

HOUSE BILL No. 6690

November 19, 2008, Introduced by Rep. Alma Smith and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 6, 39a, 40a, 41, 43, 44, 45, and 46 (MCL 791.206, 791.239a, 791.240a, 791.241, 791.243, 791.244, 791.245, and 791.246), section 6 as amended by 2006 PA 172, sections 39a and 46 as added by 1982 PA 314, section 40a as amended by 2006 PA 532, and section 44 as amended by 1999 PA 191, and by adding section 31b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) The director may promulgate rules pursuant to the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
3 24.328, to provide for all of the following:

4 (a) The control, management, and operation of the general

1 affairs of the department.

2 (b) Supervision and control of probationers and probation
3 officers throughout this state.

4 (c) The manner in which applications for pardon, reprieve,
5 medical commutation, or commutation shall be made to the governor;
6 the procedures for handling applications and recommendations by the
7 parole board **AND THE SPECIAL PAROLE BOARD**; the manner in which
8 paroles shall be considered, the criteria to be used to reach
9 release decisions, the procedures for medical and special paroles,
10 and the duties of the parole board in those matters; interviews on
11 paroles and for the notice of intent to conduct an interview; the
12 entering of appropriate orders granting or denying paroles; the
13 supervision and control of paroled prisoners; and the revocation of
14 parole.

15 (d) The management and control of state penal institutions,
16 correctional farms, probation recovery camps, and programs for the
17 care and supervision of youthful trainees separate and apart from
18 persons convicted of crimes within the jurisdiction of the
19 department. Except as provided for in section 62(3), this
20 subdivision does not apply to detention facilities operated by
21 local units of government used to detain persons less than 72
22 hours. The rules may permit the use of portions of penal
23 institutions in which persons convicted of crimes are detained. The
24 rules shall provide that decisions as to the removal of a youth
25 from the youthful trainee facility or the release of a youth from
26 the supervision of the department shall be made by the department
27 and shall assign responsibility for those decisions to a committee.

1 (e) The management and control of prison labor and industry.

2 (f) The director may promulgate rules providing for the
3 creation and operation of a lifetime electronic monitoring program
4 to conduct electronic monitoring of individuals, who have served
5 sentences imposed for certain crimes, following their release from
6 parole, prison, or both parole and prison.

7 (2) The director may promulgate rules providing for a parole
8 board structure **OR SPECIAL PAROLE BOARD STRUCTURE** consisting of 3-
9 member panels.

10 (3) The director may promulgate further rules with respect to
11 the affairs of the department as the director considers necessary
12 or expedient for the proper administration of this act. The
13 director may modify, amend, supplement, or rescind a rule.

14 (4) The director and the corrections commission shall not
15 promulgate a rule or adopt a guideline that does either of the
16 following:

17 (a) Prohibits a probation officer or parole officer from
18 carrying a firearm while on duty.

19 (b) Allows a prisoner to have his or her name changed. If the
20 Michigan supreme court rules that this subdivision is violative of
21 constitutional provisions under the first and fourteenth amendments
22 to the United States constitution and article I, sections 2 and 4
23 of the state constitution of 1963, the remaining provisions of the
24 code shall remain in effect.

25 **SEC. 31B. (1) THERE IS ESTABLISHED IN THE DEPARTMENT A SPECIAL**
26 **PAROLE BOARD CONSISTING OF 7 MEMBERS WHO SHALL BE APPOINTED BY THE**
27 **DIRECTOR AND WHO SHALL BE WITHIN THE STATE CIVIL SERVICE.**

1 (2) THE CHAIRPERSON OF THE SPECIAL PAROLE BOARD SHALL BE
2 DESIGNATED BY THE DIRECTOR. THE CHAIRPERSON OF THE SPECIAL PAROLE
3 BOARD IS RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF THE
4 SPECIAL PAROLE BOARD. THE CHAIRPERSON MAY CONDUCT INTERVIEWS AND
5 PARTICIPATE IN THE BOARD'S DECISION-MAKING PROCESS.

6 (3) THE SPECIAL PAROLE BOARD ONLY HAS JURISDICTION OVER
7 MATTERS DESCRIBED IN SECTIONS 39A, 40A, 41, 43, 44, AND 45.

8 Sec. 39a. (1) Within 10 days after an arrest for an alleged
9 violation of parole, the parolee shall be entitled to a preliminary
10 hearing CONDUCTED BY OR ON BEHALF OF THE SPECIAL PAROLE BOARD to
11 determine whether there is probable cause to believe that the
12 conditions of parole have been violated or a fact-finding hearing
13 held pursuant to section 40a.

14 (2) Prior to the preliminary hearing, the accused parolee
15 shall be given written notice of the charges, time, place, and
16 purpose of the preliminary hearing.

17 (3) At the preliminary hearing, the accused parolee is
18 entitled to the following rights:

19 (a) Disclosure of the evidence against him or her.

20 (b) The right to testify and present relevant witnesses and
21 documentary evidence.

22 (c) The right to confront and cross-examine adverse witnesses
23 unless the person conducting the preliminary hearing finds on the
24 record that a witness may be subjected to risk of harm if his or
25 her identity is revealed.

26 (4) A preliminary hearing may be postponed beyond the 10-day
27 time limit on the written request of the parolee, but shall not be

1 postponed by the department.

2 (5) If a preliminary hearing is not held pursuant to
3 subsection (1), an accused parolee shall be given written notice of
4 the charges against him or her, the time, place and purpose of the
5 fact-finding hearing and a written summary of the evidence to be
6 presented against him or her.

7 (6) If a preliminary hearing is not held pursuant to
8 subsection (1), an accused parolee may not be found guilty of a
9 violation based on evidence that was not summarized in the notice
10 provided pursuant to subsection (5) except for good cause stated on
11 the record and included in the written findings of fact provided to
12 the parolee.

13 Sec. 40a. (1) After a prisoner is released on parole, the
14 prisoner's parole order is subject to revocation at the discretion
15 of the **SPECIAL** parole board for cause as provided in this section.

16 (2) If a paroled prisoner who is required to register pursuant
17 to the sex offenders registration act, 1994 PA 295, MCL 28.721 to
18 28.736, willfully violates that act, the **SPECIAL** parole board shall
19 revoke the parole. If a prisoner convicted of violating or
20 conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i)
21 or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and
22 333.7403, is released on parole and violates or conspires to
23 violate article 7 of the public health code, 1978 PA 368, MCL
24 333.7101 to 333.7545, and that violation or conspiracy to violate
25 is punishable by imprisonment for 4 or more years, or commits a
26 violent felony during his or her release on parole, parole shall be
27 revoked.

1 (3) Within 45 days after a paroled prisoner has been returned
2 or is available for return to a state correctional facility under
3 accusation of a parole violation other than conviction for a felony
4 or misdemeanor punishable by imprisonment under the laws of this
5 state, the United States, or any other state or territory of the
6 United States, the prisoner is entitled to a fact-finding hearing
7 on the charges before 1 member of the **SPECIAL** parole board or an
8 attorney hearings officer designated by the chairperson of the
9 **SPECIAL** parole board. The fact-finding hearing shall be conducted
10 only after the accused parolee has had a reasonable amount of time
11 to prepare a defense. The fact-finding hearing may be held at a
12 state correctional facility or at or near the location of the
13 alleged violation.

14 (4) If, before a fact-finding hearing begins, the accused
15 parolee alleges that he or she is indigent and requests that an
16 attorney be appointed to represent him or her, the **SPECIAL** parole
17 board member or attorney hearings officer who will conduct the
18 hearing shall determine whether the accused parolee is indigent. If
19 the accused parolee is determined to be indigent, the **SPECIAL**
20 parole board member or hearings officer shall cause the appointment
21 of an attorney to represent the accused parolee at the fact-finding
22 hearing. The cost of the appointed attorney shall be paid from the
23 department's general operating budget.

24 (5) An accused parolee shall be given written notice of the
25 charges against him or her and the time, place, and purpose of the
26 fact-finding hearing. At the fact-finding hearing, the accused
27 parolee may be represented by a retained attorney or an attorney

1 appointed under subsection (4) and is entitled to the following
2 rights:

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

4 (b) To testify and present relevant witnesses and documentary
5 evidence.

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

10 (d) To present other relevant evidence in mitigation of the
11 charges.

12 (6) A fact-finding hearing may be postponed for cause beyond
13 the 45-day time limit on the written request of the parolee, the
14 parolee's attorney, or, if a postponement of the preliminary parole
15 violation hearing required under section 39a has been granted
16 beyond the 10-day time limit, by the **SPECIAL** parole board.

17 (7) The director or a deputy director designated by the
18 director shall be notified in writing if the preliminary parole
19 violation hearing is not conducted within the 10-day time limit,
20 and the hearing shall be conducted as soon as possible. The
21 director or a deputy director designated by the director shall be
22 notified in writing if the fact-finding hearing is not conducted
23 within the 45-day time limit, and the hearing shall be conducted as
24 soon as possible. A parolee held in custody shall not be released
25 pending disposition of either hearing.

26 (8) If the evidence presented is insufficient to support the
27 allegation that a parole violation occurred, the parolee shall be

1 reinstated to parole status.

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

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

15 (11) A parolee who is ordered to make restitution under the
16 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
17 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175,
18 MCL 760.1 to 777.69, or to pay an assessment ordered under section
19 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have
20 his or her parole revoked by the **SPECIAL** parole board if the
21 parolee fails to comply with the order and if the parolee has not
22 made a good faith effort to comply with the order. In determining
23 whether to revoke parole, the **SPECIAL** parole board shall consider
24 the parolee's employment status, earning ability, and financial
25 resources, the willfulness of the parolee's failure to comply with
26 the order, and any other special circumstances that may have a
27 bearing on the parolee's ability to comply with the order.

1 (12) As used in this section, "violent felony" means that term
2 as defined in section 36.

3 Sec. 41. When the **SPECIAL** parole board has determined ~~the~~**A**
4 matter **UNDER SECTION 40A**, it shall enter an order rescinding ~~such~~
5 parole ~~—~~or reinstating the original order of parole or **SHALL** enter
6 ~~such~~**ANY** other order ~~as it may see fit~~**IT CONSIDERS APPROPRIATE**.

7 Sec. 43. All applications for pardons, reprieves, and
8 commutations shall be filed with the **SPECIAL** parole board upon
9 forms provided ~~therefor~~**FOR THAT PURPOSE** by the **SPECIAL** parole
10 board ~~—~~and shall contain ~~such~~ information, records, and documents
11 ~~as~~**THAT** the **SPECIAL** parole board ~~may~~**REQUIRES** by rule. ~~require~~.

12 Sec. 44. (1) Subject to the constitutional authority of the
13 governor to grant reprieves, commutations, and pardons, 1 member of
14 the **SPECIAL** parole board shall interview a prisoner serving a
15 sentence for murder in the first degree or a sentence of
16 imprisonment for life without parole at the conclusion of 10
17 calendar years and thereafter as determined appropriate by the
18 **SPECIAL** parole board, until ~~such time as~~ the prisoner is granted a
19 reprieve, commutation, or pardon by the governor ~~—~~or is deceased.
20 The interview schedule prescribed in this subsection applies to all
21 prisoners to whom this section is applicable, regardless of when
22 they were sentenced.

23 (2) Upon its own initiation of, or upon receipt of any
24 application for, a reprieve, commutation, or pardon, the **SPECIAL**
25 parole board shall do all of the following, as applicable:

26 (a) Not more than 60 days after receipt of an application,
27 conduct a review to determine whether the application for a

1 reprieve, commutation, or pardon has merit.

