

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 835 Session of 2021

INTRODUCED BY STREET, KANE, MUTH, COLLETT, KEARNEY, COSTA, SAVAL, COMITTA, TARTAGLIONE, CAPPELLETTI, BARTOLOTTA AND HAYWOOD, AUGUST 11, 2021

REFERRED TO JUDICIARY, AUGUST 11, 2021

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 61  
2 (Prisons and Parole) of the Pennsylvania Consolidated  
3 Statutes, in sentencing, repealing provisions relating to  
4 transfer of inmates in need of medical treatment; in  
5 Pennsylvania Board of Probation and Parole, providing for  
6 parole for reasons of age or illness and for medical parole  
7 due to public or disaster emergency related to health or  
8 contagious disease outbreak; and abrogating regulations.

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

11 Section 1. Section 9777 of Title 42 of the Pennsylvania  
12 Consolidated Statutes is repealed:

13 [§ 9777. Transfer of inmates in need of medical treatment.

14 (a) Inmates committed to custody of department.--If an  
15 inmate is committed to the custody of the department, the  
16 department, the inmate or a person to whom the court grants  
17 standing to act on behalf of the inmate may petition the  
18 sentencing court to temporarily defer service of the sentence of  
19 confinement and temporarily remove the inmate committed to the  
20 custody of the department, or other facility, for placement in a

1 hospital, long-term care nursing facility or hospice care  
2 location. The following shall apply:

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

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

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

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

18 (iv) There are no writs filed or detainers lodged  
19 against the inmate and the inmate is not subject to any  
20 court order requiring the inmate's presence.

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

29 (vi) The hospital or long-term care nursing facility  
30 has agreed to notify the department and the court of any

1 material changes in the health status of the inmate, the  
2 nature of the care provided or other information required  
3 by the department.

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

10 (2) The sentencing court may approve the petitioner's  
11 request to temporarily defer service of the sentence of  
12 confinement in order for the inmate to receive care from a  
13 licensed hospice care provider, proposed by the petitioner  
14 and subject to electronic monitoring by the department, if  
15 all of the following are established by clear and convincing  
16 proof:

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

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

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

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

1 time that the inmate has been imprisoned and any other  
2 factors the sentencing court deems relevant.

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

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

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

26 (4) The sentencing court may terminate at any time its  
27 order authorizing the temporary deferral of the service of an  
28 inmate's sentence of confinement entered pursuant to this  
29 subsection. An inmate taken into custody pursuant to an order  
30 directing the inmate's detention or recommitment under this

1 subsection shall be delivered to the nearest State  
2 correctional institution pending a hearing on the matter.

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

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

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

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

1 circumstances under which the inmate was released change or  
2 for previously unknown circumstances, including a change in  
3 the inmate's medical status, the inmate's risk of escape, the  
4 inmate's danger to the community or the nature of the medical  
5 or other care provided by the hospital, long-term care  
6 nursing facility or hospice care provider.

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

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

30 (d) Notice.--

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

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

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

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

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

27 (f) Removal from placement.--If an inmate placed in a  
28 hospital, long-term care nursing facility or hospice care  
29 location pursuant to this chapter removes himself from the  
30 hospital, long-term care nursing facility or hospice care

1 location, the inmate shall be subject to arrest upon probable  
2 cause and shall, upon conviction thereof, be guilty of criminal  
3 contempt.

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 unless the context clearly indicates otherwise:

7 "Chief administrator." As defined under 61 Pa.C.S. § 102  
8 (relating to definitions).

9 "Department." The Department of Corrections of the  
10 Commonwealth.

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

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

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

22 "Long-term care nursing facility." A long-term care nursing  
23 facility as defined under section 802.1 of the act of July 19,  
24 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

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

29 "Sentencing court." The trial judge who most recently  
30 sentenced an inmate or, if the trial judge is no longer serving



1 as a judge of that court, the president judge of the county  
2 court of common pleas.]

3 Section 2. Title 61 is amended by adding sections to read:  
4 § 6144. Parole for reasons of age or illness.

5 (a) General rule.--Notwithstanding any other provision of  
6 law, the board may grant parole to an incarcerated individual  
7 upon petition by the department or the incarcerated individual  
8 when any of the following apply:

9 (1) The incarcerated individual has a substantially  
10 diminished ability to function in a correctional institution  
11 due to any of the following:

12 (i) A terminal illness.

