

Act No. 339  
Public Acts of 2018  
Approved by the Governor  
September 12, 2018  
Filed with the Secretary of State  
September 13, 2018  
EFFECTIVE DATE: December 12, 2018

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Reps. Kesto, Chang, Lucido, Howell, Glenn and Pagel

# **ENROLLED HOUSE BILL No. 5377**

AN ACT to amend 1953 PA 232, entitled “An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act,” by amending sections 33e and 35 (MCL 791.233e and 791.235), section 33e as added by 1992 PA 181 and section 35 as amended by 2012 PA 24.

*The People of the State of Michigan enact:*

Sec. 33e. (1) The department shall develop parole guidelines that are consistent with section 33(1)(a) to govern the exercise of the parole board’s discretion under sections 34 and 35 as to the release of prisoners on parole under this act. The purpose of the parole guidelines is to assist the parole board in making objective, evidence-based release decisions that enhance the public safety.

(2) In developing the parole guidelines, the department shall consider factors including, but not limited to, the following:

- (a) The offense for which the prisoner is incarcerated at the time of parole consideration.
- (b) The prisoner’s institutional program performance.
- (c) The prisoner’s institutional conduct.

(d) The prisoner’s prior criminal record. As used in this subdivision, “prior criminal record” means the recorded criminal history of a prisoner, including all misdemeanor and felony convictions, probation violations, juvenile adjudications for acts that would have been crimes if committed by an adult, parole failures, and delayed sentences.

(e) Other relevant factors as determined by the department, if not otherwise prohibited by law.

(3) In developing the parole guidelines, the department may consider both of the following factors:

- (a) The prisoner’s statistical risk screening.
- (b) The prisoner’s age.

(4) The department shall ensure that the parole guidelines do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability.

(5) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that prescribe the parole guidelines.

(6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection must be for substantial and compelling objective reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.

(7) Substantial and compelling objective reasons for a departure from the parole guidelines for a prisoner with high probability of parole are limited to the following circumstances:

(a) The prisoner exhibits a pattern of ongoing behavior while incarcerated indicating that he or she would be a substantial risk to public safety, including major misconducts or additional criminal convictions.

(b) The prisoner refuses to participate in programming ordered by the department to reduce the prisoner's risk. A prisoner may not be considered to have refused programming if unable to complete programming due to factors beyond his or her control.

(c) There is verified objective evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing.

(d) The prisoner has threatened harm to another person if released.

(e) There is objective evidence of post-sentencing conduct, not already scored under the parole guidelines, that the prisoner would present a high risk to public safety if paroled.

(f) The prisoner is a suspect in an unsolved criminal case that is being actively investigated.

(g) The prisoner has a pending felony charge or is subject to a detainer request from another jurisdiction.

(h) The prisoner has not yet completed programming ordered by the department to reduce the prisoner's risk, and the programming is not available in the community and the risk cannot be adequately managed in the community before completion.

(i) The release of the prisoner is otherwise barred by law.

(j) The prisoner fails to present a sufficient parole plan adequately addressing his or her identified risks and needs to ensure that he or she will not present a risk to public safety if released on parole. If a prisoner is denied parole under this subdivision, the parole board must provide the prisoner a detailed explanation of the deficiencies in the parole plan so that the prisoner may address the deficiencies before his or her next review.

(k) The prisoner has received a psychological evaluation in the past 3 years indicating the prisoner would present a high risk to public safety if paroled.

(8) The parole board may deny parole for up to 1 year to a prisoner who was denied parole under subsection (7)(h) to allow for the completion of programming ordered by the department. A prisoner denied parole under subsection (7)(h) must receive parole consideration within 30 days after the completion of the programming.

(9) The parole board shall conduct a review of a prisoner, except for a prisoner serving a life sentence, who has been denied parole as follows:

(a) If the prisoner scored high or average probability of parole, not less than annually.

(b) If the prisoner scored low probability of parole, not less than every 2 years until a score of high or average probability of parole is attained.

(10) Not less than once every 2 years, the department shall review the correlation between the implementation of the parole guidelines and the recidivism rate of paroled prisoners, and shall submit to the joint committee on administrative rules any proposed revisions to the administrative rules that the department considers appropriate after conducting the review.

(11) By March 1 of each year, the department shall report to the standing committees of the senate and the house of representatives having jurisdiction of corrections issues and the criminal justice policy commission created under section 32a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.32a, all of the following information:

(a) The number of prisoners who scored high probability of parole and were granted parole during the preceding calendar year.

(b) The number of prisoners who scored high probability of parole and for whom parole was deferred to complete necessary programming during the preceding calendar year.

(c) The number of prisoners who scored high probability of parole and were incarcerated at least 6 months past their first parole eligibility date as of December 31 of the preceding calendar year.

