

HOUSE BILL No. 4129

February 6, 2019, Introduced by Reps. LaFave, Tyrone Carter, Bolden and Filler and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending section 35 (MCL 791.235), as amended by 2018 PA 339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The release of a prisoner on parole must be
2 granted solely upon the initiative of the parole board. There is no
3 entitlement to parole. The parole board may grant a parole without
4 interviewing the prisoner if, after evaluating the prisoner
5 according to the parole guidelines, the parole board determines
6 that the prisoner has a high probability of being paroled and the
7 parole board therefore intends to parole the prisoner. Except as
8 provided in subsection (2), a prisoner must not be denied parole
9 without an interview before 1 member of the parole board. The

1 interview must be conducted at least 1 month before the expiration
2 of the prisoner's minimum sentence less applicable good time and
3 disciplinary credits for a prisoner eligible for good time and
4 disciplinary credits, or at least 1 month before the expiration of
5 the prisoner's minimum sentence for a prisoner subject to
6 disciplinary time. The parole board shall consider any statement
7 made to the parole board by a crime victim under the William Van
8 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to
9 780.834, or under any other provision of law. The parole board
10 shall not consider any of the following factors in making a parole
11 determination:

12 (a) A juvenile record that a court has ordered the department
13 to expunge.

14 (b) Information that is determined by the parole board to be
15 inaccurate or irrelevant after a challenge and presentation of
16 relevant evidence by a prisoner who has received a notice of intent
17 to conduct an interview as provided in subsection (4). This
18 subdivision applies only to presentence investigation reports
19 prepared before April 1, 1983.

20 (2) If, after evaluating a prisoner according to the parole
21 guidelines, the parole board determines that the prisoner has a low
22 probability of being paroled and the parole board therefore does
23 not intend to parole the prisoner, the parole board is not required
24 to interview the prisoner before denying parole to the prisoner.

25 (3) The parole board may consider but shall not base a
26 determination to deny parole solely on either of the following:

27 (a) A prisoner's marital history.

1 (b) Prior arrests not resulting in conviction or adjudication
2 of delinquency.

3 (4) If an interview is to be conducted, the prisoner must be
4 sent a notice of intent to conduct an interview not less than 1
5 month before the date of the interview. The notice must state the
6 specific issues and concerns that will be discussed at the
7 interview and that may be a basis for a denial of parole. The
8 parole board shall not deny parole based on reasons other than
9 those stated in the notice of intent to conduct an interview except
10 for good cause stated to the prisoner at or before the interview
11 and in the written explanation required by subsection ~~(12)~~. **(20)**.

12 (5) Except for good cause, the parole board member conducting
13 the interview shall not have cast a vote for or against the
14 prisoner's release before conducting the current interview. Before
15 the interview, the parole board member who is to conduct the
16 interview shall review pertinent information relative to the notice
17 of intent to conduct an interview.

18 (6) A prisoner may waive the right to an interview by 1 member
19 of the parole board. The waiver of the right to be interviewed must
20 be in writing and given not more than 30 days after the notice of
21 intent to conduct an interview is issued. During the interview held
22 under a notice of intent to conduct an interview, the prisoner may
23 be represented by an individual of his or her choice. The
24 representative shall not be another prisoner or an attorney. A
25 prisoner is not entitled to appointed counsel at public expense.
26 The prisoner or representative may present relevant evidence in
27 support of release.

1 (7) At least 90 days before the expiration of the prisoner's
2 minimum sentence less applicable good time and disciplinary credits
3 for a prisoner eligible for good time or disciplinary credits, or
4 at least 90 days before the expiration of the prisoner's minimum
5 sentence for a prisoner subject to disciplinary time, or the
6 expiration of a 12-month continuance for any prisoner, **OR AT THE**
7 **REQUEST OF THE PAROLE BOARD FOR A PRISONER BEING CONSIDERED FOR**
8 **PAROLE UNDER SUBSECTION (10)**, the appropriate institutional staff
9 shall prepare a parole eligibility report. The parole eligibility
10 report is considered pertinent information for purposes of
11 subsection (5). The report must include all of the following:

12 (a) A statement of all major misconduct charges of which the
13 prisoner was found guilty and the punishment served for the
14 misconduct.

15 (b) The prisoner's work and educational record while confined.