13 (ii) A chronic and debilitating physical or medical  
14 condition or disease.

15 (iii) A serious functional or cognitive impairment.

16 (iv) Deteriorating physical or mental health due to  
17 the aging process.

18 (2) All of the following criteria are met:

19 (i) The incarcerated individual is at least 55 years  
20 of age and has served the lesser of 25 years in prison or  
21 one-half of the minimum term imposed for the offense for  
22 which the incarcerated individual is currently  
23 imprisoned.

24 (ii) The board determines that the incarcerated  
25 individual would not presently pose a danger to others or  
26 the general public if released.

27 (a.1) Medical records.--The medical records of an  
28 incarcerated individual shall be made readily available to the  
29 incarcerated individual for purposes of filing a petition under  
30 subsection (a).

1 (b) Department notification.--If the petition for parole is  
2 filed by the incarcerated individual under subsection (a), the  
3 incarcerated individual shall provide a copy of the petition to  
4 the department within seven business days of filing the  
5 petition.

6 (c) Victim notification.--Within three business days of  
7 receiving an incarcerated individual's petition for parole or of  
8 the department's filing of a petition for parole on behalf of an  
9 incarcerated individual under subsection (a), the board shall,  
10 subject to any applicable confidentiality requirements, take all  
11 of the following actions:

12 (1) Notify the Office of Victim Advocate and any  
13 registered victim of the incarcerated individual's offense of  
14 the petition and the general reasons for the petition.

15 (2) Provide the Office of Victim Advocate and any  
16 registered victims an opportunity to respond within seven  
17 days in writing to the board.

18 (d) Family and incarcerated individual notification.--The  
19 following shall apply:

20 (1) No later than 72 hours after an incarcerated  
21 individual is diagnosed with a terminal illness, the  
22 department shall, subject to any applicable confidentiality  
23 requirements, take all of the following actions:

24 (i) Notify the attorney, spouse or partner or an  
25 immediate family member of the incarcerated individual of  
26 the incarcerated individual's condition.

27 (ii) Inform the attorney, spouse or partner or an  
28 immediate family member of the incarcerated individual  
29 that the attorney, spouse or partner or immediate family  
30 member may prepare and submit on the incarcerated

1 individual's behalf a petition for parole in accordance  
2 with subsection (a).

3 (iii) Provide the incarcerated individual's medical  
4 records to the incarcerated individual and the attorney,  
5 spouse or partner or an immediate family member of the  
6 incarcerated individual.

7 (2) No later than seven days after the date an  
8 incarcerated individual is diagnosed with a terminal illness,  
9 provide the spouse or partner and family members of the  
10 incarcerated individual, including extended family, with an  
11 opportunity to visit the incarcerated individual in person  
12 unless compelling reasons exist for denying visitation and  
13 the reasons are provided in writing.

14 (3) Upon request from an incarcerated individual or the  
15 attorney, spouse or partner or a family member of the  
16 incarcerated individual, ensure that department employees  
17 assist the incarcerated individual in the preparation,  
18 drafting and submission of a petition for parole in  
19 accordance with subsection (a). In the case of an  
20 incarcerated individual who is physically or mentally unable  
21 to prepare or file a petition for parole under subsection  
22 (a), the department shall have all of the following duties:

23 (i) Inform the attorney, spouse or partner or an  
24 immediate family member of the incarcerated individual  
25 that the attorney, spouse or partner or immediate family  
26 member may prepare and submit on the incarcerated  
27 individual's behalf a petition for parole under  
28 subsection (a).

29 (ii) Upon request from the incarcerated individual  
30 or the attorney, spouse or partner or an immediate family

1 member of the incarcerated individual, take all of the  
2 following actions:

3 (A) Ensure that department employees assist the  
4 incarcerated individual in the preparation, drafting  
5 and submission of a petition for parole under  
6 subsection (a).

7 (B) Within three days of the request, provide  
8 the incarcerated individual's medical records to the  
9 incarcerated individual and the attorney, spouse or  
10 partner or an immediate family member of the  
11 incarcerated individual.