2 (b) Deliver either the written documentation of the initiation
3 or the original application with the **SPECIAL** parole board's
4 determination regarding merit, to the governor and retain a copy of
5 each in its file, pending an investigation and hearing.

6 (c) Within 10 days after initiation, or after determining that
7 an application has merit, forward to the sentencing judge and to
8 the prosecuting attorney of the county having original jurisdiction
9 of the case, or their successors in office, a written notice of the
10 filing of the application or initiation, together with copies of
11 the application or initiation, any supporting affidavits, and a
12 brief summary of the case. Within 30 days after receipt of notice
13 of the filing of any application or initiation, the sentencing
14 judge and the prosecuting attorney, or their successors in office,
15 may file information at their disposal, together with any
16 objections, in writing, ~~which~~ **THAT** they may desire to interpose. If
17 the sentencing judge and the prosecuting attorney, or their
18 successors in office, do not respond within 30 days, the parole
19 board shall proceed on the application or initiation.

20 (d) If an application or initiation for commutation is based
21 on physical or mental incapacity, direct the bureau of health care
22 services to evaluate the condition of the prisoner and report on
23 that condition. If the bureau of health care services determines
24 that the prisoner is physically or mentally incapacitated, the
25 bureau shall appoint a specialist in the appropriate field of
26 medicine ~~—~~who is not employed by the department ~~—~~to evaluate the
27 condition of the prisoner and to report on that condition. These

1 reports are protected by the doctor-patient privilege of
2 confidentiality, except that these reports shall be provided to the
3 governor for his or her review.

4 (e) Within 270 days after initiation by the **SPECIAL** parole
5 board or receipt of an application that the **SPECIAL** parole board
6 has determined to have merit pursuant to subdivision (a), make a
7 full investigation and determination on whether or not to proceed
8 to a public hearing.

9 (f) Conduct a public hearing not later than 90 days after
10 making a decision to proceed with consideration of a recommendation
11 for the granting of a reprieve, commutation, or pardon. The public
12 hearing shall be held before a formal recommendation is transmitted
13 to the governor. One member of the **SPECIAL** parole board who will be
14 involved in the formal recommendation may conduct the hearing, and
15 the public shall be represented by the attorney general or a member
16 of the attorney general's staff.

17 (g) At least 30 days before conducting the public hearing,
18 provide written notice of the public hearing by mail to the
19 attorney general, the sentencing trial judge, and the prosecuting
20 attorney, or their successors in office, and each victim who
21 requests notice pursuant to the **WILLIAM VAN REGENMORTER** crime
22 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

23 (h) Conduct the public hearing pursuant to the rules
24 promulgated by the department. Except as otherwise provided in this
25 subdivision, any person having information in connection with the
26 pardon, commutation, or reprieve shall be sworn as a witness. A
27 person who is a victim shall be given an opportunity to address and

1 be questioned by the **SPECIAL** parole board at the hearing or to
2 submit written testimony for the hearing. In hearing testimony, the
3 **SPECIAL** parole board shall give liberal construction to any
4 technical rules of evidence.

5 (i) Transmit its formal recommendation to the governor.

6 (j) Make all data in its files available to the governor if
7 the **SPECIAL** parole board recommends the granting of a reprieve,
8 commutation, or pardon.

9 (3) Except for medical records protected by the doctor-patient
10 privilege of confidentiality, the files of the **SPECIAL** parole board
11 in cases under this section ~~shall be~~ **ARE** matters of public record.

12 Sec. 45. In the conduct of any hearing or investigation as
13 ~~herein provided~~ **IN THIS ACT**, any member of the **SPECIAL** parole board
14 may administer the oath to any witness.

15 Sec. 46. All decisions and recommendations of the parole board
16 **OR THE SPECIAL PAROLE BOARD** required by this act shall be by a
17 majority vote of the parole board **OR SPECIAL PAROLE BOARD** or a
18 parole board panel **OR SPECIAL PAROLE BOARD PANEL** created pursuant
19 to section 6(2).