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Senate Bill 599 (as enrolled)  
Sponsor: Senator Erika Geiss  
Senate Committee: Civil Rights, Judiciary, and Public Safety  
House Committee: Criminal Justice

Date Completed: 6-27-24

## **RATIONALE**

Public Act (PA) 13 of 2019 allowed a parole board to grant medical parole for certain medically frail prisoners (see **BACKGROUND**). According to the Department of Corrections (MDOC) approximately 20 to 30 prisoners are potentially eligible under the definition of a medically frail parolee and another several hundred could become eligible as based on future chronic care needs, although suitability for parole is ultimately up to a parole board after a full review. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, only one individual has been granted medical parole since PA 13's enactment. Reportedly, medical facilities have declined to accept or do not have the capacity to accept medically frail parolees. It has been suggested to allow eligible medically frail parolees to have a home placement with family access.

## **CONTENT**

**The bill would amend the Corrections Code to allow a medically frail prisoner eligible for medical parole to be released to a placement approved by the parole board, instead of a parole board approved medical facility. The bill would specify that if the placement were not in a medical facility, the parolee could be subject to electronic monitoring at the time of release on parole. Additionally, the bill would include among the medical conditions qualifying a parolee as medically frail a terminal medical or neurological condition resulting in life expectancy of under 18 months.**

Under the Code, a parole board may grant medical parole for certain medically frail prisoners who were not convicted of a crime punishable by imprisonment for life without parole or first-degree criminal sexual misconduct.

"Medically frail" means 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, 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 a significantly impaired ability to perform two or more activities or daily living.

Under the bill, the term would mean an individual who is a minimal threat to society as a result of the individual's medical condition, whose recent conduct in prison indicates that he or she is unlikely to engage in assaultive conduct, and who has at least one 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.
- A terminal medical or neurological condition resulting in a life expectancy of under 18 months.
- A permanent 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 a significantly impaired ability to perform two or more activities or daily living.

Among other conditions, a medically frail prisoner must only be released on parole if he or she agrees to his or her placement, or if the parolee is unable to consent because of his or her physical or mental health condition, an individual legally entitled to agree to the placement agrees that the parolee be placed in a medical facility approved by the parole board where medical care and treatment can be provided. The bill would modify this language to specify that the agreed upon placement would have to be as approved by the parole board and would not have to be a medical facility.

Additionally, if the parolee were medically frail and placement of the parolee described above was not in a medical facility, the parolee would be subject to electronic monitoring at the time the medically frail parolee was released on parole. The bill would specify that the parole board could remove this requirement if the board determined that electronic monitoring was not necessary to protect public safety. The requirement for electronic monitoring would be in addition to monitoring by a global positioning monitoring system under another State law.

"Electronic monitoring" would mean the Lifetime Electronic Monitoring Program established by the MDOC to monitor individuals released from parole, prison, or both parole and prison who are sentenced by the court to lifetime electronic monitoring.

The bill would delete the provisions below, all of which concern a parolee's placement in a medical facility.

After the agreement described above, a medically frail prisoner receiving parole must only be placed in a medical facility that agrees to accept the parolee. A parolee or an individual entitled to agree to the parolee's placement, other than a medical facility, must inform the parole board immediately if any of the following occur:

- 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 the parolee's placement at the medical facility.

The parole board must immediately notify the prosecutor for the county in which the offender was convicted and the sentencing or successor judge if the parolee is no longer eligible for care or no longer needs the level of care for which the prisoner was placed at the medical facility.

A parolee placed in a medical facility must have the same patient rights and responsibilities as any other individual who is a resident of or was admitted to the medical facility.

MCL 791.234 & 791.235

## **BACKGROUND**

Public Acts 13 through 16 of 2019 created a mechanism for medically frail prisoners to receive parole. According to a press release from Governor Gretchen Whitmer, the Acts intended to decrease the cost to taxpayers by allowing medically frail prisoners to receive care at medical facilities

and nursing homes instead of the MDOC incurring the cost of prisoners' care. Federal law prohibits incarcerated individuals from receiving treatment through Medicaid or Medicare.<sup>1</sup>

Most of the potentially eligible prisoners targeted by the Acts 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%. At the time the legislation was enacted, the average annual Medicaid rate for a semi-private room in a nursing home in the State was \$80,000 and the cost to the State for that care was \$28,000.<sup>2</sup> It is not known how much medically frail prisoners cost the MDOC, but past research has estimated that these prisoners have health care costs from three to five times the rate of an average prisoner.<sup>3</sup>

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Prisoners have the constitutional right against cruel and unusual punishment, which affords them access to medical care. Specifically, MDOC policy requires prisoners' access to a continuum of medically necessary health care services and, if their current facility cannot meet their medical needs, transfer to a facility that can meet those needs;<sup>4</sup> however, according to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, prison hospitals are not equipped to adequately handle an infirmed and aging population. Expanding parole for medically frail prisoners to allow for home placements would increase the number of parolees released and allow parolees to be placed by family members in the care of systems better equipped to provide complex care and close monitoring. Home placements would ensure that medically frail inmates are treated appropriately and compassionately at the end of their lives as well as give families the ability to be at their loved one's side at their final moments.

