

Legislative Analysis



PAROLE FOR MEDICALLY FRAIL PRISONERS

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<http://www.house.mi.gov/hfa>

House Bill 4129 (proposed substitute H-1)
Sponsor: Rep. Beau Matthew LaFave

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4130 (proposed substitute H-1)
Sponsor: Rep. Tyrone A. Carter

House Bill 4131 (proposed substitute H-1)
Sponsor: Rep. Beth Griffin

House Bill 4132 as introduced
Sponsor: Rep. Kyra Harris Bolden

Committee: Judiciary
Complete to 3-4-19

BRIEF SUMMARY:

Taken together, the bills would implement a medical parole for medically frail prisoners.

House Bill 4129 would do all of the following:

- Replace the current medical parole process with one for the medically frail.
- Exclude from eligibility prisoners convicted of first-degree murder or any crime punishable by a term of life without parole.
- Define *medically frail*.
- Require a medically frail parolee to adhere to the terms of the parole for the length of his or her parole term.
- Require a medically frail parolee to agree to being placed in a medical facility approved by the Department of Corrections (DOC) and require that certain notice requirements be met if the parolee no longer needed the care or level of care provided at the facility.
- Provide a medically frail parolee with the same rights and responsibilities as any other resident of a medical facility.

House Bill 4130 would do all of the following:

- Require notification by the parole board to the prosecutor and victim regarding the decision to consider a prisoner for a medically frail parole.
- Allow the prosecutor or victim to file an objection in circuit court.
- Allow a prosecutor to seek an independent medical examination of the prisoner.
- Specify that the sentencing or successor judge would determine whether a prisoner is eligible for a medically frail parole, and make that decision binding on the parole board as to whether the prisoner could be considered medically frail.
- Allow the decision of the sentencing judge regarding a prisoner's being medically frail to be appealed to the Court of Appeals by the DOC, the prosecutor, or the victim.

House Bill 4131 would create a misdemeanor penalty for selling or furnishing certain contraband to a medically frail parolee, assisting the parolee to abscond from DOC supervision, or knowingly causing the parolee to have contact with a person with whom contact is prohibited.

House Bill 4132 would make changes to provisions within the Corrections Code that are technical corrections or editorial in nature for consistency within that act.

House Bill 4129 is tie-barred to House Bills 4130 and 4132, and House Bills 4130, 4131, and 4132 are tie-barred to House Bill 4129. A bill that is tie-barred to another bill cannot take effect unless that other bill is also enacted.

Each bill would take effect 90 days after its enactment.

DETAILED SUMMARY:

House Bill 4129 would amend section 35 of the Corrections Code. Currently, the parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. Instead, the bill would allow the parole board to grant a medical parole for a prisoner determined to be *medically frail*. The bill would retain the requirement that a medical parole be initiated on the recommendation of the Bureau of Health Care Services, but would eliminate the requirement that the decision be reached only after a review of the medical, institutional, and criminal records of the prisoner. A prisoner convicted of first-degree murder or any crime that is punishable by life without parole would not be eligible for a medically frail parole.

Medically frail would describe an individual who is a minimal threat to society as a result of his or her medical condition, who has received a risk score of low on a validated risk assessment, whose recent conduct in prison indicates that he or she is unlikely to engage in assaultive conduct, and who has one or both of the following:

- A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to walk, stand, and/or sit without personal assistance.
- A permanent or terminal disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder that results in the need for nursing home level of care and whose ability to perform two or more *activities of daily living* is significantly impaired.

Activities of daily living would mean basic personal care and everyday activities as described in the Code of Federal Regulations and would include such tasks as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another (including moving from a reclining position to a sitting or standing position).

Medical parole for the medically frail

The Bureau of Health Care Services within the DOC coordinates and monitors health care services for prisoners and the treatment of seriously mentally ill prisoners via the DOC's mental health services program. If the Bureau believed a prisoner to be medically frail, the Bureau would utilize a specialist in the appropriate medical field, who is not a DOC employee, to evaluate and report to the Bureau on the prisoner's condition.

The determination of whether the prisoner is medically frail would be made by the parole board in consultation with the Bureau. If the parole board determined that a prisoner was medically frail and would be considered for a medically frail parole, the parole board would have to provide notice and medical records required under provisions of House Bill 4130 (see below). The parole board could grant parole to a medically frail prisoner unless the prosecutor from the county from which the prisoner was committed filed a motion opposing the parole as provided in House Bill 4130.

