

**SUBSTITUTE FOR
HOUSE BILL NO. 5931**

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 33e and 35 (MCL 791.233e and 791.235), section
33e as added by 1992 PA 181 and section 35 as amended by 2012 PA
24.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section 33(1)(a) ~~and that shall~~**TO** govern
3 the exercise of the parole board's discretion ~~pursuant to~~**UNDER**
4 sections 34 and 35 as to the release of prisoners on parole under
5 this act. The purpose of the parole guidelines ~~shall be~~**IS** to
6 assist the parole board in making release decisions that enhance
7 the public safety.

1 (2) In developing the parole guidelines, the department shall
2 consider factors including, but not limited to, the following:

3 (a) The offense for which the prisoner is incarcerated at the
4 time of parole consideration.

5 (b) The prisoner's institutional program performance.

6 (c) The prisoner's institutional conduct.

7 (d) The prisoner's prior criminal record. As used in this
8 subdivision, "prior criminal record" means the recorded criminal
9 history of a prisoner, including all misdemeanor and felony
10 convictions, probation violations, juvenile adjudications for acts
11 that would have been crimes if committed by an adult, parole
12 failures, and delayed sentences.

13 (e) Other relevant factors as determined by the department, if
14 not otherwise prohibited by law.

15 (3) In developing the parole guidelines, the department may
16 consider both of the following factors:

17 (a) The prisoner's statistical risk screening.

18 (b) The prisoner's age.

19 (4) The department shall ensure that the parole guidelines do
20 not create disparities in release decisions based on race, color,
21 national origin, gender, religion, or disability.

22 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
23 the administrative procedures act of 1969, ~~Act No. 306 of the~~
24 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
25 ~~Michigan Compiled Laws, which shall~~ **1969 PA 306, MCL 24.201 TO**
26 **24.328, THAT** prescribe the parole guidelines. ~~The department shall~~
27 ~~submit the proposed rules to the joint committee on administrative~~

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~~rules not later than April 1, 1994. Until the rules take effect, the director shall require that the parole guidelines be considered by the parole board in making release decisions. After the rules take effect, the director shall require that the parole board follow the parole guidelines.~~

(6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection shall be for substantial and compelling reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.

[(7)] IN ORDER TO FACILITATE THE EFFICIENT

ADMINISTRATION OF THE DEPARTMENT AND NOT TO CREATE A LIBERTY INTEREST OR EXPECTATION OF PAROLE, IT IS PRESUMED THAT A PRISONER WHO EITHER SCORES HIGH PROBABILITY OF RELEASE ON THE PAROLE GUIDELINES OR A PRISONER UNDER THE CUSTODY OF THE DEPARTMENT AND SERVING A SENTENCE FOR A CONTROLLED SUBSTANCE OFFENSE OR NONASSAULTIVE OFFENSE WHO SCORES HIGH OR MEDIUM PROBABILITY OF RELEASE ON THE PAROLE GUIDELINES WILL NOT BE A MENACE TO SOCIETY OR THE PUBLIC SAFETY AND WILL BE RELEASED UPON SERVICE OF THE MINIMUM SENTENCE. SUBSTANTIAL AND COMPELLING REASONS FOR DEPARTURE INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING CIRCUMSTANCES:

(A) THE PRISONER HAS AN INSTITUTIONAL MISCONDUCT SCORE LOWER THAN -1.

(B) THERE IS OBJECTIVE EVIDENCE OF HARM TO A VICTIM THAT WAS

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1 NOT AVAILABLE FOR CONSIDERATION AT THE TIME OF SENTENCING, OR THAT
2 THE PRISONER HAS THREATENED TO HARM ANOTHER PERSON IF RELEASED.

3 (C) THE PRISONER HAS A PENDING FELONY CHARGE OR DETAINER.

4 (D) THE PRISONER HAS BEEN IDENTIFIED IN THE COMBINED DNA INDEX
5 SYSTEM AND LINKED TO AN UNADJUDICATED CRIMINAL VIOLATION. HOWEVER,
6 THE PRISONER SHALL BE NOTIFIED THAT HE OR SHE MAY REQUEST
7 ADDITIONAL DNA TESTING TO CONFIRM OR REFUTE A CODIS MATCH.

8 (E) THE RELEASE OF THE PRISONER WOULD OTHERWISE BE BARRED BY
9 LAW.

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19 (8) IN DECIDING WHETHER TO RELEASE A PRISONER WHO SCORES
20 AVERAGE PROBABILITY OF RELEASE ON THE PAROLE GUIDELINES, THE PAROLE
21 BOARD SHALL CONSIDER THE ABSENCE OR PRESENCE OF THE CIRCUMSTANCES
22 LISTED IN SUBSECTION [(7)].

23 (9) A PRISONER WHO HAS BEEN DENIED RELEASE UPON FIRST
24 ELIGIBILITY SHALL BE SUBSEQUENTLY REVIEWED AS FOLLOWS:

25 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
26 RELEASE, SUBSEQUENT REVIEWS SHALL BE ANNUAL.

27 (B) IF THE PRISONER SCORED LOW PROBABILITY OF RELEASE,

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1 SUBSEQUENT REVIEWS SHALL BE EVERY 2 YEARS UNTIL A SCORE OF AVERAGE
2 PROBABILITY IS ATTAINED.

3 (10) THE PAROLE BOARD MAY DEFER A RELEASE UPON THE SERVICE OF
4 THE PRISONER'S MINIMUM SENTENCE UNDER SUBSECTION [(7)] FOR UP TO 4
5 MONTHS TO ALLOW THE PRISONER TO COMPLETE A TREATMENT PROGRAM THAT
6 IS REASONABLY NECESSARY TO REDUCE THE RISK TO PUBLIC SAFETY FROM
7 THE PRISONER'S RELEASE.

[(11) SUBSECTIONS (7) TO (10) AS ADDED BY THE AMENDATORY ACT THAT
ADDED THIS SUBSECTION APPLY ONLY TO PRISONERS TRANSFERRED TO THE CUSTODY
OF THE DEPARTMENT ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
THAT ADDED THIS SUBSECTION, EXCEPT FOR PRISONERS SERVING A LIFE SENTENCE
OR A SENTENCE FOR A VIOLATION OF SECTION 83, 84, 86, 88, 89, 110A, 145N,
317, 321, 349, 349A, 350, 397, 462E, 520B, 520C, 520D, 520G, 529, OR 529A
OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, 750.84, 750.86,
750.88, 750.89, 750.110A, 750.145N, 750.317, 750.321, 750.349, 750.349A,
750.350, 750.397, 750.462E, 750.520B, 750.520C, 750.520D, 750.520G,
750.529, AND 750.529A. SUBSECTIONS (7) TO (10) AS ADDED BY THE AMENDATORY
ACT THAT ADDED THIS SUBSECTION DO NOT APPLY TO PRISONERS IN THE CUSTODY
OF THE DEPARTMENT AND SERVING ANY SENTENCE BEFORE THE EFFECTIVE DATE OF
THE AMENDATORY ACT THAT ADDED THIS SUBSECTION.]

8 (12)] ~~(7)~~—Not less than once every 2 years, the department
9 shall review the correlation between the implementation of the
10 parole guidelines and the recidivism rate of paroled prisoners, and
11 shall submit to the joint committee on administrative rules **AND THE**
12 **CRIMINAL JUSTICE POLICY COMMISSION** any proposed revisions to the
13 administrative rules that the department considers appropriate
14 after conducting the review.

15 Sec. 35. (1) The release of a prisoner on parole shall be
16 granted solely upon the initiative of the parole board. **THERE IS NO**
17 **ENTITLEMENT TO PAROLE.** The parole board may grant a parole without
18 interviewing the prisoner ~~. However, beginning January 26, 1996,~~
19 ~~the parole board may grant a parole without interviewing the~~
20 ~~prisoner only~~ if, after evaluating the prisoner according to the
21 parole guidelines, the parole board determines that the prisoner
22 has a high probability of being paroled and the parole board
23 therefore intends to parole the prisoner. Except as provided in
24 subsection (2), a prisoner shall not be denied parole without an
25 interview before 1 member of the parole board. The interview shall
26 be conducted at least 1 month before the expiration of the
27 prisoner's minimum sentence less applicable good time and

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

10 (a) A juvenile record that a court has ordered the department
11 to expunge.

