



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5078 (Substitute H-2 as passed by the House)
House Bill 5079 (Substitute H-1 as passed by the House)
House Bill 5081 (Substitute H-2 as passed by the House)
Sponsor: Representative Al Pscholka (H.B. 5078)
Representative Dave Pagel (H.B. 5079)
Representative Rob VerHeulen (H.B. 5081)

House Committee: Appropriations
Senate Committee: Judiciary

Date Completed: 5-24-16

CONTENT**House Bill 5078 (H-2) would amend the Corrections Code to do the following:**

- Allow the Parole Board to grant medical parole to a prisoner determined to be medically frail.
- Require a parole eligibility report to be prepared for a prisoner being considered for medical parole because he or she was medically frail.
- Require an independent medical specialist to evaluate a prisoner who was physically or mentally incapacitated and report the results of the evaluation to the Parole Board.
- Exempt medical parole from certain requirements that otherwise apply to the granting of parole.
- Establish requirements for the release of a medically frail prisoner on parole, including an agreement to be placed in an appropriate medical facility.
- Authorize the Department of Corrections (DOC) to enter into contracts to facilitate medical parole for medically frail prisoners.
- Require a medical facility that the DOC used for medically frail parole to be operated in a manner that ensured the safety of the facility's residents and, when feasible, to house medically frail parolees in the same area.

House Bill 5079 (H-1) would amend the Corrections Code to exclude medically frail parolees from certain parole requirements and restrictions.

House Bill 5081 (H-2) would amend the Michigan Penal Code to prohibit and prescribe a misdemeanor penalty for various actions involving medically frail parolees.

House Bill 5078 (H-2) is tie-barred to House Bill 5079. House Bills 5079 (H-1) and 5081 (H-2) are tie-barred to House Bill 5078.

House Bill 5078 (H-2)

Medical Parole for Medically Frail Prisoners

Under the Corrections Code, the Parole Board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. The bill instead would allow the Parole Board to grant a medical parole for a prisoner determined to be medically frail. A decision to grant medical parole must be initiated upon the recommendation of the DOC's Bureau of Health Care Services, and may be reached only after a review of the prisoner's medical, institutional, and criminal records. The bill would delete the requirement for such a review.

The bill would require a parole eligibility report to be prepared by the appropriate institutional staff, at the request of the Parole Board, for a prisoner being considered for medical parole because he or she was medically frail.

"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 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 a result of one or more of the following conditions from which he or she is not expected to recover:

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

"Activities of daily living" would mean basic personal care and everyday activities, including tasks such 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.

Evaluation & Parole

Under the bill, if the Bureau of Health Care Services determined that a prisoner was physically or mentally incapacitated, it would have to appoint a specialist in the appropriate field of medicine, who was not employed by the DOC, to evaluate the prisoner's condition and report on that condition to the Bureau. The Parole Board, in consultation with the Bureau, would have to determine whether the prisoner was medically frail.

Specified requirements for the granting of parole would not apply to a medical parole for a medically frail prisoner. (House Bill 5079 (H-1) would exempt a medically frail prisoner from those requirements.)

A medically frail prisoner could be released on a medical parole only if he or she agreed to his or her placement in a medical facility in which the Parole Board determined medical care and treatment to be appropriate. If the prisoner were incapacitated, an individual legally entitled to agree to the placement would have to do so. Before the Parole Board determined whether to grant medical parole, a medically frail prisoner also would have to agree to the release of his or her medical records that were directly relevant to the condition or conditions rendering the prisoner medically frail to the prosecutor of the county from which the prisoner was committed. If a prisoner were granted medical parole, he or she would have to agree to the quarterly release, at the request of the prosecutor, of his or her medical records that were directly relevant to the condition or conditions rendering the prisoner medically frail. A prisoner's medical records otherwise would remain protected, would not be public records, and would not become part of the parolee's public file.

The following conditions also would apply to medical parole for a medically frail prisoner:

- The parolee would have to adhere to the terms of his or her parole for the length of the parole term.
- Parole would have to be for a term of not less than the time necessary to reach the prisoner's earliest release date.
- A parolee who violated the terms of parole or was determined not to be eligible for medical parole 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 be placed only in a medical facility that agreed to accept him or her and that was agreed upon by the parolee and the parole board.

("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.)

The Parole Board would be required to monitor the condition of a prisoner granted medical parole.

Administration of Parole

The bill would authorize the DOC to enter into contracts to facilitate medical parole for a medically frail prisoner. The DOC would not retain authority over the medical treatment plan for a prisoner granted medical parole. The DOC and the Parole Board would have to ensure that the placement and terms and conditions of a medical parole did not violate any other State or Federal regulations.

A medical facility that the DOC used for medical parole would have to be operated in a manner that ensured the safety of the facility's residents and, when feasible, would have to house prisoners granted medical parole and placed in the facility in close proximity to one another, preferably in a single hallway or wing of the facility.

House Bill 5079 (H-1)

Minimum Term of Imprisonment

The Corrections Code's requirements for the granting of parole include requirements that a prisoner serve the minimum term of imprisonment (subject to disciplinary time added to a sentence and allowances for good time or disciplinary credits, where applicable). The bill would exclude a medically frail prisoner granted medical parole from those requirements.

