

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 587 Session of 2023

INTRODUCED BY KINSEY, BURGOS, CURRY, HOHENSTEIN, MADDEN, KINKEAD, SCHLOSSBERG, PARKER, SANCHEZ, D. WILLIAMS, N. NELSON, KHAN, BULLOCK, KRAJEWSKI, HOWARD, KIM, INNAMORATO, GREEN, YOUNG, WARREN, FIEDLER, ISAACSON, CEPEDA-FREYTIZ, CONKLIN, FRANKEL, STURLA, O'MARA, WEBSTER, SCHWEYER, CEPHAS, VITALI, CERRATO AND MAYES, MARCH 20, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 3, 2023

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12 Consolidated Statutes is repealed: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

1 confinement and temporarily remove the inmate committed to the
2 custody of the department, or other facility, for placement in a
3 hospital, long-term care nursing facility or hospice care
4 location. The following shall apply:

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

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

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

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

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

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

1 (vi) The hospital or long-term care nursing facility
2 has agreed to notify the department and the court of any
3 material changes in the health status of the inmate, the
4 nature of the care provided or other information required
5 by the department.

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

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

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

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

27 (iv) The placement of the inmate in the proposed,
28 licensed hospice care location does not pose an undue
29 risk of escape or danger to the community. In making this
30 determination, the sentencing court shall consider the

1 inmate's institutional conduct record, whether the inmate
2 was ever convicted of a crime of violence, the length of
3 time that the inmate has been imprisoned and any other
4 factors the sentencing court deems relevant.

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

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

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

28 (4) The sentencing court may terminate at any time its
29 order authorizing the temporary deferral of the service of an
30 inmate's sentence of confinement entered pursuant to this

1 subsection. An inmate taken into custody pursuant to an order
2 directing the inmate's detention or recommitment under this
3 subsection shall be delivered to the nearest State
4 correctional institution pending a hearing on the matter.

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

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

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

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

1 warrant directing that the inmate be recommitted to the
2 custody of the appropriate correctional institution if the
3 circumstances under which the inmate was released change or
4 for previously unknown circumstances, including a change in
5 the inmate's medical status, the inmate's risk of escape, the
6 inmate's danger to the community or the nature of the medical
7 or other care provided by the hospital, long-term care
8 nursing facility or hospice care provider.

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

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

1 receive a copy of the final order adjudicating the petition.

2 (d) Notice.--

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

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

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

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

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

29 (f) Removal from placement.--If an inmate placed in a
30 hospital, long-term care nursing facility or hospice care

1 location pursuant to this chapter removes himself from the
2 hospital, long-term care nursing facility or hospice care
3 location, the inmate shall be subject to arrest upon probable
4 cause and shall, upon conviction thereof, be guilty of criminal
5 contempt.

6 (g) Definitions.--As used in this section, the following
7 words and phrases shall have the meanings given to them in this
8 subsection unless the context clearly indicates otherwise:

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

11 "Department." The Department of Corrections of the
12 Commonwealth.

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

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

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

24 "Long-term care nursing facility." A long-term care nursing
25 facility as defined under section 802.1 of the act of July 19,
26 1979 (P.L.130, No.48), known as the Health Care Facilities Act.

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

1 "Sentencing court." The trial judge who most recently
2 sentenced an inmate or, if the trial judge is no longer serving
3 as a judge of that court, the president judge of the county
4 court of common pleas.]

5 Section 2. Title 61 is amended by adding sections to read:
6 § 6144. Parole for reasons of age or illness.

7 (a) General rule.--Notwithstanding any other provision of
8 law, the board may grant parole to an incarcerated individual
9 upon petition by the department ~~or~~, the incarcerated individual, <--
10 COUNSEL FOR THE INCARCERATED INDIVIDUAL OR SPOUSE, PARTNER OR
11 IMMEDIATE FAMILY MEMBER OF THE INCARCERATED INDIVIDUAL when any
12 of the following apply:

13 (1) The incarcerated individual has a substantially
14 diminished ability to function in a correctional institution
15 due to any of the following:

16 (i) A terminal illness.

17 (ii) A chronic and debilitating physical or medical
18 condition or disease.

19 (iii) A serious functional or cognitive impairment.

20 (iv) Deteriorating physical or mental health due to
21 the aging process.

