

Pennsylvania provides compassionate release to eligible incarcerated individuals with serious and terminal medical conditions under its **Deferment of Sentence** law, which permits release to a hospital, long-term care nursing facility, or hospice care.<sup>1</sup>

## **Deferment of Sentence Due to Serious or Terminal Illness**

### **I. ELIGIBILITY**

**Medical Condition** – To be considered for a temporary Deferment of Sentence, sometimes referred to as Compassionate Release, an incarcerated individual must be (1) seriously ill and not expected to live for more than one year<sup>2</sup> or (2) terminally ill, not ambulatory, and likely to die in the near future.<sup>3</sup>

**Exclusions** – Pennsylvania law does not reference any individuals who are excluded from petitioning for a Deferment of Sentence due to a serious or terminal illness.

### **II. REFERRAL/APPLICATION**

**Petitioner** – To start the Deferment of Sentence process, the incarcerated individual, the Pennsylvania Department of Corrections (Department), or any person approved by the court to act on behalf of the incarcerated individual may petition the sentencing court<sup>4</sup> to “defer service of the sentence of confinement” and place the individual in a hospital, long-term care nursing facility, or hospice care location.<sup>5</sup>

**Petition Requirements** – Petitions filed with the sentencing court must (1) state the name of the hospital, long-term care nursing facility, or hospice care location being proposed for placement and (2) affirm that the petitioner “reasonably believes” the named hospital, long-term care facility, or hospice care location has agreed to accept the placement and provide the facts upon which that belief is based.<sup>6</sup>

- In 2014, the Pennsylvania Institutional Law Project published *An Informational Guide to Compassionate Release in Pennsylvania* (see the link in the Primary Legal Sources box at the end) that, although it has not been updated, includes valuable information for those wanting to file a petition: (1) instructions on how to file a Deferment of Sentence petition;<sup>7</sup> (2) a sample petition for Deferment of Sentence due to terminal illness;<sup>8</sup> (3) a sample petition for Deferment of Sentence due to serious illness;<sup>9</sup> (4) a sample cover letter to include with the petition;<sup>10</sup> and (5) sample letters to a physician, nursing home, hospice, and prison official.<sup>11</sup>

### **III. DOCUMENTATION AND ASSESSMENT**

The information the sentencing court considers before ruling on an individual's request for Deferment of Sentence varies slightly depending on whether the person is seeking release to a hospital or long-term care facility or to a hospice provider.<sup>12</sup>

**Release to a Hospital or Long-Term Care Facility** – An individual's petition to the sentencing court for placement in a hospital<sup>13</sup> or long-term care nursing facility<sup>14</sup> must include proof of the following:<sup>15</sup>

- The individual is seriously ill and expected to live less than one year;
- The individual's medical needs can be more appropriately addressed in a hospital or long-term care nursing facility;
- The requested hospital or long-term care nursing facility has agreed to accept the individual and provide necessary medical care;
- The individual's placement in a hospital or long-term care facility does not pose an undue risk of escape or danger to the community (as determined by the sentencing court based on an assessment of the individual's institutional conduct records, convictions for crimes of violence, length of imprisonment, and any other factors the court considers relevant);
- The hospital or long-term care facility has agreed to notify the Department and the sentencing court of any material changes in the individual's health status, the nature of the care provided, and any other required information;
- The individual has no writs or detainers and is not subject to any court orders requiring an in-person appearance; and
- Notice and opportunities to be heard on the petition have been provided to (1) anyone representing the Commonwealth of Pennsylvania at the proceeding that resulted in the order committing or detaining the individual (e.g., the prosecuting attorney), (2) the correctional facility housing the individual, and (3) any registered crime victim.

