

MEDICAL PAROLES FOR MEDICALLY FRAIL PRISONERS

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Senate Bill 599 (H-1) as reported from House committee

Sponsor: Sen. Erika Geiss

1st House Committee: Judiciary

2nd House Committee: Criminal Justice

Senate Committee: Civil Rights, Judiciary, and Public Safety

Complete to 6-19-24

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

(Enacted as Public Act 111 of 2024)

SUMMARY:

Senate Bill 599 would amend the Corrections Code to allow a *medically frail* prisoner to be released on medical parole to a placement other than a medical facility as long as the placement is approved by the parole board and, in certain cases, the parolee is subject to electronic monitoring. The bill also would change the definition of *medically frail* that applies to this part of the code.

Medical paroles

The code allows the parole board to grant a medical parole for a prisoner who is determined to be *medically frail* (except those convicted of first degree criminal sexual conduct or a crime punishable by life without parole).¹ A medical parole must be initiated by the Bureau of Health Care Services in the Department of Corrections (DOC), which coordinates and monitors health care services for prisoners and the treatment of seriously mentally ill prisoners.² After an evaluation by an outside medical specialist, the parole board, in consultation with the bureau, makes the determination of whether the prisoner is medically frail. A proposed medical parole can be contested by the applicable prosecutor, and the code provides procedures for hearing and deciding those cases in circuit court and on appeal.

Placement

Currently, a prisoner released on medical parole must be placed in a *medical facility*³ approved by the parole board where medical care and treatment can be provided. The parolee (or their legal representative) and the medical facility must agree to that placement.

The bill would eliminate the requirement that the parolee's placement be in a medical facility and instead require that the parolee's placement be as approved by the parole board and agreed to by the parolee (or their representative). If the parolee is placed in a medical facility under these provisions, the facility would, as currently, have to agree to accept the parolee.

Notifications regarding medical facility placement

Currently, when a medically frail parolee is placed in a medical facility, the parolee or their legal representative must immediately notify the parole board if any of the following apply:

- The parolee is no longer eligible for care at that medical facility.

¹ These provisions were added to the code by 2019 PA 13. See <https://www.legislature.mi.gov/documents/2019-2020/billanalysis/House/pdf/2019-HLA-4129-BAB0CE52.pdf>

² <https://www.michigan.gov/corrections/services/health-care-services>

³ Defined as a hospital, hospice, nursing home, or other housing accommodation providing medical treatment suitable to the medically frail parolee's medical condition.

- The parolee must be moved to another location for medical care.
- The parolee is no longer at the medical facility the parole board approved.
- The parolee no longer needs the level of care that resulted in placement at the medical facility.

The bill would eliminate the above requirements.

The bill also would remove a related requirement that the parole board immediately notify the applicable prosecuting attorney if the parolee is no longer eligible for care at a medical facility or no longer needs the level of care they were there to receive.

Electronic monitoring

If both of the following apply, the parole board would have to require the medically frail parolee to be subject to *electronic monitoring*:⁴

- The parolee is not placed in a medical facility.
- The parolee was determined to be medically frail, at least in part, because they have a terminal medical or mental health condition resulting in a life expectancy of under 18 months.

However, the parole board could remove a requirement for a parolee to be subject to electronic monitoring if it determines that electronic monitoring is not necessary to protect public safety.

Definition of medically frail

Currently, *medically frail* means that an individual meets all of the following:

- The individual is a minimal threat to society as a result of their medical condition.
- The individual has received a risk score of low on a validated risk assessment.
- The individual's recent conduct in prison indicates that they are unlikely to engage in assaultive conduct.
- The individual has either or both of the following:
 - A permanent or terminal physical disability or serious and complex medical condition resulting in the inability, without personal assistance, to do one or more of the activities of walking, standing, or sitting.
 - A permanent or terminal disabling mental disorder, including dementia, Alzheimer's disease, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform two or more *activities of daily living*.⁵

Under the bill, *medically frail* would mean that an individual meets all of the following:

- The individual is a minimal threat to society as a result of their medical condition.
- The individual's recent conduct in prison indicates that they are unlikely to engage in assaultive conduct.

⁴ Defined as a device by which, through global positioning system (GPS) satellite or other means, an individual's movement and location are tracked and recorded. The requirement for electronic monitoring under these provisions would be in addition to any other such monitoring requirement under Michigan law.

⁵ Defined as basic personal care and everyday activities, such as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another (for example, moving from a reclining position to a sitting or standing position).

- The individual has one or more of the following:
 - A permanent physical disability or serious and complex medical condition resulting in the inability to walk, stand, or sit without personal assistance.⁶
 - A terminal medical or neurological condition resulting in a life expectancy of under 18 months.
 - A permanent disabling mental disorder, including dementia, Alzheimer's disease, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform two or more *activities of daily living*.⁷

MCL 291.234 and 791.235

BRIEF DISCUSSION:

According to committee testimony, only one person has been paroled under the medically frail parole provisions added to the code by 2019 PA 13. Reportedly, in some cases, medical facilities, to which medical parolees must be released, either cannot or will not accept them for care. Supporters of the bill hope that allowing eligible medically frail parolees to be released to home care, with electronic monitoring if needed, will allow more individuals to receive appropriate care outside of the prison system. Relatedly, it is hoped that more clearly defining terminal conditions for purposes of these provisions could enable more individuals who do not pose a public safety threat to have appropriate supports at the end of their lives.

FISCAL IMPACT:

Senate Bill 599 would have an insignificant fiscal impact on the state and no fiscal impact on local units of government. Although the bill would result in additional medically frail prisoners being eligible for release to homes, the number remains relatively low. According to the Department of Corrections, it is estimated that between 5 and 10 prisoners would be released per year. Eligible prisoners are typically in the advanced stages of terminal illnesses and are primarily receiving only palliative care at the correctional facilities. Palliative care is not costing the state the same as it would cost the state if these prisoners were receiving advanced medical treatment for their illnesses.

POSITIONS:

Representatives of the following entities testified in support of the bill (6-18-24):

- Department of Corrections
- Families Against Mandatory Minimums
- Michigan Medicine
- Safe and Just Michigan

⁶ **Note:** As written, the bill would require that a prisoner cannot do *any* (i.e., all) of those three things without personal assistance, while current law requires only that a prisoner cannot do *one or more* of them without personal assistance. This would reduce the number of people who could be defined as medically frail and eligible for a medical parole. For example, a person who can sit without personal assistance, but who cannot stand or walk without personal assistance, is *medically frail* under current law but would no longer be defined as *medically frail* under the bill.

⁷ Defined as basic personal care and everyday activities, such as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another (for example, moving from a reclining position to a sitting or standing position).

The following entities indicated support for the bill (6-18-24):

- ACLU of Michigan
- Alliance for Safety and Justice
- Arnold Ventures
- Law Enforcement Action Partnership
- Michigan League for Public Policy
- Prosecuting Attorneys Association of Michigan

The Michigan Sheriffs' Association indicated opposition to the bill. (6-18-24)

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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.