

**SUBSTITUTE FOR
HOUSE BILL NO. 4129**

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 35 (MCL 791.235), as amended by 2018 PA 339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The release of a prisoner on parole must be
2 granted solely upon the initiative of the parole board. There is no
3 entitlement to parole. The parole board may grant a parole without
4 interviewing the prisoner if, after evaluating the prisoner
5 according to the parole guidelines, the parole board determines
6 that the prisoner has a high probability of being paroled and the
7 parole board therefore intends to parole the prisoner. Except as
8 provided in subsection (2), a prisoner must not be denied parole
9 without an interview before 1 member of the parole board. The



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

12 (a) A juvenile record that a court has ordered the department
13 to expunge.

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

20 (2) If, after evaluating a prisoner according to the parole
21 guidelines, the parole board determines that the prisoner has a low
22 probability of being paroled and the parole board therefore does
23 not intend to parole the prisoner, the parole board is not required
24 to interview the prisoner before denying parole to the prisoner.

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

27 (a) A prisoner's marital history.

28 (b) Prior arrests not resulting in conviction or adjudication
29 of delinquency.



1 (4) If an interview is to be conducted, the prisoner must be
2 sent a notice of intent to conduct an interview not less than 1
3 month before the date of the interview. The notice must state the
4 specific issues and concerns that will be discussed at the
5 interview and that may be a basis for a denial of parole. The
6 parole board shall not deny parole based on reasons other than
7 those stated in the notice of intent to conduct an interview except
8 for good cause stated to the prisoner at or before the interview
9 and in the written explanation required by subsection ~~(12)~~ **(20)**.

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

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

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



1 sentence for a prisoner subject to disciplinary time, or the
2 expiration of a 12-month continuance for any prisoner, **or at the**
3 **request of the parole board for a prisoner being considered for**
4 **parole under subsection (10)**, the appropriate institutional staff
5 shall prepare a parole eligibility report. The parole eligibility
6 report is considered pertinent information for purposes of
7 subsection (5). The report must 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) Whether the prisoner fully cooperated with this state by
15 providing complete financial information as required under section
16 3a of the state correctional facility reimbursement act, 1935 PA
17 253, MCL 800.403a.

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

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

23 (g) The result on any validated risk assessment instrument.

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
28 a prisoner may be performed by the same person who provided the
29 prisoner with therapeutic treatment, unless a different person is



1 requested by the prisoner or parole board.

2 (10) ~~The~~ Except for a prisoner who was convicted of any crime
3 that is punishable by a term of life imprisonment without parole or
4 of a violation of section 520b of the Michigan penal code, 1931 PA
5 328, MCL 750.520b, the parole board may grant a medical parole for
6 a prisoner determined to be ~~physically or mentally incapacitated.~~
7 **medically frail**. A decision to grant a medical parole must be
8 initiated on the recommendation of the bureau of health care
9 services. ~~and must be reached only after a review of the medical,~~
10 ~~institutional, and criminal records of the prisoner.~~ **If the bureau**
11 **of health care services believes that the prisoner is medically**
12 **frail, the bureau shall utilize a specialist in the appropriate**
13 **field of medicine, who is not employed by the department, to**
14 **evaluate the condition of the prisoner and to report on that**
15 **condition to the bureau. The parole board, in consultation with the**
16 **bureau of health care services, shall determine whether the**
17 **prisoner is medically frail. If the parole board determines that a**
18 **prisoner is medically frail and is going to be considered for**
19 **parole under this subsection, the parole board shall provide the**
20 **notice and medical records required under section 34(18). Unless**
21 **the prosecutor of the county from which the prisoner was committed**
22 **files a motion under section 34(19), the parole board may grant**
23 **parole to a prisoner who is determined to be medically frail. If a**
24 **motion is filed under section 34(19) and the court finds that the**
25 **prisoner is eligible for parole as a result of being medically**
26 **frail, and if no additional appeals are pending, the parole board**
27 **may grant parole to the prisoner under this subsection. The**
28 **requirements of sections 33(1)(b), (c), (d), and (f), 33b, and**
29 **34(1), (2), (3), (4), (7), (13), (14), (15), (16), and (17) do not**



1 apply to a parole granted under this subsection.

2 (11) The following conditions apply to a parole granted under
3 subsection (10):

4 (a) A prisoner must only be released on parole under
5 subsection (10) if he or she agrees to all of the following:

6 (i) His or her placement, or, if the parolee is unable to
7 consent because of the parolee's physical or mental health
8 condition, an individual legally entitled to agree to the parolee's
9 placement agrees that the parolee be placed, in a medical facility
10 approved by the parole board where medical care and treatment can
11 be provided.

12 (ii) To the release of his or her medical records that are
13 directly relevant to the condition or conditions rendering the
14 prisoner medically frail to the prosecutor and sentencing or
15 successor judge of the county from which the prisoner was committed
16 before the parole board determines whether or not to grant the
17 prisoner parole under subsection (10).

18 (iii) An independent medical exam if sought by the prosecutor of
19 the county from which the prisoner was committed as provided under
20 section 34(19). If possible, this independent medical exam must
21 occur at a facility of the department. The reasonable costs of this
22 independent medical exam must be paid for by the department.

23 (b) The parolee shall adhere to the terms of his or her parole
24 for the length of his or her parole term.

