

HOUSE BILL No. 5638

June 5, 2014, Introduced by Reps. Oakes and Durhal and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 33, 33e, 34, and 35 (MCL 791.233, 791.233e, 791.234, and 791.235), section 33 as amended by 1998 PA 320, section 33e as added by 1992 PA 181, section 34 as amended by 2010 PA 353, and section 35 as amended by 2012 PA 24, and by adding section 32.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 32. AS USED IN SECTIONS 33, 33E, AND 35, "VALIDATED RISK
2 ASSESSMENT INSTRUMENT" MEANS AN OBJECTIVE AND COMPREHENSIVE
3 ANALYSIS OF A PRISONER'S CRIMINAL HISTORY AND BACKGROUND, AND HIS
4 OR HER BEHAVIOR WHILE IN THE CORRECTIONAL FACILITY, THAT IS USED TO
5 VALIDLY PREDICT THE RISK THE PRISONER WOULD PRESENT TO THE PUBLIC

1 **SAFETY IF AND WHEN HE OR SHE IS RELEASED.**

2 Sec. 33. (1) The grant of a parole is subject to all of the
3 following:

4 (a) A prisoner shall not be given liberty on parole until the
5 board has reasonable assurance, after consideration of all of the
6 facts and circumstances, including the ~~prisoner's mental and social~~
7 ~~attitude,~~ **REPORT OF A VALIDATED RISK ASSESSMENT INSTRUMENT**, that
8 the prisoner will not become a menace to society or to the public
9 safety.

10 (b) Except as provided in section 34a, a parole shall not be
11 granted to a prisoner other than a prisoner subject to disciplinary
12 time until the prisoner has served the minimum term imposed by the
13 court less allowances for good time or special good time to which
14 the prisoner may be entitled by statute, except that a prisoner
15 other than a prisoner subject to disciplinary time is eligible for
16 parole before the expiration of his or her minimum term of
17 imprisonment whenever the sentencing judge, or the judge's
18 successor in office, gives written approval of the parole of the
19 prisoner before the expiration of the minimum term of imprisonment.

20 (c) Except as provided in section 34a, and notwithstanding the
21 provisions of subdivision (b), a parole shall not be granted to a
22 prisoner other than a prisoner subject to disciplinary time
23 sentenced for the commission of a crime described in section 33b(a)
24 to (cc) until the prisoner has served the minimum term imposed by
25 the court less an allowance for disciplinary credits as provided in
26 section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in
27 this subdivision is not eligible for special parole.

1 (d) Except as provided in section 34a, a parole shall not be
2 granted to a prisoner subject to disciplinary time until the
3 prisoner has served the minimum term imposed by the court.

4 (e) ~~A prisoner shall not be released on parole until the~~
5 ~~parole board has satisfactory evidence that arrangements have been~~
6 ~~made~~ **THE DEPARTMENT SHALL IMPLEMENT AND ADMINISTER EVIDENCE-BASED**
7 **PROGRAMMING IN RESPONSE TO VALIDATED ASSESSMENT INSTRUMENTS TO**
8 **ENSURE THAT PRISONERS ARE PREPARED** for such honorable and useful
9 employment as the prisoner is capable of performing, for the
10 prisoner's education, or for the prisoner's care if the prisoner is
11 mentally or physically ill or incapacitated. **THE PAROLE BOARD SHALL**
12 **IMPOSE CONDITIONS OF PAROLE AS REQUIRED TO ENSURE THAT EACH**
13 **PRISONER PARTICIPATES IN EVIDENCE-BASED PROGRAMMING IDENTIFIED BY**
14 **THE DEPARTMENT AND DESIGNED TO ADDRESS THE PRISONER'S EDUCATIONAL,**
15 **VOCATIONAL, AND SOCIAL NEEDS, INCLUDING OBTAINING A HIGH SCHOOL**
16 **DIPLOMA OR GENERAL EDUCATIONAL DEVELOPMENT (GED) CERTIFICATE.**

17 ~~—— (f) A prisoner whose minimum term of imprisonment is 2 years~~
18 ~~or more shall not be released on parole unless he or she has either~~
19 ~~earned a high school diploma or earned its equivalent in the form~~
20 ~~of a general education development (GED) certificate. The director~~
21 ~~of the department may waive the restriction imposed by this~~
22 ~~subdivision as to any prisoner who is over the age of 65 or who was~~
23 ~~gainfully employed immediately before committing the crime for~~
24 ~~which he or she was incarcerated. The department of corrections may~~
25 ~~also waive the restriction imposed by this subdivision as to any~~
26 ~~prisoner who has a learning disability, who does not have the~~
27 ~~necessary proficiency in English, or who for some other reason that~~

