

# HOUSE BILL No. 5078

November 10, 2015, Introduced by Reps. Pscholka, Poleski, Bumstead, Durhal, Pagel, Victory, Heise, Crawford, Outman, Callton, VerHeulen, Inman, Cox, Garcia, Santana, Jenkins, Vaupel, Iden, Singh, Kelly, Yanez, Chang, Geiss, Plawecki, Howrylak and Forlini and referred to the Committee on Appropriations.

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)~~—(16). 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 PROFESSIONAL EMPLOYED BY THE DEPARTMENT OR**  
15 **AN 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 OR OTHER LOCATION DETERMINED TO BE APPROPRIATE BY  
2 THE BOARD.

3 (ii) TO AN ONGOING RELEASE OF HIS OR HER MEDICAL RECORDS THAT  
4 ARE 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. A PRISONER'S MEDICAL RECORDS OTHERWISE  
7 REMAIN PROTECTED UNDER SECTION 2157 OF THE REVISED JUDICATURE ACT  
8 OF 1961, 1961 PA 236, MCL 600.2157, ARE NOT PUBLIC RECORDS, AND DO  
9 NOT BECOME PART OF A PAROLEE'S PUBLIC FILE.

10 (B) A PAROLE UNDER SUBSECTION (10) SHALL REQUIRE THAT THE  
11 PAROLEE REMAIN AT AN APPROVED LOCATION FOR THE LENGTH OF HIS OR HER  
12 PAROLE TERM.

13 (C) A PAROLE GRANTED UNDER SUBSECTION (10) SHALL BE FOR A TERM  
14 NOT LESS THAN THE TIME NECESSARY TO REACH THE PRISONER'S EARLIEST  
15 POSSIBLE RELEASE DATE.

16 (D) A PRISONER WHO IS GRANTED PAROLE UNDER SUBSECTION (10) AND  
17 WHO VIOLATES THE TERMS OF HIS OR HER PAROLE OR IS DETERMINED NOT TO  
18 BE ELIGIBLE FOR PAROLE UNDER SUBSECTION (10) SHALL BE RETURNED TO  
19 THE CUSTODY OF THE DEPARTMENT UNLESS HE OR SHE IS OTHERWISE  
20 ELIGIBLE FOR PAROLE.

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

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

25 (14) A FACILITY UTILIZED BY THE DEPARTMENT TO FACILITATE  
26 PAROLE UNDER SUBSECTION (10) SHALL BE OPERATED IN A MANNER THAT  
27 ENSURES THE SAFETY OF THE RESIDENTS OF THE FACILITY.

1           (15) ~~(11)~~—The department shall submit a petition to the  
2 appropriate court under section 434 of the mental health code, 1974  
3 PA 258, MCL 330.1434, for any prisoner being paroled or being  
4 released after serving his or her maximum sentence whom the  
5 department considers to be a person requiring treatment. The parole  
6 board shall require mental health treatment as a special condition  
7 of parole for any parolee whom the department has determined to be  
8 a person requiring treatment whether or not the petition filed for  
9 that prisoner is granted by the court. As used in this subsection,  
10 "person requiring treatment" means that term as defined in section  
11 401 of the mental health code, 1974 PA 258, MCL 330.1401.

12           (16) ~~(12)~~—When the parole board makes a final determination  
13 not to release a prisoner, the prisoner shall be provided with a  
14 written explanation of the reason for denial and, if appropriate,  
15 specific recommendations for corrective action the prisoner may  
16 take to facilitate release.

17           (17) ~~(13)~~—This section does not apply to the placement on  
18 parole of a person in conjunction with special alternative  
19 incarceration under section 34a(7).

20           (18) **AS USED IN THIS SECTION:**

21           (A) **"MEDICAL FACILITY" INCLUDES A HOSPITAL, HOSPICE, NURSING**  
22 **HOME, OR OTHER HOUSING ACCOMMODATION PROVIDING MEDICAL TREATMENT**  
23 **SUITABLE TO A PRISONER'S MEDICAL OR MENTAL CONDITION.**

24           (B) **"MEDICALLY FRAIL" DESCRIBES AN INDIVIDUAL WITH A DISABLING**  
25 **MENTAL DISORDER, A SERIOUS AND COMPLEX MEDICAL CONDITION, OR A**  
26 **PHYSICAL OR MENTAL DISABILITY THAT SIGNIFICANTLY IMPAIRS THE**  
27 **INDIVIDUAL'S ABILITY TO PERFORM 1 OR MORE ACTIVITIES OF DAILY**

1 **LIVING AND RENDERS THE INDIVIDUAL A MINIMAL THREAT TO SOCIETY.**

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) Senate Bill No. \_\_\_\_ or House Bill No. 5079 (request no.  
6 02505'15).

7 (a) Senate Bill No. \_\_\_\_ or House Bill No. 5080 (request no.  
8 02505'15 a).