(d) The number of prisoners who scored high probability of parole and were denied parole for a substantial and compelling objective reason, or substantial and compelling objective reasons, under subsection (7) during the preceding calendar year. This information must be provided with a breakdown of parole denials for each of the substantial and compelling objective reasons under subsection (7).

(e) The number of prisoners who scored high probability of parole and were denied parole whose controlling offense is in each of the following groups:

(i) Homicide.

(ii) Sexual offense.

(iii) An assaultive offense other than a homicide or sexual offense.

(iv) A nonassaultive offense.

(v) A controlled substance offense.

(f) Of the total number of prisoners subject to subsection (7) who scored high probability of parole and were denied parole, the number who have served the following amount of time after completing their minimum sentence:

(i) Less than 1 year.

(ii) One year or more but less than 2 years.

(iii) Two years or more but less than 3 years.

(iv) Three years or more but less than 4 years.

(v) Four or more years.

(12) The department shall immediately advise the standing committees of the senate and house of representatives having jurisdiction of corrections issues and the criminal justice policy commission described in subsection (11) of any changes made to the scoring of the parole guidelines after the effective date of the amendatory act that added this subsection, including a change in the number of points that define "high probability of parole".

(13) Subsections (6), (7), and (8) as amended or added by the amendatory act that added this subsection apply only to prisoners whose controlling offense was committed on or after the effective date of the amendatory act that added this subsection. Subsections (7) and (8) do not apply to a prisoner serving a life sentence, regardless of the date of his or her controlling offense.

Sec. 35. (1) The release of a prisoner on parole must be granted solely upon the initiative of the parole board. There is no entitlement to parole. The parole board may grant a parole without interviewing the prisoner if, after evaluating the prisoner according to the parole guidelines, the parole board determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner. Except as provided in subsection (2), a prisoner must not be denied parole without an interview before 1 member of the parole board. The interview must be conducted at least 1 month before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. The parole board shall consider any statement made to the parole board by a crime victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall not consider any of the following factors in making a parole determination:

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

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

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

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

(a) A prisoner's marital history.

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

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

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

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

(7) At least 90 days before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time or disciplinary credits, or at least 90 days before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time, or the expiration of a 12-month continuance

for any prisoner, the appropriate institutional staff shall prepare a parole eligibility report. The parole eligibility report is considered pertinent information for purposes of subsection (5). The report must include all of the following:

- (a) A statement of all major misconduct charges of which the prisoner was found guilty and the punishment served for the misconduct.
- (b) The prisoner's work and educational record while confined.
- (c) The results of any physical, mental, or psychiatric examinations of the prisoner that may have been performed.
- (d) Whether the prisoner fully cooperated with this state by providing complete financial information as required under section 3a of the state correctional facility reimbursement act, 1935 PA 253, MCL 800.403a.
- (e) Whether the prisoner refused to attempt to obtain identification documents under section 34c, if applicable.
- (f) For a prisoner subject to disciplinary time, a statement of all disciplinary time submitted for the parole board's consideration under section 34 of 1893 PA 118, MCL 800.34.
- (g) The result on any validated risk assessment instrument.
- (8) The preparer of the report shall not include a recommendation as to release on parole.
- (9) Psychological evaluations performed at the request of the parole board to assist it in reaching a decision on the release of a prisoner may be performed by the same person who provided the prisoner with therapeutic treatment, unless a different person is requested by the prisoner or parole board.
- (10) The parole board may grant a medical parole for a prisoner determined to be physically or mentally incapacitated. A decision to grant a medical parole must be initiated on the recommendation of the bureau of health care services and must be reached only after a review of the medical, institutional, and criminal records of the prisoner.
- (11) The department shall file a petition to the appropriate court under section 434 of the mental health code, 1974 PA 258, MCL 330.1434, for any prisoner being paroled or being released after serving his or her maximum sentence whom the department considers to be a person requiring treatment. The parole board shall require mental health treatment as a special condition of parole for any parolee whom the department has determined to be a person requiring treatment whether or not the petition filed for that prisoner is granted by the court. As used in this subsection, "person requiring treatment" means that term as defined in section 401 of the mental health code, 1974 PA 258, MCL 330.1401.
- (12) When the parole board makes a final determination not to release a prisoner, the parole board shall provide the prisoner with a written explanation of the reason for denial and, if appropriate, specific recommendations for corrective action the prisoner may take to facilitate release.
- (13) This section does not apply to the placement on parole of a person in conjunction with special alternative incarceration under section 34a(7).

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

This act is ordered to take immediate effect.



-----  
Clerk of the House of Representatives



-----  
Secretary of the Senate

Approved .....

-----  
Governor