1 ~~is not the fault of the prisoner is unable to successfully complete~~
2 ~~the requirements for a high school diploma or a general education~~
3 ~~development certificate. If the prisoner does not have the~~
4 ~~necessary proficiency in English, the department of corrections~~
5 ~~shall provide English language training for that prisoner necessary~~
6 ~~for the prisoner to begin working toward the completion of the~~
7 ~~requirements for a general education development certificate. This~~
8 ~~subdivision applies to prisoners sentenced for crimes committed~~
9 ~~after December 15, 1998. In providing an educational program~~
10 ~~leading to a high school degree or general education development~~
11 ~~certificate, the department shall give priority to prisoners~~
12 ~~sentenced for crimes committed on or before December 15, 1998.~~

13 (2) EXCEPT AS PROVIDED IN SECTION 34A AND SUBSECTION (3), A
14 PRISONER WHO HAS A PAROLE GUIDELINE OF HIGH OR AVERAGE PROBABILITY
15 UNDER SECTION 33E SHALL BE PLACED ON PAROLE WHEN THE PRISONER HAS
16 SERVED THE MINIMUM SENTENCE IMPOSED BY THE COURT LESS ANY
17 APPLICABLE GOOD TIME ALLOWANCES OR DISCIPLINARY CREDITS, EXCEPT
18 THAT THE PAROLE BOARD MAY DEFER A PRISONER'S PAROLE UNTIL AFTER
19 THAT DATE, BUT NOT LATER THAN THE DATE ON WHICH HE OR SHE HAS
20 SERVED 120% OF THE MINIMUM SENTENCE, FOR EITHER OF THE FOLLOWING
21 REASONS:

22 (A) TO ALLOW THE PRISONER TO COMPLETE REQUIRED PROGRAMS THAT
23 ARE DETERMINED BY THE DEPARTMENT OR THE PAROLE BOARD TO REDUCE THE
24 RISK TO THE PUBLIC SAFETY FROM THE PRISONER'S RELEASE.

25 (B) TO ALLOW A PERIOD OF TIME FOR THE PRISONER TO DEMONSTRATE
26 POSITIVE INSTITUTIONAL CONDUCT.

27 (3) SUBSECTION (2) DOES NOT APPLY TO ANY OF THE FOLLOWING

1 PRISONERS:

2 (A) A PRISONER SENTENCED FOR A FELONY FOR WHICH THE MAXIMUM
3 PENALTY IS IMPRISONMENT FOR LIFE.

4 (B) A PRISONER WHO HAS PENDING FELONY CHARGES OR DETAINERS.

5 (C) A PRISONER WHO WAS INTERVIEWED BY THE PAROLE BOARD AND
6 DENIED PAROLE UNDER SECTION 33E(5).

7 (4) ANY PRISONER NOT PLACED ON PAROLE UNDER SUBSECTION (2) WHO
8 HAS SERVED HIS OR HER MINIMUM SENTENCE SHALL BE PLACED ON PAROLE
9 NOT LATER THAN 9 MONTHS BEFORE THE EXPIRATION OF THE PRISONER'S
10 MAXIMUM SENTENCE IN ORDER TO ENSURE A PERIOD OF INTENSIVE
11 SUPERVISION IN THE COMMUNITY.

12 (5) A PRISONER WHOSE PAROLE IS RESCINDED UNDER SECTION 41
13 SHALL BE PLACED ON PAROLE AGAIN NOT MORE THAN 9 MONTHS FOLLOWING
14 THE DATE ON WHICH PAROLE WAS RESCINDED, UNLESS THE PRISONER'S
15 CONDUCT THAT LED TO THE PAROLE RESCISSION INVOLVED POSSESSION OR
16 USE OF A WEAPON OR INJURY TO A VICTIM, OR RESULTED FROM A SECOND OR
17 SUBSEQUENT PAROLE VIOLATION, IN WHICH CASE THE PAROLE BOARD SHALL
18 PLACE THE PRISONER ON PAROLE AGAIN AT ITS DISCRETION.

19 (6) ~~(2)~~ Paroles-in-custody to answer warrants filed by local
20 or out-of-state agencies, or immigration officials, are permissible
21 if an accredited agent of the agency filing the warrant calls for
22 the prisoner to be paroled in custody.

23 (7) ~~(3) Pursuant to~~ UNDER the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may
25 promulgate rules not inconsistent with this act with respect to
26 conditions to be imposed upon prisoners paroled under this act.

27 Sec. 33e. (1) The department shall develop parole guidelines

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

7 (2) In developing the parole guidelines, the department shall
 8 **USE A VALIDATED RISK ASSESSMENT INSTRUMENT. THE DEPARTMENT SHALL**
 9 consider factors including, but not limited to, the following **IN**
 10 **THE DEVELOPMENT OF THE PAROLE GUIDELINES:**

11 ~~—— (a) The offense for which the prisoner is incarcerated at the~~
 12 ~~time of parole consideration.~~

13 (A) ~~(b)~~ The prisoner's institutional program performance.

14 (B) ~~(c)~~ The prisoner's institutional conduct.

15 (C) ~~(d)~~ The prisoner's prior criminal record. As used in this
 16 subdivision, "prior criminal record" means the recorded criminal
 17 history of a prisoner, including all misdemeanor and felony
 18 convictions, probation violations, juvenile adjudications for acts
 19 that would have been crimes if committed by an adult, parole
 20 failures, and delayed sentences.

21 (D) ~~(e)~~ Other relevant factors as determined by the
 22 department, if not otherwise prohibited by law.

23 ~~—— (3) In developing the parole guidelines, the department may~~
 24 ~~consider both of the following factors:~~

25 ~~—— (a) The prisoner's statistical risk screening.~~

26 ~~—— (b) The prisoner's age.~~

27 (3) ~~(4)~~ The department shall ensure that the parole guidelines

1 do not create disparities in release decisions based on race,
2 color, national origin, gender, religion, or disability.

3 (4) ~~(5)~~—The department shall promulgate rules pursuant to
4 **UNDER** the administrative procedures act of 1969, ~~Act No. 306 of the~~
5 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
6 ~~Michigan Compiled Laws, which shall~~ **1969 PA 306, MCL 24.201 TO**
7 **24.328, THAT** prescribe the parole guidelines. ~~The department shall~~
8 ~~submit the proposed rules to the joint committee on administrative~~
9 ~~rules not later than April 1, 1994. Until the rules take effect,~~
10 ~~the director shall require that the parole guidelines be considered~~
11 ~~by the parole board in making release decisions. After the rules~~
12 ~~take effect, the director shall require that the parole board~~
13 ~~follow the parole guidelines.~~

14 (5) ~~(6)~~—The parole board may depart from the parole guidelines
15 by denying parole to a prisoner who has a high probability of
16 parole as determined under the parole guidelines or by granting
17 parole to a prisoner who has a low probability of parole as
18 determined under the parole guidelines. ~~A departure under this~~
19 ~~subsection shall be for substantial and compelling reasons stated~~
20 ~~in writing.~~ The parole board shall not use a prisoner's gender,
21 race, ethnicity, alienage, national origin, or religion to depart
22 from the recommended parole guidelines. **THE FOLLOWING ARE THE ONLY**
23 **REASONS FOR DEPARTING FROM A PAROLE GUIDELINE OF HIGH PROBABILITY**
24 **OF PAROLE:**

25 (A) **THE PRISONER'S CURRENT PSYCHOLOGICAL STATE AS DETERMINED**
26 **BY A PSYCHIATRIST BASED ON A DIAGNOSIS OF SERIOUS MENTAL ILLNESS**
27 **AND PSYCHOPATHOLOGY WOULD POSE A SIGNIFICANT RISK TO THE PUBLIC**

1 SAFETY IF THE PRISONER WERE RELEASED TO PAROLE.

2 (B) THE PRISONER HAS DEMONSTRATED CONTINUED RISK TO THE PUBLIC
3 SAFETY THROUGH SERIOUS INSTITUTIONAL MISCONDUCT.

4 (C) THE PRISONER IS SERVING A SENTENCE FOR WHICH THE MAXIMUM
5 PENALTY IS IMPRISONMENT FOR LIFE.

6 (D) THE PRISONER HAS PENDING FELONY CHARGES OR DETAINERS.

