

# HOUSE BILL No. 4130

February 7, 1991, Introduced by Reps. Ciaramitaro and Perry Bullard and referred to the Committee on Judiciary.

A bill to amend sections 2, 3, 35, and 65a of Act No. 232 of the Public Acts of 1953, entitled as amended

"An act to revise, consolidate, and codify the laws relating to probationers and probation officers as herein defined, to pardons, reprieves, commutations, and paroles, to the administration of penal institutions, correctional farms, and probation recovery camps, to prison labor and prison industries, and 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 hereby transferred; 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 prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act,"

section 2 as amended by Act No. 79 of the Public Acts of 1987, section 35 as amended by Act No. 414 of the Public Acts of 1984, and section 65a as amended by Act No. 272 of the Public Acts of

1988, being sections 791.202, 791.203, 791.235, and 791.265a of the Michigan Compiled Laws; and to add section 33e.

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

1       Section 1. Sections 2, 3, 35, and 65a of Act No. 232 of the  
2 Public Acts of 1953, section 2 as amended by Act No. 79 of the  
3 Public Acts of 1987, section 35 as amended by Act No. 414 of the  
4 Public Acts of 1984, and section 65a as amended by Act No. 272 of  
5 the Public Acts of 1988, being sections 791.202, 791.203,  
6 791.235, and 791.265a of the Michigan Compiled Laws, are amended  
7 and section 33e is added to read as follows:

8       Sec. 2. (1) The commission shall elect annually a chair-  
9 person and other officers as it considers expedient. A meeting  
10 shall be held not less than once each month or at other times as  
11 considered necessary. A majority of the total membership of the  
12 commission shall constitute a quorum for the transaction of  
13 business. The commission shall constitute the responsible  
14 authority for the administration of the correctional facilities,  
15 correctional industries, ~~parole~~, and probation of the state,  
16 subject to the limitations set forth in this act. The commission  
17 shall determine all matters relating to the unified development  
18 of the correctional facilities, correctional industries,  
19 ~~parole~~, and probation of the state and shall coordinate and  
20 adjust the agencies and correctional facilities within its juris-  
21 diction so that each shall form an integral part of a general  
22 system.

23       (2) The business ~~which~~ THAT the commission may perform  
24 shall be conducted at a public meeting held in compliance with

1 THE OPEN MEETINGS ACT, Act No. 267 of the Public Acts of 1976,  
2 being sections 15.261 to 15.275 of the Michigan Compiled Laws.  
3 Public notice of the time, date, and place of the meeting shall  
4 be given in the manner required by Act No. 267 of the Public Acts  
5 of 1976.

6       Sec. 3. (1) The commission shall appoint a director of cor-  
7 rections who shall be qualified by training and experience in  
8 penology. ~~He~~ THE DIRECTOR shall hold office at the pleasure of  
9 the commission except that he OR SHE may be removed for cause and  
10 only after a public hearing before the commission. ~~He~~ THE  
11 DIRECTOR shall receive ~~such~~ A salary ~~as shall be~~ appropriated  
12 by the legislature, together with actual and necessary traveling  
13 and other expenses. The director shall be the chief administra-  
14 tive officer of the commission and shall be responsible to the  
15 commission for the exercise of the powers and duties prescribed  
16 and conferred by this act, and for such other powers and duties  
17 as may be assigned by the commission, subject at all times to its  
18 control. Subject to the provisions of this act, and to the rules  
19 ~~and regulations adopted~~ PROMULGATED by the commission, the  
20 director shall have full power and authority to supervise and  
21 control the affairs of the department, and the several bureaus  
22 ~~thereof~~ OF THE DEPARTMENT, and he OR SHE shall carry out the  
23 orders of the commission.

24       (2) THE DIRECTOR, INDEPENDENTLY OF THE COMMISSION, SHALL  
25 SUPERVISE AND CONTROL THE OPERATION OF THE PAROLE BOARD.

26       SEC. 33E. (1) THE SENTENCING COMMISSION CREATED PURSUANT TO  
27 SECTION 33 OF CHAPTER IX OF THE CODE OF CRIMINAL PROCEDURE, ACT

1 NO. 275 OF THE PUBLIC ACTS OF 1927, BEING SECTION 769.33 OF THE  
2 MICHIGAN COMPILED LAWS, SHALL DEVELOP PAROLE GUIDELINES TO GOVERN  
3 THE EXERCISE OF THE PAROLE BOARD'S DISCRETION PURSUANT TO  
4 SECTIONS 34 AND 35 AS TO THE RELEASE OF PRISONERS ON PAROLE UNDER  
5 THIS ACT.