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

18 (2) ~~Beginning January 26, 1996, if, IF,~~ after evaluating a
19 prisoner according to the parole guidelines, the parole board
20 determines that the prisoner has a low probability of being paroled
21 and the parole board therefore does not intend to parole the
22 prisoner, the parole board is not required to interview the
23 prisoner before denying parole to the prisoner.

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

26 (a) A prisoner's marital history.

27 (b) Prior arrests not resulting in conviction or adjudication

1 of delinquency.

2 (4) If an interview is to be conducted, the prisoner shall be
3 sent a notice of intent to conduct an interview at least 1 month
4 before the date of the interview. The notice shall state the
5 specific issues and concerns that shall be discussed at the
6 interview and that may be a basis for a denial of parole. ~~A denial~~
7 ~~of~~ **THE PAROLE BOARD SHALL NOT DENY** parole ~~shall not be~~ based on
8 reasons other than those stated in the notice of intent to conduct
9 an interview except for good cause stated to the prisoner at or
10 before the interview and in the written explanation required by
11 subsection (12). ~~This subsection does not apply until April 1,~~
12 ~~1983.~~

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

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

1 The prisoner or representative may present relevant evidence in
2 support of release.

3 (7) At least 90 days before the expiration of the prisoner's
4 minimum sentence less applicable good time and disciplinary credits
5 for a prisoner eligible for good time or disciplinary credits, or
6 at least 90 days before the expiration of the prisoner's minimum
7 sentence for a prisoner subject to disciplinary time, or the
8 expiration of a 12-month continuance for any prisoner, **THE**
9 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
10 report. ~~shall be prepared by appropriate institutional staff.~~ The
11 parole eligibility report ~~shall be~~ **IS** considered pertinent
12 information for purposes of subsection (5). The report ~~shall~~ **MUST**
13 include all of the following:

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

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

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

20 **(D) THE RESULTS ON ANY VALIDATED RISK ASSESSMENT INSTRUMENTS.**

21 **(E) ~~(d)~~** Whether the prisoner fully cooperated with ~~the~~ **THIS**
22 state by providing complete financial information as required under
23 section 3a of the state correctional facility reimbursement act,
24 1935 PA 253, MCL 800.403a.

25 **(F) ~~(e)~~** Whether the prisoner refused to attempt to obtain
26 identification documents under section 34c, if applicable.

27 **(G) ~~(f)~~** For a prisoner subject to disciplinary time, a

1 statement of all disciplinary time submitted for the parole board's
2 consideration under section 34 of 1893 PA 118, MCL 800.34.

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

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

10 (10) The parole board may grant a medical parole for a
11 prisoner determined to be physically or mentally incapacitated. A
12 decision to grant a medical parole shall be initiated ~~upon~~**ON** the
13 recommendation of the bureau of health care services and shall be
14 reached only after a review of the medical, institutional, and
15 criminal records of the prisoner.

16 (11) The department shall ~~submit~~**FILE** a petition to the
17 appropriate court under section 434 of the mental health code, 1974
18 PA 258, MCL 330.1434, for any prisoner being paroled or being
19 released after serving his or her maximum sentence whom the
20 department considers to be a person requiring treatment. The parole
21 board shall require mental health treatment as a special condition
22 of parole for any parolee whom the department has determined to be
23 a person requiring treatment whether or not the petition filed for
24 that prisoner is granted by the court. As used in this subsection,
25 "person requiring treatment" means that term as defined in section
26 401 of the mental health code, 1974 PA 258, MCL 330.1401.

27 (12) When the parole board makes a final determination not to

1 release a prisoner, **THE PAROLE BOARD SHALL PROVIDE** the prisoner
2 ~~shall be provided~~ with a written explanation of the reason for
3 denial and, if appropriate, specific recommendations for corrective
4 action the prisoner may take to facilitate release.

5 (13) This section does not apply to the placement on parole of
6 a person in conjunction with special alternative incarceration
7 under section 34a(7).