

HOUSE BILL No. 5931

November 6, 2014, Introduced by Rep. Haveman and referred to the Committee on Appropriations.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 11a, 20g, 33, 33e, 35, 39a, and 40a (MCL 791.211a, 791.220g, 791.233, 791.233e, 791.235, 791.239a, and 791.240a), section 11a as amended by 1998 PA 204, section 20g as amended by 2000 PA 211, section 33 as amended by 1998 PA 320, section 33e as added by 1992 PA 181, section 35 as amended by 2012 PA 24, section 39a as added by 1982 PA 314, and section 40a as amended by 2006 PA 532.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11a. (1) The director of corrections may enter into
2 contracts on behalf of this state as the director considers
3 appropriate to implement the participation of this state in the
4 interstate corrections compact ~~pursuant to~~ **ENTERED INTO UNDER 1994**
5 **PA 92, MCL 3.981 TO 3.984, UNDER** article III of **SECTION 3 OF** the

1 interstate corrections compact, **1994 PA 92, MCL 3.983**. The
2 contracts may authorize confinement of prisoners in, or transfer of
3 prisoners from, correctional facilities under the jurisdiction of
4 the department of corrections. A contract ~~shall~~**MAY** not authorize
5 the confinement of a prisoner who is in the custody of the
6 department in an institution of a state other than a state that is
7 a party to the interstate corrections compact. When transferring
8 prisoners to institutions of other states under this section, the
9 director shall endeavor to ensure that the transfers do not
10 disproportionately affect groups of prisoners according to race,
11 religion, color, creed, or national origin.

12 (2) The director of corrections shall first determine, on the
13 basis of an inspection made by his or her direction, that an
14 institution of another state is a suitable place for confinement of
15 prisoners committed to his or her custody before entering into a
16 contract permitting that confinement, and shall, at least annually,
17 redetermine the suitability of that confinement. In determining the
18 suitability of an institution of another state, the director shall
19 determine that the institution maintains standards of care and
20 discipline not incompatible with those of this state and that all
21 inmates confined in that institution are treated equitably,
22 regardless of race, religion, color, creed, or national origin.

23 (3) In considering transfers of prisoners out-of-state
24 ~~pursuant to~~**UNDER** the interstate corrections compact ~~due to~~**ENTERED**
25 **INTO UNDER 1994 PA 92, MCL 3.981 TO 3.984, BECAUSE OF** bed space
26 needs, the department shall do all of the following:

27 (a) Consider first prisoners who volunteer to transfer ~~as long~~

1 ~~as~~ **IF** they meet the eligibility criteria for ~~such~~ **THE** transfer.

2 (b) Provide law library materials including Michigan Compiled
3 Laws, Michigan state and federal cases, and U.S. sixth circuit
4 court cases.

5 (c) Not transfer a prisoner who has a significant medical or
6 mental health need.

7 (d) Use objective criteria in determining which prisoners to
8 transfer.

9 (4) Unless a prisoner consents in writing, a prisoner
10 transferred under the interstate corrections compact ~~due to~~ **BECAUSE**
11 **OF** bed space needs ~~shall~~ **MAY** not be confined in another state for
12 more than 1 year.

13 (5) A prisoner who is transferred to an institution of another
14 state under this section ~~shall~~ **MUST** receive all of the following
15 while in the receiving state:

16 (a) Mail services and access to the court.

17 (b) Visiting and telephone privileges.

18 (c) Occupational and vocational programs such as GED-ABE and
19 appropriate vocational programs for his or her level of custody.

20 (d) Programs such as substance ~~abuse~~ **USE** programs, sex
21 offender programs, and life skills development.

22 **(E) HIGH SCHOOL EQUIVALENCY TRAINING AND CERTIFICATION.**

23 **(F)** ~~(e)~~ Routine and emergency health care, dental care, and
24 mental health services.

