

HOUSE BILL NO. 4562

March 23, 2021, Introduced by Reps. Lightner and Witwer and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 33e (MCL 791.233e), as amended by 2018 PA 339.

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) to govern the exercise of
3 the parole board's discretion under sections 34 and 35 as to the
4 release of prisoners on parole under this act. The purpose of the
5 parole guidelines is to assist the parole board in making

1 objective, evidence-based release decisions that enhance the public
2 safety.

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

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

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

8 (c) The prisoner's institutional conduct.

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

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

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

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

20 (b) The prisoner's age.

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

24 (5) The department shall promulgate rules under the
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
26 24.328, that prescribe the parole guidelines.

27 (6) The parole board may depart from the parole guidelines by
28 denying parole to a prisoner who has a high probability of parole
29 as determined under the parole guidelines or by granting parole to

1 a prisoner who has a low probability of parole as determined under
2 the parole guidelines. A departure under this subsection must be
3 for substantial and compelling objective reasons stated in writing.
4 The parole board shall not use a prisoner's gender, race,
5 ethnicity, alienage, national origin, or religion to depart from
6 the recommended parole guidelines.

7 (7) Substantial and compelling objective reasons for a
8 departure from the parole guidelines for a prisoner with high
9 probability of parole are limited to the following circumstances:

10 (a) The prisoner exhibits a pattern of ongoing behavior while
11 incarcerated indicating that he or she would be a substantial risk
12 to public safety, including major misconducts or additional
13 criminal convictions.

14 (b) The prisoner refuses to participate in programming ordered
15 by the department to reduce the prisoner's risk. A prisoner may not
16 be considered to have refused programming if unable to complete
17 programming due to factors beyond his or her control.

18 (c) There is verified objective evidence of substantial harm
19 to a victim that could not have been available for consideration at
20 the time of sentencing.

21 (d) The prisoner has threatened harm to another person if
22 released.

23 (e) There is objective evidence of post-sentencing conduct,
24 not already scored under the parole guidelines, that the prisoner
25 would present a high risk to public safety if paroled.

26 (f) The prisoner is a suspect in an unsolved criminal case
27 that is being actively investigated.

28 (g) The prisoner has a pending felony charge or is subject to
29 a detainer request from another jurisdiction.

1 (h) The prisoner has not yet completed programming ordered by
2 the department to reduce the prisoner's risk, and the programming
3 is not available in the community and the risk cannot be adequately
4 managed in the community before completion.

5 (i) The release of the prisoner is otherwise barred by law.

6 (j) The prisoner fails to present a sufficient parole plan
7 adequately addressing his or her identified risks and needs to
8 ensure that he or she will not present a risk to public safety if
9 released on parole. If a prisoner is denied parole under this
10 subdivision, the parole board must provide the prisoner a detailed
11 explanation of the deficiencies in the parole plan so that the
12 prisoner may address the deficiencies before his or her next
13 review.

14 (k) The prisoner has received a psychological evaluation in
15 the past 3 years indicating the prisoner would present a high risk
16 to public safety if paroled.

17 (8) The parole board may deny parole for up to 1 year to a
18 prisoner who was denied parole under subsection (7)(h) to allow for
19 the completion of programming ordered by the department. A prisoner
20 denied parole under subsection (7)(h) must receive parole
21 consideration within 30 days after the completion of the
22 programming.

23 (9) ~~The~~ **Except as provided under subsection (10),** the parole
24 board shall conduct a review of a prisoner, except for a prisoner
25 serving a life sentence, who has been denied parole as follows:

26 (a) If the prisoner scored high or average probability of
27 parole, not less than annually.

28 (b) If the prisoner scored low probability of parole, not less
29 than every 2 years until a score of high or average probability of

1 parole is attained.

2 (10) The parole board may conduct a subsequent review of a
3 prisoner, except for a prisoner serving a life sentence, not more
4 than 5 years after the review denying the prisoner parole, if the
5 following conditions are met:

6 (a) The majority of the parole board finds that the prisoner's
7 history of predatory, deviant, or violent behavior indicates there
8 is a present risk to public safety that cannot reasonably be
9 expected to be mitigated in less than 60 months.

10 (b) The findings under subdivision (a) are stated in writing.

11 (11) ~~(10)~~ Not less than once every 2 years, the department
12 shall review the correlation between the implementation of the
13 parole guidelines and the recidivism rate of paroled prisoners, and
14 shall submit to the joint committee on administrative rules any
15 proposed revisions to the administrative rules that the department
16 considers appropriate after conducting the review.

17 (12) ~~(11)~~ By March 1 of each year, the department shall report
18 to the standing committees of the senate and the house of
19 representatives having jurisdiction of corrections issues ~~and the~~
20 ~~criminal justice policy commission created under section 32a of~~
21 ~~chapter IX of the code of criminal procedure, 1927 PA 175, MCL~~
22 ~~769.32a,~~ all of the following information:

23 (a) The number of prisoners who scored high probability of
24 parole and were granted parole during the preceding calendar year.

25 (b) The number of prisoners who scored high probability of
26 parole and for whom parole was deferred to complete necessary
27 programming during the preceding calendar year.

28 (c) The number of prisoners who scored high probability of
29 parole and were incarcerated at least 6 months past their first

1 parole eligibility date as of December 31 of the preceding calendar
2 year.

3 (d) The number of prisoners who scored high probability of
4 parole and were denied parole for a substantial and compelling
5 objective reason, or substantial and compelling objective reasons,
6 under subsection (7) during the preceding calendar year. This
7 information must be provided with a breakdown of parole denials for
8 each of the substantial and compelling objective reasons under
9 subsection (7).

10 (e) The number of prisoners who scored high probability of
11 parole and were denied parole whose controlling offense is in each
12 of the following groups:

13 (i) Homicide.

14 (ii) Sexual offense.

15 (iii) An assaultive offense other than a homicide or sexual
16 offense.

17 (iv) A nonassaultive offense.

18 (v) A controlled substance offense.

19 (f) Of the total number of prisoners subject to subsection (7)
20 who scored high probability of parole and were denied parole, the
21 number who have served the following amount of time after
22 completing their minimum sentence:

23 (i) Less than 1 year.

24 (ii) One year or more but less than 2 years.

25 (iii) Two years or more but less than 3 years.

26 (iv) Three years or more but less than 4 years.

27 (v) Four or more years.

28 **(13)** ~~(12)~~—The department shall immediately advise the standing
29 committees of the senate and house of representatives having

1 jurisdiction of corrections issues ~~and the criminal justice policy~~
2 ~~commission described in subsection (11)~~ of any changes made to the
3 scoring of the parole guidelines after ~~the effective date of the~~
4 ~~amendatory act that added this subsection~~, **December 12, 2018**,
5 including a change in the number of points that define "high
6 probability of parole".

7 **(14)** ~~(13)~~ Subsections (6), (7), and (8), as amended or added
8 by the ~~amendatory act that added this subsection~~ **2018 PA 339**, apply
9 only to prisoners whose controlling offense was committed on or
10 after ~~the effective date of the amendatory act that added this~~
11 ~~subsection~~. **December 12, 2018**. Subsections (7) and (8) do not apply
12 to a prisoner serving a life sentence, regardless of the date of
13 his or her controlling offense.

14 Enacting section 1. This amendatory act does not take effect
15 unless Senate Bill No. ____ or House Bill No. 4563 (request no.
16 02453'21) of the 101st Legislature is enacted into law.