6 (2) IN DEVELOPING THE PAROLE GUIDELINES, THE SENTENCING COM-  
7 MISSION SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

8 (A) THE OFFENSE FOR WHICH THE PRISONER IS INCARCERATED AT  
9 THE TIME OF PAROLE CONSIDERATION.

10 (B) THE PRISONER'S INSTITUTIONAL PROGRAM PERFORMANCE.

11 (C) THE PRISONER'S INSTITUTIONAL CONDUCT.

12 (D) THE PRISONER'S PRIOR CRIMINAL RECORD. AS USED IN THIS  
13 SUBDIVISION, "PRIOR CRIMINAL RECORD" MEANS THE RECORDED CRIMINAL  
14 HISTORY OF A PRISONER, INCLUDING ALL MISDEMEANOR AND FELONY CON-  
15 VICTIONS, PROBATION VIOLATIONS, JUVENILE ADJUDICATIONS FOR ACTS  
16 THAT WOULD HAVE BEEN CRIMES IF COMMITTED BY AN ADULT, PAROLE  
17 FAILURES, AND DELAYED SENTENCES.

18 (E) OTHER RELEVANT FACTORS AS DETERMINED BY THE SENTENCING  
19 COMMISSION, IF NOT OTHERWISE PROHIBITED BY LAW.

20 (3) IN DEVELOPING THE PAROLE GUIDELINES, THE SENTENCING COM-  
21 MISSION MAY CONSIDER BOTH OF THE FOLLOWING FACTORS:

22 (A) THE PRISONER'S STATISTICAL RISK SCREENING.

23 (B) THE PRISONER'S AGE.

24 (4) THE PAROLE GUIDELINES DEVELOPED PURSUANT TO SUBSECTIONS  
25 (1) TO (3) SHALL BE SUBMITTED TO THE SECRETARY OF THE SENATE AND  
26 THE CLERK OF THE HOUSE OF REPRESENTATIVES ON OCTOBER 1, 1992, IN  
27 THE FORM OF A CONCURRENT RESOLUTION TO APPROVE THE GUIDELINES.

1 THE CONCURRENT RESOLUTION SHALL BE REFERRED TO THE JUDICIARY  
2 COMMITTEE OF EACH HOUSE. NOT LATER THAN 60 DAYS AFTER REFERRAL,  
3 EACH COMMITTEE SHALL VOTE TO RECOMMEND APPROVAL OR DISAPPROVAL OF  
4 THE CONCURRENT RESOLUTION. NOT LATER THAN 90 DAYS AFTER THE VOTE  
5 OF ITS RESPECTIVE JUDICIARY COMMITTEE, EACH HOUSE SHALL TAKE A  
6 RECORD ROLL CALL VOTE ON THE CONCURRENT RESOLUTION. APPROVAL OF  
7 THE PAROLE GUIDELINES REQUIRES A VOTE IN FAVOR OF THE CONCURRENT  
8 RESOLUTION BY A MAJORITY OF THE MEMBERS ELECTED AND SERVING IN  
9 EACH HOUSE. IF BOTH THE SENATE AND HOUSE OF REPRESENTATIVES DO  
10 NOT APPROVE THE CONCURRENT RESOLUTION WITHIN THE TIME LIMITS PRO-  
11 VIDED BY THIS SUBSECTION, THE SENTENCING COMMISSION SHALL REVISE  
12 THE PAROLE GUIDELINES WITHIN 240 DAYS AFTER THE DATE PAROLE  
13 GUIDELINES WERE PREVIOUSLY SUBMITTED TO THE LEGISLATURE. REVISED  
14 PAROLE GUIDELINES ARE SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS  
15 (1) TO (3) AND THE SAME APPROVAL PROCESS AS THE PAROLE GUIDELINES  
16 ORIGINALLY SUBMITTED PURSUANT TO THIS SUBSECTION. UNTIL THE LEG-  
17 ISLATURE APPROVES PAROLE GUIDELINES, THE SENTENCING COMMISSION  
18 SHALL CONTINUE TO REVISE AND RESUBMIT THE PAROLE GUIDELINES TO  
19 THE LEGISLATURE AS PROVIDED IN THIS SUBSECTION.