25 ~~One year after April 13, 1994 and annually after that~~
26 ~~date,~~ **BY APRIL 13 OF EACH YEAR,** the department shall report all of
27 the following to the senate and house committees responsible for

1 legislation concerning corrections and to the appropriations
2 subcommittees on corrections:

3 (a) The number of prisoners transferred to or from
4 correctional facilities in this state ~~pursuant to~~ **UNDER** the
5 interstate corrections compact **ENTERED INTO UNDER 1994 PA 92, MCL**
6 **3.981 TO 3.984.**

7 (b) The cost to the state of the transfers described in
8 subdivision (a).

9 (c) The reasons for the transfers described in subdivision
10 (a).

11 Sec. 20g. (1) The department may establish a youth
12 correctional facility which ~~shall~~ **MUST** house only prisoners
13 committed to the jurisdiction of the department who are 19 years of
14 age or less. If the department establishes or contracts with a
15 private vendor for the operation of a youth correctional facility,
16 following intake processing in a department operated facility, the
17 department shall house all male prisoners who are 16 years of age
18 or less at the youth correctional facility unless the department
19 determines that the prisoner should be housed at a different
20 facility for reasons of security, safety, or because of the
21 prisoner's specialized physical or mental health care needs.

22 (2) Except as provided in subsection (3), a prisoner who is 16
23 years of age or less and housed at a youth correctional facility
24 shall only be placed in a general population housing unit with
25 prisoners who are 16 years of age or less.

26 (3) A prisoner who becomes 17 years of age while being housed
27 at a youth correctional facility and who has a satisfactory prison

1 record may remain in a general population housing unit for no more
2 than 1 year with prisoners who are 16 years of age or less.

3 (4) Except as provided in subsection (3), a prisoner who is 16
4 years of age or less and housed at a youth correctional facility
5 shall not ~~be allowed to be~~ in the proximity of a prisoner who is 17
6 years of age or more without the presence and direct supervision of
7 custody personnel in the immediate vicinity.

8 (5) The department may establish and operate the youth
9 correctional facility or may contract on behalf of the state with a
10 private vendor for the construction or operation, or both, of the
11 youth correctional facility. If the department contracts with a
12 private vendor to construct, rehabilitate, develop, renovate, or
13 operate any existing or anticipated facility ~~pursuant to~~ **UNDER** this
14 section, the department shall require a written certification from
15 the private vendor regarding all of the following:

16 (a) If practicable to efficiently and effectively complete the
17 project, the private vendor shall follow a competitive bid process
18 for the construction, rehabilitation, development, or renovation of
19 the facility, and this process ~~shall~~ **MUST** be open to all Michigan
20 residents and firms. The private vendor shall not discriminate
21 against any contractor on the basis of its affiliation or
22 nonaffiliation with any collective bargaining organization.

23 (b) The private vendor shall make a good faith effort to
24 employ, if qualified, Michigan residents at the facility.

25 (c) The private vendor shall make a good faith effort to
26 employ or contract with Michigan residents and firms to construct,
27 rehabilitate, develop, or renovate the facility.

1 (6) If the department contracts with a private vendor for the
2 operation of the youth correctional facility, the department shall
3 require by contract that the personnel employed by the private
4 vendor in the operation of the facility be certified as
5 correctional officers to the same extent as would be required if
6 those personnel were employed in a correctional facility operated
7 by the department. The department also shall require by contract
8 that the private vendor meet requirements specified by the
9 department regarding security, protection of the public,
10 inspections by the department, programming, liability and
11 insurance, conditions of confinement, educational services required
12 under subsection (11), and any other issues the department
13 considers necessary for the operation of the youth correctional
14 facility. The department shall also require that the contract
15 include provisions to protect the public's interest if the private
16 vendor defaults on the contract. Before finalizing a contract with
17 a private vendor for the construction or operation of the youth
18 correctional facility, the department shall submit the proposed
19 contract to the standing committees of the senate and the house of
20 representatives having jurisdiction of corrections issues, the
21 corrections subcommittees of the standing committees on
22 appropriations of the senate and the house of representatives, and,
23 with regard to proposed construction contracts, the joint committee
24 on capital outlay. A contract between the department and a private
25 vendor for the construction or operation of the youth correctional
26 facility ~~shall be~~ **IS** contingent upon appropriation of the required
27 funding. If the department contracts with a private vendor under

1 this section, the selection of that private vendor ~~shall~~**MUST** be by
2 open, competitive bid.

3 (7) The department shall not site a youth correctional
4 facility under this section in a city, village, or township unless
5 the local legislative body of that city, village, or township
6 adopts a resolution approving the location.

7 (8) A private vendor operating a youth correctional facility
8 under a contract under this section shall not do any of the
9 following, unless directed to do so by the department policy:

10 (a) Calculate inmate release and parole eligibility dates.

11 (b) Award good time or disciplinary credits, or impose
12 disciplinary time.

13 (c) Approve inmates for extensions of limits of confinement.

14 (9) The youth correctional facility ~~shall~~**MUST** be open to
15 visits during all business hours, and during nonbusiness hours
16 unless an emergency prevents it, by any elected state senator or
17 state representative.

18 (10) Once each year, the department shall report on the
19 operation of the facility. ~~Copies of~~**THE DEPARTMENT SHALL SUBMIT**
20 the report ~~shall be submitted~~ to the chairpersons of the house and
21 senate committees responsible for legislation on corrections or
22 judicial issues, and to the clerk of the house of representatives
23 and the secretary of the senate.

24 (11) Regardless of whether the department itself operates the
25 youth correctional facility or contracts with a private vendor to
26 operate the youth correctional facility, all of the following
27 educational services ~~shall~~**MUST** be provided for juvenile prisoners

1 housed at the facility who have not earned a high school diploma or
2 received a general education certificate (GED):

3 (a) The department or private vendor shall require that a
4 prisoner whose academic achievement level is not sufficient to
5 allow the prisoner to participate effectively in a program leading
6 to the attainment of a ~~GED certificate~~ participate in classes that
7 ~~will prepare him or her to participate effectively in the GED~~
8 ~~program,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall provide
9 those classes in the facility.

10 (b) The department or private vendor shall require that a
11 prisoner who successfully completes classes described in
12 subdivision (a), or whose academic achievement level is otherwise
13 sufficient, participate in classes leading to the attainment of a
14 ~~GED certificate,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall
15 provide those classes.

16 (12) Neither the department nor the private vendor shall seek
17 to have the youth correctional facility authorized as a public
18 school academy under the revised school code, 1976 PA 451, MCL
19 380.1 to 380.1852.

20 (13) A private vendor that operates the youth correctional
21 facility under a contract with the department shall provide written
22 notice of its intention to discontinue its operation of the
23 facility. This subsection does not authorize or limit liability for
24 a breach or default of contract. If the reason for the
25 discontinuance is that the private vendor intends not to renew the
26 contract, the notice ~~shall~~ **MUST** be delivered to the director of the
27 department at least 1 year before the contract expiration date. If

1 the discontinuance is for any other reason, the notice ~~shall~~**MUST**
2 be delivered to the director of the department at least 6 months
3 before the date ~~on which~~**THAT** the private vendor will discontinue
4 its operation of the facility. This subsection does not authorize
5 or limit liability for a breach or default of contract.

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

8 (a) ~~A~~**EXCEPT AS OTHERWISE PROVIDED IN SECTION 33E, A** prisoner
9 shall ~~not~~ be given liberty on parole ~~until~~**WHEN THE PRISONER HAS**
10 **SERVED THE MINIMUM SENTENCE IMPOSED BY THE COURT. A PRISONER SHALL**
11 **NOT BE GIVEN LIBERTY ON PAROLE IF** the board has ~~reasonable~~
12 ~~assurance, after consideration of all of the facts and~~
13 ~~circumstances, including the prisoner's mental and social attitude,~~
14 **A SUBSTANTIAL AND COMPELLING REASON TO CONCLUDE** that the prisoner
15 **IF RELEASED** will ~~not~~ become a menace to society or to the public
16 safety. **THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING**
17 **PRISONERS:**