25 (c) The parole must be for a term not less than the time
26 necessary to reach the prisoner's earliest release date.

27 (d) A parolee who violates the terms of his or her parole or
28 is determined to no longer meet the definition of medically frail
29 may be transferred to a setting more appropriate for the medical



1 needs of the parolee or be subject to the parole violation process
2 under sections 38, 39, 39a, and 40a as determined by the parole
3 board and the department.

4 (e) The parolee must only be placed in a medical facility that
5 agrees to accept the parolee and that is agreed upon by the parolee
6 as described in subdivision (a) (i).

7 (12) The parolee or an individual legally entitled to agree to
8 the parolee's placement under subsection (11) (a) (i), other than the
9 medical facility, shall immediately inform the parole board if any
10 of the following occur:

11 (a) The parolee is no longer eligible for care at the medical
12 facility at which he or she was placed.

13 (b) The parolee must be moved to another location for medical
14 care.

15 (c) The parolee is no longer at the medical facility approved
16 by the parole board.

17 (d) The parolee no longer needs the level of care that
18 resulted in the parolee's placement at the medical facility.

19 (13) The parole board shall immediately notify the prosecutor
20 for the county in which the offender was convicted and the
21 sentencing or successor judge if the parolee is no longer eligible
22 for care or no longer needs the level of care for which the
23 prisoner was placed at the medical facility.

24 (14) The department shall not retain authority over the
25 medical treatment plan for a prisoner granted parole under
26 subsection (10) and a prisoner granted parole under subsection (10)
27 must have full patient rights at the medical facility where he or
28 she is placed.

29 (15) The department and the parole board shall ensure that the



1 placement and terms and conditions of a parole granted under
2 subsection (10) do not violate any other state or federal
3 regulations.

4 (16) A medical facility housing parolees granted parole under
5 subsection (10) must be operated in a manner that ensures the
6 safety of the residents of the medical facility.

7 (17) A parolee granted parole under subsection (10) and placed
8 in a medical facility has the same patient rights and
9 responsibilities as any other individual who is a resident of or
10 has been admitted to the medical facility. The medical facility is
11 not responsible for the enforcement of conditions of parole or the
12 reporting of violations of conditions of parole for any parolee
13 placed in the medical facility. The medical facility shall comply
14 with state and federal laws and regulations that protect resident
15 rights and state and federal laws and regulations for skilled
16 nursing facilities, regardless of the conditions of parole imposed
17 on a resident parolee.

18 (18) The process for a parole determination under subsection
19 (10) does not change or affect any of the rights afforded to a
20 victim under the William Van Regenmorter crime victim's rights act,
21 1985 PA 87, MCL 780.751 to 780.834.

22 (19) ~~(11)~~The department shall file a petition to the
23 appropriate court under section 434 of the mental health code, 1974
24 PA 258, MCL 330.1434, for any prisoner being paroled or being
25 released after serving his or her maximum sentence whom the
26 department considers to be a person requiring treatment. The parole
27 board shall require mental health treatment as a special condition
28 of parole for any parolee whom the department has determined to be
29 a person requiring treatment whether or not the petition filed for



1 that prisoner is granted by the court. As used in this subsection,
2 "person requiring treatment" means that term as defined in section
3 401 of the mental health code, 1974 PA 258, MCL 330.1401.

4 **(20)** ~~(12)~~—When the parole board makes a final determination
5 not to release a prisoner, the parole board shall provide the
6 prisoner with a written explanation of the reason for denial and,
7 if appropriate, specific recommendations for corrective action the
8 prisoner may take to facilitate release.

9 **(21)** ~~(13)~~—This section does not apply to the placement on
10 parole of a person in conjunction with special alternative
11 incarceration under section 34a(7).

12 **(22) As used in this section:**

13 **(a) "Activities of daily living" means basic personal care and**
14 **everyday activities as described in 42 CFR 441.505, including, but**
15 **not limited to, tasks such as eating, toileting, grooming,**
16 **dressing, bathing, and transferring from 1 physical position to**
17 **another, including, but not limited to, moving from a reclining**
18 **position to a sitting or standing position.**

19 **(b) "Medical facility" means a hospital, hospice, nursing**
20 **home, or other housing accommodation providing medical treatment**
21 **suitable to the condition or conditions rendering the parolee**
22 **medically frail.**

23 **(c) "Medically frail" describes an individual who is a minimal**
24 **threat to society as a result of his or her medical condition, who**
25 **has received a risk score of low on a validated risk assessment,**
26 **whose recent conduct in prison indicates he or she is unlikely to**
27 **engage in assaultive conduct, and who has 1 or both of the**
28 **following:**

29 **(i) A permanent or terminal physical disability or serious and**



1 complex medical condition resulting in the inability to do 1 or
2 more of the following without personal assistance:

3 (A) Walk.

4 (B) Stand.

5 (C) Sit.

6 (ii) A permanent or terminal disabling mental disorder,
7 including dementia, Alzheimer's, or a similar degenerative brain
8 disorder that results in the need for nursing home level of care,
9 and a significantly impaired ability to perform 2 or more
10 activities of daily living.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.

13 Enacting section 2. This amendatory act does not take effect
14 unless all of the following bills of the 100th Legislature are
15 enacted into law:

16 (a) House Bill No. 4130.

17 (b) House Bill No. 4132.

