

Pennsylvania provides compassionate release to eligible prisoners with serious or terminal medical conditions under its **Deferment of Sentence** law, which permits release to a hospital, long-term care nursing facility, or hospice care location.<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, a prisoner 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 prisoners who are not eligible to petition for a Deferment of Sentence due to serious or terminal illness.

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

**Petition** - To start the process, the prisoner, the Pennsylvania Department of Corrections (Department), or an individual who has standing from the court to act on behalf of the prisoner, may petition the sentencing court to “defer service of the sentence of confinement” and place the prisoner in a hospital, long-term care nursing facility, or hospice care location.<sup>4</sup> Petitions filed with the court must affirm the following:

- The name of the proposed hospital, long-term care nursing facility, or hospice care location; and
- That the petitioner “reasonably believes” the named hospital, long-term care facility, or hospice care location has agreed to accept the placement of the prisoner *and* the facts upon which that belief is based.<sup>5</sup>

### **III. DOCUMENTATION/ASSESSMENT**

The information the sentencing court needs to rule on a request for Deferment of Sentence depends on whether the prisoner is seeking release to (1) a hospital or long-term care facility or (2) a hospice provider.<sup>6</sup>

**Release to a Hospital or Long-Term Care Facility** - A petition to the court on behalf of a seriously ill prisoner for a Deferment of Sentence and placement in a hospital<sup>7</sup> or long-term care nursing facility<sup>8</sup> must provide proof of the following:

- The prisoner is seriously ill and is expected to live less than a year.
- The prisoner's medical needs can be more appropriately addressed in a hospital or long-term care nursing facility.
- The hospital or long-term care nursing facility requested by the petitioner has agreed to accept the prisoner and provide necessary medical care.
- The prisoner's placement in a hospital or long-term care facility does not pose an undue risk of escape or danger to the community (based on an assessment of institutional conduct records, convictions for crimes of violence, and the length of imprisonment).
- The hospital or long-term care facility has agreed to notify the Department and the court of any material changes in the prisoner's health status, the nature of the care being provided, and any other required information.
- There are no writs filed or detainers lodged against the prisoner, and he or she is not subject to any court orders requiring his or her presence.
- Notice and opportunities to be heard on the petition have been provided to: (1) the prosecuting attorney; (2) the correctional facility housing the prisoner; and (3) any registered crime victim.<sup>9</sup>

**Release to a Licensed Hospice Care Provider** - The petition must include proof of the following:

- The prisoner is terminally ill, not ambulatory, and likely to die in the near future.
- The prisoner's medical care can be more appropriately provided by a licensed hospice care provider.
- Appropriate medical care and palliative and supportive services will be provided by the licensed hospice care provider at the proposed hospice care location.<sup>10</sup>
- The prisoner's placement in the proposed hospice care location does not pose an undue risk of escape or danger to the community (based on an assessment of institutional conduct records, convictions for crimes of violence, and the length of imprisonment).
- The hospice care provider agrees to notify the Department and sentencing court of any material changes in the prisoner's health status, the nature of the hospice care provided, and any other required information.

- The following individuals/entities have been given notice and an opportunity to be heard on the petition: (1) anyone representing the Commonwealth of Pennsylvania at the proceeding resulting in the order committing or detaining the prisoner (e.g., the prosecuting attorney); (2) the correctional facility housing the prisoner; and (3) any registered crime victim.<sup>11</sup>

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

**Decision Maker** - The sentencing court makes all final Deferment of Sentence decisions.

**Service of Petition** - Petitions filed with the sentencing court are served on (1) each agency representing the Commonwealth at proceedings that resulted in the prisoner being committed or detained, and (2) the correctional institution housing the prisoner, for purposes of providing an opportunity to object and be heard on relevant issues such as alternative placements, the circumstances of placement, and the conditions of return.<sup>12</sup>

**Order** - Upon “clear and convincing” proof that the prisoner has met all of the requirements, the sentencing court can approve a petition to “temporarily defer service of the sentence of confinement” and place the prisoner in the appropriate hospital or long-term care nursing facility, or a hospice care location.<sup>13</sup>

**Notice** -

- The sentencing court must forward notice of a Deferment of Sentence order to the prisoner’s placement (the hospital, long-term care nursing facility, or hospice care location) and the Pennsylvania Department of Human Services.<sup>14</sup>
- Any Deferment of Sentence order entered by the court must direct whomever is in charge of the appropriate hospital, long-term care nursing facility, or hospice care location to ensure that all patients, employees, and contractors are notified that the prisoner’s placement has been ordered “if it is foreseeable that the person, employee or contractor will come into contact with the inmate during the placement.”<sup>15</sup>

#### **V. POST-DECISION**

**Appeal Rights** - A prisoner whose petition for a Deferment of Sentence is denied at the trial court level can appeal to the Superior Court.<sup>16</sup>

**Supervision** - Prisoners released under a Deferment of Sentence order to a hospital, long-term care nursing facility, or hospice care location will be subject to electronic monitoring.<sup>17</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 former prisoner's return to custody if (1) the circumstances under which he or she was released change or (2) for any "previously unknown circumstances." This includes a change in the former prisoner's medical status, risk of escape, or danger to the community or a change in the nature of the care provided by the hospital, long-term care nursing facility, or hospice care provider.<sup>18</sup>

- *Termination of the Order* - The sentencing court may terminate an order authorizing a temporary Deferment of Sentence "at any time."<sup>19</sup>

## VI. REPORTING/STATISTICS

The Department does not publish statistics on how many prisoners have been released under the Deferment of Sentence law due to serious or terminal illnesses. However, a 2015 news article reported that only nine prisoners were released between 2010 and June 2015 under the deferment of sentence/compassionate release law.

*Reform advocates say Pennsylvania's law is so strict that compassionate releases almost never happen, even when inmates qualify. The burden almost always rests on families to petition for release, not prison staff who see daily evidence of an inmate's decline... John Wetzel, secretary of corrections, said prison staff doesn't generally recommend inmates for release. It's up to the families.*

## NOTES

<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), <http://www.pailp.org/documents/20141107111645.pdf>, and Jeffrey Benzing, "Prison release rarely an option for dying state inmates," Public Source, June 14, 2015, <http://publicsource.org/prison-release-rarely-an-option-for-dying-state-inmates/>.

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

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

<sup>4</sup> Id. at (a). If the inmate's sentencing judge is no longer sitting, the motion can be addressed to the President Judge or the Supervising Judge of the Criminal Division. See also the sample petitions in An Informational Guide to Compassionate Release in Pennsylvania, *supra* note 1.

<sup>5</sup> 42 Pa. Cons. Stat. § 9777 (e).

<sup>6</sup> Id. at (a) (1) and (a) (2).

<sup>7</sup> "Hospital" is defined in the statute as "an entity licensed as an acute-care general hospital, a specialty hospital or a rehabilitation hospital." 42 Pa. Cons. Stat. § 9777 (g), referencing the Health Care Facilities Act of 1979 (P.L. 130, No. 48).

<sup>8</sup> The statutory definition of "long-term care nursing facility" is 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. 42 Pa. Cons. Stat. § 9777 (g), referencing the Health Care Facilities Act of 1979 (P.L. 130, No. 48).

<sup>9</sup> 42 Pa. Cons. Stat. §§ 9777(a) (1) (i) - (vii).

<sup>10</sup> "Hospice care location" is defined 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." 42 Pa. Cons. Stat. § 9777 (g).

<sup>11</sup> 42 Pa. Cons. Stat. §§ 9777 (a) (2) (i) - (vi).

<sup>12</sup> Id. at (c).

<sup>13</sup> Id. at (a) (1) and (2).

<sup>14</sup> Id. at (d) (2). Note that the statutory references the "Pennsylvania Department of Public Welfare." The name of the agency was changed to the "Pennsylvania Department of Human Services" in 2014.

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

<sup>16</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>17</sup> 42 Pa. Cons. Stat. §§ 9777 (a) (1) and (a) (2).

<sup>18</sup> Id. at (a) (3). Note that if a prisoner placed in a hospital, long-term care nursing facility, or hospice care location under the Deferment of Sentence rules "removes" himself or herself from the facility or location, the prisoner is subject to arrest and may be found guilty of criminal contempt. Id. at (f).

<sup>19</sup> Id. at (a) (4). A prisoner 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>20</sup> Benzing, *supra* note 1.

<sup>21</sup> Id.