18 (i) **A PRISONER SENTENCED FOR A FELONY FOR WHICH THE MAXIMUM**
19 **PENALTY IS IMPRISONMENT FOR LIFE.**

20 (ii) **A PRISONER WHO HAS PENDING FELONY CHARGES OR DETAINERS.**

21 (iii) **A PRISONER WHO WAS INTERVIEWED BY THE PAROLE BOARD AND**
22 **DENIED PAROLE UNDER SECTION 33E.**

23 (b) Except as provided in section 34a, a parole shall not be
24 granted to a prisoner other than a prisoner subject to disciplinary
25 time until the prisoner has served the minimum term imposed by the
26 court less allowances for good time or special good time to which
27 the prisoner may be entitled by statute, except that a prisoner

1 other than a prisoner subject to disciplinary time is eligible for
2 parole before the expiration of his or her minimum term of
3 imprisonment ~~whenever~~ **IF** the sentencing judge, or the judge's
4 successor in office, gives written approval of the parole of the
5 prisoner before the expiration of the minimum term of imprisonment.

6 (c) Except as provided in section 34a, and notwithstanding ~~the~~
7 ~~provisions of~~ subdivision (b), a parole ~~shall~~ **MAY** not be granted to
8 a prisoner other than a prisoner subject to disciplinary time
9 sentenced for the commission of a crime described in section 33b(a)
10 to (cc) until the prisoner has served the minimum term imposed by
11 the court less an allowance for disciplinary credits as provided in
12 section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in
13 this subdivision is not eligible for special parole.

14 (d) Except as provided in section 34a, a parole ~~shall~~ **MAY** not
15 be granted to a prisoner subject to disciplinary time until the
16 prisoner has served the minimum term imposed by the court.

17 (e) A prisoner shall not be released on parole until the
18 parole board has satisfactory evidence that arrangements have been
19 made for such honorable and useful employment as the prisoner is
20 capable of performing, for the prisoner's education, or for the
21 prisoner's care if the prisoner is mentally or physically ill or
22 incapacitated. **THE PAROLE BOARD SHALL IMPOSE CONDITIONS OF PAROLE**
23 **REQUIRING EACH PRISONER TO PARTICIPATE IN PROGRAMMING IDENTIFIED BY**
24 **THE DEPARTMENT AND DESIGNED TO ADDRESS THE PRISONER'S BEHAVIORAL,**
25 **EDUCATIONAL, AND SOCIAL NEEDS.**

26 (f) A prisoner whose minimum term of imprisonment is 2 years
27 or more shall not be released on parole unless he or she has either

1 earned a high school diploma or ~~earned its equivalent in the form~~
2 ~~of a general education development (GED)~~ **A HIGH SCHOOL EQUIVALENCY**
3 certificate. The director of the department may waive the
4 restriction imposed by this subdivision ~~as to any~~ **FOR A** prisoner
5 who is over the age of 65 or who was gainfully employed immediately
6 before committing the crime for which he or she was incarcerated.
7 The department of corrections may also waive the restriction
8 imposed by this subdivision ~~as to any~~ **FOR A** prisoner who has a
9 learning disability, who does not have the necessary proficiency in
10 English, or who for some other reason that is not the fault of the
11 prisoner is unable to successfully complete the requirements for a
12 high school diploma or a ~~general education development~~ **HIGH SCHOOL**
13 **EQUIVALENCY** certificate. If the prisoner does not have the
14 necessary proficiency in English, the department of corrections
15 shall provide English language training for that prisoner necessary
16 for the prisoner to begin working toward the completion of the
17 requirements for a general education development certificate. This
18 subdivision applies to prisoners sentenced for crimes committed
19 after December 15, 1998. In providing an educational program
20 leading to a high school degree or ~~general education development~~
21 **HIGH SCHOOL EQUIVALENCY** certificate, the department shall give
22 priority to prisoners sentenced for crimes committed on or before
23 December 15, 1998.