20 (5) THE SENTENCING COMMISSION MAY RECOMMEND MODIFICATIONS TO  
21 THE PAROLE GUIDELINES. MODIFICATIONS OF THE PAROLE GUIDELINES  
22 APPROVED BY THE LEGISLATURE UNDER SUBSECTION (4) SHALL NOT BE  
23 IMPLEMENTED SOONER THAN 2 YEARS AFTER THE EFFECTIVE DATE OF THOSE  
24 PAROLE GUIDELINES, UNLESS THE MODIFICATIONS ARE BASED UPON OMIS-  
25 SIONS, TECHNICAL ERRORS, CHANGES IN THE LAW, OR COURT DECISIONS.  
26 SUBSEQUENT MODIFICATIONS SHALL NOT BE IMPLEMENTED SOONER THAN 2  
27 YEARS AFTER PREVIOUS MODIFICATIONS OTHER THAN MODIFICATIONS BASED

1 UPON OMISSIONS, TECHNICAL ERRORS, CHANGES IN THE LAW, OR COURT  
2 DECISIONS. ANY MODIFICATION PROPOSED BY THE SENTENCING COMMIS-  
3 SION AS PERMITTED UNDER THIS SUBSECTION IS SUBJECT TO THE SAME  
4 APPROVAL PROCESS AS SET FORTH IN SUBSECTION (4).

5 (6) SENTENCING GUIDELINES AND MODIFICATIONS APPROVED BY THE  
6 LEGISLATURE SHALL BE PUBLISHED IN THE MICHIGAN REGISTER.

7 Sec. 35. (1) The release of a prisoner on parole shall be  
8 granted solely upon the initiative of the parole board. The  
9 parole board may grant a parole without interviewing a prisoner.  
10 A prisoner shall not be denied parole without an interview before  
11 1 member of the parole board. The interview shall be conducted  
12 at least 1 month before the expiration of the prisoner's minimum  
13 sentence less good time allowances. The parole board shall not  
14 consider any of the following factors in making a parole  
15 determination:

16 (a) A juvenile record ~~which~~ THAT a court has ordered the  
17 department to expunge.

18 (b) Information that is determined by the parole board to be  
19 inaccurate or irrelevant after a challenge and presentation of  
20 relevant evidence by a prisoner who has received a notice of  
21 intent to conduct an interview as provided in subsection (3).  
22 This subdivision ~~shall~~ APPLIES only ~~apply~~ to presentence  
23 investigation reports prepared ~~prior to~~ BEFORE April 1, 1983.

24 (2) The parole board may consider, but shall not base a  
25 determination to deny parole solely on, EITHER OF THE FOLLOWING:

26 (a) A prisoner's marital history.

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

3 (3) If an interview is to be conducted, the prisoner shall  
4 be sent a notice of intent to conduct an interview at least 1  
5 month before the date of the interview. The notice shall state  
6 the specific issues and concerns ~~which~~ THAT shall be discussed  
7 at the interview and ~~which~~ THAT may be a basis for a denial of  
8 parole. A denial of parole shall not be based on reasons other  
9 than those stated in the notice of intent to conduct an interview  
10 except for good cause stated to the prisoner at or before the  
11 interview and in the written explanation required by subsection  
12 (10). This subsection ~~shall~~ DOES not apply until April 1,  
13 1983.

14 (4) Except for good cause, the parole board member conduct-  
15 ing the interview shall not have cast a vote for or against the  
16 prisoner's release ~~prior to~~ BEFORE conducting the current  
17 interview. ~~The~~ BEFORE THE INTERVIEW, THE parole board member  
18 ~~conducting~~ WHO IS TO CONDUCT the interview shall review perti-  
19 nent information relative to the notice of intent to conduct an  
20 interview. ~~before the interview.~~

21 (5) A prisoner may waive the right to an interview by 1  
22 member of the parole board. The waiver of the right to be inter-  
23 viewed shall be given not more than 30 days after the notice of  
24 intent to conduct an interview is issued and shall be made in  
25 writing. During the interview held pursuant to a notice of  
26 intent to conduct an interview, the prisoner may be represented  
27 by an individual of his or her choice. The representative shall

1 not be another prisoner or an attorney. A prisoner is not  
2 entitled to appointed counsel at public expense. The prisoner or  
3 representative may present relevant evidence in support of  
4 release. This subsection ~~shall~~ DOES not apply until April 1,  
5 1983.