7 (E) A VALIDATED RISK ASSESSMENT INSTRUMENT HAS DEEMED THAT THE
8 PRISONER'S RISK OF REOFFENDING IS HIGH, IN THE ABSENCE OF A REENTRY
9 PLAN SUCH THAT THE PRISONER CANNOT BE EFFECTIVELY MANAGED IN THE
10 COMMUNITY.

11 (6) ~~(7)~~—Not less than once every 2 years, the department shall
12 review the correlation between the implementation of the parole
13 guidelines and the recidivism rate of paroled prisoners, and shall
14 submit to the joint committee on administrative rules any proposed
15 revisions to the administrative rules that the department considers
16 appropriate after conducting the review.

17 Sec. 34. (1) Except as provided in section 34a, a prisoner
18 sentenced to an indeterminate sentence and confined in a state
19 correctional facility with a minimum in terms of years other than a
20 prisoner subject to disciplinary time is subject to the
21 jurisdiction of the parole board when the prisoner has served a
22 period of time equal to the minimum sentence imposed by the court
23 for the crime of which he or she was convicted, less good time and
24 disciplinary credits, if applicable.

25 (2) Except as provided in section 34a, a prisoner subject to
26 disciplinary time sentenced to an indeterminate sentence and
27 confined in a state correctional facility with a minimum in terms

1 of years is subject to the jurisdiction of the parole board when
2 the prisoner has served a period of time equal to the minimum
3 sentence imposed by the court for the crime of which he or she was
4 convicted.

5 (3) If a prisoner other than a prisoner subject to
6 disciplinary time is sentenced for consecutive terms, whether
7 received at the same time or at any time during the life of the
8 original sentence, the parole board has jurisdiction over the
9 prisoner for purposes of parole when the prisoner has served the
10 total time of the added minimum terms, less the good time and
11 disciplinary credits allowed by statute. The maximum terms of the
12 sentences shall be added to compute the new maximum term under this
13 subsection, and discharge shall be issued only after the total of
14 the maximum sentences has been served less good time and
15 disciplinary credits, unless the prisoner is paroled and discharged
16 upon satisfactory completion of the parole.

17 (4) If a prisoner subject to disciplinary time is sentenced
18 for consecutive terms, whether received at the same time or at any
19 time during the life of the original sentence, the parole board has
20 jurisdiction over the prisoner for purposes of parole when the
21 prisoner has served the total time of the added minimum terms. The
22 maximum terms of the sentences shall be added to compute the new
23 maximum term under this subsection, and discharge shall be issued
24 only after the total of the maximum sentences has been served,
25 unless the prisoner is paroled and discharged upon satisfactory
26 completion of the parole.

27 (5) If a prisoner other than a prisoner subject to

1 disciplinary time has 1 or more consecutive terms remaining to
2 serve in addition to the term he or she is serving, the parole
3 board may terminate the sentence the prisoner is presently serving
4 at any time after the minimum term of the sentence has been served.

5 (6) A prisoner sentenced to imprisonment for life for any of
6 the following is not eligible for parole and is instead subject to
7 the provisions of section 44:

8 (a) First degree murder in violation of section 316 of the
9 Michigan penal code, 1931 PA 328, MCL 750.316.

10 (b) A violation of section 16(5) or 18(7) of the Michigan
11 penal code, 1931 PA 328, MCL 750.16 and 750.18.

12 (c) A violation of chapter XXXIII of the Michigan penal code,
13 1931 PA 328, MCL 750.200 to 750.212a.

14 (d) A violation of section 17764(7) of the public health code,
15 1978 PA 368, MCL 333.17764.

16 (e) First degree criminal sexual conduct in violation of
17 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
18 750.520b.

19 (f) Any other violation for which parole eligibility is
20 expressly denied under state law.

21 (7) A prisoner sentenced to imprisonment for life, other than
22 a prisoner described in subsection (6), is subject to the
23 jurisdiction of the parole board and may be placed on parole
24 according to the conditions prescribed in subsection (8) if he or
25 she meets any of the following criteria:

26 (a) Except as provided in subdivision (b) or (c), the prisoner
27 has served 10 calendar years of the sentence for a crime committed

1 before October 1, 1992 or 15 calendar years of the sentence for a
2 crime committed on or after October 1, 1992.

3 (b) Except as provided in subsection (12), the prisoner has
4 served 20 calendar years of a sentence for violating, or attempting
5 or conspiring to violate, section 7401(2)(a)(i) of the public health
6 code, 1978 PA 368, MCL 333.7401, and has another conviction for a
7 serious crime.

