

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 136 Session of 2023

INTRODUCED BY STREET, HUGHES, FONTANA, KEARNEY, BOSCOLA, KANE,
COLLETT, COSTA, CAPPELLETTI, TARTAGLIONE, SAVAL, L. WILLIAMS
AND MUTH, FEBRUARY 21, 2023

REFERRED TO JUDICIARY, FEBRUARY 21, 2023

AN ACT

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

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

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Consolidated Statutes is repealed:

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

(a) Inmates committed to custody of department.--If an
inmate is committed to the custody of the department, the
department, the inmate or a person to whom the court grants
standing to act on behalf of the inmate may petition the
sentencing court to temporarily defer service of the sentence of
confinement and temporarily remove the inmate committed to the
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

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

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

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

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

(3) An entry of an order pursuant to this subsection
temporarily deferring service of an inmate's sentence of
confinement shall include a provision that the chief
administrator or the prosecuting attorney may at any time
petition the sentencing court seeking the issuance of a bench
warrant directing that the inmate be recommitted to the
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 Human
18 Services.

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

1 (c) 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 (d) 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 of the incarcerated individual an
17 opportunity to respond within seven days in writing to the
18 board.

19 (e) Attorney and family notification.--

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 the department shall provide the spouse or partner and family
10 members of the incarcerated individual, including extended
11 family, with an opportunity to visit the incarcerated
12 individual in person unless compelling reasons exist for
13 denying visitation and 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, the department shall ensure that
17 department employees assist the incarcerated individual in
18 the preparation, drafting and submission of a petition for
19 parole in 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) The department shall ensure that employees at all
13 correctional institutions regularly and visibly post,
14 including an incarcerated individual's handbook, staff
15 training materials, law libraries and medical and hospice
16 facilities, and make available to incarcerated individuals
17 upon demand, notice of 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 (d) and (f).

23 (f) Duties of board.--

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

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

8 (i) Reports.--No later than September 1, 2023, 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 (e)
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 (j) Regulations.--The board and the department shall
27 promulgate regulations necessary to implement the provisions of
28 this section.

29 (k) 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, if 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 an incarcerated individual who, due to the
4 individual's age or underlying health conditions, are at risk of
5 serious complications or death should the individual contract
6 the 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.