6 (6) At least 90 days before the expiration of the prisoner's  
7 minimum sentence, or the expiration of a 12-month continuance, a  
8 parole eligibility report shall be prepared by appropriate insti-  
9 tutional staff. The parole eligibility report shall be consid-  
10 ered pertinent information for purposes of subsection (4). The  
11 report shall include ALL OF THE FOLLOWING:

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

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

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

19 (d) Whether the prisoner fully cooperated with the state by  
20 providing complete financial information as required under sec-  
21 tion 3a of THE STATE CORRECTIONAL FACILITY REIMBURSEMENT ACT, Act  
22 No. 253 of the Public Acts of 1935, being section 800.403a of the  
23 Michigan Compiled Laws.

24 (7) The preparer of the report shall not include a recommen-  
25 dation as to release on parole.

26 (8) Psychological evaluations performed at the request of  
27 the parole board to assist it in reaching a decision on the



1-release of a prisoner may be performed by the same person who  
2 provided the prisoner with therapeutic treatment, unless a dif-  
3 ferent person is requested by the prisoner or parole board.

4 (9) The parole board may grant a medical parole for a pris-  
5 oner determined to be physically or mentally incapacitated. A  
6 decision to grant a medical parole shall be initiated upon the  
7 recommendation of the office of health care and shall be reached  
8 only after a review of the medical, institutional, and criminal  
9 records of the prisoner.

10 (10) When the parole board makes a final determination not  
11 to release a prisoner, the prisoner shall be provided with a  
12 written explanation of the reason for denial and, if appropriate,  
13 specific recommendations for corrective action the prisoner may  
14 take to facilitate release.

15 (11) THE PAROLE BOARD SHALL FOLLOW THE PAROLE GUIDELINES  
16 APPROVED PURSUANT TO SECTION 33E. THE PAROLE BOARD MAY DEPART  
17 FROM THE PAROLE GUIDELINES, HOWEVER, IF THE PAROLE BOARD HAS A  
18 SUBSTANTIAL AND COMPELLING REASON FOR THAT DEPARTURE. THE PAROLE  
19 BOARD SHALL NOT USE THE PRISONER'S GENDER, RACE, ETHNICITY,  
20 ALIENAGE, NATIONAL ORIGIN, OR RELIGION TO DEPART FROM THE RECOM-  
21 MENDED PAROLE RELEASE DATE. THE PAROLE BOARD SHALL NOT BASE A  
22 DEPARTURE ON A FACTOR ALREADY TAKEN INTO ACCOUNT IN DETERMINING  
23 THE RECOMMENDED PAROLE GUIDELINE. THE PAROLE BOARD SHALL STATE  
24 THE REASON FOR DEPARTURE IN WRITING TO THE PRISONER.

25 Sec. 65a. (1) Under prescribed conditions, the director may  
26 extend the limits of confinement of a prisoner ~~when~~ IF there  
27 is reasonable assurance, after consideration of all facts and

1 circumstances, that the prisoner will not become a menace to  
2 society or to the public safety, by authorizing the prisoner to  
3 do any of the following:

4       (a) Visit a specifically designated place or places. An  
5 extension of limits may be granted only to a prisoner housed in a  
6 state correctional facility to permit a visit to a critically ill  
7 relative, attendance at the funeral of a relative, or the con-  
8 tacting of prospective employers. The maximum amount of time a  
9 prisoner is eligible for an extension of the limits of confine-  
10 ment under this subdivision shall not exceed a cumulative total  
11 period of 30 days. On or before December 31, 1989, the depart-  
12 ment shall report to the standing committee of the senate and  
13 house of representatives having jurisdiction over corrections the  
14 number of prisoners who are RELEASED under this subdivision, the  
15 amount of time each prisoner is released, and any major miscon-  
16 ducts or crimes committed by a prisoner released under this  
17 ~~subparagraph~~ SUBDIVISION between December 1, 1988 and  
18 December 1, 1989.

19       (b) Obtain medical services not otherwise available to a  
20 prisoner housed in a state correctional facility.

21       (c) Work at paid employment, participate in a training or  
22 educational program, or participate in a community residential  
23 drug treatment program while continuing as a prisoner housed on a  
24 voluntary basis at a community corrections center or in a commu-  
25 nity residential home.

