

Act No. 532
Public Acts of 2006
Approved by the Governor
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Senator Cropsey

ENROLLED SENATE BILL No. 1495

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 section 40a (MCL 791.240a), as amended by 2006 PA 316.

The People of the State of Michigan enact:

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

(2) If a paroled prisoner who is required to register pursuant to the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736, willfully violates that act, the parole board shall revoke the parole. If a prisoner convicted of violating or conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i) or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is released on parole and violates or conspires to violate article 7 of the public health code, 1978 PA 368, MCL 333.7101 to 333.7545, and that violation or conspiracy to violate is punishable by imprisonment for 4 or more years, or commits a violent felony during his or her release on parole, parole shall be revoked.

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

(4) If, before a fact-finding hearing begins, the accused parolee alleges that he or she is indigent and requests that an attorney be appointed to represent him or her, the parole board member or attorney hearings officer who will conduct the hearing shall determine whether the accused parolee is indigent. If the accused parolee is determined to be indigent, the parole board member or hearings officer shall cause the appointment of an attorney to represent the accused parolee at the fact-finding hearing. The cost of the appointed attorney shall be paid from the department's general operating budget.

(5) An accused parolee shall be given written notice of the charges against him or her and the time, place, and purpose of the fact-finding hearing. At the fact-finding hearing, the accused parolee may be represented by a retained attorney or an attorney appointed under subsection (4) and is entitled to the following rights:

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

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

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

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

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

(7) The director or a deputy director designated by the director shall be notified in writing if the preliminary parole violation hearing is not conducted within the 10-day time limit, and the hearing shall be conducted as soon as possible. The director or a deputy director designated by the director shall be notified in writing if the fact-finding hearing is not conducted within the 45-day time limit, and the hearing shall be conducted as soon as possible. A parolee held in custody shall not be released pending disposition of either hearing.

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

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

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

(11) A parolee who is ordered to make restitution under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69, or to pay an assessment ordered under section 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have his or her parole revoked by the parole board if the parolee fails to comply with the order and if the parolee has not made a good faith effort to comply with the order. In determining whether to revoke parole, the parole board shall consider the parolee's employment status, earning ability, and financial resources, the willfulness of the parolee's failure to comply with the order, and any other special circumstances that may have a bearing on the parolee's ability to comply with the order.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor