



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

DAVID W. SUNDAY, JR.
ATTORNEY GENERAL

July 23, 2026

RE: Opposition to HB 1042

Dear Representative:

Today you will be considering HB 1042, which was amended in committee earlier today to include provisions related to second degree (a/k/a) felony murder and “medical release.” I respectfully urge you to vote against this legislation for the reasons detailed below. Should there be a motion to revert to the prior printer’s number, I ask that you support that motion, as that would be the only true path to meeting the state Supreme Court’s deadline while providing certainty to victims whose wounds have been torn apart during the course of addressing this issue.

I ask that you oppose the legislation because in its current form it contains felony-murder penalties that are grossly inadequate; it would allow convicted murderers to forum shop for early release; and its unrelated provisions pertaining to medical release would let first-degree murderers and sex offenders qualify for early release based on conditions that are broad and vague and ultimately wholly inappropriate.

Sentencing Provisions Fail to Reflect The Seriousness of the Crimes

As an overview, felony murder is a serious crime. Some crimes include homicides which involve **violent and brutal rapes, robberies and home invasion burglaries where someone kills another person with a deadly weapon or their own hands, or even burns someone to death in their own home.** This is not conjecture or rhetoric. It is reality.

I worked these cases myself as a prosecutor. A large majority of felony murder cases generally involve primary actors who played significant roles in the commission of violent and tragic crime. The so-called “look-outs” or “getaway” drivers are few and far between. The actual deadly shooter; the fatal arsonist; the deadly rapist; the robber who killed another person: these are majority of individuals convicted of this crime.

Therefore, given the violent and tragic nature of these most serious offenses, a significant mandatory minimum sentence is appropriate and necessary. This legislation fails to provide any such sentence and in doing so provides a huge break to convicted murderers.

Of course, there can be a variance of conduct/culpability in second-degree murder cases. That is why a structure that stepped down the punishment for those least culpable would be entirely appropriate, not a bill that steps down the punishment for everyone convicted of felony murder.

The language is truly odd because it does not provide any maximum sentence in terms of the number of years, which is rather unprecedented. It effectively punts the decision-making to the Sentencing Commission, which typically works with the knowledge of what the maximum sentence is. I previously served as a member of the Sentencing Commission and am proud of the work we accomplished to balance the need for accountability and the possibility of redemption and re-entry in society. But when the Commission promulgates guidelines, which is a lengthy process, it relies on statutes which typically provide the highest minimum and maximum sentences allowed, and the Commission then provides subsequent ranges for the Guidelines. Not here. This is a particularly odd approach and leaves the Commission and practitioners with an unclear picture of what the sentencing ranges should be. This will be especially problematic for current cases where sentencing needs to occur before the long process of establishing Sentencing Guidelines takes place.

Retroactivity Language Allows for Forum Shopping and Goes Far Beyond the Scope of the Supreme Court Decision

While the Supreme Court did not address retroactivity, we support thoughtful language that does provide parole eligibility for those who are currently incarcerated after they have served an appropriate amount of time. The language in the bill, however, goes much further. It gives those in prison for felony murder, multiple bites at the apple, specifically allowing them to go to the Parole Board (which is appropriate) or to a sentencing court (which is not). This language would likely have the effect of letting these individuals go to multiple venues to get out of prison, seek to have other crimes they have been convicted of erased, and have their maximum sentences eliminated so that they can be released without any supervision, which is a dangerous proposition. The Supreme Court's decision contemplated none of this, and while we support thoughtful retroactivity language, which is reflected in the two bills passed by the Senate, the inclusion of resentences outside of the Parole Board is ill-advised.

It will also significantly delay the process. The Philadelphia Public Defender said yesterday in a Spotlight PA article that based on her experience with the juvenile resentencing and the complexity of the cases, to address the 500+ cases in her jurisdiction "is going to take over a decade." (Source: <https://www.spotlightpa.org/news/2026/07/pennsylvania-second-degree-felony-murder-deadline-justice-system/>).

