

SUBSTITUTE FOR
HOUSE BILL NO. 5398

A bill 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 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 33, 34, 34a, 35, 36, 65, and 65a

(MCL 791.233, 791.234, 791.234a, 791.235, 791.236, 791.265, and 791.265a), sections 33, 35, and 65 as amended by 1994 PA 217,

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

2

section 34 as amended by 1994 PA 345, section 34a as amended by 1998 PA 84, section 36 as amended by 1996 PA 554, and section 65a as amended by 1997 PA 13, and by adding section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7A. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE GOV-
2 ERNING BODIES OF THE SENATE AND HOUSE FISCAL AGENCIES SHALL HAVE
3 ACCESS TO ALL RECORDS OF THE DEPARTMENT OF CORRECTIONS RELATING
4 TO INDIVIDUALS UNDER THE SUPERVISION OF THE DEPARTMENT OF CORREC-
5 TIONS INCLUDING, BUT NOT LIMITED TO, RECORDS CONTAINED IN BASIC
6 INFORMATION REPORTS AND IN THE CORRECTIONS MANAGEMENT INFORMATION
7 SYSTEM, THE PAROLE BOARD INFORMATION SYSTEM, AND ANY SUCCESSOR
8 DATABASES.

9 (2) RECORDS SHALL NOT BE ACCESSIBLE UNDER SUBSECTION (1) IF
10 THE DEPARTMENT OF CORRECTIONS DETERMINES THAT ANY OF THE FOLLOW-
11 ING APPLIES:

12 (A) ACCESS IS RESTRICTED OR PROHIBITED BY LAW.

13 (B) ACCESS COULD JEOPARDIZE AN ONGOING INVESTIGATION.

14 (C) ACCESS COULD JEOPARDIZE THE SAFETY OF A PRISONER,
15 EMPLOYEE, OR OTHER PERSON.

16 (D) ACCESS COULD JEOPARDIZE THE SAFETY, CUSTODY, OR SECURITY
17 OF AN INSTITUTION OR OTHER FACILITY.

18 (3) THE RECORDS THAT ARE TO BE ACCESSED, AND THE MANNER OF
19 ACCESS TO THOSE RECORDS, SHALL BE DETERMINED UNDER A WRITTEN
20 AGREEMENT ENTERED INTO JOINTLY BETWEEN THE GOVERNING BOARD OF THE
21 SENATE FISCAL AGENCY, THE GOVERNING COMMITTEE OF THE HOUSE FISCAL

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

3

1 AGENCY, AND THE DEPARTMENT OF CORRECTIONS. THE AGREEMENT SHALL
2 ENSURE THE CONFIDENTIALITY OF ACCESSED RECORDS.

3 Sec. 33. (1) The grant of a parole is subject to all of the
4 following:

5 (a) A prisoner shall not be given liberty on parole until
6 the board has reasonable assurance, after consideration of all of
7 the facts and circumstances, including the prisoner's mental and
8 social attitude, that the prisoner will not become a menace to
9 society or to the public safety.

10 (b) Except as provided in section 34a, a parole shall not be
11 granted to a prisoner other than a prisoner subject to disci-
12 plinary time until the prisoner has served the minimum term
13 imposed by the court less allowances for good time or special
14 good time to which the prisoner may be entitled by statute,
15 except that a prisoner other than a prisoner subject to disci-
16 plinary time is eligible for parole before the expiration of his
17 or her minimum term of imprisonment whenever the sentencing
18 judge, or the judge's successor in office, gives written approval
19 of the parole of the prisoner before the expiration of the mini-
20 mum term of imprisonment.

21 (c) Except as provided in section 34a, and notwithstanding
22 the provisions of subdivision (b), a parole shall not be granted
23 to a prisoner other than a prisoner subject to disciplinary time
24 sentenced for the commission of a crime described in
25 section 33b(a) to (cc) until the prisoner has served the minimum
26 term imposed by the court less an allowance for disciplinary
27 credits as provided in section 33(5) of ~~Act No. 118 of the~~

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

4

1 ~~Public Acts of 1893, being section 800.33 of the Michigan~~
2 ~~Compiled Laws— 1893 PA 118, MCL 800.33. A prisoner described in~~
3 this subdivision is not eligible for special parole.

4 (d) Except as provided in section 34a, a parole shall not be
5 granted to a prisoner subject to disciplinary time until the
6 prisoner has served the minimum term imposed by the court. —,
7 ~~plus any disciplinary time accumulated pursuant to section 34 of~~
8 ~~Act No. 118 of the Public Acts of 1893, being section 800.34 of~~
9 ~~the Michigan Compiled Laws.—~~

10 (e) A prisoner shall not be released on parole until the
11 parole board has satisfactory evidence that arrangements have
12 been made for such honorable and useful employment as the pris-
13 oner is capable of performing, for the prisoner's education, or
14 for the prisoner's care if the prisoner is mentally or physically
15 ill or incapacitated.

16 (2) Paroles-in-custody to answer warrants filed by local or
17 out-of-state agencies, or immigration officials, are permissible
18 if an accredited agent of the agency filing the warrant calls for
19 the prisoner to be paroled in custody.

20 (3) Pursuant to the administrative procedures act of 1969,
21 ~~Act No. 306 of the Public Acts of 1969, as amended, being sec-~~
22 ~~tions 24.201 to 24.328 of the Michigan Compiled Laws— 1969~~
23 PA 306, MCL 24.201 TO 24.328, the parole board may promulgate
24 rules not inconsistent with this act with respect to conditions
25 to be imposed upon prisoners paroled under this act.

26 Sec. 34. (1) Except as provided in section 34a, a prisoner
27 sentenced to an indeterminate sentence and confined in a state

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

5

1 correctional facility with a minimum in terms of years other than
2 a prisoner subject to disciplinary time is subject to the juris-
3 diction of the parole board when the prisoner has served a period
4 of time equal to the minimum sentence imposed by the court for
5 the crime of which he or she was convicted, less good time and
6 disciplinary credits, if applicable.

7 (2) Except as provided in section 34a, a prisoner subject to
8 disciplinary time sentenced to an indeterminate sentence and con-
9 fined in a state correctional facility with a minimum in terms of
10 years is subject to the jurisdiction of the parole board when the
11 prisoner has served a period of time equal to the minimum sen-
12 tence imposed by the court for the crime of which he or she was
13 convicted. ~~, plus any disciplinary time accumulated pursuant to~~
14 ~~section 34 of Act No. 118 of the Public Acts of 1893, being sec-~~
15 ~~tion 800.34 of the Michigan Compiled Laws.~~

16 (3) If a prisoner other than a prisoner subject to disci-
17 plinary time is sentenced for consecutive terms, whether received
18 at the same time or at any time during the life of the original
19 sentence, the parole board has jurisdiction over the prisoner for
20 purposes of parole when the prisoner has served the total time of
21 the added minimum terms, less the good time and disciplinary
22 credits allowed by statute. The maximum terms of the sentences
23 shall be added to compute the new maximum term under this subsec-
24 tion, and discharge shall be issued only after the total of the
25 maximum sentences has been served less good time and disciplinary
26 credits, unless the prisoner is paroled and discharged upon
27 satisfactory completion of the parole.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

6

1 (4) If a prisoner subject to disciplinary time is sentenced
2 for consecutive terms, whether received at the same time or at
3 any time during the life of the original sentence, the parole
4 board has jurisdiction over the prisoner for purposes of parole
5 when the prisoner has served the total time of the added minimum
6 terms. ~~, plus any disciplinary time.~~ The maximum terms of the
7 sentences shall be added to compute the new maximum term under
8 this subsection, and discharge shall be issued only after the
9 total of the maximum sentences has been served, unless the pris-
10 oner is paroled and discharged upon satisfactory completion of
11 the parole.

12 (5) If a prisoner other than a prisoner subject to disci-
13 plinary time has 1 or more consecutive terms remaining to serve
14 in addition to the term he or she is serving, the parole board
15 may terminate the sentence the prisoner is presently serving at
16 any time after the minimum term of the sentence has been served.

17 (6) A prisoner under sentence for life or for a term of
18 years, other than a prisoner sentenced for life for murder in the
19 first degree or sentenced for life or for a minimum term of
20 imprisonment for a major controlled substance offense, who has
21 served 10 calendar years of the sentence in the case of a pris-
22 oner sentenced for a crime committed before October 1, 1992, or
23 who has served 15 calendar years of the sentence in the case of a
24 prisoner sentenced for a crime committed on or after October 1,
25 1992, is subject to the jurisdiction of the parole board and may
26 be released on parole by the parole board, subject to the
27 following conditions:

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

7

1 (a) ~~One member of the parole board shall interview the~~
2 ~~prisoner at~~ AT the conclusion of 10 calendar years of the
3 PRISONER'S sentence and every 5 years thereafter until such time
4 as the prisoner is paroled, discharged, or deceased, AND IN
5 ACCORDANCE WITH THE PROCEDURES DESCRIBED IN SECTION 35(4) TO (6),
6 1 MEMBER OF THE PAROLE BOARD SHALL INTERVIEW THE PRISONER. The
7 interview schedule prescribed in this subdivision applies to all
8 prisoners to whom this subsection is applicable, ~~whether~~
9 REGARDLESS OF WHEN THEY WERE sentenced. ~~before, on, or after the~~
10 ~~effective date of the 1992 amendatory act that amended this~~
11 ~~subdivision.~~

12 (b) A parole shall not be granted a prisoner so sentenced
13 until after a public hearing held in the manner prescribed for
14 pardons and commutations in sections ~~44(2)(f) to (h)~~ 44(2) and
15 45. Notice of the public hearing shall be given to the sentenc-
16 ing judge, or the judge's successor in office, and parole shall
17 not be granted if the sentencing judge, or the judge's successor
18 in office, files written objections to the granting of the parole
19 within 30 days of receipt of the notice of hearing. The written
20 objections shall be made part of the prisoner's file.

21 (c) A parole granted under this subsection shall be for a
22 period of not less than 4 years and subject to the usual rules
23 pertaining to paroles granted by the parole board. A parole
24 ordered under this subsection is not valid until the transcript
25 of the record is filed with the attorney general whose certifica-
26 tion of receipt of the transcript shall be returnable to the
27 office of the parole board within 5 days. Except for medical

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

8

1 records protected under section 2157 of the revised judicature
2 act of 1961, ~~Act No. 236 of the Public Acts of 1961, being sec-~~
3 ~~tion 600.2157 of the Michigan Compiled Laws~~ 1961 PA 236,
4 MCL 600.2157, the file of a prisoner granted a parole under this
5 subsection is a public record.

6 (d) A parole shall not be granted under this subsection in
7 the case of a prisoner who is otherwise prohibited by law from
8 parole consideration. In such cases the interview procedures in
9 section 44 shall be followed.

10 (7) Except as provided in section 34a, a prisoner's release
11 on parole is discretionary with the parole board. The action of
12 the parole board in granting or denying a parole is appealable by
13 the prisoner, the prosecutor of the county from which the pris-
14 oner was committed, or the victim of the crime for which the
15 prisoner was convicted. The appeal shall be to the circuit court
16 in the county from which the prisoner was committed, by leave of
17 the court.

18 ~~(8) The provisions of this section regarding prisoners~~
19 ~~subject to disciplinary time take effect beginning on the effec-~~
20 ~~tive date of Act No. 217 of the Public Acts of 1994, as pre-~~
21 ~~scribed in enacting section 2 of that amendatory act.~~

22 Sec. 34a. (1) A prisoner sentenced ~~either before, on, or~~
23 ~~after January 6, 1995~~ to an indeterminate term of imprisonment
24 under the jurisdiction of the department, REGARDLESS OF WHEN HE
25 OR SHE WAS SENTENCED, shall be considered by the department for
26 placement in a special alternative incarceration unit established
27 under section 3 of the special alternative incarceration act,

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

9

1 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility
2 requirements of subsections (2) and (3). For a prisoner commit-
3 ted to the jurisdiction of the department on or after March 19,
4 1992, the department shall determine before the prisoner leaves
5 the reception center whether the prisoner is eligible for place-
6 ment in a special alternative incarceration unit, although actual
7 placement may take place at a later date. A determination of
8 eligibility does not guarantee placement in a unit.

9 (2) To be eligible for placement in a special alternative
10 incarceration unit, the prisoner shall meet all of the following
11 requirements:

12 (a) The prisoner's minimum sentence does not exceed either
13 of the following limits, as applicable:

14 (i) 24 months or less for a violation of section 110 of the
15 Michigan penal code, 1931 PA 328, MCL 750.110, if the violation
16 involved any occupied dwelling house. ~~, as that term is defined~~
17 ~~in that section.~~

18 (ii) 36 months or less for any other crime.

19 (b) The prisoner has never previously been placed in a spe-
20 cial alternative incarceration unit as either a prisoner or a
21 probationer, unless he or she was removed from a special alterna-
22 tive incarceration unit for medical reasons as specified in
23 subsection (6).

24 (c) The prisoner is physically able to participate in the
25 program.

26 (d) The prisoner does not appear to have any mental
27 disability that would prevent participation in the program.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

10

1 (e) The prisoner is serving his or her first prison
2 sentence.

3 (f) At the time of sentencing, the judge did not prohibit
4 participation in the program in the judgment of sentence.

5 (g) The prisoner is otherwise suitable for the program, as
6 determined by the department.

7 (h) The prisoner is not serving a sentence for any of the
8 following crimes:

9 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b,
10 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349,
11 349a, 350, 422, 436, 511, 516, 517, 520b, 529, 529a, 531, or 544
12 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49,
13 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207,
14 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338,
15 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436,
16 750.511, 750.516, 750.517, 750.520b, 750.529, 750.529a, 750.531,
17 and 750.544.

18 (ii) A violation of section 145c, 520c, 520d, or 520g of the
19 Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c,
20 750.520d, and 750.520g.

21 (iii) A violation of section 72, 73, or 75 of the Michigan
22 penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

23 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
24 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328,
25 MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213,
26 750.319, 750.321, 750.329, and 750.397.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

11

1 (v) A violation of section 2 of 1968 PA 302, MCL 752.542.

2 (vi) An attempt to commit a crime described in subparagraphs
3 (i) to (v).

4 (vii) A violation occurring on or after January 1, 1992, of
5 section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300,
6 MCL 257.625.

7 (viii) A crime for which the prisoner was punished pursuant
8 to section 10, 11, or 12 of chapter IX of the code of criminal
9 procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

10 (3) A prisoner who is serving a sentence for a violation of
11 section 7401 or 7403 of the public health code, 1978 PA 368, MCL
12 333.7401 and 333.7403, and who has previously been convicted for
13 a violation of section 7401 or 7403(2)(a), (b), or (e) of the
14 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is
15 not eligible for placement in a special alternative incarceration
16 unit until after he or she has served the equivalent of the man-
17 datory minimum sentence prescribed by statute for that
18 violation.

