

HOUSE BILL No. 4374

March 3, 2011, Introduced by Reps. Meadows and Oakes and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 44 (MCL 791.244), as amended by 1999 PA 191.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 44. (1) Subject to the constitutional authority of the
2 governor to grant reprieves, commutations, and pardons, 1 member of
3 the parole board shall interview a prisoner serving a sentence for
4 murder in the first degree or a sentence of imprisonment for life
5 without parole at the conclusion of 10 calendar years and
6 thereafter as determined appropriate by the parole board, until
7 ~~such time as the~~ prisoner is granted a reprieve, commutation, or
8 pardon by the governor, or is deceased. The interview schedule
9 prescribed in this subsection applies to all prisoners to whom this

1 section is applicable, regardless of when they were sentenced.

2 (2) Upon its own initiation of, or upon receipt of any
3 application for, a reprieve, commutation, or pardon, the parole
4 board shall do all of the following, as applicable:

5 (a) Not more than 60 days after receipt of an application,
6 conduct a review to determine whether the application for a
7 reprieve, commutation, or pardon has merit.

8 (b) Deliver either the written documentation of the initiation
9 or the original application with the parole board's determination
10 regarding merit, to the governor and retain a copy of each in its
11 file, pending an investigation and hearing.

12 (c) Within 10 days after initiation, or after determining that
13 an application has merit, forward to the sentencing judge and to
14 the prosecuting attorney of the county having original jurisdiction
15 of the case, or their successors in office, a written notice of the
16 filing of the application or initiation, together with copies of
17 the application or initiation, any supporting affidavits, and a
18 brief summary of the case. ~~Within 30 days after receipt of notice~~
19 ~~of the filing of any application or initiation, the~~ **THE** sentencing
20 judge and the prosecuting attorney, or their successors in office,
21 may file information at their disposal, together with any
22 objections, in writing, which they may desire to interpose. **A**
23 **RESPONSE FROM A SENTENCING JUDGE OR PROSECUTING ATTORNEY SHALL BE**
24 **FILED WITHIN 14 DAYS AFTER HE OR SHE RECEIVED THE WRITTEN NOTICE IN**
25 **THE CASE OF A PROPOSED COMMUTATION BASED ON PHYSICAL OR MENTAL**
26 **INCAPACITY AS PROVIDED IN SUBDIVISION (D) OR WITHIN 30 DAYS AFTER**
27 **HE OR SHE RECEIVED THE WRITTEN NOTICE IN THE CASE OF ANY OTHER**

1 **PROPOSED COMMUTATION.** If the sentencing judge and the prosecuting
2 attorney, or their successors in office, do not respond within ~~30~~
3 ~~days~~**THE APPLICABLE TIME PERIOD**, the parole board shall proceed on
4 the application or initiation.

5 (d) If an application or initiation for commutation is based
6 on physical or mental incapacity, direct the bureau of health care
7 services to evaluate the condition of the prisoner and report on
8 that condition. If the bureau of health care services determines
9 that the prisoner is physically or mentally incapacitated, the
10 bureau shall appoint a specialist in the appropriate field of
11 medicine, who is not employed by the department, to evaluate the
12 condition of the prisoner and to report on that condition. These
13 reports are protected by the doctor-patient privilege of
14 confidentiality, except that these reports shall be provided to the
15 governor for his or her review.

16 (e) Within 270 days after initiation by the parole board or
17 receipt of an application that the parole board has determined to
18 have merit ~~pursuant to~~**UNDER** subdivision (a), make a full
19 investigation and determination on whether or not to proceed to a
20 public hearing.

21 (f) ~~Conduct~~**EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3),**
22 **CONDUCT** a public hearing not later than 90 days after making a
23 decision to proceed with consideration of a recommendation for the
24 granting of a reprieve, commutation, or pardon. The public hearing
25 shall be held before a formal recommendation is transmitted to the
26 governor. One member of the parole board who will be involved in
27 the formal recommendation may conduct the hearing, and the public

1 shall be represented by the attorney general or a member of the
2 attorney general's staff.