24 (G) **A PRISONER WHO IS SENTENCED ON OR AFTER THE EFFECTIVE DATE**
25 **OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION WHO IS NOT PLACED**
26 **ON PAROLE UPON SERVICE OF HIS OR HER MINIMUM SENTENCE UNDER SECTION**
27 **33E SHALL BE PLACED ON PAROLE NOT LATER THAN 9 MONTHS BEFORE THE**

1 **EXPIRATION OF THE PRISONER'S MAXIMUM SENTENCE TO ENSURE A PERIOD OF**
2 **INTENSIVE SUPERVISION IN THE COMMUNITY.**

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

7 (3) ~~Pursuant to~~ **UNDER** the administrative procedures act of
8 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may
9 promulgate rules not inconsistent with this act with respect to
10 conditions to be imposed upon prisoners paroled under this act.

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

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

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

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

23 (c) The prisoner's institutional conduct.

24 (d) The prisoner's prior criminal record. As used in this
25 subdivision, "prior criminal record" means the recorded criminal
26 history of a prisoner, including all misdemeanor and felony
27 convictions, probation violations, juvenile adjudications for acts

1 that would have been crimes if committed by an adult, parole
2 failures, and delayed sentences.

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

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

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

8 (b) The prisoner's age.

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

12 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
13 the administrative procedures act of 1969, ~~Act No. 306 of the~~
14 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
15 ~~Michigan Compiled Laws, which shall~~ **1969 PA 306, MCL 24.201 TO**
16 **24.328, THAT** prescribe the parole guidelines. ~~The department shall~~
17 ~~submit the proposed rules to the joint committee on administrative~~
18 ~~rules not later than April 1, 1994. Until the rules take effect,~~
19 ~~the director shall require that the parole guidelines be considered~~
20 ~~by the parole board in making release decisions. After the rules~~
21 ~~take effect, the director shall require that the parole board~~
22 ~~follow the parole guidelines.~~

23 (6) ~~The parole board may depart from the parole guidelines by~~
24 ~~denying parole to a prisoner who has a high probability of parole~~
25 ~~as determined under the parole guidelines or by granting parole to~~
26 ~~a prisoner who has a low probability of parole as determined under~~
27 ~~the parole guidelines. A departure under this subsection shall be~~

1 ~~for substantial and compelling reasons stated in writing. The~~
2 ~~parole board shall not use a prisoner's gender, race, ethnicity,~~
3 ~~alienage, national origin, or religion to depart from the~~
4 ~~recommended parole guidelines.~~ SHALL RELEASE A PRISONER WHO SCORES
5 HIGH OR AVERAGE PROBABILITY OF RELEASE UPON SERVICE OF THE
6 PRISONER'S MINIMUM SENTENCE, UNLESS 1 OF THE FOLLOWING
7 CIRCUMSTANCES IS PRESENT:

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

10 (B) THERE IS OBJECTIVE AND VERIFIABLE EVIDENCE OF
11 POSTSENTENCING CONDUCT NOT ALREADY SCORED IN THE PAROLE GUIDELINES
12 THAT DEMONSTRATES THAT THE PRISONER WOULD PRESENT A HIGH RISK TO
13 PUBLIC SAFETY IF RELEASED.

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

15 (D) THE RELEASE OF THE PRISONER WOULD OTHERWISE BE BARRED BY
16 LAW.

17 (7) THE PAROLE BOARD SHALL CONDUCT A REVIEW OF A PRISONER WHO
18 HAS BEEN DENIED RELEASE UNDER SUBSECTION (6) AS FOLLOWS:

19 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
20 RELEASE, CONDUCT A REVIEW NOT LESS THAN ANNUALLY.