8 (c) Except as provided in subsection (12), the prisoner has
9 served 17-1/2 calendar years of the sentence for violating, or
10 attempting or conspiring to violate, section 7401(2)(a)(i) of the
11 public health code, 1978 PA 368, MCL 333.7401, and does not have
12 another conviction for a serious crime.

13 (8) A parole granted to a prisoner under subsection (7) is
14 subject to the following conditions:

15 (a) At the conclusion of 10 calendar years of the prisoner's
16 sentence and thereafter as determined by the parole board until the
17 prisoner is paroled, discharged, or deceased, and in accordance
18 with the procedures described in subsection (9), 1 member of the
19 parole board shall interview the prisoner. The interview schedule
20 prescribed in this subdivision applies to all prisoners to whom
21 subsection (7) applies, regardless of the date on which they were
22 sentenced.

23 (b) In addition to the interview schedule prescribed in
24 subdivision (a), the parole board shall review the prisoner's file
25 at the conclusion of 15 calendar years of the prisoner's sentence
26 and every 5 years thereafter until the prisoner is paroled,
27 discharged, or deceased. A prisoner whose file is to be reviewed

1 under this subdivision shall be notified of the upcoming file
2 review at least 30 days before the file review takes place and
3 shall be allowed to submit written statements or documentary
4 evidence for the parole board's consideration in conducting the
5 file review.

6 (c) A decision to grant or deny parole to the prisoner shall
7 not be made until after a public hearing held in the manner
8 prescribed for pardons and commutations in sections 44 and 45.
9 Notice of the public hearing shall be given to the sentencing
10 judge, or the judge's successor in office, and parole shall not be
11 granted if the sentencing judge, or the judge's successor in
12 office, files written objections to the granting of the parole
13 within 30 days of receipt of the notice of hearing. The written
14 objections shall be made part of the prisoner's file.

15 (d) A parole granted under subsection (7) shall be for a
16 period of not less than 4 years and subject to the usual rules
17 pertaining to paroles granted by the parole board. A parole granted
18 under subsection (7) is not valid until the transcript of the
19 record is filed with the attorney general whose certification of
20 receipt of the transcript shall be returnable to the office of the
21 parole board within 5 days. Except for medical records protected
22 under section 2157 of the revised judicature act of 1961, 1961 PA
23 236, MCL 600.2157, the file of a prisoner granted a parole under
24 subsection (7) is a public record.

25 (9) An interview conducted under subsection (8)(a) is subject
26 to both of the following requirements:

27 (a) The prisoner shall be given written notice, not less than

1 30 days before the interview date, stating that the interview will
2 be conducted.

3 (b) The prisoner may be represented at the interview by an
4 individual of his or her choice. The representative shall not be
5 another prisoner. A prisoner is not entitled to appointed counsel
6 at public expense. The prisoner or representative may present
7 relevant evidence in favor of holding a public hearing as allowed
8 in subsection ~~(8)(b)~~ **(8)(C)**.

9 (10) In determining whether a prisoner convicted of violating,
10 or attempting or conspiring to violate, section 7401(2)(a)(i) of the
11 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
12 imprisonment for life before October 1, 1998 is to be released on
13 parole, the parole board shall consider all of the following:

14 (a) Whether the violation was part of a continuing series of
15 violations of section 7401 or 7403 of the public health code, 1978
16 PA 368, MCL 333.7401 and 333.7403, by that individual.

17 (b) Whether the violation was committed by the individual in
18 concert with 5 or more other individuals.

19 (c) Any of the following:

20 (i) Whether the individual was a principal administrator,
21 organizer, or leader of an entity that the individual knew or had
22 reason to know was organized, in whole or in part, to commit
23 violations of section 7401 or 7403 of the public health code, 1978
24 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
25 which the individual was convicted was committed to further the
26 interests of that entity.

27 (ii) Whether the individual was a principal administrator,

1 organizer, or leader of an entity that the individual knew or had
2 reason to know committed violations of section 7401 or 7403 of the
3 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
4 whether the violation for which the individual was convicted was
5 committed to further the interests of that entity.

6 (iii) Whether the violation was committed in a drug-free school
7 zone.

8 (iv) Whether the violation involved the delivery of a
9 controlled substance to an individual less than 17 years of age or
10 possession with intent to deliver a controlled substance to an
11 individual less than 17 years of age.

