

Legislative Analysis



MEDICAL PAROLE FOR MEDICALLY FRAIL PRISONERS

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House Bill 4101 proposed substitute (H-2)
Sponsor: Rep. Dave Pagel

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

House Bill 4102 proposed substitute (H-2)
Sponsor: Rep. Peter J. Lucido

House Bill 4103 as introduced
Sponsor: Rep. Rob VerHeulen

Committee: Appropriations
Complete to 2/23/18

BRIEF SUMMARY:

House Bills 4101 and 4102 would amend the Corrections Code to establish procedures for parole of certain prisoners who are determined to be medically frail.

House Bill 4103 would amend the Michigan Penal Code to establish penalties for removing medically frail parolees from the facilities in which they were placed as a condition of parole.

The bills are tie-barred to each other, meaning they cannot take effect unless all three of them are enacted. The bills would take effect 90 days after enactment.

DETAILED SUMMARY:

House Bill 4101 would amend the Corrections Code of 1953 to do the following:

- Require the Bureau of Health Care Services to utilize a specialist in the appropriate field of medicine, who is not employed by the Department of Corrections, to evaluate the condition of a prisoner and to report on that condition to the Bureau.
- Require the Parole Board, in consultation with the Bureau of Health Care Services, to determine whether the prisoner is medically frail.
- Require the Parole Board to provide notice and medical records for a prisoner that is medically frail and going to be considered for parole.
- Authorize the Parole Board to grant a medical parole for a prisoner who is determined to be medically frail, unless the prosecutor of the county from which the prisoner was committed files a motion.
- Define “medically frail” as describing 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 he or she is unlikely to engage in assaultive conduct, whose ability to perform two or more activities of daily living is significantly impaired, and who may have limited mobility and ability to transfer from one physical position to another, as the result of one or more of the following conditions from which the individual is not expected to recover: a disabling

mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder; a serious and complex medical condition; or a physical disability.

- Define “activities of daily living” as basic personal care and everyday activities as described in the Code of Federal Regulations, including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another, including, but not limited to, moving from a reclining position to a sitting or standing position.
- Require a prisoner who is considered for release to agree to be placed in a medical facility approved by the Parole Board where medical care and treatment can be provided, agree to the release of medical records that are directly relevant to the condition or conditions rendering the prisoner medically frail to the prosecutor and sentencing or successor judge of the county from which the prisoner was committed before the Parole Board determines whether or not to grant medical parole, and agree to an independent medical exam if sought by the prosecutor of the county from which the prisoner was committed. In the case of a prisoner who is unable to consent because of his or her physical or mental health condition, an individual who is legally entitled to agree can agree on behalf of the prisoner.
- Define “medical facility” as a hospital, hospice, nursing home, or other housing accommodation providing medical treatment suitable to the condition or conditions rendering the prisoner medically frail.
- Require the parolee to adhere to the terms of medical parole for the length of his or her parole term.
- Require the term of medical parole to be for a term not less than the time necessary to reach the prisoner's earliest release date.
- Authorize a parolee who violates the terms of parole, or who no longer meets the definition of medically frail, to be transferred to a setting more appropriate for the medical needs of the parolee, or to be subject to the parole violation process as determined by the Parole Board and the Department of Corrections.
- Require that the parolee be placed only in a medical facility that agrees to accept the parolee and that is agreed upon by the parolee.
- Require the parolee, or individual legally entitled to act on behalf of the parolee, to immediately inform the Parole Board if 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, or if the parolee no longer needs the level of care that resulted in the parolee's placement at the medical facility.
- Require the Parole Board to immediately notify the prosecutor for the county in which the offender was convicted and the sentencing or successor judge if the parolee is no longer eligible for care or no longer needs the level of care for which the prisoner was placed at the medical facility.
- Prohibit the Department of Corrections from retaining authority over the medical treatment plan for a prisoner granted medical parole, and require a prisoner granted medical parole to have full patient rights at the medical facility where he or she is placed.
- Require the Department of Corrections and the Parole Board to ensure that the placement and terms and conditions of medical parole do not violate any other state or federal regulations.