3 (g) ~~At least 30 days before~~ **BEFORE** conducting the public
4 hearing, provide written notice of the public hearing by mail to
5 the attorney general, the sentencing trial judge, and the
6 prosecuting attorney, or their successors in office, and each
7 victim who requests notice ~~pursuant to~~ **UNDER** the **WILLIAM VAN**
8 **REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751 to
9 780.834. **IF THE PUBLIC HEARING IS BEING CONDUCTED FOR A PROPOSED**
10 **COMMUTATION BASED ON PHYSICAL OR MENTAL INCAPACITY AS PROVIDED IN**
11 **SUBDIVISION (D), THE WRITTEN NOTICE SHALL BE PROVIDED AT LEAST 14**
12 **DAYS BEFORE THE PUBLIC HEARING AND MAY BE PROVIDED SIMULTANEOUSLY**
13 **WITH THE NOTICE REQUIRED UNDER SUBDIVISION (C). FOR ALL OTHER**
14 **PUBLIC HEARINGS FOR PROPOSED COMMUTATIONS, THE WRITTEN NOTICE SHALL**
15 **BE PROVIDED AT LEAST 30 DAYS BEFORE THE PUBLIC HEARING.**

16 (h) Conduct the public hearing ~~pursuant to~~ **UNDER** the rules
17 promulgated by the department. Except as otherwise provided in this
18 subdivision, any person having information in connection with the
19 pardon, commutation, or reprieve shall be sworn as a witness. A
20 person who is a victim shall be given an opportunity to address and
21 be questioned by the parole board at the hearing or to submit
22 written testimony for the hearing. In hearing testimony, the parole
23 board shall give liberal construction to any technical rules of
24 evidence.

25 (i) Transmit its formal recommendation to the governor.

26 (j) Make all data in its files available to the governor if
27 the parole board recommends the granting of a reprieve,

1 commutation, or pardon.

2 (3) NOTWITHSTANDING SUBSECTION (2), A PUBLIC HEARING IS NOT
3 REQUIRED FOR A PROPOSED COMMUTATION BASED ON PHYSICAL OR MENTAL
4 INCAPACITY UNDER SUBSECTION (2) (D) IF BOTH MEDICAL REPORTS PREPARED
5 UNDER SUBSECTION (2) (D) GIVE THE PRISONER A LIFE EXPECTANCY OF 6
6 MONTHS OR LESS AND IF THE PAROLE BOARD GIVES WRITTEN NOTICE OF THE
7 PROPOSED COMMUTATION TO THE ATTORNEY GENERAL, THE SENTENCING JUDGE,
8 AND THE PROSECUTING ATTORNEY, OR THEIR SUCCESSORS IN OFFICE, AND
9 EACH VICTIM WHO REQUESTS NOTICE UNDER THE WILLIAM VAN REGENMORTER
10 CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834. THE
11 WRITTEN NOTICE SHALL REQUEST A WRITTEN RESPONSE WITHIN 14 DAYS AS
12 TO THE PROPOSED COMMUTATION AND MAY BE MADE SIMULTANEOUSLY WITH THE
13 NOTICE REQUIRED UNDER SUBSECTION (2) (C). ANY WRITTEN RESPONSES
14 SHALL BE FORWARDED TO THE GOVERNOR WITH THE PAROLE BOARD'S FINAL
15 RECOMMENDATION AND SHALL BE MATTERS OF PUBLIC RECORD. THIS
16 SUBSECTION DOES NOT APPLY TO A PRISONER SERVING A SENTENCE FOR A
17 LISTED OFFENSE AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS
18 REGISTRATION ACT, 1994 PA 295, MCL 28.722.

19 (4) ~~(3)~~—Except for medical records protected by the doctor-
20 patient privilege of confidentiality, the files of the parole board
21 in cases under this section ~~shall be~~ **ARE** matters of public record.

22 Enacting section 1. This amendatory act does not take effect
23 unless Senate Bill No. ____ or House Bill No. 4375 (request no.
24 01247'11*) of the 96th Legislature is enacted into law.