

SENATE BILL No. 1196

March 28, 2006, Introduced by Senators SANBORN, BIRKHOLZ, CROPSEY, GILBERT, HARDIMAN, GOSCHKA, JOHNSON, CASSIS, STAMAS, KUIPERS, BISHOP, McMANUS, EMERSON, OLSHOVE, PATTERSON and CHERRY and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 40a (MCL 791.240a), as amended by 1993 PA 346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 40a. (1) Within 45 days after a paroled prisoner has been
2 returned or is available for return to a state correctional
3 facility under accusation of a parole violation other than
4 conviction for a felony or misdemeanor punishable by imprisonment
5 under the laws of this state, the United States, or any other state
6 or territory of the United States, the prisoner is entitled to a
7 fact-finding hearing on the charges before 1 member of the parole
8 board or an attorney hearings officer designated by the chairperson
9 of the parole board. The fact-finding hearing shall be conducted

1 only after the accused parolee has had a reasonable amount of time
2 to prepare a defense. The fact-finding hearing may be held at a
3 state correctional facility or at or near the location of the
4 alleged violation.

5 (2) An accused parolee shall be given written notice of the
6 charges against him or her and the time, place, and purpose of the
7 fact-finding hearing. At the fact-finding hearing, the accused
8 parolee may be represented by an appointed or retained attorney and
9 is entitled to **ALL OF** the following rights:

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

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

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

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

19 (3) A fact-finding hearing may be postponed for cause beyond
20 the 45-day time limit on the written request of the parolee, the
21 parolee's attorney, or, if a postponement of the preliminary
22 hearing has been granted beyond the 10-day time limit, by the
23 parole board. **IF THE PAROLEE IS IN CUSTODY, THE PAROLEE SHALL NOT**
24 **BE RELEASED FROM CUSTODY MERELY BECAUSE THE FACT-FINDING HEARING**
25 **WAS NOT HELD WITHIN THE 45-DAY TIME LIMIT.**

26 (4) If the evidence presented is insufficient to support the
27 allegation that a parole violation occurred, the parolee shall be

1 reinstated to parole status.

2 (5) If the parole board member or hearings officer conducting
3 the fact-finding hearing determines from a preponderance of the
4 evidence that a parole violation has occurred, the member or
5 hearings officer shall present the relevant facts to the parole
6 board and make a recommendation as to the disposition of the
7 charges.

8 (6) If a preponderance of the evidence supports the allegation
9 that a parole violation occurred, the parole board may revoke
10 parole, and the parolee shall be provided with a written statement
11 of the findings of fact and the reasons for the determination
12 within 60 days after the paroled prisoner has been returned or is
13 available for return to a state correctional facility.

14 (7) A parolee who is ordered to make restitution under the
15 **WILLIAM VAN REGENMORTER** crime victim's rights act, ~~Act No. 87 of~~
16 ~~the Public Acts of 1985, being sections 780.751 to 780.834 of the~~
17 ~~Michigan Compiled Laws— 1985 PA 87, MCL 780.751 TO 780.834,~~ or the
18 code of criminal procedure, ~~Act No. 175 of the Public Acts of~~
19 ~~1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws~~
20 **1927 PA 175, MCL 760.1 TO 777.69,** or to pay an assessment ordered
21 under section 5 of ~~Act No. 196 of the Public Acts of 1989, being~~
22 ~~section 780.905 of the Michigan Compiled Laws— 1989 PA 196, MCL~~
23 **780.905,** as a condition of parole may have his or her parole
24 revoked by the parole board if the parolee fails to comply with the
25 order and if the parolee has not made a good faith effort to comply
26 with the order. In determining whether to revoke parole, the parole
27 board shall consider the parolee's employment status, earning

1 ability, and financial resources, the willfulness of the parolee's
2 failure to comply with the order, and any other special
3 circumstances that may have a bearing on the parolee's ability to
4 comply with the order.