

SUBSTITUTE FOR
HOUSE BILL NO. 5377

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 33e and 35 (MCL 791.233e and 791.235), section
33e as added by 1992 PA 181 and section 35 as amended by 2012 PA
24.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section 33(1)(a) ~~and that shall~~**TO** govern
3 the exercise of the parole board's discretion ~~pursuant to~~**UNDER**
4 sections 34 and 35 as to the release of prisoners on parole under
5 this act. The purpose of the parole guidelines ~~shall be~~**IS** to
6 assist the parole board in making **OBJECTIVE, EVIDENCE-BASED** release
7 decisions that enhance the public safety.

1 (2) In developing the parole guidelines, the department shall
2 consider factors including, but not limited to, the following:

3 (a) The offense for which the prisoner is incarcerated at the
4 time of parole consideration.

5 (b) The prisoner's institutional program performance.

6 (c) The prisoner's institutional conduct.

7 (d) The prisoner's prior criminal record. As used in this
8 subdivision, "prior criminal record" means the recorded criminal
9 history of a prisoner, including all misdemeanor and felony
10 convictions, probation violations, juvenile adjudications for acts
11 that would have been crimes if committed by an adult, parole
12 failures, and delayed sentences.

13 (e) Other relevant factors as determined by the department, if
14 not otherwise prohibited by law.

15 (3) In developing the parole guidelines, the department may
16 consider both of the following factors:

17 (a) The prisoner's statistical risk screening.

18 (b) The prisoner's age.

19 (4) The department shall ensure that the parole guidelines do
20 not create disparities in release decisions based on race, color,
21 national origin, gender, religion, or disability.

22 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
23 the administrative procedures act of 1969, ~~Act No. 306 of the~~
24 ~~Public Acts of 1969~~ **PA 306**, being sections ~~MCL~~ 24.201 to 24.328, ~~of~~
25 ~~the Michigan Compiled Laws, which shall~~ **THAT** prescribe the parole
26 guidelines. ~~The department shall submit the proposed rules to the~~
27 ~~joint committee on administrative rules not later than April 1,~~

1 ~~1994. Until the rules take effect, the director shall require that~~
2 ~~the parole guidelines be considered by the parole board in making~~
3 ~~release decisions. After the rules take effect, the director shall~~
4 ~~require that the parole board follow the parole guidelines.~~

5 (6) The parole board may depart from the parole guidelines by
6 denying parole to a prisoner who has a high probability of parole
7 as determined under the parole guidelines or by granting parole to
8 a prisoner who has a low probability of parole as determined under
9 the parole guidelines. A departure under this subsection shall ~~shall~~**MUST**
10 be for substantial and compelling **OBJECTIVE** reasons stated in
11 writing. The parole board shall not use a prisoner's gender, race,
12 ethnicity, alienage, national origin, or religion to depart from
13 the recommended parole guidelines.

14 **(7) SUBSTANTIAL AND COMPELLING OBJECTIVE REASONS FOR A**
15 **DEPARTURE FROM THE PAROLE GUIDELINES FOR A PRISONER WITH HIGH**
16 **PROBABILITY OF PAROLE ARE LIMITED TO THE FOLLOWING CIRCUMSTANCES:**

17 **(A) THE PRISONER EXHIBITS A PATTERN OF ONGOING BEHAVIOR WHILE**
18 **INCARCERATED INDICATING THAT HE OR SHE WOULD BE A SUBSTANTIAL RISK**
19 **TO PUBLIC SAFETY, INCLUDING MAJOR MISCONDUCTS OR ADDITIONAL**
20 **CRIMINAL CONVICTIONS.**

21 **(B) THE PRISONER REFUSES TO PARTICIPATE IN PROGRAMMING ORDERED**
22 **BY THE DEPARTMENT TO REDUCE THE PRISONER'S RISK. A PRISONER MAY NOT**
23 **BE CONSIDERED TO HAVE REFUSED PROGRAMMING IF UNABLE TO COMPLETE**
24 **PROGRAMMING DUE TO FACTORS BEYOND HIS OR HER CONTROL.**

25 **(C) THERE IS VERIFIED OBJECTIVE EVIDENCE OF SUBSTANTIAL HARM**
26 **TO A VICTIM THAT COULD NOT HAVE BEEN AVAILABLE FOR CONSIDERATION AT**
27 **THE TIME OF SENTENCING.**

1 (D) THE PRISONER HAS THREATENED HARM TO ANOTHER PERSON IF
2 RELEASED.

