

Act No. 13
Public Acts of 2019
Approved by the Governor
May 22, 2019
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. LaFave, Tyrone Carter, Bolden and Filler

ENROLLED HOUSE BILL No. 4129

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 35 (MCL 791.235), as amended by 2018 PA 339.

The People of the State of Michigan enact:

Sec. 35. (1) The release of a prisoner on parole must be granted solely upon the initiative of the parole board. There is no entitlement to parole. The parole board may grant a parole without interviewing the prisoner if, after evaluating the prisoner according to the parole guidelines, the parole board determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner. Except as provided in subsection (2), a prisoner must not be denied parole without an interview before 1 member of the parole board. The interview must be conducted at least 1 month before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. The parole board shall consider any statement made to the parole board by a crime victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall not consider any of the following factors in making a parole determination:

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

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

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

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

(a) A prisoner's marital history.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Except for a prisoner who was convicted of any crime that is punishable by a term of life imprisonment without parole or of a violation of section 520b of the Michigan penal code, 1931 PA 328, MCL 750.520b, the parole board may grant a medical parole for a prisoner determined to be medically frail. A decision to grant a medical parole must be initiated on the recommendation of the bureau of health care services. If the bureau of health care services believes that the prisoner is medically frail, the bureau shall utilize a specialist in the appropriate field of medicine, who is not employed by the department, to evaluate the condition of the prisoner and to report on that condition to the bureau. The parole board, in consultation with the bureau of health care services, shall determine whether the prisoner is medically frail. If the parole board determines that a prisoner is medically frail and is going to be considered for parole under this subsection, the parole board shall provide the notice and medical records required under section 34(18). Unless the prosecutor of the county from which the prisoner was committed files a motion under section 34(19), the parole board may grant parole to a prisoner who is determined to be medically frail. If a motion is filed under section 34(19) and the court finds that the prisoner is eligible for parole as a result of being medically frail, and if no additional appeals are pending, the parole board may grant parole to the prisoner under this subsection. The requirements of sections 33(1)(b), (c), (d), and (f), 33b, and 34(1), (2), (3), (4), (7), (13), (14), (15), (16), and (17) do not apply to a parole granted under this subsection.

(11) The following conditions apply to a parole granted under subsection (10):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) A parolee granted parole under subsection (10) and placed in a medical facility has the same patient rights and responsibilities as any other individual who is a resident of or has been admitted to the medical facility. The medical facility is not responsible for the enforcement of conditions of parole or the reporting of violations of conditions of parole for any parolee placed in the medical facility. The medical facility shall comply with state and federal laws and regulations that protect resident rights and state and federal laws and regulations for skilled nursing facilities, regardless of the conditions of parole imposed on a resident parolee.

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

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

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

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

(22) As used in this section:

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

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

(c) "Medically frail" describes an individual who is a minimal threat to society as a result of his or her medical condition, who has received a risk score of low on a validated risk assessment, whose recent conduct in prison indicates he or she is unlikely to engage in assaultive conduct, and who has 1 or both of the following:

(i) A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to do 1 or more of the following without personal assistance:

- (A) Walk.
- (B) Stand.
- (C) Sit.

(ii) A permanent or terminal disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder that results in the need for nursing home level of care, and a significantly impaired ability to perform 2 or more activities of daily living.

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

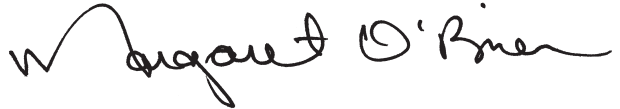
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 100th Legislature are enacted into law:

- (a) House Bill No. 4130.
- (b) House Bill No. 4132.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor