

HOUSE BILL No. 5377

January 10, 2018, Introduced by Reps. Kesto, Chang, Lucido, Howell, Glenn and Pagel and referred to the Committee on Law and Justice.

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.

8 (2) In developing the parole guidelines, the department shall

1 consider factors including, but not limited to, the following:

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

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

5 (c) The prisoner's institutional conduct.

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

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

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

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

17 (b) The prisoner's age.

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

21 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
22 the administrative procedures act of 1969, ~~Act No. 306 of the~~
23 ~~Public Acts of 1969~~ **PA 306**, ~~being sections~~ **MCL** 24.201 to 24.328, ~~of~~
24 ~~the Michigan Compiled Laws, which shall~~ **THAT** prescribe the parole
25 guidelines. ~~The department shall submit the proposed rules to the~~
26 ~~joint committee on administrative rules not later than April 1,~~
27 ~~1994. Until the rules take effect, the director shall require that~~

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

4 (6) The parole board may depart from the parole guidelines by
5 denying parole to a prisoner who has a high probability of parole
6 as determined under the parole guidelines or by granting parole to
7 a prisoner who has a low probability of parole as determined under
8 the parole guidelines. A departure under this subsection ~~shall~~ **MUST**
9 be for substantial and compelling **OBJECTIVE** reasons stated in
10 writing. The parole board shall not use a prisoner's gender, race,
11 ethnicity, alienage, national origin, or religion, **AND SHALL NOT**
12 **USE SUBJECTIVE REASONS SUCH AS A LACK OF INSIGHT, INSUFFICIENT**
13 **REMORSE, OR AN INADEQUATE PAROLE PLAN** to depart from the
14 recommended parole guidelines.

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

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

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

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

1 THE TIME OF SENTENCING.

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

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

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

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

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

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

16 (8) THE PAROLE BOARD MAY DENY PAROLE FOR UP TO 1 YEAR TO A
17 PRISONER WHO WAS DENIED PAROLE UNDER SUBSECTION (7) (H) TO ALLOW FOR
18 THE COMPLETION OF PROGRAMMING ORDERED BY THE DEPARTMENT. A PRISONER
19 DENIED PAROLE UNDER SUBSECTION (7) (H) MUST RECEIVE PAROLE
20 CONSIDERATION WITHIN 30 DAYS AFTER THE COMPLETION OF THE
21 PROGRAMMING.

22 (9) THE PAROLE BOARD SHALL CONDUCT A REVIEW OF A PRISONER,
23 EXCEPT FOR PRISONERS SERVING A LIFE SENTENCE, WHO HAS BEEN DENIED
24 PAROLE AS FOLLOWS:

25 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
26 PAROLE, CONDUCT A REVIEW NOT LESS THAN ANNUALLY.

27 (B) IF THE PRISONER SCORED LOW PROBABILITY OF PAROLE, CONDUCT

1 A REVIEW NOT LESS THAN EVERY 2 YEARS UNTIL A SCORE OF HIGH OR
2 AVERAGE PROBABILITY OF PAROLE IS ATTAINED.

3 (10) ~~(7)~~—Not less than once every 2 years, the department
4 shall review the correlation between the implementation of the
5 parole guidelines and the recidivism rate of paroled prisoners, and
6 shall submit to the joint committee on administrative rules any
7 proposed revisions to the administrative rules that the department
8 considers appropriate after conducting the review.

9 (11) BY MARCH 1 OF EACH YEAR, THE DEPARTMENT SHALL REPORT TO
10 THE STANDING COMMITTEES OF THE SENATE AND THE HOUSE OF
11 REPRESENTATIVES HAVING JURISDICTION OF CORRECTIONS ISSUES AND THE
12 CRIMINAL JUSTICE POLICY COMMISSION CREATED UNDER SECTION 32A OF
13 CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
14 769.32A, ALL OF THE FOLLOWING INFORMATION:

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

17 (B) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
18 PAROLE AND FOR WHOM PAROLE WAS DEFERRED TO COMPLETE NECESSARY
19 PROGRAMMING DURING THE PRECEDING CALENDAR YEAR.

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

24 (D) THE NUMBER OF PRISONERS WHO SCORED HIGH PROBABILITY OF
25 PAROLE AND WERE DENIED PAROLE FOR A SUBSTANTIAL AND COMPELLING
26 OBJECTIVE REASON, OR SUBSTANTIAL AND COMPELLING OBJECTIVE REASONS,
27 UNDER SUBSECTION (7) DURING THE PRECEDING CALENDAR YEAR. THIS

1 INFORMATION MUST BE PROVIDED WITH A BREAKDOWN OF PAROLE DENIALS FOR
2 EACH OF THE SUBSTANTIAL AND COMPELLING OBJECTIVE REASONS UNDER
3 SUBSECTION (7) .

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

7 (i) HOMICIDE .

8 (ii) SEXUAL OFFENSE .

9 (iii) AN ASSAULTIVE OFFENSE OTHER THAN A HOMICIDE OR SEXUAL
10 OFFENSE .

11 (iv) A NONASSAULTIVE OFFENSE .

12 (v) A CONTROLLED SUBSTANCE OFFENSE .

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

17 (i) LESS THAN 1 YEAR .

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

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

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

21 (v) FOUR OR MORE YEARS .

22 (12) THE DEPARTMENT SHALL IMMEDIATELY ADVISE THE STANDING
23 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES HAVING
24 JURISDICTION OF CORRECTIONS ISSUES AND THE CRIMINAL JUSTICE POLICY
25 COMMISSION DESCRIBED IN SUBSECTION (11) OF ANY CHANGES MADE TO THE
26 SCORING OF THE PAROLE GUIDELINES AFTER THE EFFECTIVE DATE OF THE
27 AMENDATORY ACT THAT ADDED THIS SUBSECTION, INCLUDING A CHANGE IN

1 THE NUMBER OF POINTS THAT DEFINE "HIGH PROBABILITY OF PAROLE".

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

8 Sec. 35. (1) The release of a prisoner on parole ~~shall~~**MUST** be
9 granted solely upon the initiative of the parole board. **THERE IS NO**
10 **ENTITLEMENT TO PAROLE.** The parole board may grant a parole without
11 interviewing the prisoner ~~. However, beginning January 26, 1996,~~
12 ~~the parole board may grant a parole without interviewing the~~
13 ~~prisoner only~~ if, after evaluating the prisoner according to the
14 parole guidelines, the parole board determines that the prisoner
15 has a high probability of being paroled and the parole board
16 therefore intends to parole the prisoner. Except as provided in
17 subsection (2), a prisoner ~~shall~~**MUST** not be denied parole without
18 an interview before 1 member of the parole board. The interview
19 ~~shall~~**MUST** be conducted at least 1 month before the expiration of
20 the prisoner's minimum sentence less applicable good time and
21 disciplinary credits for a prisoner eligible for good time and
22 disciplinary credits, or at least 1 month before the expiration of
23 the prisoner's minimum sentence for a prisoner subject to
24 disciplinary time. The parole board shall consider any statement
25 made to the parole board by a crime victim under the William Van
26 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to
27 780.834, or under any other provision of law. The parole board

1 shall not consider any of the following factors in making a parole
2 determination:

3 (a) A juvenile record that a court has ordered the department
4 to expunge.

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

11 (2) ~~Beginning January 26, 1996, if, IF,~~ after evaluating a
12 prisoner according to the parole guidelines, the parole board
13 determines that the prisoner has a low probability of being paroled
14 and the parole board therefore does not intend to parole the
15 prisoner, the parole board is not required to interview the
16 prisoner before denying parole to the prisoner.

17 (3) The parole board may consider but shall not base a
18 determination to deny parole solely on either of the following:

19 (a) A prisoner's marital history.

20 (b) Prior arrests not resulting in conviction or adjudication
21 of delinquency.

22 (4) If an interview is to be conducted, the prisoner ~~shall~~
23 **MUST** be sent a notice of intent to conduct an interview ~~at least~~
24 **NOT LESS THAN** 1 month before the date of the interview. The notice
25 ~~shall~~ **MUST** state the specific issues and concerns that ~~shall~~ **WILL**
26 be discussed at the interview and that may be a basis for a denial
27 of parole. ~~A denial of~~ **THE PAROLE BOARD SHALL NOT DENY** parole ~~shall~~

1 ~~not be~~ based on reasons other than those stated in the notice of
2 intent to conduct an interview except for good cause stated to the
3 prisoner at or before the interview and in the written explanation
4 required by subsection (12). ~~This subsection does not apply until~~
5 ~~April 1, 1983.~~

6 (5) Except for good cause, the parole board member conducting
7 the interview shall not have cast a vote for or against the
8 prisoner's release before conducting the current interview. Before
9 the interview, the parole board member who is to conduct the
10 interview shall review pertinent information relative to the notice
11 of intent to conduct an interview.

12 (6) A prisoner may waive the right to an interview by 1 member
13 of the parole board. The waiver of the right to be interviewed
14 ~~shall~~ **MUST** be **IN WRITING AND** given not more than 30 days after the
15 notice of intent to conduct an interview is issued. ~~and shall be~~
16 ~~made in writing.~~ During the interview held ~~pursuant to~~ **UNDER** a
17 notice of intent to conduct an interview, the prisoner may be
18 represented by an individual of his or her choice. The
19 representative shall not be another prisoner or an attorney. A
20 prisoner is not entitled to appointed counsel at public expense.
21 The prisoner or representative may present relevant evidence in
22 support of release.

23 (7) At least 90 days before the expiration of the prisoner's
24 minimum sentence less applicable good time and disciplinary credits
25 for a prisoner eligible for good time or disciplinary credits, or
26 at least 90 days before the expiration of the prisoner's minimum
27 sentence for a prisoner subject to disciplinary time, or the

1 expiration of a 12-month continuance for any prisoner, **THE**
2 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
3 report. ~~shall be prepared by appropriate institutional staff.~~ The
4 parole eligibility report ~~shall be~~ **IS** considered pertinent
5 information for purposes of subsection (5). The report ~~shall~~ **MUST**
6 include all of the following:

7 (a) A statement of all major misconduct charges of which the
8 prisoner was found guilty and the punishment served for the
9 misconduct.

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

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

13 (d) Whether the prisoner fully cooperated with ~~the~~ **THIS** state
14 by providing complete financial information as required under
15 section 3a of the state correctional facility reimbursement act,
16 1935 PA 253, MCL 800.403a.

17 (e) Whether the prisoner refused to attempt to obtain
18 identification documents under section 34c, if applicable.

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

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

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

25 (9) Psychological evaluations performed at the request of the
26 parole board to assist it in reaching a decision on the release of
27 a prisoner may be performed by the same person who provided the

1 prisoner with therapeutic treatment, unless a different person is
2 requested by the prisoner or parole board.

3 (10) The parole board may grant a medical parole for a
4 prisoner determined to be physically or mentally incapacitated. A
5 decision to grant a medical parole ~~shall~~**MUST** be initiated ~~upon~~**ON**
6 the recommendation of the bureau of health care services and ~~shall~~
7 **MUST** be reached only after a review of the medical, institutional,
8 and criminal records of the prisoner.

9 (11) The department shall ~~submit~~**FILE** a petition to the
10 appropriate court under section 434 of the mental health code, 1974
11 PA 258, MCL 330.1434, for any prisoner being paroled or being
12 released after serving his or her maximum sentence whom the
13 department considers to be a person requiring treatment. The parole
14 board shall require mental health treatment as a special condition
15 of parole for any parolee whom the department has determined to be
16 a person requiring treatment whether or not the petition filed for
17 that prisoner is granted by the court. As used in this subsection,
18 "person requiring treatment" means that term as defined in section
19 401 of the mental health code, 1974 PA 258, MCL 330.1401.

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

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

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