3 (E) THERE IS OBJECTIVE EVIDENCE OF POST-SENTENCING CONDUCT,
4 NOT ALREADY SCORED UNDER THE PAROLE GUIDELINES, THAT THE PRISONER
5 WOULD PRESENT A HIGH RISK TO PUBLIC SAFETY IF PAROLED.

6 (F) THE PRISONER IS A SUSPECT IN AN UNSOLVED CRIMINAL CASE
7 THAT IS BEING ACTIVELY INVESTIGATED.

8 (G) THE PRISONER HAS A PENDING FELONY CHARGE OR IS SUBJECT TO
9 A DETAINDER REQUEST FROM ANOTHER JURISDICTION.

10 (H) THE PRISONER HAS NOT YET COMPLETED PROGRAMMING ORDERED BY
11 THE DEPARTMENT TO REDUCE THE PRISONER'S RISK, AND THE PROGRAMMING
12 IS NOT AVAILABLE IN THE COMMUNITY AND THE RISK CANNOT BE ADEQUATELY
13 MANAGED IN THE COMMUNITY BEFORE COMPLETION.

14 (I) THE RELEASE OF THE PRISONER IS OTHERWISE BARRED BY LAW.

15 (J) THE PRISONER FAILS TO PRESENT A SUFFICIENT PAROLE PLAN
16 ADEQUATELY ADDRESSING HIS OR HER IDENTIFIED RISKS AND NEEDS TO
17 ENSURE THAT HE OR SHE WILL NOT PRESENT A RISK TO PUBLIC SAFETY IF
18 RELEASED ON PAROLE. IF A PRISONER IS DENIED PAROLE UNDER THIS
19 SUBDIVISION, THE PAROLE BOARD MUST PROVIDE THE PRISONER A DETAILED
20 EXPLANATION OF THE DEFICIENCIES IN THE PAROLE PLAN SO THAT THE
21 PRISONER MAY ADDRESS THE DEFICIENCIES BEFORE HIS OR HER NEXT
22 REVIEW.

23 (K) THE PRISONER HAS RECEIVED A PSYCHOLOGICAL EVALUATION IN
24 THE PAST 3 YEARS INDICATING THE PRISONER WOULD PRESENT A HIGH RISK
25 TO PUBLIC SAFETY IF PAROLED.

26 (8) THE PAROLE BOARD MAY DENY PAROLE FOR UP TO 1 YEAR TO A
27 PRISONER WHO WAS DENIED PAROLE UNDER SUBSECTION (7) (H) TO ALLOW FOR

1 THE COMPLETION OF PROGRAMMING ORDERED BY THE DEPARTMENT. A PRISONER
2 DENIED PAROLE UNDER SUBSECTION (7) (H) MUST RECEIVE PAROLE
3 CONSIDERATION WITHIN 30 DAYS AFTER THE COMPLETION OF THE
4 PROGRAMMING.

5 (9) THE PAROLE BOARD SHALL CONDUCT A REVIEW OF A PRISONER,
6 EXCEPT FOR A PRISONER SERVING A LIFE SENTENCE, WHO HAS BEEN DENIED
7 PAROLE AS FOLLOWS:

8 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
9 PAROLE, NOT LESS THAN ANNUALLY.

10 (B) IF THE PRISONER SCORED LOW PROBABILITY OF PAROLE, NOT LESS
11 THAN EVERY 2 YEARS UNTIL A SCORE OF HIGH OR AVERAGE PROBABILITY OF
12 PAROLE IS ATTAINED.