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

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

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

1 (b) Medical records.--The medical records of an incarcerated
2 individual shall be made readily available to the incarcerated
3 individual for purposes of filing a petition under subsection
4 (a).

5 (c) Department notification.--If the petition for parole is
6 filed by the incarcerated individual under subsection (a), the
7 incarcerated individual shall provide a copy of the petition to
8 the department within seven business days of filing the
9 petition.

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

16 (1) Notify the Office of the Victim Advocate and any
17 registered victim of the incarcerated individual's offense of
18 the petition and the general reasons for the petition.

19 (2) Provide the Office of the Victim Advocate and any
20 registered victims an opportunity to respond within seven
21 BUSINESS days in writing to the board.

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22 (e) Family and incarcerated individual notification.--The
23 following shall apply:

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

28 (i) Notify the attorney, spouse or partner or an
29 immediate family member of the incarcerated individual of
30 the incarcerated individual's condition.

1 (ii) Inform the attorney, spouse or partner or an
2 immediate family member of the incarcerated individual
3 that the attorney, spouse or partner or immediate family
4 member may prepare and submit on the incarcerated
5 individual's behalf a petition for parole in accordance
6 with subsection (a).

7 (iii) Provide UPON CONSENT OF THE INCARCERATED <--
8 INDIVIDUAL, PROVIDE the incarcerated individual's medical
9 records to the incarcerated individual and the attorney,
10 spouse or partner or an immediate family member of the
11 incarcerated individual.

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

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

28 (i) Inform the attorney, spouse or partner or an
29 immediate family member of the incarcerated individual
30 that the attorney, spouse or partner or immediate family

1 member may prepare and submit on the incarcerated
2 individual's behalf a petition for parole under
3 subsection (a).

4 (ii) Upon request from the incarcerated individual
5 or the attorney, spouse or partner or an immediate family
6 member of the incarcerated individual, take all of the
7 following actions:

8 (A) Ensure that department employees assist the
9 incarcerated individual in the preparation, drafting
10 and submission of a petition for parole under
11 subsection (a).

12 (B) Within three days of the request, provide
13 the incarcerated individual's medical records to the
14 incarcerated individual and the attorney, spouse or
15 partner or an immediate family member of the
16 incarcerated individual.

17 (4) The department shall ensure that employees at all
18 correctional institutions regularly and visibly post,
19 including in incarcerated individual handbooks, staff
20 training materials, law libraries and medical and hospice
21 facilities, and make available to incarcerated individuals
22 upon demand, notice of all of the following:

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

25 (ii) The procedures and deadlines for initiating and
26 resolving petitions made under this subsection and
27 subsections (d) and (f).

28 (f) Duties of board.--The following shall apply:

29 (1) Within two BUSINESS days of receipt of a petition
30 for parole under subsection (a), the board shall notify the

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1 secretary of the receipt of the petition and offer the
2 secretary an opportunity to make a recommendation on the
3 petition. No later than 10 BUSINESS days after receipt of <--
4 notice that the board has received a petition, the secretary
5 may offer a recommendation in writing to the board.

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

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

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

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

15 (i) The incarcerated individual.

16 (ii) The incarcerated individual's attorney.

17 (iii) The Office of the Victim Advocate and any
18 registered victim of the incarcerated individual's
19 offense.

20 (iv) The secretary.

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

23 (i) A response to the petition by the Office of the
24 Victim Advocate and any registered victim of the
25 incarcerated individual's offense.

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

27 (iii) The incarcerated individual's offense that
28 resulted in the conviction.

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

1 (v) The incarcerated individual's current age,
2 physical and mental condition and ability to function
3 within a correctional environment.

4 (vi) The incarcerated individual's postrelease care
5 plan if a plan exists.

6 (vii) The incarcerated individual's disciplinary
7 record, a full set of records of accomplishments and any
8 records demonstrating rehabilitation while incarcerated.

9 (viii) The likelihood that the incarcerated
10 individual would pose a danger to others or the general
11 public if released.

12 (5) In granting parole under paragraph (2), the board
13 may impose any reasonable terms and conditions of parole
14 specifically tailored to the circumstances relating to the
15 sentence that is the least restrictive of the incarcerated
16 individual's individual liberty.

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

20 (1) The following shall apply:

21 (i) The incarcerated individual may file a State
22 court habeas corpus petition challenging the denial. The
23 court shall act upon the petition by holding a hearing
24 within 60 days of receipt of the petition.

