



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4101 (Substitute H-2 as passed by the House)
House Bill 4102 (Substitute H-3 as passed by the House)
House Bill 4103 (as passed by the House)
House Bill 5245 (Substitute H-3 as passed by the House)
Sponsor: Representative Dave Pagel (H.B. 4101)
Representative Peter J. Lucido (H.B. 4102)
Representative Rob VerHeulen (H.B. 4103)
Representative Klint Kesto (H.B. 5245)
House Committee: Appropriations (H.B. 4101-4103)
Law and Justice (H.B. 5245)
Senate Committee: Judiciary

Date Completed: 5-15-18

CONTENT**House Bill 4101 (H-2) would amend the Corrections Code to do the following:**

- Allow the parole board to grant a medical parole for a prisoner who was determined to be medically frail, except a prisoner convicted of first-degree murder or first-degree criminal sexual conduct (CSC).
- Prescribe the procedure for determining whether a prisoner was medically frail.
- Specify conditions that would apply to a medically frail parole, including requirements that the prisoner agree to the terms of the parole, and that a parolee be placed only in a medical facility that agreed to accept him or her.
- Require the parole board to notify the prosecuting attorney for the county in which the offender was convicted 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.
- Specify that the Department of Corrections (DOC) would not retain authority over the parolee's medical treatment plan.
- Require a medical facility housing medically frail parolees to be operated in a manner that ensured the safety of the facility's residents.
- Specify that the process for a medically frail parole determination would not change or affect rights afforded to crime victims under the Crime Victim's Rights Act.
- Require a parole eligibility report to be prepared for a prisoner being considered for medically frail parole at the parole board's request.

House Bill 4102 (H-3) would amend the Corrections Code to do the following:

- Exclude a grant of medically frail parole from certain conditions that apply to a grant of parole.
- Make an exception for a prisoner granted medically frail parole to various provisions related to the jurisdiction of the parole board for certain prisoners, and the lengths of a sentence a prisoner must serve to be eligible for parole.
- Require the board to notify the prosecuting attorney of the county in which the prisoner was convicted and the victim or the immediate family of a homicide victim before granting a medically frail parole.

- **Allow the prosecuting attorney or victim, or his or her family, to object to the parole board's decision to recommend parole by filing a motion in the circuit court in which the prisoner was convicted, within 30 days of the notice.**
- **Require a motion to object to the parole to be heard by the sentencing judge or his or her successor.**
- **Allow the prosecutor and parole board to present evidence in support of or in opposition to the determination that a prisoner was medically frail, and require the sentencing judge or his or her successor to determine whether the prisoner was eligible for medically frail parole.**
- **Specify that the judge's decision would be binding on the parole board, but would be subject to appeal by leave to the Court of Appeals granted to the DOC, the prosecuting attorney, or the victim or his or her immediate family.**
- **Specify that a prisoner sentenced to life imprisonment for first-degree murder or first-degree CSC would not be eligible for parole and would be subject to a periodic interview or an expedited review for a reprieve, commutation, or pardon based in part on his or her medical condition.**
- **Specify that prisoners sentenced to life imprisonment for certain other infractions, except a medically frail prisoner, would not be eligible for parole.**

House Bill 4103 would amend the Michigan Penal Code to do the following:

- **Prohibit a person from selling or giving poison, a controlled substance, or a weapon to a medically frail parolee, assisting a medically frail parolee in leaving a medical facility, or knowingly causing a medically frail parolee to have contact with a person he or she was prohibited from having contact with.**
- **Prescribe a misdemeanor penalty for a violation.**
- **Specify that the prohibition would not apply to a person who aided or assisted a parolee in leaving a facility because the parolee required a medical service from a different facility, had a medical emergency, required evacuation from the facility.**

House Bill 5245 (H-3) would amend the Corrections Code to exclude a prisoner granted medically frail parole from a provision under which a prisoner convicted and sentenced for the commission of certain crimes is not eligible for parole until he or she has served the minimum term imposed by the court.

