

**SUBSTITUTE FOR  
SENATE BILL NO. 1495**

A bill to amend 1953 PA 232, entitled  
"Corrections code of 1953,"  
by amending section 40a (MCL 791.240a), as amended by 2006 PA 316.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 40a. (1) After a prisoner is released on parole, the  
2 prisoner's parole order is subject to revocation at the discretion  
3 of the parole board for cause as provided in this section.

4       (2) If a paroled prisoner who is required to register pursuant  
5 to the sex offenders registration act, 1994 PA 295, MCL 28.721 to  
6 28.736, willfully violates that act, the parole board shall revoke  
7 the parole. If a prisoner convicted of violating or conspiring to

1 violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the  
2 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is  
3 released on parole and violates or conspires to violate article 7  
4 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545,  
5 and that violation or conspiracy to violate is punishable by  
6 imprisonment for 4 or more years, or commits a violent felony  
7 during his or her release on parole, parole shall be revoked.

8 (3) Within 45 days after a paroled prisoner has been returned  
9 or is available for return to a state correctional facility under  
10 accusation of a parole violation other than conviction for a felony  
11 or misdemeanor punishable by imprisonment under the laws of this  
12 state, the United States, or any other state or territory of the  
13 United States, the prisoner is entitled to a fact-finding hearing  
14 on the charges before 1 member of the parole board or an attorney  
15 hearings officer designated by the chairperson of the parole board.  
16 The fact-finding hearing shall be conducted only after the accused  
17 parolee has had a reasonable amount of time to prepare a defense.  
18 The fact-finding hearing may be held at a state correctional  
19 facility or at or near the location of the alleged violation.

20 (4) IF, BEFORE A FACT-FINDING HEARING BEGINS, THE ACCUSED  
21 PAROLEE ALLEGES THAT HE OR SHE IS INDIGENT AND REQUESTS THAT AN  
22 ATTORNEY BE APPOINTED TO REPRESENT HIM OR HER, THE PAROLE BOARD  
23 MEMBER OR ATTORNEY HEARINGS OFFICER WHO WILL CONDUCT THE HEARING  
24 SHALL DETERMINE WHETHER THE ACCUSED PAROLEE IS INDIGENT. IF THE  
25 ACCUSED PAROLEE IS DETERMINED TO BE INDIGENT, THE PAROLE BOARD  
26 MEMBER OR HEARINGS OFFICER SHALL CAUSE THE APPOINTMENT OF AN  
27 ATTORNEY TO REPRESENT THE ACCUSED PAROLEE AT THE FACT-FINDING

1 **HEARING. THE COST OF THE APPOINTED ATTORNEY SHALL BE PAID FROM THE**  
2 **DEPARTMENT'S GENERAL OPERATING BUDGET.**

3 (5) ~~—(4)—~~ An accused parolee shall be given written notice of  
4 the charges against him or her and the time, place, and purpose of  
5 the fact-finding hearing. At the fact-finding hearing, the accused  
6 parolee may be represented by ~~an appointed or~~ **A** retained attorney  
7 **OR AN ATTORNEY APPOINTED UNDER SUBSECTION (4)** and is entitled to  
8 the following rights:

9 (a) Full disclosure of the evidence against him or her.

10 (b) To testify and present relevant witnesses and documentary  
11 evidence.

12 (c) To confront and cross-examine adverse witnesses unless the  
13 person conducting the fact-finding hearing finds on the record that  
14 a witness is subject to risk of harm if his or her identity is  
15 revealed.

16 (d) To present other relevant evidence in mitigation of the  
17 charges.

18 (6) ~~—(5)—~~ A fact-finding hearing may be postponed for cause  
19 beyond the 45-day time limit on the written request of the parolee,  
20 the parolee's attorney, or, if a postponement of the preliminary  
21 parole violation hearing required under section 39a has been  
22 granted beyond the 10-day time limit, by the parole board.

23 (7) ~~—(6)—~~ The director or a deputy director designated by the  
24 director shall be notified in writing if the preliminary parole  
25 violation hearing is not conducted within the 10-day time limit,  
26 and the hearing shall be conducted as soon as possible. The  
27 director or a deputy director designated by the director shall be

1 notified in writing if the fact-finding hearing is not conducted  
2 within the 45-day time limit, and the hearing shall be conducted as  
3 soon as possible. A parolee held in custody shall not be released  
4 pending disposition of either hearing.

5 (8) ~~—(7)—~~ If the evidence presented is insufficient to support  
6 the allegation that a parole violation occurred, the parolee shall  
7 be reinstated to parole status.

8 (9) ~~—(8)—~~ If the parole board member or hearings officer  
9 conducting the fact-finding hearing determines from a preponderance  
10 of the evidence that a parole violation has occurred, the **PAROLE**  
11 **BOARD** member or hearings officer shall present the relevant facts  
12 to the parole board and make a recommendation as to the disposition  
13 of the charges.

14 (10) ~~—(9)—~~ If a preponderance of the evidence supports the  
15 allegation that a parole violation occurred, the parole board may  
16 revoke parole, and the parolee shall be provided with a written  
17 statement of the findings of fact and the reasons for the  
18 determination within 60 days after the paroled prisoner has been  
19 returned or is available for return to a state correctional  
20 facility.

21 (11) ~~—(10)—~~ A parolee who is ordered to make restitution under  
22 the William Van Regenmorter crime victim's rights act, 1985 PA 87,  
23 MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA  
24 175, MCL 760.1 to 777.69, or to pay an assessment ordered under  
25 section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may  
26 have his or her parole revoked by the parole board if the parolee  
27 fails to comply with the order and if the parolee has not made a

1 good faith effort to comply with the order. In determining whether  
2 to revoke parole, the parole board shall consider the parolee's  
3 employment status, earning ability, and financial resources, the  
4 willfulness of the parolee's failure to comply with the order, and  
5 any other special circumstances that may have a bearing on the  
6 parolee's ability to comply with the order.

7 (12) ~~(11)~~ As used in this section, "violent felony" means  
8 that term as defined in section 36.