

**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
10 not be denied parole without an interview before 1 member of the
11 parole board. The interview shall be conducted at least 1 month

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

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

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

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

1 (b) Prior arrests not resulting in conviction or adjudication
2 of delinquency.

3 (4) If an interview is to be conducted, the prisoner shall be
4 sent a notice of intent to conduct an interview at least 1 month
5 before the date of the interview. The notice shall state the
6 specific issues and concerns that shall be discussed at the
7 interview and that may be a basis for a denial of parole. A denial
8 of parole shall not be based on reasons other than those stated in
9 the notice of intent to conduct an interview except for good cause
10 stated to the prisoner at or before the interview and in the
11 written explanation required by subsection ~~(12)~~—(19). This
12 subsection does not apply until April 1, 1983.

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

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

1 evidence in support of release.

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

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

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

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

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

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

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

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

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

8 (10) The parole board may grant a medical parole for a
9 prisoner determined to be ~~physically or mentally incapacitated.~~
10 **MEDICALLY FRAIL.** A decision to grant a medical parole shall be
11 initiated upon the recommendation of the bureau of health care
12 services ~~and shall be reached only after a review of the medical,~~
13 ~~institutional, and criminal records of the prisoner.~~ **AFTER A MEDICAL**
14 **EXAMINATION BY A MEDICAL DOCTOR EMPLOYED BY THE DEPARTMENT OR AN**
15 **ENTITY WITH WHICH THE DEPARTMENT HAS CONTRACTED FOR MEDICAL**
16 **SERVICES. THE PAROLE BOARD, IN CONSULTATION WITH THE BUREAU OF**
17 **HEALTH CARE SERVICES, SHALL DETERMINE WHETHER THE PRISONER IS**
18 **MEDICALLY FRAIL. THE REQUIREMENTS OF SECTIONS 33(1), 33B, AND**
19 **34(1), (2), (3), (4), (7), (8)(C), (13), (14), (15), AND (16) DO**
20 **NOT APPLY TO A PAROLE GRANTED UNDER THIS SUBSECTION.**

21 (11) THE FOLLOWING CONDITIONS APPLY TO A PAROLE GRANTED UNDER
22 SUBSECTION (10):

23 (A) A PRISONER SHALL ONLY BE RELEASED ON PAROLE UNDER
24 SUBSECTION (10) IF HE OR SHE AGREES TO BOTH OF THE FOLLOWING:

25 (i) HIS OR HER PLACEMENT, OR, IF THE PRISONER IS
26 INCAPACITATED, AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO THE
27 PRISONER'S PLACEMENT AGREES THAT THE PRISONER BE PLACED IN A

1 MEDICAL FACILITY WHERE MEDICAL CARE AND TREATMENT ARE DETERMINED TO
2 BE APPROPRIATE FOR THE PAROLEE BY THE PAROLE BOARD.

3 (ii) TO THE RELEASE OF HIS OR HER MEDICAL RECORDS THAT ARE
4 DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS RENDERING THE
5 PRISONER MEDICALLY FRAIL TO THE PROSECUTOR OF THE COUNTY FROM WHICH
6 THE PRISONER WAS COMMITTED BEFORE THE PAROLE BOARD DETERMINES
7 WHETHER OR NOT TO GRANT THE PRISONER PAROLE UNDER SUBSECTION (10).
8 IF THE PRISONER IS GRANTED PAROLE UNDER SUBSECTION (10), HE OR SHE
9 SHALL ALSO AGREE TO THE QUARTERLY RELEASE OF HIS OR HER MEDICAL
10 RECORDS THAT ARE DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS
11 RENDERING THE PRISONER MEDICALLY FRAIL AT THE REQUEST OF THE
12 PROSECUTOR OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED. A
13 PRISONER'S MEDICAL RECORDS OTHERWISE REMAIN PROTECTED UNDER SECTION
14 2157 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL
15 600.2157, ARE NOT PUBLIC RECORDS, AND DO NOT BECOME PART OF A
16 PAROLEE'S PUBLIC FILE.