House Bills 4102 (H-3), 4103, and 5245 (H-3) are tie-barred to House Bill 4101. House Bill 4101 (H-2) is tie-barred to House Bill 4102. Each bill would take effect 90 days after its enactment.

House Bill 4101 (H-2)

Medically Frail Parole

The Corrections Code allows the parole board to grant a medical parole for a prisoner determined to be physically or mentally incapacitated. Under the bill, this would apply except for a prisoner who was convicted under Section 316 or 520b of the Penal Code. (Those sections prohibit first-degree murder and first-degree CSC, respectively.) The bill also would refer to "medically frail" instead of "physically or mentally incapacitated". "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 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) a disabling medical disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder; b) a serious and complex medical condition; or c) a physical disability.

("Activities of daily living" would mean basic personal care and everyday activities as described in 42 CFR 441.505, including tasks such as eating, toileting, grooming, dressing, bathing, and transferring from one physical position to another.)

The Code requires a decision to grant a medical parole ("medically frail parole", below) to be initiated upon the recommendation of the Bureau of Health Care Services, and requires the decision to be reached only after a review of the prisoner's medical, institutional, and criminal records. The bill would eliminate the language pertaining to the review.

The bill specifies that, if the Bureau believed that the prisoner was medically frail, it would have to use a specialist in the appropriate field of medicine, who was not employed by the Department, to evaluate the prisoner's condition and report that condition to the Bureau. The parole board, in consultation with the Bureau, would have to determine whether the prisoner was medically frail. If the board determined that the prisoner was medically frail and was going to be considered for parole, the board would have to provide the notice and medical records specified in the Code (as provided by House Bill 4102 (H-3)). Unless the prosecutor of the county from which the prisoner was committed filed a motion to object to the parole, the board could grant parole to a prisoner determined to be medically frail.

The requirements of specific sections of the Code concerning conditions for a grant of parole, eligibility of certain offenders for parole, and the jurisdiction of the parole board (sections that the other bills would amend) would not apply to a medically frail parole.

Conditions for Medically Frail Parole

The following conditions would apply to a medically frail parole.

A prisoner could be released on medically frail parole only if he or she agreed to his or her placement. If the prisoner were unable to consent because of his or her 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 medical facility approved by the parole board.

The prisoner would also 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 and sentencing or successor judge of the county from which the prisoner was committed, before the parole board determined whether to grant the prisoner medically frail parole.

In addition, the prisoner would have to agree to an independent medical exam if sought by the prosecutor of the county from which the prisoner was committed. If possible, the independent medical exam would have to occur at a DOC facility, and the Department would have to pay the reasonable costs of the exam.

("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 parolee would have to adhere to the terms of his or her parole for the length of the parole term. The parole would have to be for a term not less than the time necessary to reach the prisoner's earliest release date. A parolee who violated the terms of his or her parole or who

no longer met the definition of "medically frail" could be transferred to a setting more appropriate for his or her medical needs, or be subject to the parole violation process under the Code as determined by the parole board and the Department.

A parolee could be placed only in a medical facility that agreed to accept him or her, and that was agreed upon by the parolee, as described above.

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

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

The parole board would have to notify the prosecutor for the county in which the offender was convicted and the sentencing or successor judge immediately 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 facility.

The Department would not retain authority over the medical treatment plan for a prisoner granted medically frail parole. A parolee placed in a medical facility would have the same patient rights and responsibilities as any other individual who was a resident of, or had been admitted to, the medical facility.

The Department and the parole board would have to ensure that the placement and terms and conditions of a medically frail parole did not violate any other State or Federal regulations.

A medical facility housing prisoners granted medical frail parole would have to be operated in a manner that ensured the safety of the facility's residents.

Parole Eligibility Report

The Code requires appropriate institutional staff to prepare a parole eligibility report at least 90 days before the expiration of a prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time or disciplinary credits, or at least 90 days before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time, or the expiration of a 12-month continuance for any prisoner. The report must contain information specified in the Code, including a statement of all major misconduct charges of which the prisoner was found guilty and the punishment served for the misconduct; the prisoner's work and educational record while confined; and the results of any physical, mental, or psychiatric examinations of the prisoner.

