

SUBSTITUTE FOR
HOUSE BILL NO. 4101

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~~**MUST** 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 **MUST** not be denied parole without an interview before 1 member of

1 the parole board. The interview ~~shall~~**MUST** be conducted at least 1
2 month before the expiration of the prisoner's minimum sentence less
3 applicable good time and disciplinary credits for a prisoner
4 eligible for good time and disciplinary credits, or at least 1
5 month before the expiration of the prisoner's minimum sentence for
6 a prisoner subject to disciplinary time. The parole board shall
7 consider any statement made to the parole board by a crime victim
8 under the William Van Regenmorter crime victim's rights act, 1985
9 PA 87, MCL 780.751 to 780.834, or under any other provision of law.
10 The parole board shall not consider any of the following factors in
11 making a parole 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) ~~Beginning January 26, 1996, if,~~**IF**, after evaluating a
21 prisoner according to the parole guidelines, the parole board
22 determines that the prisoner has a low probability of being paroled
23 and the parole board therefore does not intend to parole the
24 prisoner, the parole board is not required to interview the
25 prisoner before denying parole to the prisoner.

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

1 (a) A prisoner's marital history.

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

4 (4) If an interview is to be conducted, the prisoner ~~shall~~
5 **MUST** be sent a notice of intent to conduct an interview at least 1
6 month before the date of the interview. The notice ~~shall~~**MUST** state
7 the specific issues and concerns that ~~shall~~**WILL** be discussed at
8 the interview and that may be a basis for a denial of parole. A
9 denial of parole ~~shall~~**MUST** not be based on reasons other than
10 those stated in the notice of intent to conduct an interview except
11 for good cause stated to the prisoner at or before the interview
12 and in the written explanation required by subsection ~~(12)~~. ~~This~~
13 ~~subsection does not apply until April 1, 1983.~~ **(20)**.

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

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

1 to appointed counsel at public expense. The prisoner or
2 representative may present relevant evidence in support of release.

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

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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~~ **EXCEPT FOR A PRISONER WHO WAS CONVICTED UNDER SECTION**
316 OR 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316 AND
750.520B, 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 ~~MUST~~ 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 BELIEVES THAT THE PRISONER IS MEDICALLY**
17 **FRAIL, THE BUREAU SHALL UTILIZE A SPECIALIST IN THE APPROPRIATE**

18 **FIELD OF MEDICINE, WHO IS NOT EMPLOYED BY THE DEPARTMENT, TO**

19 **EVALUATE THE CONDITION OF THE PRISONER AND TO REPORT ON THAT**

20 **CONDITION TO THE BUREAU. THE PAROLE BOARD, IN CONSULTATION WITH THE**

21 **BUREAU OF HEALTH CARE SERVICES, SHALL DETERMINE WHETHER THE**

22 **PRISONER IS MEDICALLY FRAIL. IF THE PAROLE BOARD DETERMINES THAT A**

23 **PRISONER IS MEDICALLY FRAIL AND IS GOING TO BE CONSIDERED FOR**

24 **PAROLE UNDER THIS SUBSECTION, THE PAROLE BOARD SHALL PROVIDE THE**

25 **NOTICE AND MEDICAL RECORDS REQUIRED UNDER SECTION 34(19). UNLESS**

26 **THE PROSECUTOR OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED**

27 **FILES A MOTION UNDER SECTION 34(20), THE PAROLE BOARD MAY GRANT**

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1 PAROLE TO A PRISONER WHO IS DETERMINED TO BE MEDICALLY FRAIL. THE
2 REQUIREMENTS OF SECTIONS 33(1)(B), (C), (D), AND (F), 33B, AND
3 34(1), (2), (3), (4), [(7),] (8), (14), (15), (16), [(17),] AND (18) DO NOT
4 APPLY
TO A PAROLE GRANTED UNDER THIS SUBSECTION.