25 (ii) The incarcerated individual or the department
26 may submit another petition for parole under subsection
27 (a) for reconsideration by the board:

28 (A) within 30 days of receipt of notice of the
29 denial; or

30 (B) if the incarcerated individual's medical

1 condition demonstrably worsens.

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

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

13 ~~(i) (H) Reports.--No later than September 1, 2024, and each~~ <--
14 ~~September 1 thereafter, the secretary shall submit to the~~
15 ~~chairperson and minority chairperson of the Judiciary Committee~~
16 ~~of the Senate and the chairperson and minority chairperson of~~
17 ~~the Judiciary Committee of the House of Representatives a report~~
18 ~~on petitions for parole under subsection (a) and shall make the~~
19 ~~report available on the department's publicly accessible~~
20 ~~Internet website. The report shall include a description of all~~
21 ~~of the following for the previous year:~~

22 (1) The number of incarcerated individuals granted and
23 denied parole, categorized by the criteria considered as the
24 grounds for parole.

25 (2) The number of petitions initiated by or on behalf of
26 incarcerated individuals, categorized by the criteria
27 considered as the grounds for parole.

28 (3) The number of petitions that department
29 employees assisted incarcerated individuals in drafting,
30 preparing or submitting, categorized by the criteria

1 considered as the grounds for parole, and the final decision
2 made in each petition.

3 (4) The number of petitions that attorneys, spouses or
4 partners and immediate family members of incarcerated
5 individuals submitted on behalf of the incarcerated
6 individuals, categorized by the criteria considered as the
7 grounds for parole, and the final decision made in each
8 petition.

9 (5) The number of petitions filed by the department,
10 categorized by the criteria considered as the grounds for
11 parole, and the final decision made in each petition.

12 (6) For each petition filed by the department based on
13 the criteria under subsection (a)(1), the time elapsed
14 between the date the incarcerated individual was diagnosed
15 and the date the department filed the petition, categorized
16 by the criteria considered as the grounds for parole, and the
17 final decision made in each petition.

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

21 (8) The number of notifications by the department to
22 attorneys, spouses or partners and family members of
23 incarcerated individuals of the right to visit terminally ill
24 incarcerated individuals as required under subsection (e)(2),
25 whether visits occurred and how much time elapsed between the
26 notifications and the visits.

27 (9) The number of visits to terminally ill incarcerated
28 individuals that were denied by the department due to
29 security or other concerns, and the reasons given for the
30 denials.

1 ~~(j)~~ (I) Regulations.--The board and the department shall <--
2 promulgate regulations necessary to implement the provisions of
3 this section.

4 ~~(k)~~ (J) 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 "Chronic and debilitating physical or medical condition or
8 disease." A medical condition that is persistent or permanent,
9 requires medication or ongoing care from a physician or impairs
10 a person's ability to perform routine daily tasks or self-care.

11 "Deteriorating physical or mental health." A loss of
12 mobility in the limbs or body, an inability to walk without
13 assistance, incontinence, forgetfulness or disorientation, an
14 inability to perform routine daily tasks or self-care without
15 assistance or supervision or a similar health issue.

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

22 "Substantially diminished." The incarcerated individual is
23 unable or only partially able to perform one or more essential
24 daily tasks or self-care without partial or total assistance or
25 supervision.

26 "Terminal illness." A disease or condition with an end-of-
27 life trajectory, with or without a specific prognosis of life
28 expectancy. The term includes metastatic solid-tumor cancer,
29 amyotrophic lateral sclerosis, end-stage organ disease, advanced
30 dementia or a similar disease or condition.

1 § 6145. Medical parole due to public or disaster emergency
2 related to health or contagious disease outbreak.
3 Notwithstanding any other provision of law, when a public or
4 disaster emergency related to health is declared or a contagious
5 disease outbreak occurs in a facility of the department which
6 the facility is unable to contain or from which the facility
7 cannot protect vulnerable individuals, the board may grant
8 medical parole to incarcerated individuals who, due to the
9 individual's age or underlying health conditions, are at risk of
10 serious complications or death should the individual contract
11 the disease or virus. When granting medical parole under this
12 section, the board may use any expedited review process it deems
13 necessary and appropriate to release vulnerable individuals in a
14 timely fashion.

15 Section 3. All regulations and parts of regulations are
16 abrogated to the extent of any inconsistency with the provisions
17 of this act.

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