Under the bill, a parole eligibility report would have to be prepared at the request of the parole board for a prisoner being considered for medically frail parole.

House Bill 4102 (H-3)

Conditions for Parole not Applicable

Under the Corrections Code, the grant of parole is subject to a list of conditions, including the following:

- Generally, a parole must not be granted to a prisoner until he or she has served the minimum term imposed by the court less allowances for good time or special good time to which the prisoner may be entitled by statute.
- A parole must not be granted to a prisoner for the commission of a crime listed in Section 33b until he or she has served the minimum term imposed by the court less an allowance for disciplinary credits.
- A parole must not be granted to a prisoner subject to disciplinary time until he or she has served the minimum term imposed by the court.
- A prisoner whose minimum term of imprisonment is two years or more must not be released on parole unless he or she has earned a high school diploma or a high school equivalency certificate.

Under the bill, these conditions would not apply to a grant of medically frail parole.

"Medically frail" would mean that term as defined in House Bill 4101 (H-2).

Jurisdiction of Parole Board

A prisoner is subject to the jurisdiction of the parole board in the following situations:

- A prisoner sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years, when the prisoner has served a period of time equal to his or her minimum sentence, less good time and disciplinary credits, if applicable.
- A prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years, when the prisoner has served a period of time equal to his or her minimum sentence.
- For a prisoner other than a prisoner subject to disciplinary time who is sentenced for consecutive terms, when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute.
- For a prisoner subject to disciplinary time who is sentenced for consecutive terms, when the prisoner has served the total time of the added minimum terms.

The Code also prescribes the terms of parole eligibility for a prisoner convicted of violating, or attempting or conspiring to violate the Public Health Code's prohibitions against the manufacture or knowing possession of a Schedule 1 or 2 controlled substance that is a drug or narcotic.

Under the bill, all of the above would apply except to a prisoner granted a medically frail parole.

Notice of Parole; Objection

The parole board must notify the prosecuting attorney of the county in which the prisoner was convicted before granting parole to a prisoner convicted of violating, or attempting or conspiring to violate the Public Health Code's prohibitions against the manufacture or knowing possession of controlled substances. Under the bill, the board also would have to notify the prosecuting attorney before granting a medically frail parole. The board would have to provide the relevant medical records to the prosecuting attorney at the same time as providing the notice. At the same time as the board notified the prosecuting attorney, it also would have to notify any known victim or, in the case of a homicide, the victim's immediate family, that it was considering a prisoner for medically frail parole.

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 notice. If the victim, or his or her immediate family, as applicable, objected to the determination to consider the prisoner for parole, the prosecuting attorney would have to review the case with the victim or his or her immediate family, as applicable, before filing a motion in the circuit court.

A motion would have to be heard by the sentencing judge or his or her successor in office. The prosecuting attorney would have to inform the parole board if a motion were filed. A prosecutor who filed a motion could seek an independent medical examination of the prisoner. If this appeal were initiated, a subsequent appeal by the prosecutor could not be initiated after the grant of medically frail parole.

Hearing on Objection

Both of the following would apply to a hearing conducted on a motion objecting to a medically frail parole:

- The prosecutor and the parole board could present evidence in support of or in opposition to the determination that a prisoner was medically frail, including the results of any independent medical examination.
- The sentencing judge or his or her successor would have to determine whether the prisoner was eligible for parole as a result of being medically frail.

The judge's decision on the motion would be binding on the parole board with respect to whether a prisoner would have to be considered medically frail or not. However, the decision would be subject to appeal by leave to the Court of Appeals granted to the Department, the prosecuting attorney, or the victim or his or her immediate family, as applicable.