The DOC would not retain authority over the medical plan for a medically frail parolee. A medically frail parolee would have to have full patient rights at the *medical facility* where he or she is placed. Both the DOC and parole board would have to ensure that the placement and terms and conditions of a medically frail parole do not violate any other state or federal regulations. A medical facility housing prisoners granted a medically frail parole would have to be operated in a manner that ensures the safety of its residents. A parolee placed in a medical facility would have the same patient rights and responsibilities as any other individual who is a resident of or has been admitted to the medical facility. In addition, the process for a medically frail parole determination would not change or affect any rights afforded to a victim under the William Van Regenmorter Crime Victim's Rights Act.

Medical facility would mean a hospital, hospice, nursing home, or other housing accommodation providing medical treatment suitable to the condition or conditions rendering the prisoner medically frail.

Conditions for medically frail parole

The bill would not apply to certain requirements in the Corrections Code pertaining to when a prisoner is eligible for parole—for example, completion of a minimum term. Further, the following conditions would apply to a medically frail parole:

- The prisoner would have to agree to all of the following:
 - His or her placement or, if he or she is unable to consent due to the physical or mental health condition, an individual legally entitled to agree to the placement would have to agree that the prisoner be placed in a parole board-approved medical facility where medical care and treatment can be provided.
 - The release, to the prosecutor and sentencing or successor judge of the county from which the prisoner was committed, of medical records that are directly relevant to the condition or conditions rendering the prisoner medically frail. This would have to be done before the parole board determined whether to grant a medically frail parole.

- An independent medical examination, if sought by the prosecutor. If possible, the exam would have to occur at a DOC facility. The DOC would have to pay the reasonable costs of the exam.
- The parolee would have to adhere to the terms of the parole for the length of the parole term.
- The parole would have to be for a term of at least the time necessary to reach the prisoner's earliest release date (i.e., the date on which the prisoner completes his or her minimum sentence).
- A parolee who violated the parole terms or no longer met the definition of medically frail could be transferred to a setting more appropriate for the medical needs of the parolee or be subject to the parole violation process as determined by the parole board and the DOC.
- The parolee could only be placed in a medical facility that agrees to accept the parolee and that is agreed upon by the parolee.

If the parolee no longer needed the level of care

The parolee or individual legally entitled to agree to the parolee's placement would have to immediately inform the parole board if any of the following were met:

- The parolee is no longer eligible for care at the medical facility at which he or she was placed.
- The parolee must be moved to another location for medical care.
- The parolee is no longer at the medical facility approved by the parole board.
- The parolee no longer needs the level of care that resulted in placement at the medical facility.

The parole board would have to immediately notify the prosecutor and the sentencing or successor judge if the parolee were no longer eligible for care or no longer needed the level of care for which he or she was placed at the medical facility.

MCL 791.235

House Bill 4130 would amend sections 33 and 34 of the Corrections Code to establish that most prisoners could be eligible for a medically frail parole before being, or despite not being, generally or otherwise eligible for parole. A prisoner convicted of first-degree murder or criminal sexual conduct in the first degree would not be eligible for a medically frail parole, though he or she could still be eligible for an expedited medical commutation, reprieve, or pardon.

The bill would require the parole board to provide the relevant medical records for a prisoner being considered for a medically frail parole to the prosecuting attorney of the county in which the prisoner was convicted. The parole board would also have to provide notice to any known victim or, in the case of a homicide, to the victim's immediate family.

The prosecuting attorney or victim or, in the case of a homicide, the victim's immediate family could object to the parole board's decision to recommend parole by filing a motion

in the circuit court in the county in which the prisoner was convicted within 30 days of receiving the notice. Before making a decision regarding whether to object to the parole board's determination, the prosecuting attorney would have to confer with the victim, or with the family of a homicide victim, if so requested. The prosecutor would have to inform the parole board if a motion objecting to the parole were filed, and the motion would have to be heard by the sentencing judge or the judge's successor. The prosecutor could also seek an independent medical examination of the prisoner.

At the hearing, the prosecutor and the parole board could present evidence in support of or in opposition to the determination that a prisoner is medically frail, including the results of any independent medical examination. The sentencing or successor judge would have to determine whether the prisoner is eligible for parole as a result of being medically frail. The decision of the judge would be binding on the parole board with respect to whether a prisoner must be considered medically frail. However, the decision of the judge would be subject to appeal by leave to the Court of Appeals. If such an appeal were initiated, a subsequent appeal under a provision allowing appeal of the parole board's decision to parole a prisoner could not be initiated upon the granting of parole.