13 (10) ~~(7)~~—Not less than once every 2 years, the department
14 shall review the correlation between the implementation of the
15 parole guidelines and the recidivism rate of paroled prisoners, and
16 shall submit to the joint committee on administrative rules any
17 proposed revisions to the administrative rules that the department
18 considers appropriate after conducting the review.

19 (11) BY MARCH 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO
20 THE STANDING COMMITTEES OF THE SENATE AND THE HOUSE OF
21 REPRESENTATIVES HAVING JURISDICTION OF CORRECTIONS ISSUES AND THE
22 CRIMINAL JUSTICE POLICY COMMISSION CREATED UNDER SECTION 32A OF
23 CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
24 769.32A, ALL OF THE FOLLOWING INFORMATION:

25 (A) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
26 PAROLE AND WERE GRANTED PAROLE DURING THE PRECEDING CALENDAR YEAR.

27 (B) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF

1 PAROLE AND FOR WHOM PAROLE WAS DEFERRED TO COMPLETE NECESSARY
2 PROGRAMMING DURING THE PRECEDING CALENDAR YEAR.

3 (C) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
4 PAROLE AND WERE INCARCERATED AT LEAST 6 MONTHS PAST THEIR FIRST
5 PAROLE ELIGIBILITY DATE AS OF DECEMBER 31 OF THE PRECEDING CALENDAR
6 YEAR.

7 (D) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
8 PAROLE AND WERE DENIED PAROLE FOR A SUBSTANTIAL AND COMPELLING
9 OBJECTIVE REASON, OR SUBSTANTIAL AND COMPELLING OBJECTIVE REASONS,
10 UNDER SUBSECTION (7) DURING THE PRECEDING CALENDAR YEAR. THIS
11 INFORMATION MUST BE PROVIDED WITH A BREAKDOWN OF PAROLE DENIALS FOR
12 EACH OF THE SUBSTANTIAL AND COMPELLING OBJECTIVE REASONS UNDER
13 SUBSECTION (7).

14 (E) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
15 PAROLE AND WERE DENIED PAROLE WHOSE CONTROLLING OFFENSE IS IN EACH
16 OF THE FOLLOWING GROUPS:

17 (i) HOMICIDE.

18 (ii) SEXUAL OFFENSE.

19 (iii) AN ASSAULTIVE OFFENSE OTHER THAN A HOMICIDE OR SEXUAL
20 OFFENSE.

21 (iv) A NONASSAULTIVE OFFENSE.

22 (v) A CONTROLLED SUBSTANCE OFFENSE.

23 (F) OF THE TOTAL NUMBER OF PRISONERS SUBJECT TO SUBSECTION (7)
24 WHO SCORED HIGH PROBABILITY OF PAROLE AND WERE DENIED PAROLE, THE
25 NUMBER WHO HAVE SERVED THE FOLLOWING AMOUNT OF TIME AFTER
26 COMPLETING THEIR MINIMUM SENTENCE:

27 (i) LESS THAN 1 YEAR.

1 (ii) ONE YEAR OR MORE BUT LESS THAN 2 YEARS.

2 (iii) TWO YEARS OR MORE BUT LESS THAN 3 YEARS.

3 (iv) THREE YEARS OR MORE BUT LESS THAN 4 YEARS.

4 (v) FOUR OR MORE YEARS.

5 (12) THE DEPARTMENT SHALL IMMEDIATELY ADVISE THE STANDING
6 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES HAVING
7 JURISDICTION OF CORRECTIONS ISSUES AND THE CRIMINAL JUSTICE POLICY
8 COMMISSION DESCRIBED IN SUBSECTION (11) OF ANY CHANGES MADE TO THE
9 SCORING OF THE PAROLE GUIDELINES AFTER THE EFFECTIVE DATE OF THE
10 AMENDATORY ACT THAT ADDED THIS SUBSECTION, INCLUDING A CHANGE IN
11 THE NUMBER OF POINTS THAT DEFINE "HIGH PROBABILITY OF PAROLE".

12 (13) SUBSECTIONS (6), (7), AND (8) AS AMENDED OR ADDED BY THE
13 AMENDATORY ACT THAT ADDED THIS SUBSECTION APPLY ONLY TO PRISONERS
14 WHOSE CONTROLLING OFFENSE WAS COMMITTED ON OR AFTER THE EFFECTIVE
15 DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION. SUBSECTIONS
16 (7) AND (8) DO NOT APPLY TO A PRISONER SERVING A LIFE SENTENCE,
17 REGARDLESS OF THE DATE OF HIS OR HER CONTROLLING OFFENSE.

18 Sec. 35. (1) The release of a prisoner on parole ~~shall~~**MUST** be
19 granted solely upon the initiative of the parole board. **THERE IS NO**
20 **ENTITLEMENT TO PAROLE.** The parole board may grant a parole without
21 interviewing the prisoner ~~. However, beginning January 26, 1996,~~
22 ~~the parole board may grant a parole without interviewing the~~
23 ~~prisoner only~~ if, after evaluating the prisoner according to the
24 parole guidelines, the parole board determines that the prisoner
25 has a high probability of being paroled and the parole board
26 therefore intends to parole the prisoner. Except as provided in
27 subsection (2), a prisoner ~~shall~~**MUST** not be denied parole without

1 an interview before 1 member of the parole board. The interview
2 ~~shall~~**MUST** be conducted at least 1 month before the expiration of
3 the prisoner's minimum sentence less applicable good time and
4 disciplinary credits for a prisoner eligible for good time and
5 disciplinary credits, or at least 1 month before the expiration of
6 the prisoner's minimum sentence for a prisoner subject to
7 disciplinary time. The parole board shall consider any statement
8 made to the parole board by a crime victim under the William Van
9 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to
10 780.834, or under any other provision of law. The parole board
11 shall not consider any of the following factors in making a parole
12 determination:

13 (a) A juvenile record that a court has ordered the department
14 to expunge.

15 (b) Information that is determined by the parole board to be
16 inaccurate or irrelevant after a challenge and presentation of
17 relevant evidence by a prisoner who has received a notice of intent
18 to conduct an interview as provided in subsection (4). This
19 subdivision applies only to presentence investigation reports
20 prepared before April 1, 1983.

21 (2) ~~Beginning January 26, 1996, if, IF,~~ after evaluating a
22 prisoner according to the parole guidelines, the parole board
23 determines that the prisoner has a low probability of being paroled
24 and the parole board therefore does not intend to parole the
25 prisoner, the parole board is not required to interview the
26 prisoner before denying parole to the prisoner.

27 (3) The parole board may consider but shall not base a

1 determination to deny parole solely on either of the following:

2 (a) A prisoner's marital history.

3 (b) Prior arrests not resulting in conviction or adjudication
4 of delinquency.

5 (4) If an interview is to be conducted, the prisoner ~~shall~~
6 **MUST** be sent a notice of intent to conduct an interview ~~at least~~
7 **NOT LESS THAN** 1 month before the date of the interview. The notice
8 ~~shall~~**MUST** state the specific issues and concerns that ~~shall~~**WILL**
9 be discussed at the interview and that may be a basis for a denial
10 of parole. ~~A denial of~~**THE PAROLE BOARD SHALL NOT DENY** parole ~~shall~~
11 ~~not be~~ based on reasons other than those stated in the notice of
12 intent to conduct an interview except for good cause stated to the
13 prisoner at or before the interview and in the written explanation
14 required by subsection (12). ~~This subsection does not apply until~~
15 ~~April 1, 1983.~~

16 (5) Except for good cause, the parole board member conducting
17 the interview shall not have cast a vote for or against the
18 prisoner's release before conducting the current interview. Before
19 the interview, the parole board member who is to conduct the
20 interview shall review pertinent information relative to the notice
21 of intent to conduct an interview.

