

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5398**

A bill 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 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 sections 34, 34a, 35, 36, and 65a (MCL 791.234, 791.234a, 791.235, 791.236, and 791.265a), section 34 as amended by 1998 PA 209, section 34a as amended by 1998 PA 84, section 35

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as amended by 1994 PA 217, section 36 as amended by 1996 PA 554, and section 65a as amended by 1997 PA 13, and by adding section 7a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 7A. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), THE GOV-
2 ERNING BODIES OF THE SENATE AND HOUSE FISCAL AGENCIES SHALL HAVE
3 ACCESS TO ALL RECORDS OF THE DEPARTMENT OF CORRECTIONS RELATING
4 TO INDIVIDUALS UNDER THE SUPERVISION OF THE DEPARTMENT OF CORREC-
5 TIONS INCLUDING, BUT NOT LIMITED TO, RECORDS CONTAINED IN BASIC
6 INFORMATION REPORTS AND IN THE CORRECTIONS MANAGEMENT INFORMATION
7 SYSTEM, THE PAROLE BOARD INFORMATION SYSTEM, AND ANY SUCCESSOR
8 DATABASES.

9 (2) RECORDS SHALL NOT BE ACCESSIBLE UNDER SUBSECTION (1) IF
10 THE DEPARTMENT OF CORRECTIONS DETERMINES THAT ANY OF THE FOLLOW-
11 ING APPLIES:

12 (A) ACCESS IS RESTRICTED OR PROHIBITED BY LAW.

13 (B) ACCESS COULD JEOPARDIZE AN ONGOING INVESTIGATION.

14 (C) ACCESS COULD JEOPARDIZE THE SAFETY OF A PRISONER,
15 EMPLOYEE, OR OTHER PERSON.

16 (D) ACCESS COULD JEOPARDIZE THE SAFETY, CUSTODY, OR SECURITY
17 OF AN INSTITUTION OR OTHER FACILITY.

18 (3) THE RECORDS THAT ARE TO BE ACCESSED, AND THE MANNER OF
19 ACCESS TO THOSE RECORDS, SHALL BE DETERMINED UNDER A WRITTEN
20 AGREEMENT ENTERED INTO JOINTLY BETWEEN THE GOVERNING BOARD OF THE
21 SENATE FISCAL AGENCY, THE GOVERNING COMMITTEE OF THE HOUSE FISCAL

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1 AGENCY, AND THE DEPARTMENT OF CORRECTIONS. THE AGREEMENT SHALL
2 ENSURE THE CONFIDENTIALITY OF ACCESSED RECORDS.

3 Sec. 34. (1) Except as provided in section 34a, a prisoner
4 sentenced to an indeterminate sentence and confined in a state
5 correctional facility with a minimum in terms of years other than
6 a prisoner subject to disciplinary time is subject to the juris-
7 diction of the parole board when the prisoner has served a period
8 of time equal to the minimum sentence imposed by the court for
9 the crime of which he or she was convicted, less good time and
10 disciplinary credits, if applicable.

11 (2) Except as provided in section 34a, a prisoner subject to
12 disciplinary time sentenced to an indeterminate sentence and con-
13 fined in a state correctional facility with a minimum in terms of
14 years is subject to the jurisdiction of the parole board when the
15 prisoner has served a period of time equal to the minimum sen-
16 tence imposed by the court for the crime of which he or she was
17 convicted. ~~, plus any disciplinary time accumulated pursuant to~~
18 ~~section 34 of 1893 PA 118, MCL 800.34.~~

19 (3) If a prisoner other than a prisoner subject to disci-
20 plinary time is sentenced for consecutive terms, whether received
21 at the same time or at any time during the life of the original
22 sentence, the parole board has jurisdiction over the prisoner for
23 purposes of parole when the prisoner has served the total time of
24 the added minimum terms, less the good time and disciplinary
25 credits allowed by statute. The maximum terms of the sentences
26 shall be added to compute the new maximum term under this
27 subsection, and discharge shall be issued only after the total of

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1 the maximum sentences has been served less good time and
2 disciplinary credits, unless the prisoner is paroled and dis-
3 charged upon satisfactory completion of the parole.