Medically Frail Parole for Prisoners Serving Life Sentences

Currently, a prisoner sentenced to imprisonment for life for any of the following is not eligible for parole and is instead subject to the provisions of Section 44:

- First-degree murder.
- Adulterating, misbranding, removing, or substituting a drug or medicine, rendering it injurious to health, or selling, possessing for sale, or manufacturing for sale such a drug or medicine, with the intent to kill or to cause serious impairment to two or more people, resulting in death.
- Knowingly or recklessly mixing a drug or medicine with an ingredient or material, injuriously affecting its quality or potency, or selling, possessing for sale, or manufacturing for sale such a drug or medicine, with the intent to kill or cause serious impairment to two or more people, resulting in death.
- A violation of Chapter 33 (Explosives and Bombs, and Harmful Devices) of the Penal Code.
- Selling, offering for sale, possessing for sale, or manufacturing for sale a drug or device with a misleading label with the intent to kill or to cause serious impairment of a body function of two or more individuals.
- First-degree CSC committed by a person 18 years of age or older against a child under 13 years old, if the person was previously convicted of CSC against a person under 13.
- Any other violation for which parole eligibility is expressly denied under State law.

Under the bill, a prisoner sentenced to life imprisonment for first-degree murder or first-degree CSC (rather than the CSC offense described above) would not be eligible for parole and, instead, would be subject to Section 44 or 44a.

(Section 44 requires a member of the parole board periodically to interview a prisoner serving a sentence for first-degree murder or a life sentence without parole until the prisoner is granted a reprieve, commutation, or pardon by the Governor, or is deceased. Section 44a prescribes the duties of the parole board with respect to a request from the Governor for an expedited review for a reprieve, commutation, or pardon based in part on a prisoner's medical condition.)

Except for a prisoner granted a medically frail parole, a prisoner sentenced to imprisonment for life for any of the other offenses listed above would not be eligible for parole and otherwise would be subject to Section 44 or 44a:

Currently, a prisoner sentenced to imprisonment for life, other than a prisoner who is not eligible for parole, is subject to the jurisdiction of the parole board and may be placed on parole according to the conditions prescribed in the Corrections Code if he or she meets certain criteria. Under the bill, this would apply except for a prisoner granted medically frail parole.

House Bill 4103

The bill provides that a person who did any of the following would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both:

- Sold, gave, or furnished, either directly or indirectly, poison, a controlled substance (unless prescribed by a physician for the parolee's use), or a weapon to a medically frail parolee knowing that person was a medical frail parolee.
- With the intent to assist a parolee in absconding from parole, 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 parole.
- Knowingly caused a parolee to have contact with a person with whom the parolee was prohibited from having contact as a condition of the parole or a valid personal protection order.

The prohibition would not apply to a person who aided or 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 parole because of any of the following:

- The parolee required a medical service that had to be performed at a different facility.
- The parolee had a medical emergency that required medical service at a different facility.
- There was a natural disaster, fire, or infrastructural failure at the facility in which the parolee had been placed that necessitated his or her evacuation.

House Bill 5245 (H-3)

Under the Corrections Code, a person convicted and sentenced for the commission of certain crimes (such as first-, second-, or third-degree arson, murder, manslaughter, or CSC), other than a prisoner subject to disciplinary time, is not eligible for parole until he or she has served the minimum time imposed by the court less an allowance for disciplinary time, and is not eligible for special parole. Under the bill, this would not apply to a prisoner granted medically frail parole.

MCL 791.235 (H.B. 4101)
MCL 791.233 & 791.234 (H.B. 4102)
Proposed MCL 750.197d (H.B. 4103)
MCL 791.233b & 791.265 (H.B. 5245)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bills 4101 (H-2), 4102 (H-3), and 5245 (H-3)

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 40 to 60 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 known whether any or all of the 40 to 60 prisoners would be released. Also, there are another 450 to 500 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 4101 (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 \$26,300 and \$41,400 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 \$49,600 and \$64,650 per prisoner per year.

In the short term, the movement of medically frail prisoners from DOC facilities into nursing homes would have an indeterminate fiscal impact on the State. If 60 prisoners were deemed eligible for medical parole, the short-term impact for the State would be between a cost of \$100,000 and savings of \$800,000 per year. In the long-term, if it is assumed that the bills would lead to a permanent reduction in the prison population of 60, and that drop allowed the Department to close a housing unit, the savings could be between \$900,000 and \$2.2 million per year.

House Bill 4103

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 misdemeanors 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

SAS\S1718\s4101sa

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.