16 (c) The results of any physical, mental, or psychiatric
17 examinations of the prisoner that may have been performed.

18 (d) Whether the prisoner fully cooperated with this state by
19 providing complete financial information as required under section
20 3a of the state correctional facility reimbursement act, 1935 PA
21 253, MCL 800.403a.

22 (e) Whether the prisoner refused to attempt to obtain
23 identification documents under section 34c, if applicable.

24 (f) For a prisoner subject to disciplinary time, a statement
25 of all disciplinary time submitted for the parole board's
26 consideration under section 34 of 1893 PA 118, MCL 800.34.

27 (g) The result on any validated risk assessment instrument.

1 (8) The preparer of the report shall not include a
2 recommendation as to release on parole.

3 (9) Psychological evaluations performed at the request of the
4 parole board to assist it in reaching a decision on the release of
5 a prisoner may be performed by the same person who provided the
6 prisoner with therapeutic treatment, unless a different person is
7 requested by the prisoner or parole board.

8 (10) ~~The~~ **EXCEPT FOR A PRISONER WHO WAS CONVICTED UNDER SECTION**
9 **316 OR 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316**
10 **AND 750.520B, THE** parole board may grant a medical parole for a
11 prisoner determined to be ~~physically or mentally incapacitated.~~
12 **MEDICALLY FRAIL.** A decision to grant a medical parole must be
13 initiated on the recommendation of the bureau of health care
14 services. ~~and must be reached only after a review of the medical,~~
15 ~~institutional, and criminal records of the prisoner.~~ **IF THE BUREAU**
16 **OF HEALTH CARE SERVICES BELIEVES THAT THE PRISONER IS MEDICALLY**
17 **FRAIL, THE BUREAU SHALL UTILIZE A SPECIALIST IN THE APPROPRIATE**
18 **FIELD OF MEDICINE, WHO IS NOT EMPLOYED BY THE DEPARTMENT, TO**
19 **EVALUATE THE CONDITION OF THE PRISONER AND TO REPORT ON THAT**
20 **CONDITION TO THE BUREAU. THE PAROLE BOARD, IN CONSULTATION WITH THE**
21 **BUREAU OF HEALTH CARE SERVICES, SHALL DETERMINE WHETHER THE**
22 **PRISONER IS MEDICALLY FRAIL. IF THE PAROLE BOARD DETERMINES THAT A**
23 **PRISONER IS MEDICALLY FRAIL AND IS GOING TO BE CONSIDERED FOR**
24 **PAROLE UNDER THIS SUBSECTION, THE PAROLE BOARD SHALL PROVIDE THE**
25 **NOTICE AND MEDICAL RECORDS REQUIRED UNDER SECTION 34(19). UNLESS**
26 **THE PROSECUTOR OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED**
27 **FILES A MOTION UNDER SECTION 34(20), THE PAROLE BOARD MAY GRANT**

1 PAROLE TO A PRISONER WHO IS DETERMINED TO BE MEDICALLY FRAIL. THE
2 REQUIREMENTS OF SECTIONS 33(1)(B), (C), (D), AND (F), 33B, AND
3 34(1), (2), (3), (4), (7), (8), (14), (15), (16), (17), AND (18) DO
4 NOT APPLY TO A PAROLE GRANTED UNDER THIS SUBSECTION.

5 (11) THE FOLLOWING CONDITIONS APPLY TO A PAROLE GRANTED UNDER
6 SUBSECTION (10):

7 (A) A PRISONER MUST ONLY BE RELEASED ON PAROLE UNDER
8 SUBSECTION (10) IF HE OR SHE AGREES TO ALL OF THE FOLLOWING:

9 (i) HIS OR HER PLACEMENT, OR, IF THE PRISONER IS UNABLE TO
10 CONSENT BECAUSE OF THE PRISONER'S PHYSICAL OR MENTAL HEALTH
11 CONDITION, AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO THE
12 PRISONER'S PLACEMENT AGREES THAT THE PRISONER BE PLACED IN A
13 MEDICAL FACILITY APPROVED BY THE PAROLE BOARD WHERE MEDICAL CARE
14 AND TREATMENT CAN BE PROVIDED.