12 (4) Ensure that employees at all correctional  
13 institutions regularly and visibly post, including in  
14 incarcerated individual handbooks, staff training materials,  
15 law libraries and medical and hospice facilities, and make  
16 available to incarcerated individuals upon demand, notice of  
17 all of the following:

18 (i) An incarcerated individual's right to petition  
19 for parole under subsection (a).

20 (ii) The procedures and deadlines for initiating and  
21 resolving petitions made under this subsection and  
22 subsections (c) and (e).

23 (e) Duties of board.--The following shall apply:

24 (1) Within two days of receipt of a petition for parole  
25 under subsection (a), the board shall notify the secretary of  
26 the receipt of the petition and offer the secretary an  
27 opportunity to make a recommendation on the petition. No  
28 later than 10 days after receipt of notice that the board has  
29 received a petition, the secretary may offer a recommendation  
30 in writing to the board.

1           (2) The board shall issue a decision on a petition for  
2 parole under subsection (a) and state the reasons for the  
3 decision as follows:

4           (i) Within 15 days for a petition made based on the  
5 criteria under subsection (a)(1).

6           (ii) Within 30 days for a petition made based on the  
7 criteria under subsection (a)(2).

8           (3) The board shall immediately provide a copy of the  
9 decision under paragraph (2) to all of the following:

10           (i) The incarcerated individual.

11           (ii) The incarcerated individual's attorney.

12           (iii) The Office of Victim Advocate and any  
13 registered victim of the incarcerated individual's  
14 offense.

15           (iv) The secretary.

16           (4) The board shall, when issuing a decision on the  
17 petition under paragraph (2), consider all of the following:

18           (i) A response to the petition by the Office of  
19 Victim Advocate and any registered victim of the  
20 incarcerated individual's offense.

21           (ii) Recommendations by the secretary, if any.

22           (iii) The incarcerated individual's offense that  
23 resulted in the conviction.

24           (iv) The incarcerated individual's sentence and time  
25 served for the conviction.

26           (v) The incarcerated individual's current age,  
27 physical and mental condition and ability to function  
28 within a correctional environment.

29           (vi) The incarcerated individual's postrelease care  
30 plan if a plan exists.

1           (vii) The incarcerated individual's disciplinary  
2           record, a full set of records of accomplishments and any  
3           records demonstrating rehabilitation while incarcerated.

4           (viii) The likelihood that the incarcerated  
5           individual would pose a danger to others or the general  
6           public if released.

7           (5) In granting parole under paragraph (2), the board  
8           may impose any reasonable terms and conditions of parole  
9           specifically tailored to the circumstances relating to the  
10           sentence that is the least restrictive of the incarcerated  
11           individual's individual liberty.

12           (e.1) Denial of petition.--Notwithstanding any other  
13           provision of law, if the board denies a petition for parole  
14           under subsection (e):

15           (1) The following:

16           (i) The incarcerated individual may file a State  
17           court habeas corpus petition challenging the denial. The  
18           court shall act upon a petition by holding a hearing  
19           within 60 days of receipt of the petition.

20           (ii) The incarcerated individual or the department  
21           may submit another petition for parole under subsection  
22           (a) for reconsideration by the board:

23           (A) within 30 days of receipt of notice of the  
24           denial; or

25           (B) if the incarcerated individual's medical  
26           condition demonstrably worsens.

27           (2) In addition to paragraph (1), the incarcerated  
28           individual or the department may submit another petition for  
29           parole under subsection (a) one year after the date that the  
30           initial petition was filed.

1 (f) Right to counsel.--Notwithstanding any other provision  
2 of law, an incarcerated individual who submits a petition under  
3 subsection (a) or (e.1)(1)(ii), shall have the right to  
4 assistance of counsel, including appointment of counsel if the  
5 incarcerated individual is indigent, for proceedings in front of  
6 the board and for any State court habeas petition filed under  
7 subsection (e.1).

8 (g) Reports.--No later than September 1, 2021, and each  
9 September 1 thereafter, the secretary shall submit to the  
10 chairperson and minority chairperson of the Judiciary Committee  
11 of the Senate and the chairperson and minority chairperson of  
12 the Judiciary Committee of the House of Representatives a report  
13 on petitions for parole under subsection (a) and shall make the  
14 report available on the department's publicly accessible  
15 Internet website. The report shall include a description of all  
16 of the following for the previous year:

17 (1) The number of incarcerated individuals granted and  
18 denied parole, categorized by the criteria relied on as the  
19 grounds for parole.