19 (4) If the sentencing judge prohibited a prisoner's partici-
20 pation in the special alternative incarceration program in the
21 judgment of sentence, that prisoner shall not be placed in a spe-
22 cial alternative incarceration unit. If the sentencing judge
23 permitted the prisoner's participation in the special alternative
24 incarceration program in the judgment of sentence, that prisoner
25 may be placed in a special alternative incarceration unit if the
26 department determines that the prisoner also meets the
27 requirements of subsections (2) and (3). If the sentencing judge

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

12

1 neither prohibited nor permitted a prisoner's participation in
2 the special alternative incarceration program in the judgment of
3 sentence, and the department determines that the prisoner meets
4 the eligibility requirements of subsections (2) and (3), the
5 department shall notify the judge or the judge's successor, the
6 prosecuting attorney for the county in which the prisoner was
7 sentenced, and any victim of the crime for which the prisoner was
8 committed if the victim has submitted to the department a written
9 request for any notification pursuant to section 19(1) of the
10 crime victim's rights act, 1985 PA 87, MCL 780.769, of the pro-
11 posed placement of the prisoner in the special alternative incar-
12 ceration unit not later than 30 days before placement is intended
13 to occur. The department shall not place the prisoner in a spe-
14 cial alternative incarceration unit unless the sentencing judge,
15 or the judge's successor, notifies the department, in writing,
16 that he or she does not object to the proposed placement. In
17 making the decision on whether or not to object, the judge, or
18 judge's successor, shall review any impact statement submitted
19 pursuant to section 14 of the crime victim's rights act, 1985 PA
20 87, MCL 780.764, by the victim or victims of the crime of which
21 the prisoner was convicted.

22 (5) Notwithstanding subsection (4), a prisoner shall not be
23 placed in a special alternative incarceration unit unless the
24 prisoner consents to that placement and agrees that the depart-
25 ment may suspend or restrict privileges generally afforded other
26 prisoners including, but not limited to, the areas of visitation,
27 property, mail, publications, commissary, library, and telephone

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

13

1 access. However, the department may not suspend or restrict the
2 prisoner's access to the prisoner grievance system.

3 (6) A prisoner may be placed in a special alternative incar-
4 ceration program for a period of not less than 90 days or more
5 than 120 days. If, during that period, the prisoner misses more
6 than 5 days of program participation due to medical excuse for
7 illness or injury occurring after he or she was placed in the
8 program, the period of placement shall be increased by the number
9 of days missed, beginning with the sixth day of medical excuse,
10 up to a maximum of 20 days. However, the total number of days a
11 prisoner may be placed in this program, including days missed due
12 to medical excuse, shall not exceed 120 days. A medical excuse
13 shall be verified by a physician's statement. A prisoner who is
14 medically unable to participate in the program for more than 25
15 days shall be returned to a state correctional facility but may
16 be reassigned to the program if the prisoner meets the eligibil-
17 ity requirements of subsections (2) and (3).

18 (7) Upon certification of completion of the special alterna-
19 tive incarceration program, the prisoner shall be placed on
20 parole. A prisoner paroled under this section shall have condi-
21 tions of parole as determined appropriate by the parole board and
22 shall be placed on parole for not less than 18 months, or the
23 balance of the prisoner's minimum sentence, whichever is greater,
24 with at least the first 120 days under intensive supervision.

25 (8) The parole board may suspend or revoke parole for any
26 prisoner paroled under this section subject to sections 39a and
27 40a. For a prisoner other than a prisoner subject to

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

14

1 disciplinary time, if parole is revoked before the expiration of
2 the prisoner's minimum sentence, less disciplinary credits, the
3 parole board shall forfeit, pursuant to section 33(13) of 1893 PA
4 118, MCL 800.33, all disciplinary credits that were accumulated
5 during special alternative incarceration, and the prisoner shall
6 be considered for parole pursuant to section 35.

7 (9) On March 19, 1993, and annually after that time, the
8 department shall report to the legislature the impact of the
9 operation of this section, including a report concerning
10 recidivism.

11 ~~(10) The provisions of this section regarding prisoners~~
12 ~~subject to disciplinary time take effect beginning on the effec-~~
13 ~~tive date of 1994 PA 217, as prescribed in enacting section 2 of~~
14 ~~that amendatory act.~~

15 Sec. 35. (1) The release of a prisoner on parole shall be
16 granted solely upon the initiative of the parole board. The
17 parole board may grant a parole without interviewing the
18 prisoner. However, beginning on the date on which the adminis-
19 trative rules prescribing parole guidelines pursuant to
20 section 33e(5) take effect, the parole board may grant a parole
21 without interviewing the prisoner only if, after evaluating the
22 prisoner according to the parole guidelines, the parole board
23 determines that the prisoner has a high probability of being
24 paroled and the parole board therefore intends to parole the
25 prisoner. Except as provided in subsection (2), a prisoner shall
26 not be denied parole without an interview before 1 member of the
27 parole board. The interview shall be conducted at least 1 month