### **Supporting Argument**

Allowing a parole board to initiate a review upon a prognosis of a life expectancy of under 18 months would give the board adequate time to deliberate on a case and grant parole if appropriate. Some believe that the current definition of medically frail is not functional in practice as only one individual has received medical parole in the five years medically frail parole has been legal in the State. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, in many cases by the time an inmate meets the definition of medically frail by not being able to stand, sit, or walk without assistance, a parole board does not have enough time to review that potentially medically frail inmate's case because the illness often progresses faster than the review's timeline.

Typically, the review process takes months; once a parole board is made aware of a potentially eligible inmate's medical condition, the parole board must provide notice to the individual, the county prosecutor, and any registered victims on the case before fully considering the case. The parole board then must hold a hearing and after review the case. Finally, if the parole board grants parole, the board must provide 28 days' notice of that decision to any registered victims. Even expedited cases can take over four months. In instances in which a prosecutor or victim appeals, the case goes before a circuit court and further affects the timeline. The

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<sup>1</sup> Executive Office of Governor Gretchen Whitmer, Governor Gretchen Whitmer Signs Bills to Parole Medically Frail Prisoners for Treatment, 5-22-2019.

<sup>2</sup> Currently, the average annual Medicaid rate for a semi-private room in a nursing home in the State is \$100,000 and the cost to the State for that care is approximately \$35,000.

<sup>3</sup> Senate Fiscal Agency, Summary of Bill on Third Reading of House Bills 4129 through 4132, 5-1-19. Available on the Michigan Legislature website: <https://www.legislature.mi.gov/>

<sup>4</sup> MDOC, Policy Directive 03.04.100, 2023.

current requirements to trigger a parole board review for a potentially medically frail parolee are not sufficient in allowing incarcerated individuals the chance to have this type of parole.

### **Supporting Argument**

Increasing the number of individuals released as medically frail parolees would save the State money for the care and incarceration of these individuals. According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, the State's geriatric prison population is increasing. The MDOC considers a prisoner to be 10 years older than his or her chronological age when considering the prisoner's health status.<sup>5</sup> Due to this, in many cases prisoners' infirmities affect them more severely than a person who is not imprisoned, and many medically frail patients require frequent medication adjustments and consultations, special physical accommodations, and clinical monitoring. Some people consider prison hospitals to be unequipped to care for people who are dying or in decline; reportedly, prisons are equipped for individuals with short term, acute care needs but are unable to provide surgery and do not have immediate access to advanced medical equipment. Additionally, prisons would have fewer individuals to transport back and forth to standard medical facilities for care. Expanding placement options would relieve the burden on prison hospitals for the cost and care of medically frail parolees.

### **Supporting Argument**

The prisoners being released as medically frail parolees are not a threat to society. These individuals are often bedridden or do not have the mental capacity to commit a subsequent crime or harm someone around them. For example, patients with a terminal diagnosis such as metastatic cancers often cannot complete standard daily tasks. Additionally, medically frail parole is up to a parole board's discretion, and the judgment of boards should be trusted to determine the risk status of a potential parolee.

### **Opposing Argument**

Several states, including Georgia, Florida, New York, and California have established state-run nursing facilities to house medically frail parolees, among others needing complex care.<sup>6</sup> Michigan should adopt this standard of care for individuals with increasing medical costs.

**Response:** Transferring a medically frail parolee to a separate facility would still separate families that are willing to take care of, and wish to be there for, a parolee during his or her last days. Additionally, according to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, the MDOC considered this model before PA 13's enactment and concluded that the critical mass of steady patient flow required for a facility of this kind could not be met at that time. Additionally, while Medicaid can potentially incur the cost of those facilities, the facility would have to be completely independent of the MDOC.

Legislative Analyst: Eleni Lionas

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco, Jr.

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<sup>5</sup> "Correctional Healthcare and Mental Health.", MDOC.

[https://www.house.mi.gov/hfa/PDF/Corrections/Corrections\\_Subcmte\\_Testimony\\_MDOC\\_Healthcare\\_Presentation\\_2-20-19.pdf](https://www.house.mi.gov/hfa/PDF/Corrections/Corrections_Subcmte_Testimony_MDOC_Healthcare_Presentation_2-20-19.pdf)

<sup>6</sup> "New Nursing Home Payment Streams Could Address Surging Demand Among Justice-Involved Individuals.", Skilled Nursing News. <https://skillednursingnews.com/2023/10/new-nursing-home-payment-streams-could-address-surging-demand-among-justice-involved-individuals/#:~:text=States%20can%20also%20establish%20state,have%20successfully%20implemented%20such%20facilities>. Retrieved 6-11-24.