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

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

21 (D) A PAROLEE WHO VIOLATES THE TERMS OF HIS OR HER PAROLE OR
22 IS DETERMINED NOT TO BE ELIGIBLE FOR PAROLE UNDER SUBSECTION (10)
23 MAY BE TRANSFERRED TO A SETTING MORE APPROPRIATE FOR THE MEDICAL
24 NEEDS OF THE PAROLEE OR BE SUBJECT TO THE PAROLE VIOLATION PROCESS
25 UNDER SECTIONS 38, 39, 39A, AND 40A AS DETERMINED BY THE PAROLE
26 BOARD AND THE DEPARTMENT.

27 (12) THE PAROLE BOARD SHALL MONITOR THE MEDICAL CONDITION OF A

1 PRISONER GRANTED PAROLE UNDER SUBSECTION (10).

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

4 (14) THE DEPARTMENT SHALL NOT RETAIN AUTHORITY OVER THE
5 MEDICAL TREATMENT PLAN FOR A PRISONER GRANTED PAROLE UNDER
6 SUBSECTION (10).

7 (15) A FACILITY UTILIZED BY THE DEPARTMENT TO FACILITATE
8 PAROLE UNDER SUBSECTION (10) SHALL BE OPERATED IN A MANNER THAT
9 ENSURES THE SAFETY OF THE RESIDENTS OF THE FACILITY.

10 (16) A PRISONER GRANTED PAROLE UNDER SUBSECTION (10) SHALL
11 ONLY BE PLACED IN A MEDICAL FACILITY OWNED BY THE DEPARTMENT OR
12 CONTRACTED BY THE DEPARTMENT TO FACILITATE PAROLE UNDER SUBSECTION
13 (10).

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

1 401 of the mental health code, 1974 PA 258, MCL 330.1401.

2 (19) ~~(12)~~ When the parole board makes a final determination
3 not to release a prisoner, the prisoner shall be provided with a
4 written explanation of the reason for denial and, if appropriate,
5 specific recommendations for corrective action the prisoner may
6 take to facilitate release.

7 (20) ~~(13)~~ This section does not apply to the placement on
8 parole of a person in conjunction with special alternative
9 incarceration under section 34a(7).

10 (21) AS USED IN THIS SECTION:

11 (A) "ACTIVITIES OF DAILY LIVING" MEANS BASIC PERSONAL CARE AND
12 EVERYDAY ACTIVITIES AS DESCRIBED IN 42 CFR 441.505, INCLUDING, BUT
13 NOT LIMITED TO, TASKS SUCH AS EATING, TOILETING, GROOMING,
14 DRESSING, BATHING, AND TRANSFERRING FROM 1 PHYSICAL POSITION TO
15 ANOTHER, INCLUDING, BUT NOT LIMITED TO, MOVING FROM A RECLINING
16 POSITION TO A SITTING OR STANDING POSITION.

17 (B) "MEDICAL FACILITY" MEANS A HOSPITAL, HOSPICE, NURSING
18 HOME, OR OTHER HOUSING ACCOMMODATION PROVIDING MEDICAL TREATMENT
19 SUITABLE TO A PRISONER'S MEDICAL OR MENTAL CONDITION OWNED BY THE
20 DEPARTMENT OR CONTRACTED BY THE DEPARTMENT TO FACILITATE PAROLE
21 UNDER SUBSECTION (10).

22 (C) "MEDICALLY FRAIL" DESCRIBES AN INDIVIDUAL WHO IS A MINIMAL
23 THREAT TO SOCIETY AS A RESULT OF A DISABLING MENTAL DISORDER, A
24 SERIOUS AND COMPLEX MEDICAL CONDITION, OR A PHYSICAL OR MENTAL
25 DISABILITY THAT SIGNIFICANTLY IMPAIRS THE INDIVIDUAL'S ABILITY TO
26 PERFORM 2 OR MORE ACTIVITIES OF DAILY LIVING AND MAY LIMIT THE
27 INDIVIDUAL'S MOBILITY AND ABILITY TO TRANSFER FROM 1 PHYSICAL

1 **POSITION TO ANOTHER.**

2 Enacting section 1. This amendatory act does not take effect
3 unless all of the following bills of the 98th Legislature are
4 enacted into law:

5 (a) House Bill No. 5079.

6 (b) House Bill No. 5080.