

# HOUSE BILL NO. 4129

February 06, 2019, Introduced by Reps. LaFave, Tyrone Carter, Bolden and Filler and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled  
"Corrections code of 1953,"  
by amending section 35 (MCL 791.235), as amended by 2018 PA 339.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 35. (1) The release of a prisoner on parole must be  
2 granted solely upon the initiative of the parole board. There is no  
3 entitlement to parole. The parole board may grant a parole without  
4 interviewing the prisoner if, after evaluating the prisoner  
5 according to the parole guidelines, the parole board determines  
6 that the prisoner has a high probability of being paroled and the

1 parole board therefore intends to parole the prisoner. Except as  
2 provided in subsection (2), a prisoner must not be denied parole  
3 without an interview before 1 member of the parole board. The  
4 interview must be conducted at least 1 month before the expiration  
5 of the prisoner's minimum sentence less applicable good time and  
6 disciplinary credits for a prisoner eligible for good time and  
7 disciplinary credits, or at least 1 month before the expiration of  
8 the prisoner's minimum sentence for a prisoner subject to  
9 disciplinary time. The parole board shall consider any statement  
10 made to the parole board by a crime victim under the William Van  
11 Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to  
12 780.834, or under any other provision of law. The parole board  
13 shall not consider any of the following factors in making a parole  
14 determination:

15 (a) A juvenile record that a court has ordered the department  
16 to expunge.

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

23 (2) If, after evaluating a prisoner according to the parole  
24 guidelines, the parole board determines that the prisoner has a low  
25 probability of being paroled and the parole board therefore does  
26 not intend to parole the prisoner, the parole board is not required  
27 to interview the prisoner before denying parole to the prisoner.

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

1 (a) A prisoner's marital history.

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

4 (4) If an interview is to be conducted, the prisoner must be  
5 sent a notice of intent to conduct an interview not less than 1  
6 month before the date of the interview. The notice must state the  
7 specific issues and concerns that will be discussed at the  
8 interview and that may be a basis for a denial of parole. The  
9 parole board shall not deny parole based on reasons other than  
10 those stated in the notice of intent to conduct an interview except  
11 for good cause stated to the prisoner at or before the interview  
12 and in the written explanation required by subsection ~~(12)~~ **(20)**.

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

19 (6) A prisoner may waive the right to an interview by 1 member  
20 of the parole board. The waiver of the right to be interviewed must  
21 be in writing and given not more than 30 days after the notice of  
22 intent to conduct an interview is issued. During the interview held  
23 under a notice of intent to conduct an interview, the prisoner may  
24 be represented by an individual of his or her choice. The  
25 representative shall not be another prisoner or an attorney. A  
26 prisoner is not entitled to appointed counsel at public expense.  
27 The prisoner or representative may present relevant evidence in  
28 support of release.

29 (7) At least 90 days before the expiration of the prisoner's

1 minimum sentence less applicable good time and disciplinary credits  
2 for a prisoner eligible for good time or disciplinary credits, or  
3 at least 90 days before the expiration of the prisoner's minimum  
4 sentence for a prisoner subject to disciplinary time, or the  
5 expiration of a 12-month continuance for any prisoner, **or at the**  
6 **request of the parole board for a prisoner being considered for**  
7 **parole under subsection (10)**, the appropriate institutional staff  
8 shall prepare a parole eligibility report. The parole eligibility  
9 report is considered pertinent information for purposes of  
10 subsection (5). The report must include all of the following:

11 (a) A statement of all major misconduct charges of which the  
12 prisoner was found guilty and the punishment served for the  
13 misconduct.

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

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

17 (d) Whether the prisoner fully cooperated with this state by  
18 providing complete financial information as required under section  
19 3a of the state correctional facility reimbursement act, 1935 PA  
20 253, MCL 800.403a.

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

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

26 (g) The result on any validated risk assessment instrument.

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

29 (9) Psychological evaluations performed at the request of the

1 parole board to assist it in reaching a decision on the release of  
2 a prisoner may be performed by the same person who provided the  
3 prisoner with therapeutic treatment, unless a different person is  
4 requested by the prisoner or parole board.

5 (10) ~~The~~ **Except for a prisoner who was convicted under section**  
6 **316 or 520b of the Michigan penal code, 1931 PA 328, MCL 750.316**  
7 **and 750.520b, the** parole board may grant a medical parole for a  
8 prisoner determined to be ~~physically or mentally incapacitated.~~  
9 **medically frail.** A decision to grant a medical parole must be  
10 initiated on the recommendation of the bureau of health care  
11 services. ~~and must be reached only after a review of the medical,~~  
12 ~~institutional, and criminal records of the prisoner.~~ **If the bureau**  
13 **of health care services believes that the prisoner is medically**  
14 **frail, the bureau shall utilize a specialist in the appropriate**  
15 **field of medicine, who is not employed by the department, to**  
16 **evaluate the condition of the prisoner and to report on that**  
17 **condition to the bureau. The parole board, in consultation with the**  
18 **bureau of health care services, shall determine whether the**  
19 **prisoner is medically frail. If the parole board determines that a**  
20 **prisoner is medically frail and is going to be considered for**  
21 **parole under this subsection, the parole board shall provide the**  
22 **notice and medical records required under section 34(19). Unless**  
23 **the prosecutor of the county from which the prisoner was committed**  
24 **files a motion under section 34(20), the parole board may grant**  
25 **parole to a prisoner who is determined to be medically frail. The**  
26 **requirements of sections 33(1)(b), (c), (d), and (f), 33b, and**  
27 **34(1), (2), (3), (4), (7), (8), (14), (15), (16), (17), and (18) do**  
28 **not apply to a parole granted under this subsection.**

29 (11) The following conditions apply to a parole granted under

1 subsection (10):

2 (a) A prisoner must only be released on parole under  
3 subsection (10) if he or she agrees to all of the following:

4 (i) His or her placement, or, if the prisoner is unable to  
5 consent because of the prisoner's physical or mental health  
6 condition, an individual legally entitled to agree to the  
7 prisoner's placement agrees that the prisoner be placed in a  
8 medical facility approved by the parole board where medical care  
9 and treatment can be provided.

10 (ii) To the release of his or her medical records that are  
11 directly relevant to the condition or conditions rendering the  
12 prisoner medically frail to the prosecutor and sentencing or  
13 successor judge of the county from which the prisoner was committed  
14 before the parole board determines whether or not to grant the  
15 prisoner parole under subsection (10).

16 (iii) An independent medical exam if sought by the prosecutor of  
17 the county from which the prisoner was committed as provided under  
18 section 34(20). If possible, this independent medical exam must  
19 occur at a facility of the department. The reasonable costs of this  
20 independent medical exam must be paid for by the department.

21 (b) The parolee shall adhere to the terms of his or her parole  
22 for the length of his or her parole term.

23 (c) The parole must be for a term not less than the time  
24 necessary to reach the prisoner's earliest release date.

25 (d) A parolee who violates the terms of his or her parole or  
26 is determined to no longer meet the definition of medically frail  
27 may be transferred to a setting more appropriate for the medical  
28 needs of the parolee or be subject to the parole violation process  
29 under sections 38, 39, 39a, and 40a as determined by the parole

1 board and the department.

2 (e) The parolee must only be placed in a medical facility that  
3 agrees to accept the parolee and that is agreed upon by the parolee  
4 as described in subdivision (a) (i).

5 (12) The parolee or an individual legally entitled to agree to  
6 the parolee's placement under subsection (11) (a) (i) shall  
7 immediately inform the parole board if any of the following occur:

8 (a) The parolee is no longer eligible for care at the medical  
9 facility at which he or she was placed.

10 (b) The parolee must be moved to another location for medical  
11 care.

12 (c) The parolee is no longer at the medical facility approved  
13 by the parole board.