21 (B) IF THE PRISONER SCORED LOW PROBABILITY OF RELEASE, CONDUCT
22 A REVIEW NOT LESS THAN EVERY 2 YEARS UNTIL A SCORE OF HIGH OR
23 AVERAGE PROBABILITY IS ATTAINED.

24 (8) THE PAROLE BOARD MAY DEFER A RELEASE UPON THE SERVICE OF
25 THE PRISONER'S MINIMUM SENTENCE UNDER SUBSECTION (6) FOR UP TO 4
26 MONTHS TO ALLOW THE PRISONER TO COMPLETE A TREATMENT PROGRAM THAT
27 IS REASONABLY NECESSARY TO REDUCE THE RISK TO PUBLIC SAFETY FROM

1 **THE PRISONER'S RELEASE.**

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

9 Sec. 35. (1) The release of a prisoner on parole shall be
10 granted solely upon the initiative of the parole board. The parole
11 board may grant a parole without interviewing the prisoner —
12 ~~However, beginning January 26, 1996, the parole board may grant a~~
13 ~~parole without interviewing the prisoner only if, after evaluating~~
14 the prisoner according to the parole guidelines, the parole board
15 determines that the prisoner has a high probability of being
16 paroled and the parole board therefore intends to parole the
17 prisoner. Except as provided in subsection (2), a prisoner ~~shall~~
18 **MAY** not be denied parole without an interview before 1 member of
19 the parole board. The interview ~~shall~~ **MUST** be conducted at least 1
20 month before the expiration of the prisoner's minimum sentence less
21 applicable good time and disciplinary credits for a prisoner
22 eligible for good time and disciplinary credits, or at least 1
23 month before the expiration of the prisoner's minimum sentence for
24 a prisoner subject to disciplinary time. The parole board shall
25 consider any statement made to the parole board by a crime victim
26 under the William Van Regenmorter crime victim's rights act, 1985
27 PA 87, MCL 780.751 to 780.834, or under any other provision of law.

1 The parole board shall not consider any of the following factors in
2 making a parole determination:

3 (a) A juvenile record that a court has ordered the department
4 to expunge.

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

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

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

19 (a) A prisoner's marital history.

20 (b) Prior arrests not resulting in conviction or adjudication
21 of delinquency.

22 (4) If an interview is to be conducted, the prisoner shall be
23 sent a notice of intent to conduct an interview at least 1 month
24 before the date of the interview. The notice ~~shall~~ **MUST** state the
25 specific issues and concerns that ~~shall~~ **WILL** be discussed at the
26 interview and that may be a basis for a denial of parole. ~~A denial~~
27 ~~of~~ **THE PAROLE BOARD SHALL NOT DENY** parole ~~shall not be based on~~

1 reasons other than those stated in the notice of intent to conduct
2 an interview except for good cause stated to the prisoner at or
3 before the interview and in the written explanation required by
4 subsection (12). ~~This subsection does not apply until April 1,~~
5 ~~1983.~~

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

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

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

1 expiration of a 12-month continuance for any prisoner, **THE**
2 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
3 report. ~~shall be prepared by appropriate institutional staff.~~ The
4 parole eligibility report ~~shall be~~ **IS** considered pertinent
5 information for purposes of subsection (5). The report ~~shall~~ **MUST**
6 include all of the following:

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

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

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

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

17 (e) Whether the prisoner refused to attempt to obtain
18 identification documents under section 34c, if applicable.

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

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

24 (9) Psychological evaluations performed at the request of the
25 parole board to assist it in reaching a decision on the release of
26 a prisoner may be performed by the same person who provided the
27 prisoner with therapeutic treatment, unless a different person is

1 requested by the prisoner or parole board.

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

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

19 (12) When the parole board makes a final determination not to
20 release a prisoner, **THE PAROLE BOARD SHALL PROVIDE** the prisoner
21 ~~shall be provided~~ with a written explanation of the reason for
22 denial and, if appropriate, specific recommendations for corrective
23 action the prisoner may take to facilitate release.