5 (11) THE FOLLOWING CONDITIONS APPLY TO A PAROLE GRANTED UNDER
6 SUBSECTION (10):

7 (A) A PRISONER MUST ONLY BE RELEASED ON PAROLE UNDER
8 SUBSECTION (10) IF HE OR SHE AGREES TO ALL OF THE FOLLOWING:

9 (i) HIS OR HER PLACEMENT, OR, IF THE PRISONER IS UNABLE TO
10 CONSENT BECAUSE OF THE PRISONER'S PHYSICAL OR MENTAL HEALTH
11 CONDITION, AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO THE
12 PRISONER'S PLACEMENT AGREES THAT THE PRISONER BE PLACED IN A
13 MEDICAL FACILITY APPROVED BY THE PAROLE BOARD WHERE MEDICAL CARE
14 AND TREATMENT CAN BE PROVIDED.

15 (ii) TO THE RELEASE OF HIS OR HER MEDICAL RECORDS THAT ARE
16 DIRECTLY RELEVANT TO THE CONDITION OR CONDITIONS RENDERING THE
17 PRISONER MEDICALLY FRAIL TO THE PROSECUTOR AND SENTENCING OR
18 SUCCESSOR JUDGE OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED
19 BEFORE THE PAROLE BOARD DETERMINES WHETHER OR NOT TO GRANT THE
20 PRISONER PAROLE UNDER SUBSECTION (10).

21 (iii) AN INDEPENDENT MEDICAL EXAM IF SOUGHT BY THE PROSECUTOR
22 OF THE COUNTY FROM WHICH THE PRISONER WAS COMMITTED AS PROVIDED
23 UNDER SECTION 34(20). [IF POSSIBLE, THIS INDEPENDENT MEDICAL EXAM MUST
OCCUR AT A FACILITY OF THE DEPARTMENT. THE REASONABLE COSTS OF THIS
INDEPENDENT MEDICAL EXAM MUST BE PAID FOR BY THE DEPARTMENT.]

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

26 (C) THE PAROLE MUST BE FOR A TERM NOT LESS THAN THE TIME
27 NECESSARY TO REACH THE PRISONER'S EARLIEST RELEASE DATE.

1 (D) A PAROLEE WHO VIOLATES THE TERMS OF HIS OR HER PAROLE OR
2 IS DETERMINED TO NO LONGER MEET THE DEFINITION OF MEDICALLY FRAIL
3 MAY BE TRANSFERRED TO A SETTING MORE APPROPRIATE FOR THE MEDICAL
4 NEEDS OF THE PAROLEE OR BE SUBJECT TO THE PAROLE VIOLATION PROCESS
5 UNDER SECTIONS 38, 39, 39A, AND 40A AS DETERMINED BY THE PAROLE
6 BOARD AND THE DEPARTMENT.

7 (E) THE PAROLEE MUST ONLY BE PLACED IN A MEDICAL FACILITY THAT
8 AGREES TO ACCEPT THE PAROLEE AND THAT IS AGREED UPON BY THE PAROLEE
9 AS DESCRIBED IN SUBDIVISION (A) (i) .

10 (12) THE PAROLEE OR AN INDIVIDUAL LEGALLY ENTITLED TO AGREE TO
11 THE PAROLEE'S PLACEMENT UNDER SUBSECTION (11) (A) (i) SHALL
12 IMMEDIATELY INFORM THE PAROLE BOARD IF ANY OF THE FOLLOWING OCCUR:

13 (A) THE PAROLEE IS NO LONGER ELIGIBLE FOR CARE AT THE MEDICAL
14 FACILITY AT WHICH HE OR SHE WAS PLACED.

15 (B) THE PAROLEE MUST BE MOVED TO ANOTHER LOCATION FOR MEDICAL
16 CARE.

17 (C) THE PAROLEE IS NO LONGER AT THE MEDICAL FACILITY APPROVED
18 BY THE PAROLE BOARD.

19 (D) THE PAROLEE NO LONGER NEEDS THE LEVEL OF CARE THAT
20 RESULTED IN THE PAROLEE'S PLACEMENT AT THE MEDICAL FACILITY.