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

15

1 before the expiration of the prisoner's minimum sentence less
2 applicable good time and disciplinary credits for a prisoner eli-
3 gible for good time and disciplinary credits, or at least 1 month
4 before the expiration of the prisoner's minimum sentence ~~plus~~
5 ~~disciplinary time~~ for a prisoner subject to disciplinary time.
6 The parole board shall consider any statement made to the parole
7 board by a crime victim under the crime victim's rights act, ~~Act~~
8 ~~No. 87 of the Public Acts of 1985, being sections 780.751 to~~
9 ~~780.834 of the Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO
10 780.834, or under any other provision of law. The parole board
11 shall not consider any of the following factors in making a
12 parole determination:

13 (a) A juvenile record that a court has ordered the depart-
14 ment 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
18 intent to conduct an interview as provided in subsection (4).
19 This subdivision applies only to presentence investigation
20 reports prepared before April 1, 1983.

21 (2) Beginning on the date on which the administrative rules
22 prescribing the parole guidelines take effect pursuant to
23 section 33e(5), if, after evaluating a prisoner according to the
24 parole guidelines, the parole board determines that the prisoner
25 has a low probability of being paroled and the parole board
26 therefore does not intend to parole the prisoner, the parole

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

16

1 board shall not be required to interview the prisoner before
2 denying parole to the prisoner.

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

5 (a) A prisoner's marital history.

6 (b) Prior arrests not resulting in conviction or adjudica-
7 tion of delinquency.

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

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

24 (6) A prisoner may waive the right to an interview by 1
25 member of the parole board. The waiver of the right to be inter-
26 viewed shall be given not more than 30 days after the notice of
27 intent to conduct an interview is issued and shall be made in

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

17

1 writing. During the interview held pursuant to a notice of
2 intent to conduct an interview, the prisoner may be represented
3 by an individual of his or her choice. The representative shall
4 not be another prisoner or an attorney. A prisoner is not enti-
5 tled to appointed counsel at public expense. The prisoner or
6 representative may present relevant evidence in support of
7 release. This subsection does not apply until April 1, 1983.

8 (7) At least 90 days before the expiration of the prisoner's
9 minimum sentence less applicable good time and disciplinary cred-
10 its for a prisoner eligible for good time or disciplinary cred-
11 its, or at least 90 days before the expiration of the prisoner's
12 minimum sentence ~~plus disciplinary time~~ for a prisoner subject
13 to disciplinary time, or the expiration of a 12-month continuance
14 for any prisoner, a parole eligibility report shall be prepared
15 by appropriate institutional staff. The parole eligibility
16 report shall be considered pertinent information for purposes of
17 subsection (5). The report shall include all of the following:

18 (a) A statement of all major misconduct charges of which the
19 prisoner was found guilty and the punishment served for the
20 misconduct.

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

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

25 (d) Whether the prisoner fully cooperated with the state by
26 providing complete financial information as required under
27 section 3a of the state correctional facility reimbursement act,

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

18

1 ~~Act No. 253 of the Public Acts of 1935, being section 800.403a~~
2 ~~of the Michigan Compiled Laws~~ 1935 PA 253, MCL 800.403A.

3 (E) FOR A PRISONER SUBJECT TO DISCIPLINARY TIME, A STATEMENT
4 OF ALL DISCIPLINARY TIME SUBMITTED FOR THE PAROLE BOARD'S CONSID-
5 ERATION PURSUANT TO SECTION 34 OF 1893 PA 118, MCL 800.34.

6 (8) The preparer of the report shall not include a recommen-
7 dation as to release on parole.

8 (9) Psychological evaluations performed at the request of
9 the parole board to assist it in reaching a decision on the
10 release of a prisoner may be performed by the same person who
11 provided the prisoner with therapeutic treatment, unless a dif-
12 ferent person is requested by the prisoner or parole board.

13 (10) The parole board may grant a medical parole for a pris-
14 oner determined to be physically or mentally incapacitated. A
15 decision to grant a medical parole shall be initiated upon the
16 recommendation of the bureau of health care services and shall be
17 reached only after a review of the medical, institutional, and
18 criminal records of the prisoner.

19 (11) The department shall submit a petition to the ~~probate~~
20 APPROPRIATE court under section 434 of the mental health code,
21 ~~Act No. 258 of the Public Acts of 1974, being section 330.1434~~
22 ~~of the Michigan Compiled Laws~~ 1974 PA 258, MCL 330.1434, for any
23 prisoner being paroled or being released after serving his or her
24 maximum sentence whom the department considers to be a person
25 requiring treatment. The parole board shall require mental
26 health treatment as a special condition of parole for any parolee
27 whom the department has determined to be a person requiring

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

19

1 treatment whether or not the petition filed for that prisoner is
2 granted by the ~~probate~~ court. As used in this subsection,
3 "person requiring treatment" means that term as defined in
4 section 401 of ~~Act No. 258 of the Public Acts of 1974, being~~
5 ~~section 330.1401 of the Michigan Compiled Laws~~ THE MENTAL HEALTH
6 CODE, 1974 PA 258, MCL 330.1401.