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

27 Sec. 39a. (1) Within 10 days after an arrest for an alleged

1 violation of parole, the parolee ~~shall be~~**IS** entitled to a
2 preliminary hearing to determine ~~whether~~**IF** there is probable cause
3 to believe that the conditions of parole have been violated or a
4 fact-finding hearing held ~~pursuant to~~**UNDER** section 40a.

5 (2) **WITHIN 3 DAYS AFTER AN ARREST FOR AN ALLEGED VIOLATION OF**
6 **PAROLE, THE PAROLE OFFICER MAY WITHDRAW THE WARRANT AND RELEASE THE**
7 **PRISONER TO PAROLE SUPERVISION IF THE OFFICER DETERMINES, AND A**
8 **SUPERVISOR CONFIRMS, THAT THE PAROLED PRISONER COMMITTED ONLY A**
9 **NONCOMPLIANCE VIOLATION. TIME SERVED UNDER THIS SUBSECTION MAY NOT**
10 **BE CREDITED UNLESS CUMULATIVE CONFINEMENT UNDER THIS SUBSECTION**
11 **EQUALS 30 DAYS, AT WHICH POINT THE 30 DAYS AND ANY FUTURE**
12 **CONFINEMENT UNDER THIS SUBSECTION MUST BE CREDITED.**

13 (3) ~~(2) Prior to~~**BEFORE** the preliminary hearing, the accused
14 parolee ~~shall~~**MUST** be given written notice of the charges, time,
15 place, and purpose of the preliminary hearing.

16 (4) ~~(3)~~At the preliminary hearing, the accused parolee is
17 entitled to the following rights:

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

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

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

25 (5) ~~(4)~~A preliminary hearing may be postponed beyond the 10-
26 day time limit on the written request of the parolee, but ~~shall~~**MAY**
27 not be postponed by the department.

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

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

12 (8) **AS USED IN THIS SECTION, "NONCOMPLIANCE VIOLATION" MEANS**
13 **THAT TERM AS DEFINED IN SECTION 40A.**

14 Sec. 40a. (1) After a prisoner is released on parole, the
15 prisoner's parole order is subject to **SANCTIONS OR** revocation at
16 the discretion of the **DEPARTMENT AND** parole board for cause as
17 provided in this section **AND SECTION 39A.**

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

1 violent felony during his or her release on parole, parole shall be
2 revoked.

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

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

27 (5) An accused parolee ~~shall~~**MUST** 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 a retained attorney or an attorney
4 appointed under subsection (4) and is entitled to the following
5 rights:

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

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

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

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

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

20 (7) The director or a deputy director designated by the
21 director ~~shall~~**MUST** be notified in writing if the preliminary
22 parole violation hearing is not conducted within the 10-day time
23 limit, and the hearing ~~shall~~**MUST** be conducted as soon as possible.
24 The director or a deputy director designated by the director ~~shall~~
25 **MUST** be notified in writing if the fact-finding hearing is not
26 conducted within the 45-day time limit, and the hearing ~~shall~~**MUST**
27 be conducted as soon as possible. A parolee held in custody shall

1 not be released pending disposition of either hearing.

2 (8) If the evidence presented is insufficient to support the
3 allegation that a parole violation occurred, the parolee ~~shall~~**MUST**
4 be reinstated to parole status.