MCL 791.233 and 791.234

House Bill 4131 would add a new section to the Michigan Penal Code to provide that a person who does any of the following is guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both:

- Directly or indirectly sells, gives, or furnishes poison, a controlled substance, or a weapon to an individual whom the person knows to be a medically frail parolee. (This penalty would not apply to a person providing a controlled substance prescribed by a physician to that parolee.)
- With the intent to assist a medically frail parolee violate the parole, abscond or attempt to abscond from supervision by leaving a medical facility in which the parolee has agreed to reside as a condition of his or her parole without permission of the parolee's supervising agent.
- Knowingly cause a medically frail parolee to have contact with a person with whom the parolee is prohibited from having contact as a condition of the parole or a valid personal protection order.

Exceptions

The bill would not apply to a person who aids or assists a medically frail parolee in leaving or attempting to leave the medical facility to which he or she has been placed because of any of the following:

- The medically frail parolee requires a medical service that must be performed at, or has a medical emergency that requires medical service at, a different medical facility.
- A natural disaster, fire, or infrastructural failure at the medical facility necessitates evacuating the medically frail parolee.

Proposed MCL 750.197d

House Bill 4132 would amend the Corrections Code to except prisoners granted medically frail parole from a provision that bars individuals convicted and sentenced for committing certain crimes from eligibility for special parole or for parole before he or she has served the minimum term imposed by the court (less an allowance for disciplinary credits). The bill would also make several technical and editorial changes.

MCL 791.233b and 791.265

FISCAL IMPACT:

House Bills 4129, 4130, and 4132 would have no fiscal impact on local government and would result in minimal savings to the state. Savings would be realized by the Department of Corrections, as it is assumed that Medicaid would cover health care-related costs for medically frail prisoners, as that term is defined in HB 4129, who are released on medical parole.

Providing health care to an aging prison population is a large and growing cost for the state. Though the prison population has declined overall, the population of prisoners over the age of 50 has increased. In 2009, 17.3% of the prison population was over age 50. Currently, 25% are over age 50.

Caring for prisoners inside the prison environment is far more expensive than it is on the outside. Under the 1965 law that created Medicaid, anyone entering a state prison forfeited Medicaid eligibility. However, an exception to that general rule opened up in 1997 when the United States Department of Health and Human Services wrote to state Medicaid directors saying that prisoners who leave state or local facilities to receive care in hospitals or nursing homes could be covered by Medicaid if they would otherwise qualify for Medicaid. Most elderly or disabled prisoners qualify under existing Medicaid rules, as long as they receive care outside of prison facilities.

Receiving federally subsidized long-term care outside of prison walls potentially could reduce the state's share of health care costs. A shift in medical costs to the Medicaid program would result in a net savings equal to approximately 64% of those costs, as the state generally must provide state match equal to 36% of Medicaid expenditures, with federal Medicaid reimbursement providing the other 64% of the cost. The average annual Medicaid cost for a nursing facility in the state is roughly \$75,000. The cost to the state for that care would be a little over \$27,000.

To be eligible for medical release under HB 4129, a prisoner must meet a number of requirements related to his or her medical condition and to his or her risk to public safety. According to the Department of Corrections, there are between 20 and 30 prisoners who would be eligible for medical release under the definition of medically frail and other conditions contained in the bills, but those prisoners have yet to be screened for risk or screened for placement, so it is not guaranteed that all 20 to 30 prisoners would be released. Also, there are another 450 to 500 prisoners who are not yet eligible for release under the medically frail criteria, but who could become eligible in the future based on their chronic

care needs. They have chronic conditions which will require treatment for the rest of their lives.

In fiscal year 2018, the average health care cost for prisoners in the average prison population was roughly \$7,900 per prisoner. Based on national research, it is estimated that medically frail prisoners cost anywhere from three to five times more than other prisoners in the average population. Using these estimates, the average health care cost for medically frail prisoners is roughly between \$23,700 and \$39,500 per prisoner.

Using an average of the cost estimates for medically frail prisoners, and shifting the group of between 20 and 30 prisoners to an outside nursing home setting, the fiscal impact to the department could yield a cost of savings of between \$632,000 and \$948,000 annually in health care-related costs. The savings could be slightly higher when other incidental costs, such as meals, transportation, and clothing, are included. Shifting the health care costs for these prisoners to Medicaid would cost the state between \$540,000 and \$810,000. So, the net annual savings to the state would be between \$92,000 and \$138,000. Savings would slowly grow over time as the medical parole population increases.

House Bill 4131 would have no fiscal impact on the state, but could have a fiscal impact on local units of government. To the extent that the bill results in a greater number of convictions, resulting in individuals being imprisoned for not more than a year or a fine of not more than \$1,000, or both, it could increase costs on local correctional systems. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.