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

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

15 Sec. 36. (1) All paroles shall be ordered by the parole
16 board and shall be signed by the chairperson. Written notice of
17 the order shall be given to the sheriff or other police officer
18 of the municipality or county in which the prisoner was convicted
19 ~~—~~ and ~~to~~ the sheriff or other local police officer of the
20 municipality or county to which the paroled prisoner is sent.

21 (2) An order of parole may be amended or rescinded at the
22 discretion of the parole board for cause. If a paroled prisoner
23 who is required to register pursuant to the sex offenders regis-
24 tration act, ~~Act No. 295 of the Public Acts of 1994, being sec-~~
25 ~~tions 28.721 to 28.732 of the Michigan Compiled Laws~~ 1994
26 PA 295, MCL 28.721 TO 28.732, willfully violates that act, the
27 parole board shall rescind the parole. A parole shall not be

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

20

1 rescinded unless an interview is conducted by 1 member of the
2 parole board. The purpose of the interview is to consider and
3 act upon information received by the board after the original
4 parole release decision. A rescission interview shall be con-
5 ducted within 45 days after receiving the new information. At
6 least 10 days before the interview, the parolee shall receive a
7 copy or summary of the new evidence that is the basis for the
8 interview. An amendment to a parole order shall be in writing
9 and is not effective until notice of the amendment is given to
10 the parolee.

11 (3) When an order for parole is issued, the order shall con-
12 tain the conditions of the parole and shall specifically provide
13 proper means of supervision of the paroled prisoner in accordance
14 with the rules of the bureau of field services.

15 (4) The order of parole shall contain a condition to pay
16 restitution to the victim of the prisoner's crime or the victim's
17 estate if the prisoner was ordered to make restitution pursuant
18 to the crime victim's rights act, ~~Act No. 87 of the Public Acts~~
19 ~~of 1985, being sections 780.751 to 780.834 of the Michigan~~
20 ~~Compiled Laws~~ 1985 PA 87, MCL 780.751 TO 780.834, or the code of
21 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~
22 ~~being sections 760.1 to 776.21 of the Michigan Compiled Laws~~
23 1927 PA 175, MCL 760.1 TO 776.22.

24 (5) The order of parole shall contain a condition requiring
25 the parolee to pay a parole supervision fee as prescribed in
26 section 36a.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

21

1 (6) The order of parole shall contain a condition requiring
2 the parolee to pay any assessment the prisoner was ordered to pay
3 ~~pursuant to~~ UNDER section 5 of ~~Act No. 196 of the Public Acts~~
4 ~~of 1989, being section 780.905 of the Michigan Compiled Laws~~
5 1989 PA 196, MCL 780.905.

6 (7) If the parolee is required to be registered under ~~Act~~
7 ~~No. 295 of the Public Acts of 1994~~ THE SEX OFFENDERS REGISTRA-
8 TION ACT, 1994 PA 295, MCL 28.721 TO 28.732, the order of parole
9 shall contain a condition requiring the parolee to comply with
10 that act.

11 (8) An order of parole issued for a prisoner subject to dis-
12 ciplinary time ~~shall~~ MAY contain a condition requiring the
13 parolee to be housed in a community corrections center or a com-
14 munity residential home for not less than the first 30 days but
15 not more than the first 180 days of his or her term of parole.
16 As used in this subsection, "community corrections center" and
17 "community residential home" mean those terms as defined in
18 section 65a. ~~This subsection applies beginning on the date that~~
19 ~~sentencing guidelines are enacted into law after the sentencing~~
20 ~~commission submits recommended sentencing guidelines to the sec-~~
21 ~~retary of the senate and the clerk of the house of representa-~~
22 ~~tives pursuant to section 33 of chapter IX of the code of crimi-~~
23 ~~nal procedure, Act No. 175 of the Public Acts of 1927, being sec-~~
24 ~~tion 769.33 of the Michigan Compiled Laws.~~

25 (9) The order of parole shall contain a condition requiring
26 the parolee to pay the following amounts owed by the prisoner, if
27 applicable:

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

22

1 (a) The balance of filing fees and costs ordered to be paid
2 under section 2963 of the revised judicature act of 1961, ~~Act~~
3 ~~No. 236 of the Public Acts of 1961, being section 600.2963 of the~~
4 ~~Michigan Compiled Laws~~ 1961 PA 236, MCL 600.2963.

5 (b) The balance of any filing fee ordered to be paid by a
6 federal court under section 1915 of title 28 of the United States
7 Code, 28 U.S.C. 1915 and any unpaid order of costs assessed
8 against the prisoner.

9 (10) In each case in which payment of restitution is ordered
10 as a condition of parole, a parole officer assigned to a case
11 shall review the case not less than twice yearly to ensure that
12 restitution is being paid as ordered. The final review shall be
13 conducted not less than 60 days before the expiration of the
14 parole period. If the parole officer determines that restitution
15 is not being paid as ordered, the parole officer shall file a
16 written report of the violation with the parole board on a form
17 prescribed by the parole board. The report shall include a
18 statement of the amount of arrearage and any reasons for the
19 arrearage known by the parole officer. The parole board shall
20 immediately provide a copy of the report to the court, the prose-
21 cuting attorney, and the victim.

