

EXPEDITED MEDICAL COMMUTATION

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Senate Bill 12 (reported by House committee w/o amendment)

Sponsor: Sen. Rick Jones

House Committee: Michigan Competitiveness

Senate Committee: Michigan Competitiveness

Complete to 3-6-17

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

(Enacted as Public Act 8 of 2017)

BRIEF SUMMARY: The bill creates an expedited, or shortened, process for the review and hearing process for a reprieve, commutation, or pardon based on the medical condition of a prisoner. Initiation of the expedited process must be by request from the governor.

FISCAL IMPACT: The bill would have no fiscal impact on the state or on local units of government. The bill would expedite the process for reviews and hearings relative to reprieves, commutations, or pardons based in part on prisoners' medical conditions. The process as outlined under the bill would be the same as the current process, but steps in the process would occur in shorter time periods.

THE APPARENT PROBLEM:

Michigan's "tough on crime" approach in the 1990s creating mandatory minimum sentences and long sentences for many crime categories means that today the state's prisons house many senior citizens. Like all elderly populations, these men and women are at risk for a variety of chronic and terminal illnesses. Even younger prisoners may become seriously ill with diseases like ALS or cancer. Prisons are not set up to provide for the needs of chronically and terminally ill inmates. Transport to hospitals, as well as treatment, is expensive as at least two guards must accompany the prisoner. As a prisoner's condition worsens, the trips to local hospitals or clinics for treatment may become increasingly painful. Even if a clinical research study is available that could provide cutting edge and free treatment, prisoners are excluded from participation. And, prisoners who are approaching the end of life due to disease no longer have access to visits from family and friends whether they are in a prison setting or in a secure unit in one of the few hospitals having such units.

Michigan does have a medical clemency, or commutation, process in place, but it is lengthy—up to 420 days. It is not uncommon for a prisoner to die before the process is completed. Even if eventually released, the prisoner may be too far along in the disease process to benefit from available treatments. Further, the commutation process may only be initiated by the Michigan parole board or the inmate.

Some feel that an expedited commutation process should be created for chronically or terminally prisoners.

THE CONTENT OF THE BILL:

Currently, the Michigan parole board may initiate a reprieve, commutation (e.g., reduction in sentence), or pardon. A current or former inmate may also file an application. The process is lengthy and can take more than a year to complete the many steps required by statute before a formal recommendation by the parole board is sent to the governor.

Senate Bill 12 adds a new section to the Corrections Code to allow the governor to request the parole board to expedite the review and hearing process for a reprieve, commutation, or pardon based in part on a prisoner's medical condition. The process is identical to the process used currently for requesting a reprieve, commutation, or pardon with the exception that some of the time frames have been reduced, as noted below:

- Not more than 10 days (instead of 60 days) after receipt of an application, the parole board would be required to conduct a review to determine whether the application for a reprieve, commutation, or pardon has merit. The board's determination, along with a copy of the original application or the documentation of the board's initiation, is then delivered to the governor.
- Within 5 days (instead of 10) after initiation or the determination of merit, the parole board would have to provide notice to the sentencing judge and to the prosecuting attorney of the county having original jurisdiction of the case, or their successors of the application or initiation. The time period allowed for the judge or prosecutor to respond to the notice would be the same as currently provided for the process—30 days.
- Not more than 90 days (instead of 270) after initiation by the parole board or receipt of the application deemed to have merit, the board must make a full investigation and determination whether or not to proceed to a public hearing. Time periods provided for the public hearing process are the same as currently provided for the process—holding the public hearing within 90 days after making the decision to proceed.
- After the public hearing, the parole board must transmit its final recommendation to the governor along with all data in its files if it recommends the granting of a reprieve, commutation, or pardon; however, neither the bill nor statute specifies a time frame for this part of the process.

The bill takes effect 90 days after enactment.

MCL 791.244 and 791.244a (proposed)

HOUSE COMMITTEE ACTION:

The Senate-passed bill was not amended by the House committee.

ARGUMENTS:

For:

The bill greatly shortens the time frame for a request for medical commutation to be decided without compromising public safety. It preserves the current process and safeguards, but shaves at least seven and a half months off, perhaps shortening the process to as few as 100 days. This is important when someone is facing a terminal and/or painful and debilitating condition that is expensive to treat. Further, some illnesses make the prisoner vulnerable to harassment or even physical violence by other prisoners. As some say, prisons are set up to keep society safe from dangerous people and to provide consequences for unlawful conduct, not to tend to the needs of those with chronic and terminal diseases such as Alzheimer's, ALS, or bone cancer. Many of these prisoners could be cared for at home by family members or admitted to hospice or nursing homes. Even care provided by Medicaid or Medicare in those settings would be less burdensome to taxpayers than that provided by the Department of Corrections and with no increased risk to the public. Once released, the former inmate could join medical trials, further decreasing costs to the public. At the very least, the bill provides a more humane approach to those who, though they made bad choices in the past, still deserve to be treated with dignity and proper medical care when seriously ill or dying.

Against:

According to testimony provided on last session's versions of the expedited clemency process and a bill package creating a medical parole process for medically frail prisoners, many felt the medical parole package was more comprehensive, such as specifying the type of facility to which the prisoner would be released (e.g., hospice center, nursing home, or home hospice) and providing follow-up parole supervision, among other things. Further, allowing for medical parole (reintroduced as House Bills 4101-4103) properly shifts the burden of medical decisions from the governor to medical specialists appointed by the prison Bureau of Health Care Services. Thus some feel the goal of reducing costs when providing end of life care or treatments for serious or debilitating illnesses, while still preserving public safety and enabling more humane care and family involvement, is better provided by a medically frail parole process than an expedited commutation process.

POSITIONS:

The Office of Attorney General indicated support for the bill. (3-1-17)

Michigan Sheriff's Association indicated support for the bill. (2-8-17)

Grand Rapids Area Chamber of Commerce indicated support for the bill. (3-1-17)

Michigan Catholic Conference indicated support for the bill. (2-8-17)

Goodwill Industries of Greater Detroit indicated support for the bill. 2-8-17)

Citizens Alliance on Prisons and Public Spending indicated a neutral position on the bill.
(3-1-17)

The Michigan Department of Corrections has not yet taken a formal position on the bill.
(3-5-17)

The Michigan Association of Counties has not yet taken a formal position on the bill.
(3-6-17)

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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.