15 (ii) TO THE RELEASE OF HIS OR HER MEDICAL RECORDS THAT ARE
16 DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS RENDERING THE
17 PRISONER MEDICALLY FRAIL TO THE PROSECUTOR AND SENTENCING OR
18 SUCCESSOR JUDGE OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED
19 BEFORE THE PAROLE BOARD DETERMINES WHETHER OR NOT TO GRANT THE
20 PRISONER PAROLE UNDER SUBSECTION (10).

21 (iii) AN INDEPENDENT MEDICAL EXAM IF SOUGHT BY THE PROSECUTOR
22 OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED AS PROVIDED
23 UNDER SECTION 34(20). IF POSSIBLE, THIS INDEPENDENT MEDICAL EXAM
24 MUST OCCUR AT A FACILITY OF THE DEPARTMENT. THE REASONABLE COSTS OF
25 THIS INDEPENDENT MEDICAL EXAM MUST BE PAID FOR BY THE DEPARTMENT.

26 (B) THE PAROLEE SHALL ADHERE TO THE TERMS OF HIS OR HER PAROLE
27 FOR THE LENGTH OF HIS OR HER PAROLE TERM.

1 (C) THE PAROLE MUST BE FOR A TERM NOT LESS THAN THE TIME
2 NECESSARY TO REACH THE PRISONER'S EARLIEST RELEASE DATE.

3 (D) A PAROLEE WHO VIOLATES THE TERMS OF HIS OR HER PAROLE OR
4 IS DETERMINED TO NO LONGER MEET THE DEFINITION OF MEDICALLY FRAIL
5 MAY BE TRANSFERRED TO A SETTING MORE APPROPRIATE FOR THE MEDICAL
6 NEEDS OF THE PAROLEE OR BE SUBJECT TO THE PAROLE VIOLATION PROCESS
7 UNDER SECTIONS 38, 39, 39A, AND 40A AS DETERMINED BY THE PAROLE
8 BOARD AND THE DEPARTMENT.

9 (E) THE PAROLEE MUST ONLY BE PLACED IN A MEDICAL FACILITY THAT
10 AGREES TO ACCEPT THE PAROLEE AND THAT IS AGREED UPON BY THE PAROLEE
11 AS DESCRIBED IN SUBDIVISION (A) (i) .

12 (12) THE PAROLEE OR AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO
13 THE PAROLEE'S PLACEMENT UNDER SUBSECTION (11) (A) (i) SHALL
14 IMMEDIATELY INFORM THE PAROLE BOARD IF ANY OF THE FOLLOWING OCCUR:

15 (A) THE PAROLEE IS NO LONGER ELIGIBLE FOR CARE AT THE MEDICAL
16 FACILITY AT WHICH HE OR SHE WAS PLACED.

17 (B) THE PAROLEE MUST BE MOVED TO ANOTHER LOCATION FOR MEDICAL
18 CARE.

19 (C) THE PAROLEE IS NO LONGER AT THE MEDICAL FACILITY APPROVED
20 BY THE PAROLE BOARD.

21 (D) THE PAROLEE NO LONGER NEEDS THE LEVEL OF CARE THAT
22 RESULTED IN THE PAROLEE'S PLACEMENT AT THE MEDICAL FACILITY.

23 (13) THE PAROLE BOARD SHALL IMMEDIATELY NOTIFY THE PROSECUTOR
24 FOR THE COUNTY IN WHICH THE OFFENDER WAS CONVICTED AND THE
25 SENTENCING OR SUCCESSOR JUDGE IF THE PAROLEE IS NO LONGER ELIGIBLE
26 FOR CARE OR NO LONGER NEEDS THE LEVEL OF CARE FOR WHICH THE
27 PRISONER WAS PLACED AT THE MEDICAL FACILITY.

1 (14) THE DEPARTMENT SHALL NOT RETAIN AUTHORITY OVER THE
2 MEDICAL TREATMENT PLAN FOR A PRISONER GRANTED PAROLE UNDER
3 SUBSECTION (10) AND A PRISONER GRANTED PAROLE UNDER SUBSECTION (10)
4 MUST HAVE FULL PATIENT RIGHTS AT THE MEDICAL FACILITY WHERE HE OR
5 SHE IS PLACED.