22 (11) If a parolee is required to register pursuant to ~~Act~~
23 ~~No. 295 of the Public Acts of 1994~~ THE SEX OFFENDERS REGISTRA-
24 TION ACT, 1994 PA 295, MCL 28.721 TO 28.732, the parole officer
25 shall register the parolee as provided in that act.

26 Sec. 65. (1) Under rules promulgated by the director of the
27 department, the assistant director in charge of the bureau of

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

23

1 correctional facilities, except as otherwise provided in this
2 section, may cause the transfer or re-transfer of a prisoner from
3 a correctional facility to which committed to any other correc-
4 tional facility, or temporarily to a state institution for medi-
5 cal or surgical treatment. In effecting a transfer, the assist-
6 ant director of the bureau of correctional facilities may utilize
7 the services of an executive or employee within the department
8 and of a law enforcement officer of the state.

9 (2) ~~A~~ EXCEPT AS PROVIDED IN SECTION 65A(6), A prisoner who
10 is subject to disciplinary time and is committed to the jurisdic-
11 tion of the department shall be confined in a secure correctional
12 facility for the duration of his or her minimum sentence plus
13 disciplinary time, except for periods when the prisoner is away
14 from the secure correctional facility while being supervised by
15 an employee of the department for 1 of the following purposes:

16 (a) Visiting a critically ill relative.

17 (b) Attending the funeral of a relative.

18 (c) Obtaining medical services not otherwise available at
19 the secure correctional facility.

20 (d) Participating in a work detail.

21 (3) As used in this section, "offender" means a citizen of
22 the United States or a foreign country who has been convicted of
23 a crime and been given a sentence in a country other than the
24 country of which he or she is a citizen. If a treaty is in
25 effect between the United States and a foreign country, which
26 provides for the transfer of offenders from the jurisdiction of 1
27 of the countries to the jurisdiction of the country of which the

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

24

1 offender is a citizen, and if the offender requests the transfer,
2 the governor of this state or a person designated by the governor
3 may give the approval of this state to a transfer of an offender,
4 if the conditions of the treaty are satisfied.

5 (4) Not less than 45 days before approval of a transfer pur-
6 suant to subsection (3) from this state to another country, the
7 governor, or the governor's designee, shall notify the sentencing
8 judge and the prosecuting attorney of the county having original
9 jurisdiction, or their successors in office, of the request for
10 transfer. The notification shall indicate any name changes of
11 the offender subsequent to sentencing. Within 20 days after
12 receiving such notification, the judge or prosecutor may send to
13 the governor, or the governor's designee, information about the
14 criminal action against the offender or objections to the
15 transfer. Objections to the transfer shall not preclude approval
16 of the transfer.

17 (5) As used in this section, "secure correctional facility"
18 means a facility that houses prisoners under the jurisdiction of
19 the department according to the following requirements:

20 (a) The facility is enclosed by a locked fence or wall that
21 is designed to prevent prisoners from leaving the enclosed
22 premises and that is patrolled by correctional officers.

23 (b) Prisoners in the facility are restricted to the area
24 inside the fence or wall.

25 (c) Prisoners are under guard by correctional officers 7
26 days per week, 24 hours per day.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

25

1 Sec. 65a. (1) Under prescribed conditions, the director may
2 extend the limits of confinement of a prisoner when there is
3 reasonable assurance, after consideration of all facts and cir-
4 cumstances, that the prisoner will not become a menace to society
5 or to the public safety, by authorizing the prisoner to do any of
6 the following:

7 (a) Visit a specifically designated place or places. An
8 extension of limits may be granted only to a prisoner housed in a
9 state correctional facility to permit a visit to a critically ill
10 relative, attendance at the funeral of a relative, or contacting
11 prospective employers. The maximum amount of time a prisoner is
12 eligible for an extension of the limits of confinement under this
13 subdivision shall not exceed a cumulative total period of 30
14 days.

15 (b) Obtain medical services not otherwise available to a
16 prisoner housed in a state correctional facility.

17 (c) Work at paid employment, participate in a training or
18 educational program, or participate in a community residential
19 drug treatment program while continuing as a prisoner housed on a
20 voluntary basis at a community corrections center or in a commu-
21 nity residential home.

22 (2) The director shall promulgate rules to implement this
23 section.

24 (3) The willful failure of a prisoner to remain within the
25 extended limits of his or her confinement or to return within the
26 time prescribed to an institution or facility designated by the
27 director shall be considered an escape from custody as provided

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

26

1 in section 193 of the Michigan penal code, 1931 PA 328,
2 MCL 750.193.

3 (4) Subject to subsection ~~-(6)-~~ (9), a prisoner, other than
4 a prisoner subject to disciplinary time, who is convicted of a
5 crime of violence or any assaultive crime is not eligible for the
6 extensions of the limits of confinement provided in subsection
7 (1) until the minimum sentence imposed for the crime has less
8 than 180 days remaining.

