

# HOUSE BILL No. 5843

May 13, 1992, Introduced by Rep. Perry Bullard and referred to the Committee on Corrections.

A bill to amend sections 33 and 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,"

section 33 as amended by Act No. 458 of the Public Acts of 1982 and section 35 as amended by Act No. 414 of the Public Acts of

1984, being sections 791.233 and 791.235 of the Michigan Compiled Laws; and to add section 35a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 33 and 35 of Act No. 232 of the Public  
2 Acts of 1953, section 33 as amended by Act No. 458 of the Public  
3 Acts of 1982 and section 35 as amended by Act No. 414 of the  
4 Public Acts of 1984, being sections 791.233 and 791.235 of the  
5 Michigan Compiled Laws, are amended and section 35a is added to  
6 read as follows:

7 Sec. 33. (1) ~~The~~ EXCEPT AS PROVIDED IN SECTION 35A, THE  
8 grant of a parole shall be subject to all of the following:

9 (a) A prisoner shall not be given his OR HER liberty on  
10 parole until the board has reasonable assurance, after considera-  
11 tion of all of the facts and circumstances, including the  
12 prisoner's mental and social attitude, that the prisoner will not  
13 become a menace to society or to the public safety.

14 (b) A parole shall not be granted to a prisoner until the  
15 prisoner has served the minimum term imposed by the court less  
16 allowances for good time, ~~or~~ special good time, DISCIPLINARY  
17 CREDITS, OR SPECIAL DISCIPLINARY CREDITS to which the prisoner  
18 may be entitled ~~to~~ by statute, except that ~~prisoners~~ A  
19 PRISONER shall be eligible for parole ~~prior to~~ BEFORE the expi-  
20 ration of ~~their~~ HIS OR HER minimum ~~terms~~ TERM of imprisonment  
21 whenever the sentencing judge, or the judge's successor in  
22 office, gives written approval of the parole of the prisoner  
23 ~~prior to~~ BEFORE the expiration of the minimum ~~terms~~ TERM of  
24 imprisonment.

1 (c) Notwithstanding the provisions of subdivision (b), a  
2 parole shall not be granted to a prisoner sentenced for the com-  
3 mission of a crime described in section 33b(a) to (cc) until the  
4 prisoner has served the minimum term imposed by the court less an  
5 allowance for disciplinary credits as provided in section 33(5)  
6 of Act No. 118 of the Public Acts of 1893, being section 800.33  
7 of the Michigan Compiled Laws. A prisoner described in this sub-  
8 division is not eligible for special parole.

9 (d) A prisoner shall not be released on parole until the  
10 parole board has satisfactory evidence that arrangements have  
11 been made for such honorable and useful employment as the pris-  
12 oner is capable of performing, or the prisoner's education, or  
13 for the prisoner's care if the prisoner is mentally or physically  
14 ill or incapacitated.

15 ~~(e) If a prisoner is serving a sentence for a crime commit-~~  
16 ~~ted during the time the prisoner was on parole due to a reduction~~  
17 ~~of a previous prison term under the prison overcrowding emergency~~  
18 ~~powers act, Act No. 519 of the Public Acts of 1980, being sec-~~  
19 ~~tions 800.71 to 800.79 of the Michigan Compiled Laws, that pris-~~  
20 ~~oner shall not be released on parole due to a reduction in the~~  
21 ~~prisoner's minimum term under the prison overcrowding emergency~~  
22 ~~powers act, Act No. 519 of the Public Acts of 1980.~~

23 (2) Paroles-in-custody to answer warrants filed by local,  
24 out-of-state agencies, or immigration officials are permissible,  
25 provided an accredited agent of the agency filing the warrant  
26 shall call for the prisoner so paroled in custody.

1       (3) Pursuant to THE ADMINISTRATIVE PROCEDURES ACT OF 1969,  
2 Act No. 306 of the Public Acts of 1969, as amended, being  
3 sections 24.201 to ~~24.315~~ 24.328 of the Michigan Compiled Laws,  
4 the parole board may promulgate rules not inconsistent with this  
5 act with respect to conditions to be imposed upon paroled prison-  
6 ers paroled under this act.

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

16       (a) A juvenile record which a court has ordered the depart-  
17 ment 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 only apply to presentence investigation  
23 reports prepared prior to April 1, 1983.

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

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

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

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

1 representative may present relevant evidence in support of  
2 release. This subsection shall not apply until April 1, 1983.

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

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

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

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

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

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

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

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

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

12 SEC. 35A. (1) IF A PRISONER'S MINIMUM SENTENCE IMPOSED BY  
13 THE COURT IS LESS THAN 12 MONTHS, AND IF THE PRISONER IS NOT  
14 FOUND GUILTY OF A NONBONDABLE MAJOR MISCONDUCT DURING THE PERIOD  
15 OF HIS OR HER MINIMUM TERM OF INCARCERATION, THE PAROLE BOARD  
16 SHALL ORDER PAROLE FOR THAT PRISONER IMMEDIATELY UPON THE EXPIRA-  
17 TION OF THE PRISONER'S MINIMUM TERM, LESS ANY GOOD TIME AND DIS-  
18 CIPLINARY CREDITS. THE REQUIREMENTS OF SECTIONS 33 AND 35 DO NOT  
19 APPLY TO A GRANT OF PAROLE UNDER THIS SECTION.

20 (2) AS USED IN THIS SECTION, "NONBONDABLE MAJOR MISCONDUCT"  
21 MEANS A VIOLATION OF RULES OR POLICIES APPLICABLE TO PRISONERS  
22 WHICH MAY RESULT IN THE LOSS BY A PRISONER OF A RIGHT, AS  
23 DESCRIBED IN SECTION 51(2).