

HOUSE BILL No. 4712

April 16, 1991, Introduced by Reps. Bender, Walberg, DeMars, Oxender, Ouwinga, Allen, London, Dolan, Munsell, Bankes, Ostling, Gilmer and Jaye and referred to the Committee on Corrections.

A bill to amend section 35 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,"

as amended by Act No. 414 of the Public Acts of 1984, being section 791.235 of the Michigan Compiled Laws; and to add section 33c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 35 of Act No. 232 of the Public Acts of
2 1953, as amended by Act No. 414 of the Public Acts of 1984, being
3 section 791.235 of the Michigan Compiled Laws, is amended and
4 section 33c is added to read as follows:

5 SEC. 33C. (1) IN THE CASE OF A PRISONER WHO, AT ANY TIME
6 DURING HIS OR HER TERM OF IMPRISONMENT, TESTS POSITIVE FOR THE
7 PRESENCE OF HIV OR THE ANTIBODY TO HIV, IS DIAGNOSED AS HAVING
8 ACQUIRED IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY
9 SYNDROME-RELATED COMPLEX, OR IS DIAGNOSED AS HAVING ANY OTHER
10 SEXUALLY TRANSMITTED DISEASE, THE PAROLE BOARD, IN CONSIDERING A
11 GRANT OF PAROLE FOR THE PRISONER, SHALL CONSIDER WHETHER THE
12 PRISONER VOLUNTARILY CONTACTED EACH PERSON WHOM THE PRISONER MAY
13 HAVE EXPOSED TO THE VIRUS OR DISEASE AND NOTIFIED THOSE PERSONS
14 AS TO THEIR RISK OF EXPOSURE AND POSSIBLE INFECTION.

15 (2) THE APPROPRIATE INSTITUTIONAL STAFF WHO ARE REQUIRED TO
16 PREPARE PAROLE ELIGIBILITY REPORTS PURSUANT TO SECTION 35(6)
17 SHALL INCLUDE IN THE PAROLE ELIGIBILITY REPORT FOR A PRISONER
18 DESCRIBED IN SUBSECTION (1) THE INFORMATION NEEDED IN ORDER FOR
19 THE PAROLE BOARD TO MAKE THE CONSIDERATION REQUIRED BY SUBSECTION
20 (1).

21 (3) THE REQUIREMENTS IMPOSED BY THIS SECTION ARE IN ADDITION
22 TO ANY OTHER CONDITIONS OR REQUIREMENTS OF PAROLE IMPOSED BY THIS
23 ACT.

24 (4) AS USED IN THIS SECTION, "HIV" MEANS HUMAN IMMUNODEFI-
25 CIENCY VIRUS.

1 Sec. 35. (1) The release of a prisoner on parole shall be
2 granted solely upon the initiative of the parole board. The
3 parole board may grant a parole without interviewing a prisoner.
4 A prisoner shall not be denied parole without an interview before
5 1 member of the parole board. The interview shall be conducted
6 at least 1 month before the expiration of the prisoner's minimum
7 sentence less good time allowances. The parole board shall not
8 consider any of the following factors in making a parole
9 determination:

10 (a) A juvenile record which a court has ordered the depart-
11 ment to expunge.

12 (b) Information that is determined by the parole board to be
13 inaccurate or irrelevant after a challenge and presentation of
14 relevant evidence by a prisoner who has received a notice of
15 intent to conduct an interview as provided in subsection (3).
16 This subdivision shall only apply to presentence investigation
17 reports prepared prior to April 1, 1983.

18 (2) The parole board may consider, but shall not base a
19 determination to deny parole solely on, EITHER OR BOTH OF THE
20 FOLLOWING:

21 (a) A prisoner's marital history.

22 (b) Prior arrests not resulting in conviction or adjudica-
23 tion of delinquency.

24 (3) If an interview is to be conducted, the prisoner shall
25 be sent a notice of intent to conduct an interview at least 1
26 month before the date of the interview. The notice shall state
27 the specific issues and concerns which shall be discussed at the

1 interview and which may be a basis for a denial of parole. A
2 denial of parole shall not be based on reasons other than those
3 stated in the notice of intent to conduct an interview except for
4 good cause stated to the prisoner at or before the interview and
5 in the written explanation required by subsection (10). This
6 subsection shall not apply until April 1, 1983.

7 (4) Except for good cause, the parole board member conduct-
8 ing the interview shall not have cast a vote for or against the
9 prisoner's release prior to conducting the current interview.
10 The parole board member conducting the interview shall review
11 pertinent information relative to the notice of intent to conduct
12 an interview before the interview.

13 (5) A prisoner may waive the right to an interview by 1
14 member of the parole board. The waiver of the right to be inter-
15 viewed shall be given not more than 30 days after the notice of
16 intent to conduct an interview is issued and shall be made in
17 writing. During the interview held pursuant to a notice of
18 intent to conduct an interview, the prisoner may be represented
19 by an individual of his or her choice. The representative shall
20 not be another prisoner or an attorney. A prisoner is not enti-
21 tled to appointed counsel at public expense. The prisoner or
22 representative may present relevant evidence in support of
23 release. This subsection shall not apply until April 1, 1983.

24 (6) At least 90 days before the expiration of the prisoner's
25 minimum sentence, or the expiration of a 12-month continuance, a
26 parole eligibility report shall be prepared by appropriate
27 institutional staff. The parole eligibility report shall be

1 considered pertinent information for purposes of subsection (4).

2 The report shall include ALL OF THE FOLLOWING:

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

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

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

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

15 (E) THE INFORMATION REQUIRED UNDER SECTION 33C.

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

18 (8) Psychological evaluations performed at the request of
19 the parole board to assist it in reaching a decision on the
20 release of a prisoner may be performed by the same person who
21 provided the prisoner with therapeutic treatment, unless a dif-
22 ferent person is requested by the prisoner or parole board.

23 (9) The parole board may grant a medical parole for a pris-
24 oner determined to be physically or mentally incapacitated. A
25 decision to grant a medical parole shall be initiated upon the
26 recommendation of the office of health care and shall be reached

1 only after a review of the medical, institutional, and criminal
2 records of the prisoner.

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