
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2046 Session of
2018

INTRODUCED BY KINSEY, FITZGERALD, SOLOMON, KIRKLAND, FRANKEL,
ROTHMAN, CALTAGIRONE, RABB, J. HARRIS, HILL-EVANS, THOMAS,
WATSON AND SCHWEYER, JANUARY 31, 2018

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 31, 2018

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, providing for medical parole and early
3 release of elderly inmates.

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

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

8 CHAPTER 33A

9 MEDICAL PAROLE AND EARLY

10 RELEASE OF ELDERLY INMATES

11 Sec.

12 33A01. Legislative findings and declaration.

13 33A02. Definitions.

14 33A03. Establishment of program.

15 33A04. Medical parole.

16 33A05. Conditional early release and elderly inmates.

17 33A06. Provisions applicable to medical parole and early

18 release.

1 33A07. Duties of department.

2 33A08. Duties of board.

3 33A09. Department of Aging.

4 33A10. Regulations.

5 33A11. Applicability and construction.

6 § 33A01. Legislative findings and declaration.

7 The General Assembly:

8 (1) Finds that:

9 (i) Statistics reveal that the number of individuals
10 55 years of age and older who are incarcerated in Federal
11 and state prisons in the United States has increased by
12 1,400% since 1981 and is expected to triple by 2030.

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

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

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

28 (v) The incarceration of geriatric inmates forces
29 the Commonwealth's correctional system to open more
30 geriatric-care units and expand existing resources to

1 house aging and elderly inmates with dementia, diabetes,
2 heart disease, cancer and other physical, behavioral and
3 cognitive disabilities associated with aging.

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

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

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

17 § 33A02. Definitions.

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

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

27 "Commission." The Pennsylvania Commission on Sentencing.

28 "Correctional facility." A State correctional institution.

29 "Early release." The release of an elderly inmate from the
30 custody of the department before the inmate's original release

1 date due to the age of the inmate.

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

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

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

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

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

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

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

20 (3) A description of the inmate's mental or physical
21 incapacity.

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

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

28 (1) A medical diagnosis.

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

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

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

8 "Permanently medically incapacitated inmate." An aging and
9 infirm inmate:

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

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

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

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

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

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

27 (1) has a condition caused by injury, disease, syndrome
28 or illness which, to a reasonable degree of medical certainty
29 as determined by a health care practitioner, renders the
30 aging and infirm inmate terminally ill to the extent that

1 there can be no recovery and death is imminent; and

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

3 "Violent offense." The term includes:

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

9 (2) An offense for which registration is required under
10 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
11 sexual offenders).

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

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

14 (ii) 18 Pa.C.S. § 2503 (relating to voluntary
15 manslaughter).

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

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

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

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

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

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

28 (ix) 18 Pa.C.S. § 2716(b) (relating to weapons of
29 mass destruction).

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

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

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

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

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

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

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

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

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

21 § 33A03. Establishment of program.

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

26 (1) Examine and consider the needs of aging and infirm
27 inmates and elderly inmates.

28 (2) Adopt health care standards unique to aging and
29 infirm inmates and elderly inmates.

30 (3) Examine and evaluate the systemic barriers to

1 community reintegration by elderly inmates, including the
2 relevance, accessibility and applicability of prescribed
3 programming models for elderly inmates.

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

8 § 33A04. Medical parole.

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

18 (b) Procedure.--

19 (1) The following apply:

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

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

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

27 (iv) Upon receipt of the notice under subparagraph
28 (ii), the board shall send notice to the prosecuting
29 attorney and the sentencing court indicating that the
30 department has preliminarily identified the inmate as an

1 eligible offender. The notice shall be sent by United
2 States mail unless the board, the sentencing court and
3 the prosecuting attorney have consented to receipt of
4 notice via electronic mail.

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

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

16 (A) The department has certified that the
17 eligible offender has a good conduct record and
18 continues to remain an eligible offender.

19 (B) The reentry plan for the eligible offender
20 is adequate.

21 (C) The eligible offender's conditions and
22 requirements for medical parole have been
23 established.

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

26 (vii) If the court or prosecuting attorney files a
27 timely objection under subparagraph (v), the board shall
28 make a determination whether the inmate's status as an
29 eligible offender shall be rescinded. The board shall
30 notify the department, the prosecuting attorney and the

1 sentencing court of the board's determination no later
2 than 60 days after receipt of the objection.

3 (viii) If the board determines that the inmate is an
4 eligible offender under this chapter, the board shall
5 follow the requirements under subparagraph (vi).

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

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

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

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

27 (1) Successful participation in programs designed to
28 restore the inmate as a productive individual in the
29 community upon release.

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

1 (3) A renunciation of criminal activity and criminal
2 affiliations, if applicable.

3 (4) Remorse for criminal activity.

4 § 33A05. Conditional early release and elderly inmates.