20 (2) The number of petitions initiated by or on behalf of  
21 incarcerated individuals, categorized by the criteria relied  
22 on as the grounds for parole.

23 (3) The number of petitions that department  
24 employees assisted incarcerated individuals in drafting,  
25 preparing or filing, categorized by the criteria relied on as  
26 the grounds for parole, and the final decision made in each  
27 petition.

28 (4) The number of petitions that attorneys, spouses or  
29 partners and immediate family members of incarcerated  
30 individuals submitted on behalf of the incarcerated

1 individuals, categorized by the criteria relied on as the  
2 grounds for parole, and the final decision made in each  
3 petition.

4 (5) The number of petitions filed by the department,  
5 categorized by the criteria relied on as the grounds for  
6 parole, and the final decision made in each petition.

7 (6) For each petition filed by the department based on  
8 the criteria under subsection (a)(1), the time elapsed  
9 between the date the incarcerated individual was diagnosed  
10 and the date the department filed the petition, categorized  
11 by the criteria relied on as the grounds for parole, and the  
12 final decision made in each petition.

13 (7) For each criteria specified under subsection (a),  
14 the number of incarcerated individuals who died while a  
15 petition for parole was pending.

16 (8) The number of notifications by the department to  
17 attorneys, spouses or partners and family members of  
18 incarcerated individuals of their right to visit terminally  
19 ill incarcerated individuals as required under subsection (d)  
20 (2), whether visits occurred and how much time elapsed  
21 between the notifications and the visits.

22 (9) The number of visits to terminally ill incarcerated  
23 individuals that were denied by the department due to  
24 security or other concerns, and the reasons given for the  
25 denials.

26 (h) Regulations.--The board and the department shall  
27 promulgate regulations necessary to implement the provisions of  
28 this section.

29 (i) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this



1 subsection unless the context clearly indicates otherwise:

2 "Chronic and debilitating physical or medical condition or  
3 disease." A medical condition that is persistent or permanent,  
4 requires medication or ongoing care from a physician or impairs  
5 a person's ability to perform routine daily tasks or self-care.

6 "Deteriorating physical or mental health." A loss of  
7 mobility in the limbs or body, an inability to walk without  
8 assistance, incontinence, forgetfulness or disorientation, an  
9 inability to perform routine daily tasks or self-care without  
10 assistance or supervision or a similar health issue.

11 "Serious functional or cognitive impairment." A condition  
12 that is persistent or permanent and limits the incarcerated  
13 individual's ability to reason, perceive, comprehend or  
14 communicate. The term includes, but is not limited to,  
15 intellectual disability, mental illness, dementia or brain  
16 damage from injury or stroke.

17 "Substantially diminished." The incarcerated individual is  
18 unable or only partially able to perform one or more essential  
19 daily tasks or self-care without partial or total assistance or  
20 supervision.

21 "Terminal illness." A disease or condition with an end-of-  
22 life trajectory, with or without a specific prognosis of life  
23 expectancy. The term includes metastatic solid-tumor cancer,  
24 amyotrophic lateral sclerosis (ALS), end-stage organ disease,  
25 advanced dementia or a similar disease or condition.

26 § 6145. Medical parole due to public or disaster emergency  
27 related to health or contagious disease outbreak.

28 Notwithstanding any other provision of law, when a public or  
29 disaster emergency related to health is declared or a contagious  
30 disease outbreak occurs in a department facility which the

1 facility is unable to contain or from which the facility cannot  
2 protect vulnerable individuals, the board may grant medical  
3 parole to incarcerated individuals who, due to the individual's  
4 age or underlying health conditions, are at risk of serious  
5 complications or death should the individual contract the  
6 disease or virus. When granting medical parole under this  
7 section, the board may use any expedited review process it deems  
8 necessary and appropriate to release vulnerable individuals in a  
9 timely fashion.

10 Section 3. All regulations and parts of regulations are  
11 abrogated to the extent of any inconsistency with the provisions  
12 of this act.

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