

**SUBSTITUTE FOR
HOUSE BILL NO. 5078**

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 35 (MCL 791.235), as amended by 2012 PA 24.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 35. (1) The release of a prisoner on parole shall be
2 granted solely upon the initiative of the parole board. The parole
3 board may grant a parole without interviewing the prisoner.
4 However, ~~beginning January 26, 1996,~~ the parole board may grant a
5 parole without interviewing the prisoner only if, after evaluating
6 the prisoner according to the parole guidelines, the parole board
7 determines that the prisoner has a high probability of being
8 paroled and the parole board therefore intends to parole the
9 prisoner. Except as provided in subsection (2), a prisoner shall

1 not be denied parole without an interview before 1 member of the
2 parole board. The interview shall be conducted at least 1 month
3 before the expiration of the prisoner's minimum sentence less
4 applicable good time and disciplinary credits for a prisoner
5 eligible for good time and disciplinary credits, or at least 1
6 month before the expiration of the prisoner's minimum sentence for
7 a prisoner subject to disciplinary time. The parole board shall
8 consider any statement made to the parole board by a crime victim
9 under the William Van Regenmorter crime victim's rights act, 1985
10 PA 87, MCL 780.751 to 780.834, or under any other provision of law.
11 The parole board shall not consider any of the following factors in
12 making a parole determination:

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

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

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

27 (3) The parole board may consider but shall not base a

1 determination to deny parole solely on either of the following:

2 (a) A prisoner's marital history.

3 (b) Prior arrests not resulting in conviction or adjudication
4 of delinquency.

5 (4) If an interview is to be conducted, the prisoner shall be
6 sent a notice of intent to conduct an interview at least 1 month
7 before the date of the interview. The notice shall state the
8 specific issues and concerns that shall be discussed at the
9 interview and that may be a basis for a denial of parole. A denial
10 of parole shall not be based on reasons other than those stated in
11 the notice of intent to conduct an interview except for good cause
12 stated to the prisoner at or before the interview and in the
13 written explanation required by subsection ~~(12)~~. ~~This subsection~~
14 ~~does not apply until April 1, 1983.~~ **(18)**.

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

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

1 an attorney. A prisoner is not entitled to appointed counsel at
2 public expense. The prisoner or representative may present relevant
3 evidence in support of release.

4 (7) At least 90 days before the expiration of the prisoner's
5 minimum sentence less applicable good time and disciplinary credits
6 for a prisoner eligible for good time or disciplinary credits, or
7 at least 90 days before the expiration of the prisoner's minimum
8 sentence for a prisoner subject to disciplinary time, or the
9 expiration of a 12-month continuance for any prisoner, **OR AT THE**
10 **REQUEST OF THE PAROLE BOARD FOR A PRISONER BEING CONSIDERED FOR**
11 **PAROLE UNDER SUBSECTION (10)**, a parole eligibility report shall be
12 prepared by appropriate institutional staff. The parole eligibility
13 report shall be considered pertinent information for purposes of
14 subsection (5). The report shall include all of the following:

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

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

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

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

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

27 (f) For a prisoner subject to disciplinary time, a statement

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

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

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

10 (10) The parole board may grant a medical parole for a
11 prisoner determined to be ~~physically or mentally incapacitated.~~
12 **MEDICALLY FRAIL.** A decision to grant a medical parole shall be
13 initiated upon the recommendation of the bureau of health care
14 services. ~~and shall be reached only after a review of the medical,~~
15 ~~institutional, and criminal records of the prisoner.~~**IF THE BUREAU**
16 **OF HEALTH CARE SERVICES DETERMINES THAT THE PRISONER IS PHYSICALLY**
17 **OR MENTALLY INCAPACITATED, THE BUREAU SHALL APPOINT A SPECIALIST IN**
18 **THE APPROPRIATE FIELD OF MEDICINE, WHO IS NOT EMPLOYED BY THE**
19 **DEPARTMENT, TO EVALUATE THE CONDITION OF THE PRISONER AND TO REPORT**
20 **ON THAT CONDITION TO THE BUREAU. THE PAROLE BOARD, IN CONSULTATION**
21 **WITH THE BUREAU OF HEALTH CARE SERVICES, SHALL DETERMINE WHETHER**
22 **THE PRISONER IS MEDICALLY FRAIL. THE REQUIREMENTS OF SECTIONS**
23 **33(1)(B), (C), (D), AND (F), 33B, AND 34(1), (2), (3), (4), (7),**
24 **(8)(C), (13), (14), (15), AND (16) DO NOT APPLY TO A PAROLE GRANTED**
25 **UNDER THIS SUBSECTION.**