14 (d) The parolee no longer needs the level of care that  
15 resulted in the parolee's placement at the medical facility.

16 (13) The parole board shall immediately notify the prosecutor  
17 for the county in which the offender was convicted and the  
18 sentencing or successor judge if the parolee is no longer eligible  
19 for care or no longer needs the level of care for which the  
20 prisoner was placed at the medical facility.

21 (14) The department shall not retain authority over the  
22 medical treatment plan for a prisoner granted parole under  
23 subsection (10) and a prisoner granted parole under subsection (10)  
24 must have full patient rights at the medical facility where he or  
25 she is placed.

26 (15) The department and the parole board shall ensure that the  
27 placement and terms and conditions of a parole granted under  
28 subsection (10) do not violate any other state or federal  
29 regulations.

1           (16) A medical facility housing prisoners granted parole under  
2 subsection (10) must be operated in a manner that ensures the  
3 safety of the residents of the medical facility.

4           (17) A parolee granted parole under subsection (10) and placed  
5 in a medical facility has the same patient rights and  
6 responsibilities as any other individual who is a resident of or  
7 has been admitted to the medical facility.

8           (18) The process for a parole determination under subsection  
9 (10) does not change or affect any of the rights afforded to a  
10 victim under the William Van Regenmorter crime victim's rights act,  
11 1985 PA 87, MCL 780.751 to 780.834.

12           (19) ~~(11)~~—The department shall file a petition to the  
13 appropriate court under section 434 of the mental health code, 1974  
14 PA 258, MCL 330.1434, for any prisoner being paroled or being  
15 released after serving his or her maximum sentence whom the  
16 department considers to be a person requiring treatment. The parole  
17 board shall require mental health treatment as a special condition  
18 of parole for any parolee whom the department has determined to be  
19 a person requiring treatment whether or not the petition filed for  
20 that prisoner is granted by the court. As used in this subsection,  
21 "person requiring treatment" means that term as defined in section  
22 401 of the mental health code, 1974 PA 258, MCL 330.1401.

23           (20) ~~(12)~~—When the parole board makes a final determination  
24 not to release a prisoner, the parole board shall provide the  
25 prisoner with a written explanation of the reason for denial and,  
26 if appropriate, specific recommendations for corrective action the  
27 prisoner may take to facilitate release.

28           (21) ~~(13)~~—This section does not apply to the placement on  
29 parole of a person in conjunction with special alternative



1 incarceration under section 34a(7).

2 (22) As used in this section:

3 (a) "Activities of daily living" means basic personal care and  
4 everyday activities as described in 42 CFR 441.505, including, but  
5 not limited to, tasks such as eating, toileting, grooming,  
6 dressing, bathing, and transferring from 1 physical position to  
7 another, including, but not limited to, moving from a reclining  
8 position to a sitting or standing position.

9 (b) "Medical facility" means a hospital, hospice, nursing  
10 home, or other housing accommodation providing medical treatment  
11 suitable to the condition or conditions rendering the prisoner  
12 medically frail.

13 (c) "Medically frail" describes an individual who is a minimal  
14 threat to society as a result of his or her medical condition, who  
15 has received a risk score of low on a validated risk assessment,  
16 whose recent conduct in prison indicates he or she is unlikely to  
17 engage in assaultive conduct, whose ability to perform 2 or more  
18 activities of daily living is significantly impaired, and who may  
19 have limited mobility and ability to transfer from 1 physical  
20 position to another as the result of 1 or more of the following  
21 conditions from which the individual is not expected to recover:

22 (i) A disabling mental disorder, including dementia,  
23 Alzheimer's, or a similar degenerative brain disorder.

24 (ii) A serious and complex medical condition.

25 (iii) A physical disability.

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

28 Enacting section 2. This amendatory act does not take effect  
29 unless all of the following bills of the 100th Legislature are

1 enacted into law:

2 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request no.  
3 01447'19).

4 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request no.  
5 01549'19).