12 (11) ~~Except as provided in section 34a, a prisoner's release~~
13 ~~on parole is discretionary with the parole board.~~ The action of the
14 parole board in granting a parole is appealable by the prosecutor
15 of the county from which the prisoner was committed or the victim
16 of the crime for which the prisoner was convicted. The appeal shall
17 be to the circuit court in the county from which the prisoner was
18 committed, by leave of the court.

19 (12) If the sentencing judge, or his or her successor in
20 office, determines on the record that a prisoner described in
21 subsection (7)(b) or (c) sentenced to imprisonment for life for
22 violating, or attempting or conspiring to violate, section
23 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401,
24 has cooperated with law enforcement, the prisoner is subject to the
25 jurisdiction of the parole board and may be released on parole as
26 provided in subsection (7)(b) or (c) 2-1/2 years earlier than the
27 time otherwise indicated in subsection (7)(b) or (c). The prisoner

1 is considered to have cooperated with law enforcement if the court
2 determines on the record that the prisoner had no relevant or
3 useful information to provide. The court shall not make a
4 determination that the prisoner failed or refused to cooperate with
5 law enforcement on grounds that the defendant exercised his or her
6 constitutional right to trial by jury. If the court determines at
7 sentencing that the defendant cooperated with law enforcement, the
8 court shall include its determination in the judgment of sentence.

9 (13) Notwithstanding subsections (1) and (2), an individual
10 convicted of violating, or attempting or conspiring to violate,
11 section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health code,
12 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred
13 before March 1, 2003, and who was sentenced to a term of years, is
14 eligible for parole after serving 20 years of the sentence imposed
15 for the violation if the individual has another serious crime or
16 17-1/2 years of the sentence if the individual does not have
17 another conviction for a serious crime, or after serving the
18 minimum sentence imposed for that violation, whichever is less.

19 (14) Notwithstanding subsections (1) and (2), an individual
20 who was convicted of violating, or attempting or conspiring to
21 violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public
22 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
23 occurred before March 1, 2003, and who was sentenced according to
24 those sections as they existed before March 1, 2003, is eligible
25 for parole after serving the minimum of each sentence imposed for
26 that violation or 10 years of each sentence imposed for that
27 violation, whichever is less.

1 (15) Notwithstanding subsections (1) and (2), an individual
2 who was convicted of violating, or attempting or conspiring to
3 violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public
4 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
5 occurred before March 1, 2003, and who was sentenced according to
6 those sections as they existed before March 1, 2003, is eligible
7 for parole after serving the minimum of each sentence imposed for
8 that violation or 5 years of each sentence imposed for that
9 violation, whichever is less.

10 (16) Notwithstanding subsections (1) and (2), an individual
11 who was convicted of violating, or attempting or conspiring to
12 violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
13 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
14 occurred before March 1, 2003, who was sentenced according to those
15 sections of law as they existed before March 1, 2003 to consecutive
16 terms of imprisonment for 2 or more violations of section
17 7401(2)(a) or 7403(2)(a), is eligible for parole after serving 1/2
18 of the minimum sentence imposed for each violation of section
19 7401(2)(a)(iv) or 7403(2)(a)(iv). This subsection applies only to
20 sentences imposed for violations of section 7401(2)(a)(iv) or
21 7403(2)(a)(iv) and does not apply if the sentence was imposed for a
22 conviction for a new offense committed while the individual was on
23 probation or parole.

24 (17) The parole board shall provide notice to the prosecuting
25 attorney of the county in which the individual was convicted before
26 granting parole to the individual under subsection (13), (14),
27 (15), or (16).

1 (18) As used in this section:

2 (a) "Serious crime" means violating or conspiring to violate
3 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
4 333.7545, that is punishable by imprisonment for more than 4 years,
5 or an offense against a person in violation of section 83, 84, 86,
6 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
7 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
8 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
9 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
10 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

11 (b) "State correctional facility" means a facility that houses
12 prisoners committed to the jurisdiction of the department.