6 (15) THE DEPARTMENT AND THE PAROLE BOARD SHALL ENSURE THAT THE
7 PLACEMENT AND TERMS AND CONDITIONS OF A PAROLE GRANTED UNDER
8 SUBSECTION (10) DO NOT VIOLATE ANY OTHER STATE OR FEDERAL
9 REGULATIONS.

10 (16) A MEDICAL FACILITY HOUSING PRISONERS GRANTED PAROLE UNDER
11 SUBSECTION (10) MUST BE OPERATED IN A MANNER THAT ENSURES THE
12 SAFETY OF THE RESIDENTS OF THE MEDICAL FACILITY.

13 (17) A PAROLEE GRANTED PAROLE UNDER SUBSECTION (10) AND PLACED
14 IN A MEDICAL FACILITY HAS THE SAME PATIENT RIGHTS AND
15 RESPONSIBILITIES AS ANY OTHER INDIVIDUAL WHO IS A RESIDENT OF OR
16 HAS BEEN ADMITTED TO THE MEDICAL FACILITY.

17 (18) THE PROCESS FOR A PAROLE DETERMINATION UNDER SUBSECTION
18 (10) DOES NOT CHANGE OR AFFECT ANY OF THE RIGHTS AFFORDED TO A
19 VICTIM UNDER THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT,
20 1985 PA 87, MCL 780.751 TO 780.834.

21 (19) ~~(11)~~—The department shall file a petition to the
22 appropriate court under section 434 of the mental health code, 1974
23 PA 258, MCL 330.1434, for any prisoner being paroled or being
24 released after serving his or her maximum sentence whom the
25 department considers to be a person requiring treatment. The parole
26 board shall require mental health treatment as a special condition
27 of parole for any parolee whom the department has determined to be

1 a person requiring treatment whether or not the petition filed for
2 that prisoner is granted by the court. As used in this subsection,
3 "person requiring treatment" means that term as defined in section
4 401 of the mental health code, 1974 PA 258, MCL 330.1401.

5 (20) ~~(12)~~—When the parole board makes a final determination
6 not to release a prisoner, the parole board shall provide the
7 prisoner with a written explanation of the reason for denial and,
8 if appropriate, specific recommendations for corrective action the
9 prisoner may take to facilitate release.

10 (21) ~~(13)~~—This section does not apply to the placement on
11 parole of a person in conjunction with special alternative
12 incarceration under section 34a(7).

13 (22) AS USED IN THIS SECTION:

14 (A) "ACTIVITIES OF DAILY LIVING" MEANS BASIC PERSONAL CARE AND
15 EVERYDAY ACTIVITIES AS DESCRIBED IN 42 CFR 441.505, INCLUDING, BUT
16 NOT LIMITED TO, TASKS SUCH AS EATING, TOILETING, GROOMING,
17 DRESSING, BATHING, AND TRANSFERRING FROM 1 PHYSICAL POSITION TO
18 ANOTHER, INCLUDING, BUT NOT LIMITED TO, MOVING FROM A RECLINING
19 POSITION TO A SITTING OR STANDING POSITION.

20 (B) "MEDICAL FACILITY" MEANS A HOSPITAL, HOSPICE, NURSING
21 HOME, OR OTHER HOUSING ACCOMMODATION PROVIDING MEDICAL TREATMENT
22 SUITABLE TO THE CONDITION OR CONDITIONS RENDERING THE PRISONER
23 MEDICALLY FRAIL.

24 (C) "MEDICALLY FRAIL" DESCRIBES AN INDIVIDUAL WHO IS A MINIMAL
25 THREAT TO SOCIETY AS A RESULT OF HIS OR HER MEDICAL CONDITION, WHO
26 HAS RECEIVED A RISK SCORE OF LOW ON A VALIDATED RISK ASSESSMENT,
27 WHOSE RECENT CONDUCT IN PRISON INDICATES HE OR SHE IS UNLIKELY TO

1 ENGAGE IN ASSAULTIVE CONDUCT, WHOSE ABILITY TO PERFORM 2 OR MORE
2 ACTIVITIES OF DAILY LIVING IS SIGNIFICANTLY IMPAIRED, AND WHO MAY
3 HAVE LIMITED MOBILITY AND ABILITY TO TRANSFER FROM 1 PHYSICAL
4 POSITION TO ANOTHER AS THE RESULT OF 1 OR MORE OF THE FOLLOWING
5 CONDITIONS FROM WHICH THE INDIVIDUAL IS NOT EXPECTED TO RECOVER:

6 (i) A DISABLING MENTAL DISORDER, INCLUDING DEMENTIA,
7 ALZHEIMER'S, OR A SIMILAR DEGENERATIVE BRAIN DISORDER.

8 (ii) A SERIOUS AND COMPLEX MEDICAL CONDITION.

9 (iii) A PHYSICAL DISABILITY.

Definitions

Medically frail: 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 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.

Activities of daily living: Basic personal care and everyday activities as described in the Code of Federal Regulations and would include such tasks 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).

Medical Parole: “Medical parole is a parole granted on humanitarian or medical grounds. It is sometimes referred to as a compassionate parole. The parole granting authority may lay down a set of medical parole conditions. An inmate who satisfies these conditions is granted medical parole.” (USLegal.com)

History

Currently, the parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated.

Phone: (517) 373-8080
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PAROLE FOR MEDICALLY FRAIL PRISONERS

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

**House Bill 4129 (proposed substitute H-1) Sponsor:
Rep. Beau Matthew LaFave**

Legislative Analyst: Susan Stutzky
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**House Bill 4132 as introduced
Sponsor: Rep. Kyra Harris Bolden**

**Committee: Judiciary
Complete to 3-4-19**

BRIEF SUMMARY:

Taken together, the bills would implement a medical parole for medically frail prisoners.

House Bill 4129 would do all of the following:

- Replace the current medical parole process with one for the medically frail.
- Exclude from eligibility prisoners convicted of first-degree murder or any crime punishable by a term of life without parole.
- Define *medically frail*.
- Require a medically frail parolee to adhere to the terms of the parole for the length of his or her parole term.
- Require a medically frail parolee to agree to being placed in a medical facility approved by the Department of Corrections (DOC) and require that certain notice requirements be met if the parolee no longer needed the care or level of care provided at the facility.
- Provide a medically frail parolee with the same rights and responsibilities as any other resident of a medical facility.

The bill would take effect 90 days after its enactment.

DETAILED SUMMARY:

House Bill 4129 would amend section 35 of the Corrections Code. Currently, the parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. Instead, the bill would allow the parole board to grant a medical parole for a prisoner determined to be medically frail. The bill would retain the requirement that a medical parole be initiated on the recommendation of the Bureau of Health Care Services, but would eliminate the requirement that the decision be reached only after a review of the medical, institutional, and criminal records of the prisoner. A prisoner convicted of first-degree murder or any crime that is punishable by life without parole would not be eligible for a medically frail parole.

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 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.

Activities of daily living would mean basic personal care and everyday activities as described in the Code of Federal Regulations and would include such tasks 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).

Medical parole for the medically frail:

The Bureau of Health Care Services within the DOC coordinates and monitors health care services for prisoners and the treatment of seriously mentally ill prisoners via the DOC's mental health services program. If the Bureau believed a prisoner to be medically frail, the Bureau would utilize a specialist in the appropriate medical field, who is not a DOC employee, to evaluate and report to the Bureau on the prisoner's condition.

The determination of whether the prisoner is medically frail would be made by the parole board in consultation with the Bureau. If the parole board determined that a prisoner was medically frail and would be considered for a medically frail parole, the parole board would have to provide notice and medical records required under provisions of House Bill 4130 (see below). The parole board could grant parole to a medically frail prisoner unless the prosecutor from the county from which the prisoner was committed filed a motion opposing the parole as provided in House Bill 4130.

The DOC would not retain authority over the medical plan for a medically frail parolee. A medically frail parolee would have to have full patient rights at the medical facility where he or she is placed. Both the DOC and parole board would have to ensure that the placement and terms and conditions of a medically frail parole do not violate any other state or federal regulations. A medical facility housing prisoners granted a medically frail parole would have to be operated in a manner that ensures the safety of its residents. A parolee placed in a medical facility would have the same patient rights and responsibilities as any other individual who is a resident of or has been admitted to the medical facility. In addition, the process for a medically frail parole determination would not change or affect any rights afforded to a victim under the William Van Regenmorter Crime Victim's Rights Act.

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.

