

HOUSE BILL No. 5967

April 25, 2006, Introduced by Reps. Ball, Acciavatti, Schuitmaker, Pastor, Pavlov, Gosselin, Robertson, Taub, Moore, Caul, David Law, Casperson and Farhat and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 36 and 40a (MCL 791.236 and 791.240a), section 36 as amended by 2003 PA 75 and section 40a as amended by 1993 PA 346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36. (1) All paroles shall be ordered by the parole board
2 and shall be signed by the chairperson. Written notice of the order
3 shall be given to the sheriff or other police officer of the
4 municipality or county in which the prisoner was convicted, and to
5 the sheriff or other local police officer of the municipality or
6 county to which the paroled prisoner is sent.

1 (2) A parole order may be amended ~~or rescinded~~ at the
2 discretion of the parole board for cause, **OR IS SUBJECT TO**
3 **REVOCATION AS PROVIDED IN SECTION 40A.** ~~If a paroled prisoner who~~
4 ~~is required to register pursuant to the sex offenders registration~~
5 ~~act, 1994 PA 295, MCL 28.721 to 28.732, willfully violates that~~
6 ~~act, the parole board shall rescind the parole. If a prisoner~~
7 ~~convicted of violating or conspiring to violate section~~
8 ~~7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health~~
9 ~~code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole~~
10 ~~and violates or conspires to violate article 7 of the public health~~
11 ~~code, 1978 PA 368, MCL 333.7401 to 333.7545, and that violation or~~
12 ~~conspiracy to violate is punishable by imprisonment for 4 or more~~
13 ~~years, or commits a violent felony during his or her release on~~
14 ~~parole, parole shall be rescinded.~~

15 ~~— (3) A parole shall not be rescinded unless an interview is~~
16 ~~conducted by 1 member of the parole board. The purpose of the~~
17 ~~interview is to consider and act upon information received by the~~
18 ~~board after the original parole release decision. A rescission~~
19 ~~interview shall be conducted within 45 days after receiving the new~~
20 ~~information. At least 10 days before the interview, the parolee~~
21 ~~shall receive a copy or summary of the new evidence that is the~~
22 ~~basis for the interview. An amendment to a parole order shall be~~
23 ~~in writing and is not effective until notice of the amendment is~~
24 ~~given to the parolee.~~

25 (3) ~~—(4)~~ When a parole order is issued, the order shall
26 contain the conditions of the parole and shall specifically provide
27 proper means of supervision of the paroled prisoner in accordance

1 with the rules of the bureau of field services.

2 (4) ~~—(5)—~~ The parole order shall contain a condition to pay
3 restitution to the victim of the prisoner's crime or the victim's
4 estate if the prisoner was ordered to make restitution pursuant to
5 the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87,
6 MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA
7 175, MCL 760.1 to 777.69.

8 (5) ~~—(6)—~~ The parole order shall contain a condition requiring
9 the parolee to pay a parole supervision fee as prescribed in
10 section 36a.

11 (6) ~~—(7)—~~ The parole order shall contain a condition requiring
12 the parolee to pay any assessment the prisoner was ordered to pay
13 pursuant to section 5 of 1989 PA 196, MCL 780.905.

14 (7) ~~—(8)—~~ The parole order shall contain a condition requiring
15 the parolee to pay the minimum state cost prescribed by section 1j
16 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL
17 769.1j, if the minimum state cost has not been paid.

18 (8) ~~—(9)—~~ If the parolee is required to be registered under
19 the sex offenders registration act, 1994 PA 295, MCL 28.721 to
20 ~~28.732—~~ **28.736**, the parole order shall contain a condition
21 requiring the parolee to comply with that act.

22 (9) ~~—(10)—~~ If a prisoner convicted of violating or conspiring
23 to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of
24 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is
25 released on parole, the parole order shall contain a notice that if
26 the parolee violates or conspires to violate article 7 of the
27 public health code, 1978 PA 368, MCL ~~—333.7401—~~ **333.7101** to

1 333.7545, and that violation or conspiracy to violate is punishable
2 by imprisonment for 4 or more years, or commits a violent felony
3 during his or her release on parole, parole shall be rescinded.