26       (2) The director shall promulgate rules PURSUANT TO THE  
27 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC

1 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN  
2 COMPILED LAWS, to implement this section.

3 (3) The willful failure of a prisoner to remain within the  
4 extended limits of his or her confinement or to return within the  
5 time prescribed to an institution or facility designated by the  
6 director ~~shall be deemed~~ IS an escape from custody as provided  
7 in section 193 of the Michigan penal code, Act No. 328 of the  
8 Public Acts of 1931, as amended, being section 750.193 of the  
9 Michigan Compiled Laws.

10 (4) ~~Prisoners~~ A PRISONER convicted of a crime of violence  
11 or any assaultive crime ~~shall~~ IS not ~~be~~ eligible for the  
12 extensions of the limits of confinement provided in subsection  
13 (1) until ~~such time as~~ the minimum sentence imposed for the  
14 crime has less than 180 days remaining. ~~, except that if~~ IF the  
15 reason for the extension is to visit a critically ill relative,  
16 attend the funeral of a relative, or obtain medical services not  
17 otherwise available, the director may allow the extension under  
18 escort as provided in subsection (1).

19 (5) ~~Prisoners~~ A PRISONER serving a sentence for murder in  
20 the first degree ~~shall~~ IS not ~~be~~ eligible for the extensions  
21 of confinement under this section until a parole release date is  
22 established by the parole board and in no case ~~prior to~~ BEFORE  
23 service of 15 calendar years with a good institutional  
24 adjustment.

25 (6) A PRISONER, OTHER THAN A PRISONER DESCRIBED IN SUBSEC-  
26 TION (4) OR (5) OR A PRISONER SERVING A SENTENCE FOR AN OFFENSE  
27 DESCRIBED IN SECTION 2A OF CHAPTER IX OF THE CODE OF CRIMINAL

1 PROCEDURE, ACT NO. 175 OF THE PUBLIC ACTS OF 1927, BEING SECTION  
2 769.2A OF THE MICHIGAN COMPILED LAWS, WHO IS OTHERWISE ELIGIBLE  
3 FOR PLACEMENT IN A COMMUNITY CORRECTIONS CENTER OR COMMUNITY RES-  
4 IDENTIAL HOME SHALL NOT BE ASSIGNED TO A COMMUNITY CORRECTIONS  
5 CENTER OR COMMUNITY RESIDENTIAL HOME FOR MORE THAN THE FINAL  
6 12 MONTHS OF THE PRISONER'S MINIMUM SENTENCE.

7 (7) ~~-(6)-~~ As used in this section:

8 (a) "Community corrections center" means a facility either  
9 contracted for or operated by the department in which a security  
10 staff is on duty 7 days per week, 24 hours per day. ~~except that~~  
11 ~~the department may waive the requirement that electronic monitor-~~  
12 ~~ing be provided as to any prisoner who is within 3 months of his~~  
13 ~~or her parole date.~~

14 (b) "Community residential home" means a facility where  
15 electronic monitoring of prisoner presence is provided by the  
16 department 7 days per week, 24 hours per day, EXCEPT THAT THE  
17 DEPARTMENT MAY WAIVE THE REQUIREMENT THAT ELECTRONIC MONITORING  
18 BE PROVIDED AS TO ANY PRISONER WHO IS WITHIN 3 MONTHS OF HIS OR  
19 HER PAROLE DATE.

20 (c) "State correctional facility" means a facility owned or  
21 leased by the department. State correctional facility does not  
22 include a community corrections center or community residential  
23 home.

24 Section 2. Sections 2, 3, and 35 of Act No. 232 of the  
25 Public Acts of 1953, as amended by this amendatory act, and sec-  
26 tion 33e of Act No. 232 of the Public Acts of 1953, as added by  
27 this amendatory act, shall take effect April 1, 1992.

1       Section 3. Section 65a of Act No. 232 of the Public Acts of  
2 1953, as amended by this amendatory act, shall take effect on the  
3 effective date of the concurrent resolution of the legislature  
4 first approving the sentencing guidelines developed pursuant to  
5 section 34 of chapter IX of the code of criminal procedure, Act  
6 No. 175 of the Public Acts of 1927.

7       Section 4. This amendatory act shall not take effect unless  
8 Senate Bill No. \_\_\_\_\_ or House Bill No. 4127 (request  
9 no. 00985'91 \*) of the 86th Legislature is enacted into law.