4 (4) If a prisoner subject to disciplinary time is sentenced
5 for consecutive terms, whether received at the same time or at
6 any time during the life of the original sentence, the parole
7 board has jurisdiction over the prisoner for purposes of parole
8 when the prisoner has served the total time of the added minimum
9 terms. ~~, plus any disciplinary time.~~ The maximum terms of the
10 sentences shall be added to compute the new maximum term under
11 this subsection, and discharge shall be issued only after the
12 total of the maximum sentences has been served, unless the pris-
13 oner is paroled and discharged upon satisfactory completion of
14 the parole.

15 (5) If a prisoner other than a prisoner subject to disci-
16 plinary time has 1 or more consecutive terms remaining to serve
17 in addition to the term he or she is serving, the parole board
18 may terminate the sentence the prisoner is presently serving at
19 any time after the minimum term of the sentence has been served.

20 (6) A prisoner under sentence for life or for a term of
21 years, other than a prisoner sentenced for life for murder in the
22 first degree ~~or sentenced for life or for a minimum term of~~
23 ~~imprisonment for a major controlled substance offense~~, or sen-
24 tenced for life for a violation of chapter XXXIII of the Michigan
25 penal code, 1931 PA 328, MCL 750.200 to ~~750.212~~ 750.212A, who
26 has served 10 calendar years of the sentence in the case of a
27 prisoner sentenced for ~~a~~ ANY OTHER crime committed before

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1 October 1, 1992, OR, EXCEPT AS PROVIDED IN SUBSECTION (10), WHO
2 HAS SERVED 20 CALENDAR YEARS OF THE SENTENCE IN THE CASE OF A
3 PRISONER SENTENCED TO IMPRISONMENT FOR LIFE FOR VIOLATING OR
4 CONSPIRING TO VIOLATE SECTION 7401(2)(A)(i) OF
5 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401, WHO HAS
6 ANOTHER CONVICTION FOR A SERIOUS CRIME, OR, EXCEPT AS PROVIDED IN
7 SUBSECTION (10), WHO HAS SERVED 17-1/2 CALENDAR YEARS OF THE SEN-
8 TENCE IN THE CASE OF A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE
9 FOR VIOLATING OR CONSPIRING TO VIOLATE SEC-
10 TION 7401(2)(A)(i) OF THE PUBLIC HEALTH CODE, 1978 PA 368,
11 MCL 333.7401, WHO DOES NOT HAVE ANOTHER CONVICTION FOR A SERIOUS
12 CRIME, or who has served 15 calendar years of the sentence in the
13 case of a prisoner sentenced for a ANY OTHER crime committed on or
14 after

15 October 1, 1992, is subject to the jurisdiction of the parole
16 board and may be released on parole by the parole board, subject
17 to the following conditions:

18 (a) ~~One member of the parole board shall interview the~~
19 ~~prisoner at~~ AT the conclusion of 10 calendar years of the
20 PRISONER'S sentence and every 5 years thereafter until ~~such time~~
21 ~~as~~ the prisoner is paroled, discharged, or deceased, AND IN
22 ACCORDANCE WITH THE PROCEDURES DESCRIBED IN SECTION 35(4) TO (6),
23 1 MEMBER OF THE PAROLE BOARD SHALL INTERVIEW THE PRISONER. The
24 interview schedule prescribed in this subdivision applies to all
25 prisoners to whom this subsection is applicable, ~~whether sen-~~
26 ~~tenced before, on, or after the effective date of the 1992 amen-~~
27 ~~datory act that amended this subdivision~~ REGARDLESS OF THE DATE
28 ON WHICH THEY WERE SENTENCED.

29 (b) A parole shall not be granted a prisoner so sentenced
30 until after a public hearing held in the manner prescribed for

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1 pardons and commutations in sections ~~44(2)(f) to (h)~~ 44 and
2 45. Notice of the public hearing shall be given to the sentenc-
3 ing judge, or the judge's successor in office, and parole shall
4 not be granted if the sentencing judge, or the judge's successor
5 in office, files written objections to the granting of the parole
6 within 30 days of receipt of the notice of hearing. The written
7 objections shall be made part of the prisoner's file.

8 (c) A parole granted under this subsection shall be for a
9 period of not less than 4 years and subject to the usual rules
10 pertaining to paroles granted by the parole board. A parole
11 ordered under this subsection is not valid until the transcript
12 of the record is filed with the attorney general whose certifica-
13 tion of receipt of the transcript shall be returnable to the
14 office of the parole board within 5 days. Except for medical
15 records protected under section 2157 of the revised judicature
16 act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner
17 granted a parole under this subsection is a public record.