4 (10) ~~-(11)-~~ A parole order issued for a prisoner subject to
5 disciplinary time may contain a condition requiring the parolee to
6 be housed in a community corrections center or a community
7 residential home for not less than the first 30 days but not more
8 than the first 180 days of his or her term of parole. As used in
9 this subsection, "community corrections center" and "community
10 residential home" mean those terms as defined in section 65a.

11 (11) ~~-(12)-~~ The parole order shall contain a condition
12 requiring the parolee to pay the following amounts owed by the
13 prisoner, if applicable:

14 (a) The balance of filing fees and costs ordered to be paid
15 under section 2963 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.2963.

17 (b) The balance of any filing fee ordered to be paid by a
18 federal court under section 1915 of title 28 of the United States
19 Code, 28 ~~U.S.C.~~ USC 1915 and any unpaid order of costs assessed
20 against the prisoner.

21 (12) ~~-(13)-~~ In each case in which payment of restitution is
22 ordered as a condition of parole, a parole officer assigned to a
23 case shall review the case not less than twice yearly to ensure
24 that restitution is being paid as ordered. The final review shall
25 be conducted not less than 60 days before the expiration of the
26 parole period. If the parole officer determines that restitution is
27 not being paid as ordered, the parole officer shall file a written

1 report of the violation with the parole board on a form prescribed
2 by the parole board. The report shall include a statement of the
3 amount of arrearage and any reasons for the arrearage known by the
4 parole officer. The parole board shall immediately provide a copy
5 of the report to the court, the prosecuting attorney, and the
6 victim.

7 (13) ~~(14)~~ If a parolee is required to register pursuant to
8 the sex offenders registration act, 1994 PA 295, MCL 28.721 to
9 ~~28.732~~ **28.736**, the parole officer shall register the parolee as
10 provided in that act.

11 (14) ~~(15)~~ If the parole order contains a condition intended
12 to protect 1 or more named persons, the department shall enter
13 those provisions of the parole order into the corrections
14 management information system, accessible by the law enforcement
15 information network. If the parole board rescinds a parole order
16 described in this subsection, the department within 3 business days
17 shall remove from the corrections management information system the
18 provisions of that parole order.

19 (15) ~~(16)~~ As used in this section, "violent felony" means an
20 offense against a person in violation of section 82, 83, 84, 86,
21 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
22 520e, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA
23 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,
24 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
25 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529,
26 750.529a, and 750.530.

27 Sec. 40a. **(1) A PAROLE ORDER IS SUBJECT TO REVOCATION AT THE**

1 DISCRETION OF THE PAROLE BOARD FOR CAUSE AS PROVIDED IN THIS
2 SECTION.

3 (2) IF A PAROLED PRISONER WHO IS REQUIRED TO REGISTER PURSUANT
4 TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO
5 28.736, WILLFULLY VIOLATES THAT ACT, THE PAROLE BOARD SHALL REVOKE
6 THE PAROLE. IF A PRISONER CONVICTED OF VIOLATING OR CONSPIRING TO
7 VIOLATE SECTION 7401(2)(A)(i) OR (ii) OR 7403(2)(A)(i) OR (ii) OF THE
8 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, IS
9 RELEASED ON PAROLE AND VIOLATES OR CONSPIRES TO VIOLATE ARTICLE 7
10 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7101 TO 333.7545,
11 AND THAT VIOLATION OR CONSPIRACY TO VIOLATE IS PUNISHABLE BY
12 IMPRISONMENT FOR 4 OR MORE YEARS, OR COMMITS A VIOLENT FELONY
13 DURING HIS OR HER RELEASE ON PAROLE, PAROLE SHALL BE REVOKED.

14 (3) ~~(1)~~ Within 45 days after a paroled prisoner has been
15 returned or is available for return to a state correctional
16 facility under accusation of a parole violation other than
17 conviction for a felony or misdemeanor punishable by imprisonment
18 under the laws of this state, the United States, or any other state
19 or territory of the United States, the prisoner is entitled to a
20 fact-finding hearing on the charges before 1 member of the parole
21 board or an attorney hearings officer designated by the chairperson
22 of the parole board. The fact-finding hearing shall be conducted
23 only after the accused parolee has had a reasonable amount of time
24 to prepare a defense. The fact-finding hearing may be held at a
25 state correctional facility or at or near the location of the
26 alleged violation.