26 (11) THE FOLLOWING CONDITIONS APPLY TO A PAROLE GRANTED UNDER
27 SUBSECTION (10):

1 (A) A PRISONER SHALL ONLY BE RELEASED ON PAROLE UNDER
2 SUBSECTION (10) IF HE OR SHE AGREES TO ALL OF THE FOLLOWING:

3 (i) HIS OR HER PLACEMENT, OR, IF THE PRISONER IS
4 INCAPACITATED, AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO THE
5 PRISONER'S PLACEMENT AGREES THAT THE PRISONER BE PLACED IN A
6 MEDICAL FACILITY WHERE MEDICAL CARE AND TREATMENT ARE DETERMINED TO
7 BE APPROPRIATE FOR THE PAROLEE BY THE PAROLE BOARD.

8 (ii) TO THE RELEASE OF HIS OR HER MEDICAL RECORDS THAT ARE
9 DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS RENDERING THE
10 PRISONER MEDICALLY FRAIL TO THE PROSECUTOR OF THE COUNTY FROM WHICH
11 THE PRISONER WAS COMMITTED BEFORE THE PAROLE BOARD DETERMINES
12 WHETHER OR NOT TO GRANT THE PRISONER PAROLE UNDER SUBSECTION (10).

13 (iii) IF THE PRISONER IS GRANTED PAROLE UNDER SUBSECTION (10),
14 TO THE QUARTERLY RELEASE OF HIS OR HER MEDICAL RECORDS THAT ARE
15 DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS RENDERING THE
16 PRISONER MEDICALLY FRAIL AT THE REQUEST OF THE PROSECUTOR OF THE
17 COUNTY FROM WHICH THE PRISONER WAS COMMITTED. A PRISONER'S MEDICAL
18 RECORDS OTHERWISE REMAIN PROTECTED UNDER SECTION 2157 OF THE
19 REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2157, ARE NOT
20 PUBLIC RECORDS, AND DO NOT BECOME PART OF A PAROLEE'S PUBLIC FILE.

21 (B) THE PAROLEE SHALL ADHERE TO THE TERMS OF HIS OR HER PAROLE
22 FOR THE LENGTH OF HIS OR HER PAROLE TERM.

23 (C) THE PAROLE SHALL BE FOR A TERM NOT LESS THAN THE TIME
24 NECESSARY TO REACH THE PRISONER'S EARLIEST RELEASE DATE.

25 (D) A PAROLEE WHO VIOLATES THE TERMS OF HIS OR HER PAROLE OR
26 IS DETERMINED NOT TO BE ELIGIBLE FOR PAROLE UNDER SUBSECTION (10)
27 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 SHALL ONLY BE PLACED IN A MEDICAL FACILITY
5 THAT AGREES TO ACCEPT THE PAROLEE AND THAT IS AGREED UPON BY THE
6 PAROLEE, AS DESCRIBED IN SUBDIVISION (A) (i), AND THE PAROLE BOARD.

7 (12) THE PAROLE BOARD SHALL MONITOR THE MEDICAL CONDITION OF A
8 PRISONER GRANTED PAROLE UNDER SUBSECTION (10).

9 (13) THE DEPARTMENT MAY ENTER INTO CONTRACTS TO FACILITATE
10 PAROLE UNDER SUBSECTION (10).

11 (14) THE DEPARTMENT SHALL NOT RETAIN AUTHORITY OVER THE
12 MEDICAL TREATMENT PLAN FOR A PRISONER GRANTED PAROLE UNDER
13 SUBSECTION (10).

14 (15) THE DEPARTMENT AND THE PAROLE BOARD SHALL ENSURE THAT THE
15 PLACEMENT AND TERMS AND CONDITIONS OF A PAROLE GRANTED UNDER
16 SUBSECTION (10) DO NOT VIOLATE ANY OTHER STATE OR FEDERAL
17 REGULATIONS.