18 (d) A parole shall not be granted under this subsection in
19 the case of a prisoner who is otherwise prohibited by law from
20 parole consideration. In such cases the interview procedures in
21 section 44 shall be followed.

22 (7) IN DETERMINING WHETHER A PRISONER CONVICTED OF VIOLATING
23 OR CONSPIRING TO VIOLATE SECTION 7401(2)(A)(i) OF THE PUBLIC
24 HEALTH CODE, 1978 PA 368, MCL 333.7401, AND SENTENCED TO IMPRIS-
25 ONMENT FOR LIFE BEFORE OCTOBER 1, 1998 IS TO BE RELEASED ON
26 PAROLE, THE PAROLE BOARD SHALL CONSIDER ALL OF THE FOLLOWING:

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1 (A) WHETHER THE VIOLATION WAS PART OF A CONTINUING SERIES OF
2 VIOLATIONS OF SECTION 7401 OR 7403 OF THE PUBLIC HEALTH CODE,
3 1978 PA 368, MCL 333.7401 AND 333.7403, BY THAT INDIVIDUAL.

4 (B) WHETHER THE VIOLATION WAS COMMITTED BY THE INDIVIDUAL IN
5 CONCERT WITH 5 OR MORE OTHER INDIVIDUALS.

6 (C) ANY OF THE FOLLOWING:

7 (i) WHETHER THE INDIVIDUAL WAS A PRINCIPAL ADMINISTRATOR,
8 ORGANIZER, OR LEADER OF AN ENTITY THAT THE INDIVIDUAL KNEW OR HAD
9 REASON TO KNOW WAS ORGANIZED, IN WHOLE OR IN PART, TO COMMIT VIO-
10 LATIONS OF SECTION 7401 OR 7403 OF THE PUBLIC HEALTH CODE, 1978
11 PA 368, MCL 333.7401 AND 333.7403, AND WHETHER THE VIOLATION FOR
12 WHICH THE INDIVIDUAL WAS CONVICTED WAS COMMITTED TO FURTHER THE
13 INTERESTS OF THAT ENTITY.

14 (ii) WHETHER THE INDIVIDUAL WAS A PRINCIPAL ADMINISTRATOR,
15 ORGANIZER, OR LEADER OF AN ENTITY THAT THE INDIVIDUAL KNEW OR HAD
16 REASON TO KNOW COMMITTED VIOLATIONS OF SECTION 7401 OR 7403 OF
17 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403,
18 AND WHETHER THE VIOLATION FOR WHICH THE INDIVIDUAL WAS CONVICTED
19 WAS COMMITTED TO FURTHER THE INTERESTS OF THAT ENTITY.

20 (iii) WHETHER THE VIOLATION WAS COMMITTED IN A DRUG-FREE
21 SCHOOL ZONE.

22 (iv) WHETHER THE VIOLATION INVOLVED THE DELIVERY OF A CON-
23 TROLLED SUBSTANCE TO AN INDIVIDUAL LESS THAN 17 YEARS OF AGE OR
24 POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE TO AN
25 INDIVIDUAL LESS THAN 17 YEARS OF AGE.

26 (8) ~~(7)~~ Except as provided in section 34a, a prisoner's
27 release on parole is discretionary with the parole board. The

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1 action of the parole board in granting or denying a parole is
2 appealable by the prisoner, the prosecutor of the county from
3 which the prisoner was committed, or the victim of the crime for
4 which the prisoner was convicted. The appeal shall be to the
5 circuit court in the county from which the prisoner was commit-
6 ted, by leave of the court.

7 ~~(8) The provisions of this section regarding prisoners~~
8 ~~subject to disciplinary time take effect beginning on the effec-~~
9 ~~tive date of 1994 PA 217, as prescribed in enacting section 2 of~~
10 ~~that amendatory act.~~

