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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2634 Session of  
2022

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INTRODUCED BY KAIL, BROOKS, CIRESI, COX, ECKER, KINSEY, ROWE AND  
C. WILLIAMS, JUNE 13, 2022

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 13, 2022

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in sentencing, further  
3 providing for transfer of inmates in need of medical  
4 treatment.

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

7 Section 1. Section 9777 of Title 42 of the Pennsylvania  
8 Consolidated Statutes, amended June 30, 2021 (P.L.260, No.59),  
9 is amended to read:

10 § 9777. Transfer of inmates in need of medical treatment.

11 [(a) Inmates committed to custody of department.--If an  
12 inmate is committed to the custody of the department, the  
13 department, the inmate or a person to whom the court grants  
14 standing to act on behalf of the inmate may petition the  
15 sentencing court to temporarily defer service of the sentence of  
16 confinement and temporarily remove the inmate committed to the  
17 custody of the department, or other facility, for placement in a  
18 hospital, long-term care nursing facility or hospice care  
19 location. The following shall apply:

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

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

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

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

16 (iv) There are no writs filed or detainers lodged  
17 against the inmate and the inmate is not subject to any  
18 court order requiring the inmate's 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,  
22 the sentencing court shall consider the inmate's  
23 institutional conduct record, whether the inmate was ever  
24 convicted of a crime of violence, the length of time that  
25 the inmate has been imprisoned and any other factors the  
26 sentencing court deems relevant.

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

1 by the department.

2 (vii) Each agency representing the Commonwealth at a  
3 proceeding which resulted in an order committing or  
4 detaining the inmate, 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 petitioner's  
9 request to temporarily defer service of the sentence of  
10 confinement in order for the inmate to receive care from a  
11 licensed hospice care provider, proposed by the petitioner  
12 and subject to electronic monitoring by the department, if  
13 all of the following are established by clear and convincing  
14 proof:

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

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

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

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

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

6 (vi) Each agency representing the Commonwealth at a  
7 proceeding which resulted in an order committing or  
8 detaining the inmate, the State or local correctional  
9 facility housing the inmate 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 an inmate's sentence of  
14 confinement shall include a provision that the department or  
15 prosecuting attorney may at any time petition the sentencing  
16 court for an order directing that the inmate be recommitted  
17 to the custody of the department if the circumstances under  
18 which the inmate was released change or for any previously  
19 unknown circumstances, including a change in the inmate's  
20 medical status, the inmate's risk of escape, the inmate's  
21 danger to the community or the nature of the medical or other  
22 care provided by the hospital, long-term care nursing  
23 facility or hospice care provider.

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

1 (b) Inmates committed to custody of other facilities.--An  
2 inmate not committed to the custody of the department but  
3 confined in an institution authorized to incarcerate or detain  
4 persons for criminal sentences, violations of criminal law or  
5 orders of parole, probation, bail or other order related to a  
6 civil or criminal matter may have service of the sentence of  
7 confinement deferred and may be placed in a hospital, long-term  
8 care nursing facility or licensed hospice care location, subject  
9 to electronic monitoring, by order of the judge that committed  
10 the inmate to the facility or institution or by another  
11 available judge designated to preside if all of the following  
12 are established by clear and convincing proof:

13 (1) The chief administrator, the chief administrator's  
14 designee, the inmate or a person to whom the court grants  
15 standing to act on behalf of the inmate petitions the court  
16 or has given written consent to the grant of a petition under  
17 this section filed on behalf of the inmate.

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

22 (3) An entry of an order pursuant to this subsection  
23 temporarily deferring service of an inmate's sentence of  
24 confinement shall include a provision that the chief  
25 administrator or the prosecuting attorney may at any time  
26 petition the sentencing court seeking the issuance of a bench  
27 warrant directing that the inmate be recommitted to the  
28 custody of the appropriate correctional institution if the  
29 circumstances under which the inmate was released change or  
30 for previously unknown circumstances, including a change in

1 the inmate's medical status, the inmate's risk of escape, the  
2 inmate's danger to the community or the nature of the medical  
3 or other care provided by the hospital, long-term care  
4 nursing facility or hospice care provider.

5 (4) The sentencing court may terminate at any time its  
6 order authorizing the temporary deferral of the service of an  
7 inmate's sentence of confinement entered pursuant to this  
8 subsection. An inmate taken into custody pursuant to an order  
9 directing detention or recommitment under this subsection  
10 shall be delivered to the county correctional institution or  
11 other institution at which the inmate was confined prior to  
12 the entry of the order deferring the service of the sentence  
13 of confinement pending a hearing on the matter.