5 (a) Authority to petition for early release.--The following
6 apply:

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

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

25 (3) No later than 90 days from receipt of a petition for
26 early release from an elderly inmate, the department shall
27 conduct, and the elderly inmate shall participate in, an
28 examination of the inmate, incorporating methodologies that
29 are recognized by experts in the prediction of dangerousness,
30 including a prediction of the probability that the elderly

1 inmate will engage in future criminal behavior, if released
2 on conditions to be set by the board.

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

9 § 33A06. Provisions applicable to medical parole and early
10 release.

11 If an inmate is granted medical parole or early release under
12 this chapter, the board may require, as a condition precedent to
13 medical parole or early release, that the inmate's release plan
14 include:

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

18 (2) Verification of the availability of appropriate
19 medical services sufficient to meet any ongoing treatment
20 requirements, if any.

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

25 § 33A07. Duties of department.

26 The department shall:

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

29 (i) be based upon all available medical information
30 or data; and

1 (ii) include a process for identified inmates to
2 submit a petition for medical parole.

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

5 (i) Public safety.

6 (ii) The seriousness of the offense.

7 (iii) The victims and survivors of victims of crime
8 for which the inmate was convicted and sentenced to
9 incarceration.

10 (iv) The inmate's remorse and atonement for the
11 offense for which the inmate was convicted and sentenced
12 or the absence of remorse and atonement.

13 (v) The inmate's productivity and life changes while
14 incarcerated.

15 (vi) The inmate's infraction history while
16 incarcerated, if any.

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

20 (viii) The inmate's behavioral health history, if
21 applicable.

22 (ix) Any other criteria determined necessary and
23 appropriate by the department and the board.

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

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

30 (5) Consider and incorporate recommendations provided by

1 the Department of Aging.

2 § 33A08. Duties of board.

3 (a) Duties.--The board:

4 (1) Shall establish criteria for reviewing petitions
5 under this section, which shall include consideration of the
6 criteria established in accordance with section 33A03
7 (relating to establishment of program). In establishing the
8 criteria, the board shall include an elderly inmate's failure
9 to participate in an evaluation under section 33A04 (relating
10 to medical parole).

11 (2) Shall give public safety considerations the highest
12 priority when making all decisions regarding early release
13 and conditions of early release. The board's decision to
14 grant early release to an elderly inmate under this section
15 is discretionary based on consideration of the criteria
16 established in accordance with paragraph (1).

17 (3) Shall, before reviewing a petition, give written
18 notice of the petition to all interested parties, including,
19 but not limited to, the following:

20 (i) Law enforcement.

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

22 (iii) The sentencing court.

23 (iv) The county district attorney's office which
24 prosecuted the case.

25 (v) The victims of the crime, if any, who have
26 indicated a desire to be notified.

27 (vi) The Office of Victim Advocate.

28 (vii) The Attorney General, if determined necessary
29 and appropriate.

30 (4) Shall conduct a hearing on each petition for early

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

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

27 (6) When making a decision for early release, shall
28 consider any written statement addressing the appropriateness
29 of early release from the department, the prosecuting
30 attorney, the sentencing judge, law enforcement and

1 correctional personnel involved in the case, if applicable,
2 the victim and any survivor of the victim and any other
3 interested party.

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

10 (b) Denial of petition and violations.--The following apply:

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

15 (2) An elderly inmate granted early release in
16 accordance with this chapter may be returned to a
17 correctional facility at the discretion of the board if the
18 released inmate is found to have violated a condition of
19 early release. The released elderly inmate shall be entitled
20 to a hearing under 2 Pa.C.S. Ch. 5 Subch. A (relating to
21 practice and procedure of Commonwealth agencies). If the
22 board finds that the elderly inmate has reoffended, the board
23 may recommit the elderly inmate for up to the remainder of
24 the court-imposed term of incarceration. The elderly inmate
25 may file a new petition for early release five years from the
26 date of return to a correctional facility or at an earlier
27 date as may be set by the board.

28 (3) The board may refuse to review a petition for any
29 reason and may not be required to state a reason for the
30 board's refusal to review.

1 § 33A09. Department of Aging.

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

11 (1) Access to services such as transportation and
12 housing, connection with a social support system, access to
13 physical and mental health care and help with signing up for
14 benefits.

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

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

19 (b) Cooperation.--The Department of Aging shall cooperate
20 with the department and the board in carrying out the
21 requirements of this subsection.

22 § 33A10. Regulations.

23 The following apply:

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

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

1 § 33A11. Applicability and construction.

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

5 (b) Construction.--Nothing in this chapter shall be
6 construed to:

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

10 (2) Limit the authority of the board to address
11 violations of a condition of medical parole or early release
12 under Subchapter C of Chapter 61 (relating to powers and
13 duties).

14 (3) Convey a right to:

15 (i) medical parole;

16 (ii) an assessment for medical parole or any
17 examination or evaluation to determine eligibility for
18 medical parole; or

19 (iii) petition the board for early release from the
20 custody of the department.

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