11 (9) IF THE SENTENCING JUDGE, OR HIS OR HER SUCCESSOR IN
12 OFFICE, DETERMINES ON THE RECORD THAT A PRISONER DESCRIBED IN
13 SUBSECTION (6) SENTENCED TO IMPRISONMENT FOR LIFE FOR VIOLATING OR
14 CONSPIRING TO VIOLATE SECTION 7401(2)(A)(i)
15 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401, HAS COOPER-
16 ATED WITH LAW ENFORCEMENT, THE PRISONER IS SUBJECT TO THE JURIS-
17 DICTION OF THE PAROLE BOARD AND MAY BE RELEASED ON PAROLE AS PRO-
18 VIDED IN SUBSECTION (6), 2-1/2 YEARS EARLIER THAN THE TIME OTHER-
19 WISE INDICATED IN SUBSECTION (6). THE PRISONER IS CONSIDERED TO
20 HAVE COOPERATED WITH LAW ENFORCEMENT IF THE COURT DETERMINES ON
21 THE RECORD THAT THE PRISONER HAD NO RELEVANT OR USEFUL INFORMA-
22 TION TO PROVIDE. THE COURT SHALL NOT MAKE A DETERMINATION THAT
23 THE PRISONER FAILED OR REFUSED TO COOPERATE WITH LAW ENFORCEMENT
24 ON GROUNDS THAT THE DEFENDANT EXERCISED HIS OR HER CONSTITUTIONAL
25 RIGHT TO TRIAL BY JURY. IF THE COURT DETERMINES AT SENTENCING
26 THAT THE DEFENDANT COOPERATED WITH LAW ENFORCEMENT, THE COURT
SHALL INCLUDE ITS DETERMINATION IN THE JUDGMENT OF SENTENCE.

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1 (10) AS USED IN THIS SECTION, "SERIOUS CRIME" MEANS VIOLATING
2 OR CONSPIRING TO VIOLATE ARTICLE 7 OF THE PUBLIC HEALTH CODE, 1978
3 PA 368,
4 MCL 333.7101 TO 333.7545, THAT IS PUNISHABLE BY IMPRISONMENT FOR
5 MORE THAN 4 YEARS, OR AN OFFENSE AGAINST A PERSON IN VIOLATION OF
6 SECTION 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349A, 350,
7 397, 520B, 520C, 520D, 520G, 529, 529A, OR 530 OF THE MICHIGAN
8 PENAL CODE, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87,
9 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349A,
10 750.350, 750.397, 750.520B, 750.520C, 750.520D, 750.520G,
11 750.529, 750.529A, AND 750.530.

11 Sec. 34a. (1) A prisoner sentenced ~~either before, on, or~~
12 ~~after January 6, 1995~~ to an indeterminate term of imprisonment
13 under the jurisdiction of the department, REGARDLESS OF WHEN HE
14 OR SHE WAS SENTENCED, shall be considered by the department for
15 placement in a special alternative incarceration unit established
16 under section 3 of the special alternative incarceration act,
17 1988 PA 287, MCL 798.13, if the prisoner meets the eligibility
18 requirements of subsections (2) and (3). For a prisoner commit-
19 ted to the jurisdiction of the department on or after March 19,
20 1992, the department shall determine before the prisoner leaves
21 the reception center whether the prisoner is eligible for place-
22 ment in a special alternative incarceration unit, although actual
23 placement may take place at a later date. A determination of
24 eligibility does not guarantee placement in a unit.

25 (2) To be eligible for placement in a special alternative
26 incarceration unit, the prisoner shall meet all of the following
27 requirements:

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1 (a) The prisoner's minimum sentence does not exceed either
2 of the following limits, as applicable:

3 (i) 24 months or less for a violation of section 110 of the
4 Michigan penal code, 1931 PA 328, MCL 750.110, if the violation
5 involved any occupied dwelling house. ~~—, as that term is defined~~
6 ~~in that section.~~

7 (ii) 36 months or less for any other crime.

8 (b) The prisoner has never previously been placed in a spe-
9 cial alternative incarceration unit as either a prisoner or a
10 probationer, unless he or she was removed from a special alterna-
11 tive incarceration unit for medical reasons as specified in
12 subsection (6).

13 (c) The prisoner is physically able to participate in the
14 program.

15 (d) The prisoner does not appear to have any mental disabil-
16 ity that would prevent participation in the program.

17 (e) The prisoner is serving his or her first prison
18 sentence.

19 (f) At the time of sentencing, the judge did not prohibit
20 participation in the program in the judgment of sentence.

21 (g) The prisoner is otherwise suitable for the program, as
22 determined by the department.

23 (h) The prisoner is not serving a sentence for any of the
24 following crimes:

25 (i) A violation of section 11, 49, 80, 83, 89, 91, 157b,
26 158, 207, 260, 316, 317, 327, 328, 335a, 338, 338a, 338b, 349,
27 349a, 350, 422, 436, 511, 516, 517, 520b, 529, 529a, 531, or 544

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1 of the Michigan penal code, 1931 PA 328, MCL 750.11, 750.49,
2 750.80, 750.83, 750.89, 750.91, 750.157b, 750.158, 750.207,
3 750.260, 750.316, 750.317, 750.327, 750.328, 750.335a, 750.338,
4 750.338a, 750.338b, 750.349, 750.349a, 750.350, 750.422, 750.436,
5 750.511, 750.516, 750.517, 750.520b, 750.529, 750.529a, 750.531,
6 and 750.544.