- Require facilities housing prisoners granted medical parole to operate in a manner that ensures the safety of the residents of the facilities.
- Require a parolee granted medical parole to have the same patient rights and responsibilities as any other individual who is a resident of or has been admitted to the facility.
- Prohibit the process for a parole determination from changing or affecting any of the rights afforded to victims under the Crime Victim's Rights Act.

MCL 791.235

House Bill 4102 is a companion bill that would amend the Corrections Code of 1953 to establish that most all prisoners can be eligible for the special medical parole prior to being parole-eligible (e.g., prisoners serving with allowances for good time, prisoners serving with allowances for disciplinary credits, prisoners serving indeterminate sentences with minimums in terms of years, prisoners serving consecutive terms, prisoners serving life sentences, etc.). However, prisoners who are sentenced to prison for life for committing first degree murder or criminal sexual conduct in the first degree would be prohibited from being eligible for medical parole.

The bill would require the Parole Board to provide relevant medical records to the prosecuting attorney of the county in which the prisoner was convicted for a prisoner being considered for medical parole. The Parole Board would be required to provide notice to any known victim or, in the case of a homicide, 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 by filing a motion in the circuit court in the county in which the prisoner was convicted within 30 days of receiving the notice. The motion would be required to be heard by the sentencing judge or the judge's successor. 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 judge or the judge's successor would be required to determine whether the prisoner is eligible for parole. The decision of the sentencing judge or the judge's successor would be binding on the Parole Board with respect to whether a prisoner must be considered medically frail or not. However, the decision of the sentencing judge would be subject to appeal.

MCL 791.233, 791.233b, and 791.234

House Bill 4103 would amend the Michigan Penal Code to make it a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$1,000, or both, for a person to do any of the following:

- Sell, give, or furnish, either directly or indirectly, poison, a controlled substance, or a weapon to a medically frail parolee, knowing that person is a medically frail parolee.
- Intend to assist a medically frail parolee abscond from parole or assist in leaving or attempting to leave a medical facility in which the parolee has been placed as a condition of medical parole.

- Knowingly cause a medically frail parolee to have contact with a person with whom the parolee is prohibited from having contact with as a condition of parole or a valid personal protection order.

The provisions of the bill would not apply to a person who provides a controlled substance to a parolee if that substance has been prescribed by a physician for use by the parolee. A controlled substance would mean that term as defined in the Public Health Code (MCL 333.7104). The provisions of the bill would not apply to a person who aids or assists a parolee in leaving or attempting to leave a medical facility because of any of the following: the parolee requires a medical service that must be performed at a different medical facility; the parolee has a medical emergency that requires medical service at a different medical facility; or there is a natural disaster, fire, or infrastructural failure at the medical facility in which the parolee has been placed that necessitates evacuating the parolee.

Proposed MCL 750.197d

FISCAL IMPACT:

House Bills 4101 and 4102 would have an indeterminate fiscal impact on the state. Savings could be realized as it is assumed that Medicaid would cover healthcare-related costs for medically frail prisoners, as that term is defined in HB 4101, 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 2007, 15% of the prison population was over age 50. Currently, 23% 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 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 65% of those costs, as the state generally must provide state match equal to 35% of Medicaid expenditures. 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 \$26,000.

To be eligible for medical release under HB 4101, 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 40 and 60 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 40 to 60 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.

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. In fiscal year 2017, the average health care cost for prisoners in the average prison population was roughly \$7,500 per prisoner. At five times higher, the average health care cost for medically frail prisoners is roughly \$37,500.

Shifting the group of between 40 and 60 prisoners to an outside nursing home setting could yield the department a savings of between \$1.2 and \$1.8 million annually in healthcare-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 \$1.0 and \$1.6 million. So, the net annual savings to the state would be about \$200,000.

House Bill 4103 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.

Fiscal Analyst: Robin R. Risko

■ 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.