22 (6) A prisoner may waive the right to an interview by 1 member
23 of the parole board. The waiver of the right to be interviewed
24 ~~shall~~**MUST** be **IN WRITING AND** given not more than 30 days after the
25 notice of intent to conduct an interview is issued. ~~and shall be~~
26 ~~made in writing.~~ During the interview held ~~pursuant to~~**UNDER** a
27 notice of intent to conduct an interview, the prisoner may be

1 represented by an individual of his or her choice. The
2 representative shall not be another prisoner or an attorney. A
3 prisoner is not entitled to appointed counsel at public expense.
4 The prisoner or representative may present relevant evidence in
5 support of release.

6 (7) At least 90 days before the expiration of the prisoner's
7 minimum sentence less applicable good time and disciplinary credits
8 for a prisoner eligible for good time or disciplinary credits, or
9 at least 90 days before the expiration of the prisoner's minimum
10 sentence for a prisoner subject to disciplinary time, or the
11 expiration of a 12-month continuance for any prisoner, **THE**
12 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
13 report. ~~shall be prepared by appropriate institutional staff.~~ The
14 parole eligibility report ~~shall be~~ **IS** considered pertinent
15 information for purposes of subsection (5). The report ~~shall~~ **MUST**
16 include all of the following:

17 (a) A statement of all major misconduct charges of which the
18 prisoner was found guilty and the punishment served for the
19 misconduct.

20 (b) The prisoner's work and educational record while confined.

21 (c) The results of any physical, mental, or psychiatric
22 examinations of the prisoner that may have been performed.

23 (d) Whether the prisoner fully cooperated with ~~the~~ **THIS** state
24 by providing complete financial information as required under
25 section 3a of the state correctional facility reimbursement act,
26 1935 PA 253, MCL 800.403a.

27 (e) Whether the prisoner refused to attempt to obtain

1 identification documents under section 34c, if applicable.

2 (f) For a prisoner subject to disciplinary time, a statement
3 of all disciplinary time submitted for the parole board's
4 consideration under section 34 of 1893 PA 118, MCL 800.34.

5 **(G) THE RESULT ON ANY VALIDATED RISK ASSESSMENT INSTRUMENT.**

6 (8) The preparer of the report shall not include a
7 recommendation as to release on parole.

8 (9) Psychological evaluations performed at the request of the
9 parole board to assist it in reaching a decision on the release of
10 a prisoner may be performed by the same person who provided the
11 prisoner with therapeutic treatment, unless a different person is
12 requested by the prisoner or parole board.

13 (10) The parole board may grant a medical parole for a
14 prisoner determined to be physically or mentally incapacitated. A
15 decision to grant a medical parole ~~shall~~**MUST** be initiated ~~upon~~**ON**
16 the recommendation of the bureau of health care services and ~~shall~~
17 **MUST** be reached only after a review of the medical, institutional,
18 and criminal records of the prisoner.

19 (11) The department shall ~~submit~~**FILE** a petition to the
20 appropriate court under section 434 of the mental health code, 1974
21 PA 258, MCL 330.1434, for any prisoner being paroled or being
22 released after serving his or her maximum sentence whom the
23 department considers to be a person requiring treatment. The parole
24 board shall require mental health treatment as a special condition
25 of parole for any parolee whom the department has determined to be
26 a person requiring treatment whether or not the petition filed for
27 that prisoner is granted by the court. As used in this subsection,

1 "person requiring treatment" means that term as defined in section
2 401 of the mental health code, 1974 PA 258, MCL 330.1401.

3 (12) When the parole board makes a final determination not to
4 release a prisoner, **THE PAROLE BOARD SHALL PROVIDE** the prisoner
5 ~~shall be provided~~ with a written explanation of the reason for
6 denial and, if appropriate, specific recommendations for corrective
7 action the prisoner may take to facilitate release.

8 (13) This section does not apply to the placement on parole of
9 a person in conjunction with special alternative incarceration
10 under section 34a(7).

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.