7 (ii) A violation of section 145c, 520c, 520d, or 520g of the
8 Michigan penal code, 1931 PA 328, MCL 750.145c, 750.520c,
9 750.520d, and 750.520g.

10 (iii) A violation of section 72, 73, or 75 of the Michigan
11 penal code, 1931 PA 328, MCL 750.72, 750.73, and 750.75.

12 (iv) A violation of section 86, 112, 136b, 193, 195, 213,
13 319, 321, 329, or 397 of the Michigan penal code, 1931 PA 328,
14 MCL 750.86, 750.112, 750.136b, 750.193, 750.195, 750.213,
15 750.319, 750.321, 750.329, and 750.397.

16 (v) A violation of section 2 of 1968 PA 302, MCL 752.542.

17 (vi) An attempt to commit a crime described in subparagraphs
18 (i) to (v).

19 (vii) A violation occurring on or after January 1, 1992, of
20 section 625(4) or (5) of the Michigan vehicle code, 1949 PA 300,
21 MCL 257.625.

22 (viii) A crime for which the prisoner was punished pursuant
23 to section 10, 11, or 12 of chapter IX of the code of criminal
24 procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

25 (3) A prisoner who is serving a sentence for a violation of
26 section 7401 or 7403 of the public health code, 1978 PA 368,
27 MCL 333.7401 and 333.7403, and who has previously been convicted

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1 for a violation of section 7401 or 7403(2)(a), (b), or (e) of the
2 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is
3 not eligible for placement in a special alternative incarceration
4 unit until after he or she has served the equivalent of the man-
5 datory minimum sentence prescribed by statute for that
6 violation.

7 (4) If the sentencing judge prohibited a prisoner's partici-
8 pation in the special alternative incarceration program in the
9 judgment of sentence, that prisoner shall not be placed in a spe-
10 cial alternative incarceration unit. If the sentencing judge
11 permitted the prisoner's participation in the special alternative
12 incarceration program in the judgment of sentence, that prisoner
13 may be placed in a special alternative incarceration unit if the
14 department determines that the prisoner also meets the require-
15 ments of subsections (2) and (3). If the sentencing judge nei-
16 ther prohibited nor permitted a prisoner's participation in the
17 special alternative incarceration program in the judgment of sen-
18 tence, and the department determines that the prisoner meets the
19 eligibility requirements of subsections (2) and (3), the depart-
20 ment shall notify the judge or the judge's successor, the prose-
21 cuting attorney for the county in which the prisoner was sen-
22 tenced, and any victim of the crime for which the prisoner was
23 committed if the victim has submitted to the department a written
24 request for any notification pursuant to section 19(1) of the
25 crime victim's rights act, 1985 PA 87, MCL 780.769, of the pro-
26 posed placement of the prisoner in the special alternative
27 incarceration unit not later than 30 days before placement is

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1 intended to occur. The department shall not place the prisoner
2 in a special alternative incarceration unit unless the sentencing
3 judge, or the judge's successor, notifies the department, in
4 writing, that he or she does not object to the proposed
5 placement. In making the decision on whether or not to object,
6 the judge, or judge's successor, shall review any impact state-
7 ment submitted pursuant to section 14 of the crime victim's
8 rights act, 1985 PA 87, MCL 780.764, by the victim or victims of
9 the crime of which the prisoner was convicted.

10 (5) Notwithstanding subsection (4), a prisoner shall not be
11 placed in a special alternative incarceration unit unless the
12 prisoner consents to that placement and agrees that the depart-
13 ment may suspend or restrict privileges generally afforded other
14 prisoners including, but not limited to, the areas of visitation,
15 property, mail, publications, commissary, library, and telephone
16 access. However, the department may not suspend or restrict the
17 prisoner's access to the prisoner grievance system.

