

HOUSE No. 1622

The Commonwealth of Massachusetts

PRESENTED BY:

Benjamin Swan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act for the medical release of prisoners.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Timothy J. Muise</i>	<i>P.O. Box 1218</i> <input type="checkbox"/> <i>Shirley, MA 01464</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>

HOUSE No. 1622

By Mr. Swan of Springfield, a petition (accompanied by bill, House, No. 1622) of Benjamin Swan and others for legislation to establish guidelines for the releasing of prisoners for medical reasons. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act for the medical release of prisoners.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 127 of the Massachusetts General Laws is hereby amended by inserting, after
2 section 119, the following section:

3 197A.

4 (1) The Commissioner of the Department of Corrections (hereafter Commissioner) may
5 grant a prisoner held in a state correctional facility a medical release upon the Commissioner’s
6 determination that:

7 (a) if the prisoner is released, he/she will live and remain at liberty without violating law
8 or being a danger to the safety of any person or the community and his/her release will not be
9 incompatible with the welfare of society; and

10 (b) if there is any of the following extraordinary and compelling reasons that warrant
11 such release:

12 (i.) the prisoner is suffering from a terminal illness;

13 (ii.) the prisoner is suffering from a permanent physical or medical condition, or is
14 experiencing deteriorating physical or mental health because of the aging process, that
15 substantially diminishes the ability of the prisoner to provide self-care within the environment of
16 a correctional facility for which conventional treatment promises no substantial improvement;

17 (iii.) the prisoner is greatly endangered by confinement or confinement will
18 substantially shorten the prisoner's life;

19 (iv.) there exists in the prisoner's case an extraordinary and compelling reason
20 other than, or in combination with, the reasons described herein in subdivisions (i.), (ii.), and
21 (iii.).

22 (c) Rehabilitation of the prisoner is not, by itself, an extraordinary and compelling reason
23 for purpose of medical release under subdivision (1) (b).

24 (2) The request for medical release may be initiated by the primary care physician
25 (hereafter PCP) or the superintendent of a state correctional facility, or the prisoner or his/her
26 legal representative.

27 Upon such request:

28 (a) the PCP will examine the prisoner and assemble the medical record, including
29 existing pertinent assessments, if any, by medical consultants and specialists;

30 (b) the PCP will summarize and describe the medical condition and prognosis in
31 layman's terms, or to a reasonable degree of medical certainty, and document his/her findings in
32 the prisoners medical record;

33 (c) the PCP will forward the record so compiled for consideration of medical release to
34 the Commissioner.

35 (3) The authority to grant a medical release rests within the discretion of the
36 Commissioner. No prisoner has the right to medical release or to an additional medical
37 evaluation to determine eligibility for such release. The Commissioner shall adopt policies and
38 procedures necessary to implement the medical release of the prisoner in a timely and efficient
39 manner.

40 (4) In the event that the Commissioner determines that the prisoner is not eligible for
41 medical release, the prisoner (or his/her legal representative) may appeal that decision to the
42 Undersecretary for Criminal Justice in the Executive Office of Public Safety for reconsideration.

43 (5) Except as otherwise provided in this section, a person granted medical release shall be
44 subject to the laws governing parole, as if such a person were a parolee. The parole board may
45 revise, alter or amend such terms and conditions at any time.

46 (6) A person granted medical release under this section shall be under the jurisdiction,
47 supervision, and control of the parole board in the same manner as a person under parole
48 supervision. The parole board may establish conditions of release, on an individual basis, to
49 ensure public safety. A person granted medical release and violates a condition of parole
50 supervision shall be subject to section 149.

51 (7) Notwithstanding any general law or special law to the contrary, no physician or
52 employer of physician providing medical diagnosis pursuant to this section shall be held liable,
53 either as an institution or personally, for issuance of a medical diagnosis under this section,

54 operated in good faith, shall be totally immune from civil and criminal liability as a result of
55 fulfilling this section.