**Release to a Licensed Hospice Care Provider** – An individual's petition to the sentencing court for placement in a licensed hospice care location<sup>16</sup> must include proof of the following:<sup>17</sup>

- The incarcerated individual is terminally ill, non-ambulatory, and is likely to die in the near future;

- The licensed hospice care provider can provide the individual with more appropriate medical care;
- The hospice care provider will provide appropriate medical care, palliative care, and supportive services at the proposed hospice care location;
- The individual’s placement in the proposed hospice care location does not pose an undue risk of escape or danger to the community (as determined by the sentencing court based on an assessment of institutional conduct records, convictions for crimes of violence, the length of imprisonment, and any other factors the court considers relevant);
- The hospice care provider has agreed to notify the Department and sentencing court of any material changes in the individual’s health status, the nature of the hospice care provided, and any other required information; and
- Notice and opportunities to be heard on the petition have been provided to (1) anyone representing the Commonwealth of Pennsylvania at the proceeding that resulted in the order committing or detaining the individual (e.g., the prosecuting attorney), (2) the correctional facility housing the individual, and (3) any registered crime victim.

#### **IV. DECISION-MAKING PROCESS**

**Decision-Maker** – The sentencing court makes all final Deferment of Sentence decisions.<sup>18</sup>

**Service of Petitions** – As discussed above, Deferment of Sentence petitions filed with the sentencing court are served on (1) each agency representing the Commonwealth at proceedings that resulted in the individual being committed or detained; (2) the correctional institution housing the individual; and (3) registered victims. Each of those parties and individuals has the opportunity to object and be heard on the individual’s petition, the circumstances of the alternative placement, the conditions, and any other relevant issues.<sup>19</sup> All those notified will receive a copy of the court’s final order.<sup>20</sup>

**Decision and Order** – If the sentencing court determines that there is “clear and convincing proof” that the incarcerated individual has met all of the eligibility and documentation requirements (as detailed above in the Documentation and Assessment section), it may approve the petition to temporarily defer “service of the sentence of confinement” and place the individual in a hospital, long-term care nursing facility, or hospice care.<sup>21</sup>

- The sentencing court must forward a notice of any Deferment of Sentence order to the individual’s placement (the hospital, long-term care nursing

facility, or hospice care location) and the Pennsylvania Department of Human Services.<sup>22</sup>

- Any Deferment of Sentence order that the court enters must direct those in charge of the appropriate hospital, long-term care nursing facility, or hospice care location to notify all patients, employees, and contractors of the order if it is foreseeable that they will come into contact with the individual during the placement.<sup>23</sup>

## **V. POST-DECISION**

**Appeal Rights** – An individual whose petition for a Deferment of Sentence is denied at the trial court level can appeal to the Superior Court.<sup>24</sup>

**Supervision** – All individuals released under a Deferment of Sentence are subject to electronic monitoring.<sup>25</sup>

### **Revocation/Termination**

- **Return to Custody Provision** – The sentencing court’s order must include a provision that the Department or the prosecuting attorney may petition the court to direct the individual’s return to custody if (1) the circumstances under which the person was released change or (2) for any “previously unknown circumstances.” That includes a change in the individual’s medical status; risk of escape; danger to the community; or the nature of the care provided by the hospital, long-term care nursing facility, or hospice care provider.<sup>26</sup>
- **Termination of the Order** – The sentencing court may terminate its order authorizing a temporary Deferment of Sentence at any time.<sup>27</sup> If that happens, the individual is taken into custody and sent to the nearest state correctional institution pending a hearing.<sup>28</sup>

## **VI. REPORTING/STATISTICS**

The Department does not publish statistics on how many individuals have been released under the Deferment of Sentence law due to serious or terminal illnesses.

- A 2020 news article reported that only nine people were granted compassionate release through a Deferment of Sentence between 2010 and June 2015.<sup>29</sup> Meghan Novisky, a researcher and professor of criminology, was quoted in the article as saying “the requirements [of the Deferment of Sentence law] are so stringent that a lot of people don’t qualify.”<sup>30</sup> Secretary of Corrections John Wetzel said of the law, “It’s not compassionate, nor do we release anybody.”<sup>31</sup>

## **PENNSYLVANIA COMPASSIONATE RELEASE**

### **PRIMARY LEGAL SOURCES**

#### **DEFERMENT OF SENTENCE**

##### **Statute**

Pennsylvania Consolidated Statutes, Title 42, § 9777, available through the Pennsylvania General Assembly, <https://www.legis.state.pa.us/WU01/LI/LI/CT/PDF/42/42.PDF>, by scrolling to the appropriate section.

