

SENATE BILL No. 1495

November 9, 2006, Introduced by Senator CROPSEY 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 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
8 violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the
9 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is

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

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

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

1 (5) ~~—(4)—~~ An accused parolee shall be given written notice of
2 the charges against him or her and the time, place, and purpose of
3 the fact-finding hearing. At the fact-finding hearing, the accused
4 parolee may be represented by ~~an appointed or~~ **A** retained attorney
5 **OR AN ATTORNEY APPOINTED UNDER SUBSECTION (4)** and is entitled to
6 the following rights:

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

8 (b) To testify and present relevant witnesses and documentary
9 evidence.

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

14 (d) To present other relevant evidence in mitigation of the
15 charges.

16 (6) ~~—(5)—~~ A fact-finding hearing may be postponed for cause
17 beyond the 45-day time limit on the written request of the parolee,
18 the parolee's attorney, or, if a postponement of the preliminary
19 parole violation hearing required under section 39a has been
20 granted beyond the 10-day time limit, by the parole board.

21 (7) ~~—(6)—~~ The director or a deputy director designated by the
22 director shall be notified in writing if the preliminary parole
23 violation hearing is not conducted within the 10-day time limit,
24 and the hearing shall be conducted as soon as possible. The
25 director or a deputy director designated by the director shall be
26 notified in writing if the fact-finding hearing is not conducted
27 within the 45-day time limit, and the hearing shall be conducted as

1 soon as possible. A parolee held in custody shall not be released
2 pending disposition of either hearing.

3 (8) ~~—(7)—~~ If the evidence presented is insufficient to support
4 the allegation that a parole violation occurred, the parolee shall
5 be reinstated to parole status.

6 (9) ~~—(8)—~~ If the parole board member or hearings officer
7 conducting the fact-finding hearing determines from a preponderance
8 of the evidence that a parole violation has occurred, the member or
9 hearings officer shall present the relevant facts to the parole
10 board and make a recommendation as to the disposition of the
11 charges.

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

19 (11) ~~—(10)—~~ A parolee who is ordered to make restitution under
20 the William Van Regenmorter crime victim's rights act, 1985 PA 87,
21 MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA
22 175, MCL 760.1 to 777.69, or to pay an assessment ordered under
23 section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may
24 have his or her parole revoked by the parole board if the parolee
25 fails to comply with the order and if the parolee has not made a
26 good faith effort to comply with the order. In determining whether
27 to revoke parole, the parole board shall consider the parolee's

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

5 (12) ~~(11)~~ As used in this section, "violent felony" means
6 that term as defined in section 36.