate supervision for the elderly inmate in
10 the same manner as inmates given supervised release in
11 accordance with the rules and regulations adopted by the
12 board under section 6141 (relating to general rules and
13 special regulations).

14 (7) May refuse to review a petition for any reason and
15 may not be required to state a reason for the board's refusal
16 to review.

17 (d) Denial of petition and violations.--The following apply:

18 (1) An elderly inmate whose petition for early release
19 is denied may file a new petition for early release three
20 years from the date of denial or at an earlier date as may be
21 established by the board.

22 (2) An elderly inmate granted early release in
23 accordance with this section may be returned to a
24 correctional facility at the discretion of the board if the
25 released inmate is found to have violated a condition of
26 early release. The released elderly inmate shall be entitled
27 to a hearing under 2 Pa.C.S. Ch. 5 Subch. A (relating to
28 practice and procedure of Commonwealth agencies). If the
29 board finds that the elderly inmate has reoffended, the board
30 may recommit the elderly inmate for up to the remainder of

1 the court-imposed term of incarceration. The elderly inmate
2 may file a new petition for early release five years from the
3 date of return to a correctional facility or at an earlier
4 date as may be set by the board.

5 § 33A06. Provisions applicable to medical parole and early
6 release.

7 If an inmate is granted medical parole or early release under
8 this chapter, the board may require, as a condition precedent to
9 medical parole or early release, that the inmate's release plan
10 include:

11 (1) The identification of a family member or community
12 sponsor who will assist the aging and infirm inmate or
13 elderly inmate with the activities of daily living.

14 (2) Verification of the availability of appropriate
15 medical services sufficient to meet any ongoing treatment
16 requirements, if any.

17 (3) Verification of appropriate housing, which may
18 include, but not be limited to, a hospital, hospice, nursing
19 home or other housing accommodation suitable to an aging and
20 infirm inmate's medical needs.

21 § 33A07. Duties of department.

22 The department shall:

23 (1) Develop and implement procedures to identify inmates
24 who may be eligible for medical parole. The procedures shall:

25 (i) be based upon all available medical information
26 or data; and

27 (ii) include a process for identified inmates to
28 submit a petition for medical parole.

29 (2) Establish criteria for reviewing petitions for
30 medical parole. The criteria must include consideration of:

1 (i) Public safety.

2 (ii) The seriousness of any offense committed by an
3 aging and infirm inmate.

4 (iii) The victims and survivors of victims of crime
5 for which the aging and infirm inmate was convicted and
6 sentenced to incarceration.

7 (iv) The aging and infirm inmate's remorse and
8 atonement for the offense for which the inmate was
9 convicted and sentenced or the absence of remorse and
10 atonement.

11 (v) The aging and infirm inmate's productivity and
12 life changes while incarcerated.

13 (vi) The aging and infirm inmate's infraction
14 history while incarcerated, if any.

15 (vii) The aging and infirm inmate's involvement in,
16 completion of and responsiveness to programs and services
17 made available to the inmate while incarcerated.

18 (viii) The aging and infirm inmate's behavioral
19 health history, if applicable.

20 (ix) Any other criteria determined necessary and
21 appropriate by the department and the board.

22 (3) Establish a uniform method for submitting petitions
23 to the board in accordance with the requirements of this
24 chapter.

25 (4) Consult with the board in developing the uniform
26 method for submitting petitions to the board in accordance
27 with paragraph (3).

28 (5) Consider and incorporate recommendations provided by
29 the Department of Aging.

30 § 33A08. Duties of board.

1 The board shall establish criteria for reviewing petitions
2 under section 33A05 (relating to conditional early release of
3 elderly inmates), which shall include consideration of the
4 criteria established in accordance with section 33A03 (relating
5 to establishment of program). In establishing the criteria, the
6 board shall include an elderly inmate's failure to participate
7 in an evaluation under section 33A05.

8 § 33A09. Department of Aging.

9 (a) Consultations with the Department of Aging.--The
10 department shall consult with the Department of Aging to
11 determine the resources an eligible offender may need to
12 transition from being an inmate to being a member of the
13 community. The consultations shall focus on the role of the
14 Department of Aging's area agencies on aging in assisting the
15 department in determining the community-based options and
16 factors necessary for successful reentry by eligible offenders
17 who are granted medical parole, including, but not limited to,
18 the following:

19 (1) Access to services such as transportation and
20 housing, connection with a social support system, access to
21 physical and mental health care and help with signing up for
22 benefits.

23 (2) Finding appropriate placement for an eligible
24 offender granted medical parole who is terminally ill.

25 (3) Help with identifying health care practitioners and
26 securing medical records to safely manage illness or disease.

27 (b) Cooperation.--The Department of Aging shall cooperate
28 with the department and the board in carrying out the
29 requirements of this subsection.

30 § 33A10. Regulations.

1 The following apply:

2 (1) The department and the board shall collaborate and
3 each agency shall adopt and promulgate regulations necessary
4 to carry out their respective duties under this chapter.

5 (2) Any rules, regulations or guidelines adopted by the
6 board under this title or under 42 Pa.C.S. § 2154.5 (relating
7 to adoption of guidelines for parole) may be used by the
8 board to carry out its duties under this chapter.

9 § 33A11. Applicability and construction.

10 (a) Applicability.--The provisions of this chapter shall not
11 apply to an inmate who is sentenced to a term of imprisonment
12 after a conviction for a violent offense.

13 (b) Construction.--Nothing in this chapter shall be
14 construed to:

15 (1) Alter or diminish the rights conferred to victims
16 under the act of November 24, 1998 (P.L.882, No.111), known
17 as the Crime Victims Act.

18 (2) Limit the authority of the board to address
19 violations of a condition of medical parole or early release
20 under Subchapter C of Chapter 61 (relating to powers and
21 duties).

22 (3) Convey a right to:

23 (i) medical parole;

24 (ii) an assessment for medical parole or any
25 examination or evaluation to determine eligibility for
26 medical parole; or

27 (iii) petition the board for early release from the
28 custody of the department.

29 Section 2. This act shall take effect in 60 days.