21 (13) THE PAROLE BOARD SHALL IMMEDIATELY NOTIFY THE PROSECUTOR
22 FOR THE COUNTY IN WHICH THE OFFENDER WAS CONVICTED AND THE
23 SENTENCING OR SUCCESSOR JUDGE IF THE PAROLEE IS NO LONGER ELIGIBLE
24 FOR CARE OR NO LONGER NEEDS THE LEVEL OF CARE FOR WHICH THE
25 PRISONER WAS PLACED AT THE MEDICAL FACILITY.

26 (14) THE DEPARTMENT SHALL NOT RETAIN AUTHORITY OVER THE
27 MEDICAL TREATMENT PLAN FOR A PRISONER GRANTED PAROLE UNDER

1 SUBSECTION (10) AND A PRISONER GRANTED PAROLE UNDER SUBSECTION (10)
2 MUST HAVE FULL PATIENT RIGHTS AT THE MEDICAL FACILITY WHERE HE OR
3 SHE IS PLACED.

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

8 (16) A MEDICAL FACILITY HOUSING PRISONERS GRANTED PAROLE UNDER
9 SUBSECTION (10) MUST BE OPERATED IN A MANNER THAT ENSURES THE
10 SAFETY OF THE RESIDENTS OF THE MEDICAL FACILITY.

11 (17) A PAROLEE GRANTED PAROLE UNDER SUBSECTION (10) AND PLACED
12 IN A MEDICAL FACILITY HAS THE SAME PATIENT RIGHTS AND
13 RESPONSIBILITIES AS ANY OTHER INDIVIDUAL WHO IS A RESIDENT OF OR
14 HAS BEEN ADMITTED TO THE MEDICAL FACILITY.

15 (18) THE PROCESS FOR A PAROLE DETERMINATION UNDER SUBSECTION
16 (10) DOES NOT CHANGE OR AFFECT ANY OF THE RIGHTS AFFORDED TO A
17 VICTIM UNDER THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT,
18 1985 PA 87, MCL 780.751 TO 780.834.

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

1 "person requiring treatment" means that term as defined in section
2 401 of the mental health code, 1974 PA 258, MCL 330.1401.

3 (20) ~~(12)~~—When the parole board makes a final determination
4 not to release a prisoner, the prisoner ~~shall~~**MUST** be provided with
5 a written explanation of the reason for denial and, if appropriate,
6 specific recommendations for corrective action the prisoner may
7 take to facilitate release.

8 (21) ~~(13)~~—This section does not apply to the placement on
9 parole of a person in conjunction with special alternative
10 incarceration under section 34a(7).

11 (22) AS USED IN THIS SECTION:

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

18 (B) "MEDICAL FACILITY" MEANS A HOSPITAL, HOSPICE, NURSING
19 HOME, OR OTHER HOUSING ACCOMMODATION PROVIDING MEDICAL TREATMENT
20 SUITABLE TO THE CONDITION OR CONDITIONS RENDERING THE PRISONER
21 MEDICALLY FRAIL.

22 (C) "MEDICALLY FRAIL" DESCRIBES AN INDIVIDUAL WHO IS A MINIMAL
23 THREAT TO SOCIETY AS A RESULT OF HIS OR HER MEDICAL CONDITION, WHO
24 HAS RECEIVED A RISK SCORE OF LOW ON A VALIDATED RISK ASSESSMENT,
25 WHOSE RECENT CONDUCT IN PRISON INDICATES HE OR SHE IS UNLIKELY TO
26 ENGAGE IN ASSAULTIVE CONDUCT, WHOSE ABILITY TO PERFORM 2 OR MORE
27 ACTIVITIES OF DAILY LIVING IS SIGNIFICANTLY IMPAIRED, AND WHO MAY

1 HAVE LIMITED MOBILITY AND ABILITY TO TRANSFER FROM 1 PHYSICAL
2 POSITION TO ANOTHER AS THE RESULT OF 1 OR MORE OF THE FOLLOWING
3 CONDITIONS FROM WHICH THE INDIVIDUAL IS NOT EXPECTED TO RECOVER:

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

6 (ii) A SERIOUS AND COMPLEX MEDICAL CONDITION.

7 (iii) A PHYSICAL DISABILITY.

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

10 Enacting section 2. This amendatory act does not take effect
11 unless House Bill No. 4102 of the 99th Legislature is enacted into
12 law.