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

28 (d) Notice.--

29 (1) Any order entered under this section placing an  
30 inmate in a hospital, long-term care nursing facility or

1 hospice care location which provides care to persons who were  
2 not placed therein pursuant to an order entered under this  
3 section shall direct the individual in charge of the  
4 hospital, long-term care nursing facility or hospice care  
5 location to ensure that each person receiving care at, and  
6 each employee or contractor working in, the hospital, long-  
7 term care nursing facility or hospice care location is  
8 notified that the placement was ordered if it is foreseeable  
9 that the person, employee or contractor will come into  
10 contact with the inmate during the placement.

11 (2) The sentencing court shall forward notice of any  
12 order entered under this section placing an inmate in a  
13 hospital, long-term care nursing facility or hospice care  
14 location to the hospital, long-term care nursing facility or  
15 hospice care location and to the Department of Human  
16 Services.

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

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

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

25 (f) Removal from placement.--If an inmate placed in a  
26 hospital, long-term care nursing facility or hospice care  
27 location pursuant to this chapter removes himself from the  
28 hospital, long-term care nursing facility or hospice care  
29 location, the inmate shall be subject to arrest upon probable  
30 cause and shall, upon conviction thereof, be guilty of criminal

1 contempt.

2 (g) 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 "Chief administrator." As defined under 61 Pa.C.S. § 102  
6 (relating to definitions).

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

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

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

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

20 "Long-term care nursing facility." A long-term care nursing  
21 facility as defined under section 802.1 of the act of July 19,  
22 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

23 "Prosecuting attorney." The Office of Attorney General of  
24 the Commonwealth or the office of a district attorney of a  
25 county who represented the Commonwealth at the most recent  
26 sentencing of an inmate.

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



1 (a) Modification of an imposed term of imprisonment for  
2 reasons of illness.--Notwithstanding any other provision of law,  
3 the court that imposed a sentence on a defendant or inmate may  
4 modify a term of imprisonment upon petition by the Secretary of  
5 Corrections, chief administrator of any other institution, the  
6 prosecuting attorney, the inmate or the court if:

7 (1) extraordinary and compelling family hardship  
8 warrants the modification. A hardship may include the  
9 following:

10 (i) the death or physical or mental incapacitation  
11 of the caregiver for the inmate's minor child or  
12 children; or

13 (ii) the physical or mental incapacitation of the  
14 inmate's spouse or partner if the inmate would be the  
15 only available caregiver for the spouse or partner; or

16 (2) the inmate has a substantially diminished ability to  
17 function in a correctional facility due to:

18 (i) a terminal illness;

19 (ii) a chronic and debilitating physical or medical  
20 condition or disease;

21 (iii) a serious functional or cognitive impairment;

22 or

23 (iv) deteriorating physical or mental health due to  
24 the aging process.

25 (b) Notification and decision requirements.--Notifications  
26 shall be given in accordance with the following:

27 (1) If a petition for sentence modification is filed by  
28 the inmate under subsection (a), the inmate shall provide a  
29 copy of the petition to the Department of Corrections or  
30 other institution within seven business days of filing the

1 petition.

2 (2) Within three business days of receiving the inmate's  
3 petition for modification under paragraph (1), or within  
4 three business days of the Department of Corrections' or  
5 other institution filing a petition on behalf of an inmate  
6 under subsection (a), the Department of Corrections, other  
7 institution or the district attorney for the county where the  
8 conviction occurred shall, subject to any applicable  
9 confidentiality requirements, notify the Office of the Victim  
10 Advocate and any registered victim of the inmate's offense of  
11 the petition and the general reasons for the petition and  
12 provide an opportunity to respond to the court in writing  
13 within seven days.

14 (3) The Department of Corrections or other institution  
15 shall, subject to any applicable confidentiality  
16 requirements:

17 (i) In the case of an inmate diagnosed with a  
18 terminal illness:

19 (A) No later than 72 hours after the diagnosis  
20 by a medical professional employed or contracted by  
21 the Department of Corrections or other institution:

22 (I) Notify the inmate's last attorney of  
23 record, spouse or partner and immediate family  
24 members of the inmate's condition.

25 (II) Inform the inmate's attorney, spouse or  
26 partner and family members that they may prepare  
27 and submit on the inmate's behalf a petition for  
28 sentence modification under subsection (a)(2).

29 (III) Provide the inmate's medical records  
30 to the inmate and the inmate's attorney, spouse

1           or partner or family member.

2           (B) No later than seven days after the date of  
3           the diagnosis, provide the inmate's spouse or partner  
4           and immediate or extended family members with an  
5           opportunity to visit the inmate in person unless  
6           compelling reasons exist for denying the visit and  
7           the reasons are provided in writing.

8           (C) Upon request from the inmate or the inmate's  
9           attorney, spouse or partner or family members, ensure  
10          the Department of Corrections or other institution  
11          employees assist the inmate in the preparation,  
12          drafting or submission of a petition for sentence  
13          modification under subsection (a) (2).

14          (ii) In the case of an inmate who is physically or  
15          mentally unable to prepare or file a petition for  
16          sentencing modification under subsection (a) (2):

17                (A) Inform the inmate's attorney, spouse or  
18                partner and family members that they may prepare and  
19                submit a petition for sentencing modification under  
20                subsection (a) (2).

21                (B) Upon request from the inmate, the inmate's  
22                attorney, spouse or partner or family members:

23                    (I) Ensure the Department of Corrections or  
24                    other institution employee staff assist the  
25                    inmate in the preparation, drafting and  
26                    submission of a petition for sentence  
27                    modification under subsection (a) (2).

28                    (II) Within three days of the request,  
29                    provide the inmate's medical records to the  
30                    inmate, the inmate's attorney, spouse or partner

1                   or family members.

2                   (iii) Ensure that all Department of Corrections or  
3 other institutional facilities regularly and visibly  
4 post, including in inmate handbooks, staff training  
5 materials and facility law libraries and medical and  
6 hospice facilities, and make available to inmates upon  
7 demand, notice of:

8                   (A) An inmate's right to petition for a sentence  
9 modification under subsection (a).

10                   (B) The procedures and timelines for initiating  
11 and resolving petitions described in subsections (c)  
12 (2) and (d).

13 (c) Requirements for the court.--

14                   (1) Upon receipt of a petition for a sentence  
15 modification under subsection (a), the court:

16                   (i) Shall give the Commonwealth an opportunity to  
17 respond to the petition in writing within 10 days or a  
18 shorter time as set by the court.

19                   (ii) May order a hearing on the petition without  
20 requiring the inmate to attend in person.

21                   (iii) Shall request, from the Department of  
22 Corrections or other institution, the petitioner's  
23 disciplinary record. The record shall be provided to the  
24 court within 10 days or a shorter time as set by the  
25 court.

26                   (2) The court shall:

27                   (i) Issue a decision on the petition, stating the  
28 reasons for the decision and the decision shall be made:

29                   (A) Within 60 days of a petition made under  
30 subsection (a)(1).

1                   (B) Within 30 days of a petition made under  
2                   subsection (a) (2).

3                   (ii) Immediately provide a copy of the decision to  
4                   the inmate, the inmates' attorney, the Office of Victim  
5                   Advocate, the Secretary of Corrections, the chief  
6                   administrator of any other facility and any registered  
7                   victim of the inmate's offense.

8                   (3) The court shall, when issuing a decision on the  
9                   petition, consider the following:

10                   (i) Any response to the petition for sentence  
11                   modification by the Office of Victim Advocate and any  
12                   registered victim of the inmate's offense.

13                   (ii) Any recommendation of the Secretary of  
14                   Corrections or chief administrator of any other  
15                   institution.

16                   (iii) The inmate's instant offense or offenses of  
17                   conviction.

18                   (iv) The inmate's sentence and time served on the  
19                   instant offense or offenses of conviction.

20                   (v) The inmate's current age, physical and mental  
21                   condition and ability to function within a correctional  
22                   environment.

23                   (vi) The inmate's postrelease care plan, if any.

24                   (vii) The inmate's disciplinary record while  
25                   incarcerated as well as any history of accomplishments,  
26                   programing attended or other records demonstrating  
27                   rehabilitation.

28                   (viii) The likelihood that the inmate would pose an  
29                   unreasonable risk of danger to others or the community if  
30                   released.

1           (4) In granting a petition under subsection (a), the  
2 court may impose any reasonable condition of release that  
3 might be imposed under a sentence of probation under section  
4 9754 (relating to order of probation) and any other condition  
5 specifically tailored to the circumstances giving rise to the  
6 order that is least restrictive of an inmate's liberty.