Conditions for medically frail parole

The bill would not apply to certain requirements in the Corrections Code pertaining to when a prisoner is eligible for parole—for example, completion of a minimum term. Further, the following conditions would apply to a medically frail parole:

- The prisoner would have to agree to all of the following:
 - His or her placement or, if he or she is unable to consent due to the 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 parole board-approved medical facility where medical care and treatment can be provided.
 - The release, to the prosecutor and sentencing or successor judge of the county from which the prisoner was committed, of medical records that are directly relevant to the condition or conditions rendering the prisoner medically frail. This would have to be done before the parole board determined whether to grant a medically frail parole.
 - An independent medical examination, if sought by the prosecutor. If possible, the exam would have to occur at a DOC facility. The DOC would have to pay the reasonable costs of the exam.
- The parolee would have to adhere to the terms of the parole for the length of the parole term.
- The parole would have to be for a term of at least the time necessary to reach the prisoner's earliest release date (i.e., the date on which the prisoner completes his or her minimum sentence).
- A parolee who violated the parole terms or no longer met the definition of medically frail 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 only be placed in a medical facility that agrees to accept the parolee and that is agreed upon by the parolee.

If the parolee no longer needed the level of care:

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

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

The parole board would have to immediately notify the prosecutor 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.

MCL 791.235

FISCAL IMPACT:

House Bills 4129 would have no fiscal impact on local government and would result in minimal savings to the state. Savings would be realized by the Department of Corrections, as it is assumed that Medicaid would cover health care-related costs for medically frail prisoners, as that term is defined in HB 4129, who are released on medical parole.

Providing health care to an aging prison population is a large and growing cost for the state. Though the prison population has declined overall, the population of prisoners over the age of 50 has increased. In 2009, 17.3% of the prison population was over age 50. Currently, 25% are over age 50.

Caring for prisoners inside the prison environment is far more expensive than it is on the outside. Under the 1965 law that created Medicaid, anyone entering a state prison forfeited Medicaid eligibility. However, an exception to that general rule opened up in 1997 when the United States Department of Health and Human Services wrote to state Medicaid directors saying that prisoners who leave state or local facilities to receive care in hospitals or nursing homes could be covered by Medicaid if they would otherwise qualify for Medicaid. Most elderly or disabled prisoners qualify under existing Medicaid rules, as long as they receive care outside of prison facilities.

Receiving federally subsidized long-term care outside of prison walls potentially could reduce the state's share of health care costs. A shift in medical costs to the Medicaid program would result in a net savings equal to approximately 64% of those costs, as the state generally must provide state match equal to 36% of Medicaid expenditures, with federal Medicaid reimbursement providing the other 64% of the cost. The average annual Medicaid cost for a nursing facility in the state is roughly \$75,000. The cost to the state for that care would be a little over \$27,000.

To be eligible for medical release under HB 4129, a prisoner must meet a number of requirements related to his or her medical condition and to his or her risk to public safety. According to the Department of Corrections, there are between 20 and 30 prisoners who would be eligible for medical release under the definition of medically frail and other conditions contained in the bills, but those prisoners have yet to be screened for risk or screened for placement, so it is not guaranteed that all 20 to 30 prisoners would be released. Also, there are another 450 to 500 prisoners who are not yet eligible for release under the medically frail criteria, but who could become eligible in the future based on their chronic care needs. They have chronic conditions which will require treatment for the rest of their lives.

In fiscal year 2018, the average health care cost for prisoners in the average prison population was roughly \$7,900 per prisoner. Based on national research, it is estimated that medically frail prisoners cost anywhere from three to five times more than other prisoners in the average population. Using these estimates, the average health care cost for medically frail prisoners is roughly between \$23,700 and \$39,500 per prisoner.

Using an average of the cost estimates for medically frail prisoners, and shifting the group of between 20 and 30 prisoners to an outside nursing home setting, the fiscal impact to the department could yield a cost of savings of between \$632,000 and \$948,000 annually in health care-related costs. The savings could be slightly higher when other incidental costs, such as meals, transportation, and clothing, are included. Shifting the health care costs for these prisoners to Medicaid would cost the state between \$540,000 and \$810,000. So, the net annual savings to the state would be between \$92,000 and \$138,000. Savings would slowly grow over time as the medical parole population increases.

■ 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.