9 (5) Subject to ~~subsection~~ SUBSECTIONS (6) AND (9), a pris-
10 oner subject to disciplinary time is not eligible for the exten-
11 sions of the limits of confinement provided in subsection (1)
12 until he or she has served the minimum sentence imposed for the
13 crime plus any disciplinary time.

14 (6) A PRISONER SUBJECT TO DISCIPLINARY TIME WHO IS SERVING A
15 SENTENCE FOR AN OFFENSE THAT IS IN OFFENSE CLASS E, F, G, OR H
16 UNDER PART 2 OF CHAPTER XVII OF THE CODE OF CRIMINAL PROCEDURE,
17 1927 PA 175, MCL 777.11 TO 777.19, OR AN OFFENSE DESCRIBED IN
18 SECTION 18 OF CHAPTER XVII OF THE CODE OF CRIMINAL PROCEDURE,
19 1927 PA 175, MCL 777.18, FOR WHICH THE UNDERLYING OFFENSE IS IN
20 OFFENSE CLASS E, F, G, OR H BECOMES ELIGIBLE FOR THE EXTENSION OF
21 LIMITS OF CONFINEMENT UNDER SUBSECTION (1) WHEN THE MINIMUM SEN-
22 TENCE IMPOSED FOR THE CRIME, PLUS ANY DISCIPLINARY TIME, HAS LESS
23 THAN 180 DAYS REMAINING. HOWEVER, A PRISONER DESCRIBED IN THIS
24 SUBSECTION SHALL NOT BE PLACED IN A COMMUNITY RESIDENTIAL HOME.
25 IF A PRISONER DESCRIBED IN THIS SUBSECTION IS PLACED IN A COMMU-
26 NITY CORRECTIONS CENTER, HE OR SHE ALSO SHALL BE PLACED ON
27 ELECTRONIC MONITORING WHETHER INSIDE OR OUTSIDE THE COMMUNITY

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

27

1 CORRECTIONS CENTER. A PRISONER DESCRIBED IN THIS SUBSECTION
2 SHALL NOT BE PLACED IN A COMMUNITY CORRECTIONS CENTER IF ANY OF
3 THE FOLLOWING APPLY:

4 (A) THE PRISONER IS SERVING A SENTENCE FOR A CRIMINAL SEXUAL
5 CONDUCT OFFENSE LISTED IN SECTION 2A(1) OF CHAPTER IX OF THE CODE
6 OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.2A.

7 (B) THE PRISONER PRESENTS A RISK TO THE PUBLIC SAFETY, AS
8 DETERMINED BY THE DEPARTMENT, OR IS CLASSIFIED AS A VERY HIGH
9 ASSAULT RISK ACCORDING TO THE DEPARTMENT'S RISK SCREENING
10 CRITERIA.

11 (7) However, NOTWITHSTANDING SUBSECTIONS (4), (5), AND (6),
12 if the reason for the extension is to visit a critically ill rel-
13 ative, attend the funeral of a relative, or obtain medical serv-
14 ices not otherwise available, the director may allow the exten-
15 sion under escort as provided in subsection (1).

16 (8) ~~(5)~~ A prisoner serving a sentence for murder in the
17 first degree is not eligible for the extensions of confinement
18 under this section until a parole release date is established by
19 the parole board and in no case before serving 15 calendar years
20 with a good institutional adjustment.

21 (9) ~~(6)~~ A prisoner who is convicted of a crime of violence
22 or any assaultive crime, and whose minimum sentence imposed for
23 the crime is 10 years or more, shall not be placed in a community
24 residential home during any portion of his or her sentence.

25 ~~(7) The provisions of this section regarding prisoners~~
26 ~~subject to disciplinary time take effect beginning on the~~

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

28

1 ~~effective date of 1994 PA 217, as prescribed in enacting section~~
2 ~~2 of that amendatory act.~~

3 (10) ~~(8)~~ As used in this section:

4 (a) "Community corrections center" means a facility either
5 contracted for or operated by the department in which a security
6 staff is on duty 7 days per week, 24 hours per day.

7 (b) "Community residential home" means a location where
8 electronic monitoring of prisoner presence is provided by the
9 department 7 days per week, 24 hours per day, except that the
10 department may waive the requirement that electronic monitoring
11 be provided as to any prisoner who is within 3 months of his or
12 her parole date.

13 (c) "State correctional facility" means a facility owned or
14 leased by the department. State correctional facility does not
15 include a community corrections center or community residential
16 home.

17 Enacting section 1. This amendatory act takes effect
18 January 1, 1999.

19 Enacting section 2. This amendatory act does not take
20 effect unless all of the following bills of the 89th Legislature
21 are enacted into law:

22 (a) Senate Bill No. 826.

23 (b) House Bill No. 4065.

24 (c) House Bill No. 4444.

25 (d) House Bill No. 4445.

26 (e) House Bill No. 4446.

HB5398, As Passed House, June 16, 1998

House Bill No. 5398

29

- 1 (f) House Bill No. 4515.
- 2 (g) House Bill No. 5419.
- 3 (h) House Bill No. 5876.