The Last Minute Inclusion of the "Medical Release" Provisions Contain Significant Loopholes That Will Benefit Violent Murderers and Sex Offenders

I have significant concerns with the unrelated last-minute inclusion of medical release language. Please note that I am not against looking at our terminal release law and bringing us in line with how other states approach this issue. I understand the sincere motivations by those who advocate for these provisions and while most of this language passed the House previously,

many of the concerns that have been expressed about it both before and after its passage both formally and informally have never been addressed. But the language included today in the amendment, as is explained below, creates a system that will likely overwhelmingly benefit **murderers and sexual offenders**, while sidelining victims at every turn.

Specifically: the diagnostic standard is overly broad. The illness categories are expansive and untethered from actual end-of-life conditions. Procedural protections for victims are minimal to nonexistent. This proposal favors offenders, not victims, and fails to provide any coherent, safe, or responsible framework for medical release.

Please consider the following challenges with the language:

Diagnosis Standard

The bill permits diagnoses by “a treating provider or physician.” This means two things:

- Non-physicians—such as psychologists, social workers, and other licensed clinicians—may issue qualifying diagnoses.
- Physicians who are **not** treating the incarcerated individual may also diagnose.

This broad diagnostic authority matters because the proposal primarily affects individuals serving long sentences for **first-degree murder** and **serious sexual offenses**.

Terminal Illness Standard

The bill contains **no requirement that the individual be at the end of life** or on any definable terminal trajectory. A person could be diagnosed with a “terminal illness” yet still have a **substantial remaining life expectancy** and be released. And if the terminal illness is cured, as sometimes does happen, there is no mechanism for a return to prison. This diverges from the approach taken in most other states.

Serious Illness Standard

Individuals qualifying under the “serious illness” category would often require placement in long-term care facilities or nursing homes. Space in these facilities is extremely limited, and many do not accept individuals with felony records. The bill offers **no plan** for where these individuals would go.

Life-Threatening Illness Standard

The bill allows release for any “life-threatening illness,” a category that includes broadly prevalent conditions—such as asthma, diabetes, and GERD—that are routinely and effectively managed **inside correctional institutions** today. This language effectively opens the door for release based on conditions that **prisons already treat safely and consistently**.

Functional or Cognitive Impairment

The impairment provision is sweeping. It would allow release for a wide array of behavioral-health conditions.

Because many individuals convicted of murder or sexual assault have longstanding behavioral-health challenges, this section becomes a significant avenue for release for precisely those offenders who committed the most serious crimes.

Impact on Victims

The bill is uniformly **anti-victim** in its design.

- Victims have only **seven days** to respond to a petition—an unreasonably short period that disregards trauma, grief, and the practical realities of notification.
- Only victims who are already registered may participate. Many are not, either because their cases predate registration systems or because they reasonably believed the offender would never be released based on the law that we currently have. Both provisions are deeply insensitive and disregard victims' rights and needs.

Conclusion

While I do not often send formal letters on pieces of legislation, I am obligated to do so here because of the need to provide the proper context and real world impact of the legislation you are being asked to consider today.

Indeed, issues that have this much of an impact on victims of homicide and sexual assault should be carefully and thoroughly considered, not inserted into legislation at the last minute with no notice or stakeholder feedback. This problem is exacerbated by the extraordinarily broad and sometimes ambiguous language that is not consistent with the approach by many other states.

This approach does not foster appropriate and thoughtful re-entry initiatives or put individuals on a path to success. Thoughtful re-entry initiatives are necessary and important, and I support those initiatives. But not this approach, which ultimately fails to hold dangerous offenders accountable, gives them multiple opportunities to forum shop, and provides enormous benefits to those who have committed the most violent crimes.

Thank you for your time and consideration

Sincerely,

A handwritten signature in blue ink, appearing to read "David W. Sunday", with a long horizontal flourish extending to the right.

David W. Sunday
Attorney General