18 (16) A MEDICAL FACILITY UTILIZED BY THE DEPARTMENT TO
19 FACILITATE PAROLE UNDER SUBSECTION (10) SHALL BE OPERATED IN A
20 MANNER THAT ENSURES THE SAFETY OF THE RESIDENTS OF THE MEDICAL
21 FACILITY AND SHALL, WHEN FEASIBLE, HOUSE PRISONERS GRANTED PAROLE
22 UNDER SUBSECTION (10) AND PLACED IN THE MEDICAL FACILITY IN CLOSE
23 PROXIMITY TO ONE ANOTHER, PREFERABLY IN A SINGLE HALLWAY OR WING OF
24 THE MEDICAL FACILITY.

25 (17) ~~(11)~~ The department shall submit a petition to the
26 appropriate court under section 434 of the mental health code, 1974
27 PA 258, MCL 330.1434, for any prisoner being paroled or being

1 released after serving his or her maximum sentence whom the
2 department considers to be a person requiring treatment. The parole
3 board shall require mental health treatment as a special condition
4 of parole for any parolee whom the department has determined to be
5 a person requiring treatment whether or not the petition filed for
6 that prisoner is granted by the court. As used in this subsection,
7 "person requiring treatment" means that term as defined in section
8 401 of the mental health code, 1974 PA 258, MCL 330.1401.

9 (18) ~~(12)~~—When the parole board makes a final determination
10 not to release a prisoner, the prisoner shall be provided with a
11 written explanation of the reason for denial and, if appropriate,
12 specific recommendations for corrective action the prisoner may
13 take to facilitate release.

14 (19) ~~(13)~~—This section does not apply to the placement on
15 parole of a person in conjunction with special alternative
16 incarceration under section 34a(7).

17 (20) AS USED IN THIS SECTION:

18 (A) "ACTIVITIES OF DAILY LIVING" MEANS BASIC PERSONAL CARE AND
19 EVERYDAY ACTIVITIES AS DESCRIBED IN 42 CFR 441.505, INCLUDING, BUT
20 NOT LIMITED TO, TASKS SUCH AS EATING, TOILETING, GROOMING,
21 DRESSING, BATHING, AND TRANSFERRING FROM 1 PHYSICAL POSITION TO
22 ANOTHER, INCLUDING, BUT NOT LIMITED TO, MOVING FROM A RECLINING
23 POSITION TO A SITTING OR STANDING POSITION.

24 (B) "MEDICAL FACILITY" MEANS A HOSPITAL, HOSPICE, NURSING
25 HOME, OR OTHER HOUSING ACCOMMODATION PROVIDING MEDICAL TREATMENT
26 SUITABLE TO THE CONDITION OR CONDITIONS RENDERING THE PRISONER
27 MEDICALLY FRAIL.

1 (C) "MEDICALLY FRAIL" DESCRIBES AN INDIVIDUAL WHO IS A MINIMAL
2 THREAT TO SOCIETY AS A RESULT OF HIS OR HER MEDICAL CONDITION, WHO
3 HAS RECEIVED A RISK SCORE OF LOW ON A VALIDATED RISK ASSESSMENT,
4 WHOSE ABILITY TO PERFORM 2 OR MORE ACTIVITIES OF DAILY LIVING IS
5 SIGNIFICANTLY IMPAIRED, AND WHO MAY HAVE LIMITED MOBILITY AND
6 ABILITY TO TRANSFER FROM 1 PHYSICAL POSITION TO ANOTHER AS THE
7 RESULT OF 1 OR MORE OF THE FOLLOWING CONDITIONS FROM WHICH THE
8 INDIVIDUAL IS NOT EXPECTED TO RECOVER:

9 (i) A DISABLING MENTAL DISORDER, INCLUDING DEMENTIA,
10 ALZHEIMER'S, OR A SIMILAR DEGENERATIVE BRAIN DISORDER.

11 (ii) A SERIOUS AND COMPLEX MEDICAL CONDITION.

12 (iii) A PHYSICAL DISABILITY.

13 Enacting section 1. This amendatory act does not take effect
14 unless House Bill No. 5079 of the 98th Legislature is enacted into
15 law.