27 (4) ~~(2)~~ An accused parolee shall be given written notice of

1 the charges against him or her and the time, place, and purpose of
2 the fact-finding hearing. At the fact-finding hearing, the accused
3 parolee may be represented by an appointed or retained attorney and
4 is entitled to the following rights:

5 (a) Full disclosure of the evidence against him or her.

6 (b) To testify and present relevant witnesses and documentary
7 evidence.

8 (c) To confront and cross-examine adverse witnesses unless the
9 person conducting the fact-finding hearing finds on the record that
10 a witness is subject to risk of harm if his or her identity is
11 revealed.

12 (d) To present other relevant evidence in mitigation of the
13 charges.

14 (5) ~~-(3)-~~ A fact-finding hearing may be postponed for cause
15 beyond the 45-day time limit on the written request of the parolee,
16 the parolee's attorney, or, if a postponement of the preliminary
17 hearing has been granted beyond the 10-day time limit, by the
18 parole board.

19 (6) **THE DIRECTOR SHALL BE NOTIFIED IN WRITING IF THE**
20 **PRELIMINARY PAROLE VIOLATION HEARING IS NOT CONDUCTED WITHIN THE**
21 **10-DAY TIME LIMIT, AND THE HEARING SHALL BE CONDUCTED AS SOON AS**
22 **POSSIBLE. THE DIRECTOR SHALL BE NOTIFIED IN WRITING IF THE FACT-**
23 **FINDING HEARING IS NOT CONDUCTED WITHIN THE 45-DAY TIME LIMIT, AND**
24 **THE HEARING SHALL BE CONDUCTED AS SOON AS POSSIBLE. A PAROLEE HELD**
25 **IN CUSTODY SHALL NOT BE RELEASED PENDING DISPOSITION OF EITHER**
26 **HEARING.**

27 (7) ~~-(4)-~~ If the evidence presented is insufficient to support

1 the allegation that a parole violation occurred, the parolee shall
2 be reinstated to parole status.

3 (8) ~~-(5)-~~ If the parole board member or hearings officer
4 conducting the fact-finding hearing determines from a preponderance
5 of the evidence that a parole violation has occurred, the member or
6 hearings officer shall present the relevant facts to the parole
7 board and make a recommendation as to the disposition of the
8 charges.

9 (9) ~~-(6)-~~ If a preponderance of the evidence supports the
10 allegation that a parole violation occurred, the parole board may
11 revoke parole, and the parolee shall be provided with a written
12 statement of the findings of fact and the reasons for the
13 determination within 60 days after the paroled prisoner has been
14 returned or is available for return to a state correctional
15 facility.

16 (10) ~~-(7)-~~ A parolee who is ordered to make restitution under
17 the **WILLIAM VAN REGENMORTER** crime victim's rights act, ~~Act No. 87~~
18 ~~of the Public Acts of 1985, being sections 780.751 to 780.834 of~~
19 ~~the Michigan Compiled Laws 1985 PA 87, MCL 780.751 TO 780.834, or~~
20 the code of criminal procedure, ~~Act No. 175 of the Public Acts of~~
21 ~~1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws~~
22 **1927 PA 175, MCL 760.1 TO 777.69**, or to pay an assessment ordered
23 under section 5 of ~~Act No. 196 of the Public Acts of 1989, being~~
24 ~~section 780.905 of the Michigan Compiled Laws 1989 PA 196, MCL~~
25 **780.905**, as a condition of parole may have his or her parole
26 revoked by the parole board if the parolee fails to comply with the
27 order and if the parolee has not made a good faith effort to comply

1 with the order. In determining whether to revoke parole, the parole
2 board shall consider the parolee's employment status, earning
3 ability, and financial resources, the willfulness of the parolee's
4 failure to comply with the order, and any other special
5 circumstances that may have a bearing on the parolee's ability to
6 comply with the order.

7 **(11) AS USED IN THIS SECTION, "VIOLENT FELONY" MEANS THAT TERM**
8 **AS DEFINED IN SECTION 36.**