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

11 (10) If a preponderance of the evidence supports the
12 allegation that a parole violation occurred, the parole board may
13 **IMPOSE A SANCTION OR** revoke parole. ~~, and~~ **THE PAROLE BOARD SHALL**
14 **PROVIDE** the parolee ~~shall be provided~~ with a written statement of
15 the findings of fact and the reasons for the determination within
16 **THE SANCTION PERIOD OR WITHIN** 60 days after the paroled prisoner
17 has been returned or is available for return to a state
18 correctional facility, **AS APPLICABLE. THE PRISONER MUST BE**
19 **SANCTIONED WITH CONFINEMENT IN THE COUNTY JAIL, AND THEN PLACED ON**
20 **PAROLE AGAIN NOT MORE THAN 30 DAYS FOLLOWING THE DATE ON WHICH THE**
21 **DETERMINATION OF A FIRST OR SECOND RISK VIOLATION OCCURS. THE**
22 **PAROLE BOARD MAY REVOKE PAROLE TO THE CUSTODY OF THE DEPARTMENT FOR**
23 **THE THIRD DETERMINATION OF A RISK VIOLATION OR FOR A FIRST**
24 **DETERMINATION OF A MAJOR RISK VIOLATION, AND PLACE THE PRISONER ON**
25 **PAROLE AGAIN.**

26 (11) ~~A~~**THE PAROLE BOARD MAY REVOKE THE PAROLE OF A** parolee who
27 is ordered to make restitution under the William Van Regenmorter

1 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or
2 the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69,
3 or to pay an assessment ordered under section 5 of 1989 PA 196, MCL
4 780.905, as a condition of parole ~~may have his or her parole~~
5 ~~revoked by the parole board~~ if the parolee ~~fails to~~ **DOES NOT** comply
6 with the order and if the parolee has not made a good faith effort
7 to comply with the order. In determining whether to revoke parole,
8 the parole board shall consider the parolee's employment status,
9 earning ability, and financial resources, the willfulness of the
10 parolee's failure to comply with the order, and any other special
11 circumstances that may have a bearing on the parolee's ability to
12 comply with the order.

13 (12) IF A PRISONER HAS TURNED HIMSELF OR HERSELF IN WITHIN 7
14 DAYS AFTER A WARRANT HAS BEEN ISSUED, THE PAROLE BOARD SHALL NOT
15 SANCTION OR REVOKE PAROLE FOR ABSCONDING SUPERVISION.

16 (13) ~~(12)~~ As used in this section: ~~,"violent~~

17 (A) "ABSCONDING SUPERVISION" MEANS BEING APPREHENDED BY A LAW
18 ENFORCEMENT OR PAROLE OFFICER, OR BEING ARRESTED FOR A NEW CRIME
19 OUTSIDE OF THIS STATE. IF THE PRISONER HAS TURNED HIMSELF OR
20 HERSELF IN WITHIN 7 DAYS AFTER A WARRANT HAS BEEN ISSUED, HE OR SHE
21 SHALL NOT BE SANCTIONED OR REVOKED FOR ABSCONDING SUPERVISION.

22 (B) "MAJOR RISK VIOLATION" MEANS EITHER OF THE FOLLOWING:

23 (i) THE VIOLATION OF A PROTECTIVE ORDER.

24 (ii) AN ALLEGED VIOLATION OF SECTION 83, 84, 86, 88, 89, 317,
25 321, 349, 349A, 350, 397, 520B, 520C, 520D, 520G(1), 529, OR 529A
26 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, 750.84,
27 750.86, 750.88, 750.89, 750.317, 750.321, 750.349, 750.349A,

1 750.350, 750.397, 750.520B, 750.520C, 750.520D, 750.520G, 750.529,
2 AND 750.529A.

3 (C) "NONCOMPLIANCE VIOLATION" MEANS A VIOLATION THAT IS NOT A
4 RISK VIOLATION OR A MAJOR RISK VIOLATION.

5 (D) "RISK VIOLATION" MEANS 1 OR MORE OF THE FOLLOWING:

6 (i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR PROXIMITY
7 TO A SPECIFICALLY PROHIBITED LOCATION.

8 (ii) AN ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING OR
9 ASSAULTIVE BEHAVIOR.

10 (iii) AN ARREST FOR A NEW FELONY.

11 (iv) ABSCONDING SUPERVISION.

12 (v) THE PRISONER'S SIXTH OR SUBSEQUENT NONCOMPLIANCE
13 VIOLATION.

14 (E) "VIOLENT felony" means that term as defined in section 36.