7           (5) An order granting or denying a petition under this  
8 section shall be a final order for the purposes of Pa.R.A.P.  
9 No. 341 (relating to final orders; generally).

10       (d) Annual report.--No later than one year after September  
11 1, 2023, and once every year thereafter, the Secretary of  
12 Corrections shall submit to the Judiciary Committee of the  
13 Senate and the Judiciary Committee of the House of  
14 Representatives a report on petitions for sentence modifications  
15 under subsection (a), which shall include descriptions of the  
16 following:

17           (1) The number of inmates granted and denied sentence  
18 modifications, categorized by the criteria relied on for the  
19 grounds for a modification in sentence.

20           (2) The number of petitions initiated by or on behalf of  
21 inmates, categorized by the criteria relied on as the grounds  
22 for a modification in sentence.

23           (3) The number of petitions that the Department of  
24 Corrections employees assisted inmates in drafting, preparing  
25 or filing, categorized by the criteria relied on as the  
26 grounds for a modification in sentence and the final decision  
27 made in each petition.

28           (4) The number of petitions that the attorneys, spouses  
29 or partners or family members submitted on an inmate's  
30 behalf, categorized by the criteria relied on as the grounds

1 for a modification in sentence and the final decision made in  
2 each petition.

3 (5) The number of petitions filed in court by the  
4 Secretary of Corrections, categorized by the criteria relied  
5 on as the grounds for a modification in sentence and the  
6 final decision made in each petition.

7 (6) For each petition filed in court by the Secretary of  
8 Corrections under subsection (a)(2), the time elapsed between  
9 the date the inmate was diagnosed with a terminal illness and  
10 the date the Secretary of Corrections filed the petition in  
11 court, categorized by the criteria relied on as the grounds  
12 for a modification in sentence and the final decision made in  
13 each petition.

14 (7) For each criteria listed in subsection (a), the  
15 number of inmates who died while a petition for sentence  
16 modification was pending.

17 (8) The number of Department of Corrections  
18 notifications to attorneys, spouses or partners and family  
19 members of their right to visit a terminally ill inmate as  
20 required under subsection (b)(3)(i) and, for each  
21 notification, whether the visit occurred and how much time  
22 elapsed between the notification and the visit.

23 (9) The number of visits to each terminally ill inmates  
24 that were denied by the Department of Corrections due to  
25 security or other concerns and the reason given for each  
26 denial.

27 (e) Regulations.--The Department of Corrections and the  
28 Administrative Office of Pennsylvania Courts shall promulgate  
29 rules and regulations to comply with the requirements of this  
30 section within 180 days of the effective date of this

1 subsection.

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 "Chronic and debilitating physical or medical condition or  
6 disease." The term includes a medical condition that is  
7 persistent or permanent, requires medication or ongoing care  
8 from a physician or impairs a person's ability to perform  
9 routine daily tasks or self care.

10 "Deteriorating physical or mental health." The term includes  
11 a loss of mobility in the limbs or body, inability to walk  
12 without assistance, incontinence, forgetfulness, disorientation  
13 or inability to perform routine daily tasks or self care without  
14 assistance or supervision.

15 "Other institution." An institution other than the  
16 Department of Corrections that is authorized to incarcerate or  
17 detain individuals for criminal sentences, violations of  
18 criminal law or orders of parole, probation, bail or other order  
19 related to a civil or criminal matter.

20 "Serious functional or cognitive impairment." A condition  
21 that is persistent or permanent and limits the inmate's ability  
22 to reason, perceive, comprehend or communicate. The term  
23 includes intellectual disabilities, mental illness, dementia and  
24 brain damage from injury or stroke.

25 "Substantially diminished." The inmate is unable or only  
26 partially able to perform one or more essential daily tasks or  
27 self care without partial or total assistance or supervision.

28 "Terminal illness." A disease or condition with an end-of-  
29 life trajectory, with or without a specific prognosis of life  
30 expectancy. The term includes metastatic solid tumor cancer,



1 amyotrophic lateral sclerosis, end-stage organ disease and  
2 advanced dementia.

3 Section 2. Any regulations or parts of regulations are  
4 abrogated insofar as they are inconsistent with the amendment of  
5 42 Pa.C.S. § 9777.

6 Section 3. This act shall apply to an individual sentenced  
7 on, before or after the effective date of the amendment of 42  
8 Pa.C.S. § 9777.

9 Section 4. This act shall take effect in 60 days.