13 Sec. 35. (1) ~~The release of a prisoner on parole shall be~~
14 ~~granted solely upon the initiative of the parole board.~~ The parole
15 board may grant a parole without interviewing the prisoner -
16 ~~However, beginning January 26, 1996, the parole board may grant a~~
17 ~~parole without interviewing the prisoner only~~ if, after evaluating
18 the prisoner according to the parole guidelines, the parole board
19 determines that the prisoner has a high probability of being
20 paroled and the parole board therefore intends to parole the
21 prisoner. Except as provided in subsection (2), a prisoner shall
22 not be denied parole without an interview before 1 member of the
23 parole board. The interview shall be conducted at least 1 month
24 before the expiration of the prisoner's minimum sentence less
25 applicable good time and disciplinary credits for a prisoner
26 eligible for good time and disciplinary credits, or at least 1
27 month before the expiration of the prisoner's minimum sentence for

1 a prisoner subject to disciplinary time. The parole board shall
2 consider any statement made to the parole board by a crime victim
3 under the William Van Regenmorter crime victim's rights act, 1985
4 PA 87, MCL 780.751 to 780.834, or under any other provision of law.
5 The parole board shall not consider any of the following factors in
6 making a parole determination:

7 (a) A juvenile record that a court has ordered the department
8 to expunge.

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

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

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

23 (a) A prisoner's marital history.

24 (b) Prior arrests not resulting in conviction or adjudication
25 of delinquency.

26 (4) If an interview is to be conducted, the prisoner shall be
27 sent a notice of intent to conduct an interview at least 1 month

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

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

15 (6) A prisoner may waive the right to an interview by 1 member
16 of the parole board. The waiver of the right to be interviewed
17 shall be given not more than 30 days after the notice of intent to
18 conduct an interview is issued and shall be made in writing. During
19 the interview held pursuant to a notice of intent to conduct an
20 interview, the prisoner may be represented by an individual of his
21 or her choice. The representative shall not be another prisoner or
22 an attorney. A prisoner is not entitled to appointed counsel at
23 public expense. The prisoner or representative may present relevant
24 evidence in support of release.

25 (7) At least 90 days before the expiration of the prisoner's
26 minimum sentence less applicable good time and disciplinary credits
27 for a prisoner eligible for good time or disciplinary credits, or

1 at least 90 days before the expiration of the prisoner's minimum
2 sentence for a prisoner subject to disciplinary time, or the
3 expiration of a 12-month continuance for any prisoner, a parole
4 eligibility report shall be prepared by appropriate institutional
5 staff. The parole eligibility report shall be considered pertinent
6 information for purposes of subsection (5). The report shall
7 include all of the following:

8 (a) A statement of all major misconduct charges of which the
9 prisoner was found guilty and the punishment served for the
10 misconduct.

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

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

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

15 **(E)** ~~(d)~~—Whether the prisoner fully cooperated with the state
16 by providing complete financial information as required under
17 section 3a of the state correctional facility reimbursement act,
18 1935 PA 253, MCL 800.403a.

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

21 **(G)** ~~(f)~~—For a prisoner subject to disciplinary time, a
22 statement of all disciplinary time submitted for the parole board's
23 consideration under section 34 of 1893 PA 118, MCL 800.34.

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

26 (9) Psychological evaluations performed at the request of the
27 parole board to assist it in reaching a decision on the release of

1 a prisoner may be performed by the same person who provided the
2 prisoner with therapeutic treatment, unless a different person is
3 requested by the prisoner or parole board.

4 (10) The parole board may grant a medical parole for a
5 prisoner determined to be physically or mentally incapacitated. A
6 decision to grant a medical parole shall be initiated upon the
7 recommendation of the bureau of health care services and shall be
8 reached only after a review of the medical, institutional, and
9 criminal records of the prisoner.

10 (11) The department shall submit a petition to the appropriate
11 court under section 434 of the mental health code, 1974 PA 258, MCL
12 330.1434, for any prisoner being paroled or being released after
13 serving his or her maximum sentence whom the department considers
14 to be a person requiring treatment. The parole board shall require
15 mental health treatment as a special condition of parole for any
16 parolee whom the department has determined to be a person requiring
17 treatment whether or not the petition filed for that prisoner is
18 granted by the court. As used in this subsection, "person requiring
19 treatment" means that term as defined in section 401 of the mental
20 health code, 1974 PA 258, MCL 330.1401.

21 (12) When the parole board makes a final determination not to
22 release a prisoner, the prisoner shall be provided with a written
23 explanation of the reason for denial and, if appropriate, specific
24 recommendations for corrective action the prisoner may take to
25 facilitate release.

26 (13) This section does not apply to the placement on parole of
27 a person in conjunction with special alternative incarceration

1 under section 34a(7).