



HOUSE JUSTICE COMMITTEE

HOUSE BILL 4129 PRESENTATION

PRODUCED BY THE
MICHIGAN COALITION ADVOCATING FOR REHABILITATION
AND EQUALITY

WHAT *is* HB 4129?

In essence, House Bill 4129 aims to expand the eligibility for medical parole to include prisoners who are deemed medically frail and not just those who are physically or mentally incapacitated. This change would be based on their medical condition and their demonstrated behavior while incarcerated to ensure they pose minimal risk to society.

HB 4129 amends the corrections code concerning medical parole for prisoners. Currently, a parole board may grant medical parole for a prisoner determined to be physically or mentally incapacitated. Under this legislation, the bill removes such language and would allow parole boards to grant a medical parole for a prisoner determined to be *medically frail*.

Under the proposed bill, the Bureau of Health Care Services would still need to recommend the medical parole, but the requirement for a comprehensive review of the prisoner's medical, institutional, and criminal records would be removed. **However, prisoners convicted of first-degree murder or crimes punishable by life without parole would remain ineligible for medically frail parole.**

HOW DO WE DEFINE MEDICALLY FRAGILE?

Medically frail is used to describe an individual who is a minimal threat to society due to their medical condition, and who has received a **low** risk score on a validated risk assessment. Likewise, their recent conduct in prison indicates that he or she is unlikely to engage in assaultive conduct, and who has one or both of the following:

- A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to walk, stand, and/or sit without personal assistance.
- A permanent or terminal disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder that results in the need for nursing home level of care and whose ability to perform two or more *activities of daily living* is significantly impaired.

What are activities of daily living?

These activities are basic personal care and everyday activities. They include the following:

- Eating, drinking
- Toileting, bathing
- Grooming, dressing
- Transferring from one physical position to another (such as standing to sitting)

What is a risk score?

The Risk Prediction is a system that predicts the probability of an offender committing assaultive and property crimes while on parole. Risk screening is used in determining eligibility for the state's Community Residential Programs and is incorporated within the MDOC's security classification system.

HOW *is* ELIGIBILITY DETERMINED?

In this system, medically frail prisoners are determined under the Bureau of Health Care Services within the DOC through monitoring the health care of individuals, and coordinating with the DOC's mental health service program. If a prisoner is deemed medically frail, an independent medical specialist would assess their condition and report back to the Bureau. The ultimate decision for granting medically frail parole would rest with the parole board, in consultation with the Bureau. However, a prosecutor could oppose the parole by filing a motion.

Once granted, the DOC would not have control over the medical plan for the parolee, who would be entitled to full patient rights at the medical facility where they are placed. Both the DOC and

parole board must ensure that the parole conditions comply with state and federal regulations, and the medical facility housing parolees must maintain a safe environment.

The parole term would be at least as long as the prisoner's earliest release date, and if the parolee no longer needs the level of care provided by the facility, the parole board and DOC would decide on appropriate actions.

If requested, the prosecutor can also have an independent medical examination conducted, with the DOC covering the costs

HOW DO PRISONERS CONSENT?

The bill introduces conditions for medically frail parole, with certain exemptions from regular parole requirements. To be eligible, the **prisoner must consent** to being placed in a parole board-approved medical facility where adequate care can be provided.

- If the parolee is unable to provide consent due to physical or mental health conditions, an authorized individual must agree to the placement in a parole board-approved medical facility to receive necessary medical care and treatment.

Relevant medical records must be released to the prosecutor and sentencing judge before the parole board decides on the parole. The parolee must comply with the parole terms for the entire duration, which must extend at least until the prisoner's earliest release date.

HOW LONG ARE THEY CARED FOR?

If the parolee no longer requires the current level of medical care, they or their representative must promptly inform the parole board. This notification should occur if any of the following situations arise:

- The parolee becomes ineligible for care at the current medical facility
- The parolee needs to be moved to another location for medical care
- The parolee is no longer at the approved medical facility
- The parolee's medical condition no longer necessitates the level of care provided by the facility.
- The parolee violates terms that were agreed upon between themselves, the parole board, and the medical facility.

The parole board is then required to immediately notify the prosecutor and the sentencing or successor judge about the change in the parolee's medical care needs or eligibility.

FISCAL IMPACT

HB 4129 is not expected to have any fiscal impact on local governments and would actually result in savings to the state. The savings would be realized by the Department of Corrections, as Medicaid would cover health care-related costs for medically frail prisoners released on medical parole.

Though the net prison population has declined, the number of prisoners over the age of 50 has increased over 7% since 2009. Our current system of caring for aging prisoners in the prison environment is costly, as prisoners do not receive medicaid. However, in 1997, regulations were passed providing that federally subsidized long-term care outside of prison walls. Since most elderly or disabled prisoners qualify under existing Medicaid rules, as long as they receive care outside of prison facilities, this could reduce the state's share of health care expenses.

Right now, approximately 20 to 30 prisoners are eligible for medical release, and an additional 450 to 500 prisoners could become eligible in the future due to chronic care needs. On average, a prisoner costs \$7,900 to the taxpayer, with medically frail prisoners costing 3-5 times as much (roughly between \$23,700 and \$39,500).

If the eligible group of 20 to 30 prisoners is shifted to an outside nursing home setting, the Department of Corrections could save between \$632,000 and \$948,000 annually in health care-related costs. This could result in a net annual savings to the state of between \$92,000 and \$138,000. These savings are expected to gradually increase as the medical parole population grows over time.