

# Safe & Just Michigan

## Testimony Regarding H.B. 4129-32

*House Judiciary Committee; March 5, 2019*

Good morning. I am the Executive Director of Safe & Just Michigan, a criminal justice policy and research organization based in Lansing. I am submitting this written testimony in support of H.B. 4129-30, and 4132,<sup>1</sup> as I am unable to attend today's hearing in person.

### *The Problem*

The vast majority of states have some sort of medical or geriatric release law—by some reports 47 of 50.<sup>2</sup> Michigan is frequently included among this group, but this is inaccurate: while Michigan does have a medical transfer statute on the books,<sup>3</sup> it is not currently in use because it is thought to be inconsistent with the subsequently-enacted statutory requirement that all prisoners serve 100% of their minimum sentence in prison.<sup>4</sup>

As many as 850 people in Michigan's prisons are "medically frail"<sup>5</sup>—that is, mentally or physically incapacitated and thus unable to perform basic tasks of daily living without assistance. But under current law, the Michigan Department of Corrections (MDOC) cannot transfer these prisoners to an outside facility for medical or nursing care unless they have served their minimum sentence and are thus eligible for parole. Many medically frail prisoners are not currently eligible for parole, so MDOC is responsible for providing these prisoners with medical and

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<sup>1</sup> SJM does not support H.B. 4131. Existing law is sufficient to protect the public from the possibility that an individual on medical parole violates the terms of their release, or is assisted in doing so.

<sup>2</sup> See, e.g., Maschi, T., Kalmanofsky, A., Westcott, K., & Pappacena, L. (2015). *An Analysis of United States Compassionate and Geriatric Release Laws: Towards a Rights-Based Response for Diverse Elders and Their Families and Communities*. New York, NY: Be the Evidence Press, Fordham University, available at [www.beetheevidence.org](http://www.beetheevidence.org) (47 states).

<sup>3</sup> See MCL 791.265(b).

<sup>4</sup> See MCL 791.265(2) ("A prisoner who is ... committed to the jurisdiction of the department shall be confined in a secure correctional facility for the duration of his or her minimum sentence ...").

<sup>5</sup> *Testimony of MDOC Legislative Liaison Kyle Kaminski*, House Appropriations Subcommittee on Corrections (Oct. 18, 2017).

nursing care until they become parole-eligible, their sentence is commuted by the Governor (a rare occurrence), or they die in prison. Further, because Medicaid does not cover the cost of medical care for prisoners,<sup>6</sup> MDOC must bear 100% of the cost of these prisoners' care, notwithstanding the very high costs of doing so (3-5 times greater than average<sup>7</sup>).

### *The Solution: Parole Medically Frail Prisoners*

Safe & Just Michigan has long supported creating a special parole for medically frail prisoners. It makes little sense to incarcerate people that are mentally or physically incapacitated: they pose no meaningful threat to the public, they are poorly suited for the prison environment, and they are among the costliest prisoners to house. In spite of this, Michigan law *requires* the Michigan Department of Corrections both to care for medically frail prisoners for the duration of their sentences (in many cases, life), and to bear 100% of the cost of doing so.

H.B. 4129-30 & 4132 propose an important first step to fixing this problem: they would permit some prisoners who are medically frail to be paroled to appropriate medical or nursing facilities, and would permit the cost of their care to be shifted from the Department of Corrections to Medicaid.<sup>8</sup>

However, the current package of bills falls short in one important respect: it does not apply to many—perhaps most—prisoners that are medically frail. This is because it does not extend to people serving life without the possibility of parole (almost all of who were convicted of first degree murder), or people convicted of first degree criminal sexual conduct. By one estimate, there are as many as 850 prisoners in MDOC custody that are medically frail;<sup>9</sup> however, the current proposal will likely only apply to “20 to 30 prisoners” with “450 to 500 prisoners” likely to become eligible in the future.<sup>10</sup>

First degree murder and first degree criminal sexual conduct are among the most serious crimes we recognize in law, and their penalties reflect that. But if paroling medically frail prisoners is good policy—and it clearly is—the reason a person is in prison should not impact whether they are eligible for a medical parole. Indeed, removing certain classes of prisoners from eligibility is fundamentally

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<sup>6</sup> Section 1905(a)(29)(A) of the Act prohibits Medicaid federal financial participation (FFP) for “any such payments with respect to care or services for any individual who is an inmate of a public institution (*except as a patient in a medical institution*)” (emphasis added).

<sup>7</sup> *Testimony of MDOC Legislative Liaison Kyle Kaminski*, House Appropriations Subcommittee on Corrections (Oct. 18, 2017).

<sup>8</sup> The Center for Medicaid and Medicare Services has approved Medicaid reimbursement for similar programs in Connecticut and Georgia.

<sup>9</sup> *Testimony of MDOC Legislative Liaison Kyle Kaminski*, House Appropriations Subcommittee on Corrections (Oct. 18, 2017).

<sup>10</sup> Senate Fiscal Agency Analysis of H.B. 4101-03 & 5245 (prior versions of H.B. 4129-32), pg. 3 (May 21, 2018), available at <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-4101-F.pdf>.

inconsistent with the rationale for paroling medically frail prisoners, because it will result in the very costs the policy is seeking to avoid. This is particularly true for the class of prisoners serving life without parole, since they will inevitably become old and sick during their sentence and require complex, expensive medical care. Experience bears this out, as this class of prisoners already accounts for a large and disproportionate amount of the prisoners that are currently medically frail.

Safe & Just Michigan urges the Legislature to amend this legislation to apply to all medically frail prisoners. However, because we believe that creating a medical parole that is available to some prisoners is better than having no medical parole, we also support this legislation in its current form.

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Thank you for the opportunity to submit written testimony today. Please do not hesitate to contact me if you have questions.

Sincerely,

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