Prisoners Sentenced to Life Imprisonment

A prisoner sentenced to imprisonment for life for certain offenses (including first-degree murder, some major controlled substance offenses, and some first-degree criminal sexual conduct offenses) is not eligible for parole. Under the bill, a person convicted of any of those offenses could be eligible for medical parole.

Prisoners sentenced to imprisonment for life, other than those who explicitly are not eligible for parole, may be eligible for parole after serving 10, 15, 17.5, or 20 years, depending on the offense and the date of the conviction. The bill would exclude a medically frail prisoner granted medical parole from those provisions.

Under the Code, a decision to grant or deny parole to a prisoner sentenced to imprisonment for life may not be made until after a public hearing is held. A parole granted to a person sentenced to life imprisonment is not valid until the transcript of the record is filed with the

Attorney General. The bill would exclude a medically frail prisoner granted medical parole from those provisions.

Major Controlled Substance Offenses

The Code specifies parole eligibility requirements for a person convicted of various major controlled substance offenses that occurred before March 1, 2003 (when certain mandatory minimum sentences and parole restrictions applied and were enforced for those offenses). The bill would exclude a medically frail prisoner granted medical parole from those provisions.

High School Diploma

Currently, a prisoner whose minimum term is at least two years may not be released on parole until he or she has earned a high school diploma or its equivalent in the form of a general education development certificate, unless the DOC Director waives this requirement. The bill would exclude a medically frail prisoner granted medical parole from the requirement.

House Bill 5081 (H-2)

Under the bill, a person who did any of the following would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000:

- Sold, gave, or furnished poison, a controlled substance, or a weapon to a medically frail parolee, knowing that the person was such a parolee, unless the controlled substance had been prescribed by a physician for use by the parolee.
- Assisted a medically frail parolee in leaving or attempting to leave a medical facility in which the parolee had been placed as a condition of his or her medical parole, with the intent to assist the parolee in absconding from parole.
- Knowingly caused a medically frail parolee to have contact with a person with whom the parolee was prohibited from having contact as a condition of his or her parole or a valid personal protection order.

The bill would not apply to a person who aided or assisted a medically frail parolee in leaving or attempting to leave a medical facility because of any of the following:

- The parolee required a medical service that had to be performed at a different medical facility.
- The parolee had a medical emergency that required medical service at a different medical facility.
- There was a natural disaster, fire, or infrastructural failure at the medical facility that necessitated evacuating the parolee.

"Medical facility" would mean a hospital, hospice, nursing home, or other housing accommodation suitable to the condition or conditions rendering the parolee medically frail.

MCL 791.235 (H.B. 5078)
791.233 et al. (H.B. 5079)
Proposed MCL 750.197d (H.B. 5081)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bills 5078 (H-2) and 5079 (H-1)

The bills would have no fiscal impact on local government and an indeterminate fiscal impact on the State. To be eligible for medical parole under the bills, prisoners would have to meet a number of requirements regarding their medical condition and their risk to public safety. According to the Department of Corrections, approximately 120 prisoners potentially would be eligible for medical parole under the definition of medically frail, but those prisoners have not been screened for risk or for placement, so it is not guaranteed that all 120 prisoners would be released. Also, there are another 500 to 600 prisoners who would not yet be eligible for parole under the medically frail criteria, but who could become eligible sometime in the future based on their chronic care needs.

Originally, anyone entering a State prison forfeited Medicaid eligibility. An exception to that general rule opened up in 1997, however, when the U.S. Department of Health and Human Services informed state Medicaid directors that prisoners who left state or local facilities for care in hospitals or nursing homes could be covered by Medicaid as long as they received care outside of a secure facility and otherwise qualified for the program. Most of the prisoners targeted by the bills would qualify under existing traditional Medicaid rules. For any costs covered by traditional Medicaid, the Federal government pays approximately 65% and the State pays 35%.

House Bill 5078 (H-2) does not specify exactly the type of facility to which the inmates would be paroled, but the average annual Medicaid rate for a semi-private room in a nursing home in Michigan is \$80,000. The cost to the State for that care would be approximately \$28,000.

It is not known how much medically frail prisoners cost the Department of Corrections, but past research has estimated that these prisoners have health care costs from three to five times the rate of an average prisoner. Using these estimates, in the short term, medically frail prisoners cost between \$7,196 and \$10,628 per year. In the long term, if the proposed policy reduced the prison population enough to allow the Department to close a housing unit or an entire facility, the marginal savings to the State would be between \$37,880 and \$41,312.

In the short term, the movement of medically frail prisoners from DOC facilities into nursing homes would have a negative fiscal impact on the State. If 120 prisoners were deemed eligible for medical parole, the short-term cost to the State would be between \$2.1 million and \$2.5 million per year. In the long-term, if it is assumed that the bills would lead to a permanent reduction in the prison population of 120, and that drop allowed the Department to close a housing unit, the savings could be between \$1.2 million and \$1.6 million per year.

House Bill 5081 (H-2)

The bill would have no fiscal impact on the State and could have a negative, though likely minor, fiscal impact on local government. The proposed offenses would be a misdemeanor punishable by imprisonment for up to one year, a fine of up to \$1,000, or both. An increase in misdemeanor arrests and convictions could increase resource demands on local court systems, law enforcement, and jails. Any associated increase in fine revenue would be dedicated to public libraries.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.