##### **Additional Resource**

Pennsylvania Institutional Law Project, *An Informational Guide to Compassionate Release in Pennsylvania* (2014), <https://static1.squarespace.com/static/589b4d9f725e250f864b8d07/t/59e7a2632aeba556d5b69592/1508352614516/Compassionate+Release.pdf>.

## **NOTES**

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\* *Id.* means see prior note.

<sup>1</sup> 42 Pa. Cons. Stat. § 9777. Note that in various publications and news articles, Deferment of Sentence is referred to as Compassionate Release. See Pennsylvania Institutional Law Project, *An Informational Guide to Compassionate Release in Pennsylvania* (2014), and Lindsay Weber, “Pennsylvania Lawmakers Make Renewed Effort to Expand Compassionate Prison Releases,” *The Morning Call* (July 26, 2021), <https://www.mcall.com/news/pennsylvania/capitol-ideas/mc-nws-pa-compassionate-prison-releases-20210726-dcyftxu4d5e6dk3hn7n6vazboy-story.html>.

<sup>2</sup> 42 Pa. Cons. Stat. § 9777 (a) (1) (iii).

<sup>3</sup> *Id.* at (a) (2) (i).

<sup>4</sup> *Id.* at (g), defining “sentencing court” as the trial judge who most recently sentenced the individual or, if the trial judge is no longer serving, the president judge of the county court of common pleas.

<sup>5</sup> *Id.* at (a).

<sup>6</sup> *Id.* at (e).

<sup>7</sup> Pennsylvania Institutional Law Project, *An Informational Guide to Compassionate Release in Pennsylvania*, 12.

<sup>8</sup> *Id.* at 28.

<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> Id. at 34-36.

<sup>12</sup> 42 Pa. Cons. Stat. §§ 9777 (a) (1) and (a) (2).

<sup>13</sup> Id. at (g), referencing the Health Care Facilities Act of 1979 (P.L. 130, No. 48), defining “hospital” as an entity licensed as an acute-care general hospital, a specialty hospital, or a rehabilitation hospital.

<sup>14</sup> Id., referencing the Health Care Facilities Act of 1979 (P.L. 130, No. 48), defining “long-term care nursing facility” as a facility that provides either skilled or intermediate nursing care or both levels of care to two or more patients, who are unrelated to the licensee, for a period exceeding 24 hours.

<sup>15</sup> Id. at (a) (1).

<sup>16</sup> Id. at (g), referencing the Health Care Facilities Act of 1979 (P.L. 130, No. 48), defining a hospice care location as a home, independent living environment, or inpatient setting that provides a coordinated program of palliative and supportive services through a licensed hospice care provider.

<sup>17</sup> Id. at (a) (2).

<sup>18</sup> Id. at (a).

<sup>19</sup> Id. at (c).

<sup>20</sup> Id.

<sup>21</sup> Id. at (a) (1) and (a) (2).

<sup>22</sup> Id. at (d) (2).

<sup>23</sup> Id. at (d) (1).

<sup>24</sup> A 2012 decision in *Commonwealth v. Folk* held that a sentencing court’s denial of a petition for Deferment of Sentence due to illness will only be overturned if the sentencing court acted inappropriately (e.g., “manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous”). 40 A.3d 169 (Pa. Super. 2012).

<sup>25</sup> 42 Pa. Cons. Stat. §§ 9777 (a) (1) and (a) (2).

<sup>26</sup> Id. at (a) (3). Note that an individual placed in a hospital, long-term care nursing facility, or hospice care location who removes themselves from the facility or location is subject to arrest and may be found guilty of criminal contempt. Id. at (f).

<sup>27</sup> Id. at (a) (4). An individual taken into custody pursuant to an order directing detention or recommitment must be “delivered” to the nearest state correctional institution pending a hearing. Id.

<sup>28</sup> Id.

<sup>29</sup> Joshua Vaughn, “Pennsylvania has Few Options to Release Elderly Prisoners as COVID-19 Spreads,” *The Appeal* (March 23, 2020), <https://theappeal.org/pennsylvania-has-few-options-to-release-elderly-prisoners-as-covid-19-spreads/>.

<sup>30</sup> Id.

<sup>31</sup> Id.