18 (6) A prisoner may be placed in a special alternative incar-
19 ceration program for a period of not less than 90 days or more
20 than 120 days. If, during that period, the prisoner misses more
21 than 5 days of program participation due to medical excuse for
22 illness or injury occurring after he or she was placed in the
23 program, the period of placement shall be increased by the number
24 of days missed, beginning with the sixth day of medical excuse,
25 up to a maximum of 20 days. However, the total number of days a
26 prisoner may be placed in this program, including days missed due
27 to medical excuse, shall not exceed 120 days. A medical excuse

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1 shall be verified by a physician's statement. A prisoner who is
2 medically unable to participate in the program for more than 25
3 days shall be returned to a state correctional facility but may
4 be reassigned to the program if the prisoner meets the eligibil-
5 ity requirements of subsections (2) and (3).

6 (7) Upon certification of completion of the special alterna-
7 tive incarceration program, the prisoner shall be placed on
8 parole. A prisoner paroled under this section shall have condi-
9 tions of parole as determined appropriate by the parole board and
10 shall be placed on parole for not less than 18 months, or the
11 balance of the prisoner's minimum sentence, whichever is greater,
12 with at least the first 120 days under intensive supervision.

13 (8) The parole board may suspend or revoke parole for any
14 prisoner paroled under this section subject to sections 39a and
15 40a. For a prisoner other than a prisoner subject to disci-
16 plinary time, if parole is revoked before the expiration of the
17 prisoner's minimum sentence, less disciplinary credits, the
18 parole board shall forfeit, pursuant to section 33(13) of 1893
19 PA 118, MCL 800.33, all disciplinary credits that were accumu-
20 lated during special alternative incarceration, and the prisoner
21 shall be considered for parole pursuant to section 35.

22 (9) On March 19, 1993, and annually after that time, the
23 department shall report to the legislature the impact of the
24 operation of this section, including a report concerning
25 recidivism.

26 ~~(10) The provisions of this section regarding prisoners~~
27 ~~subject to disciplinary time take effect beginning on the~~

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1 ~~effective date of 1994 PA 217, as prescribed in enacting~~
2 ~~section 2 of that amendatory act.~~

3 Sec. 35. (1) The release of a prisoner on parole shall be
4 granted solely upon the initiative of the parole board. The
5 parole board may grant a parole without interviewing the
6 prisoner. However, beginning on the date on which the adminis-
7 trative rules prescribing parole guidelines pursuant to
8 section 33e(5) take effect, the parole board may grant a parole
9 without interviewing the prisoner only if, after evaluating the
10 prisoner according to the parole guidelines, the parole board
11 determines that the prisoner has a high probability of being
12 paroled and the parole board therefore intends to parole the
13 prisoner. Except as provided in subsection (2), a prisoner shall
14 not be denied parole without an interview before 1 member of the
15 parole board. The interview shall be conducted at least 1 month
16 before the expiration of the prisoner's minimum sentence less
17 applicable good time and disciplinary credits for a prisoner eli-
18 gible for good time and disciplinary credits, or at least 1 month
19 before the expiration of the prisoner's minimum sentence ~~plus~~
20 ~~disciplinary time~~ for a prisoner subject to disciplinary time.
21 The parole board shall consider any statement made to the parole
22 board by a crime victim under the crime victim's rights act, ~~Act~~
23 ~~No. 87 of the Public Acts of 1985, being sections 780.751 to~~
24 ~~780.834 of the Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO
25 780.834, or under any other provision of law. The parole board
26 shall not consider any of the following factors in making a
27 parole determination:

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

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

9 (2) Beginning on the date on which the administrative rules
10 prescribing the parole guidelines take effect pursuant to
11 section 33e(5), if, after evaluating a prisoner according to the
12 parole guidelines, the parole board determines that the prisoner
13 has a low probability of being paroled and the parole board
14 therefore does not intend to parole the prisoner, the parole
15 board shall not be required to interview the prisoner before
16 denying parole to the prisoner.

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

19 (a) A prisoner's marital history.

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

22 (4) If an interview is to be conducted, the prisoner shall
23 be sent a notice of intent to conduct an interview at least 1
24 month before the date of the interview. The notice shall state
25 the specific issues and concerns that shall be discussed at the
26 interview and that may be a basis for a denial of parole. A
27 denial of parole shall not be based on reasons other than those

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1 stated in the notice of intent to conduct an interview except for
2 good cause stated to the prisoner at or before the interview and
3 in the written explanation required by subsection (12). This
4 subsection does not apply until April 1, 1983.

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

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

22 (7) At least 90 days before the expiration of the prisoner's
23 minimum sentence less applicable good time and disciplinary cred-
24 its for a prisoner eligible for good time or disciplinary cred-
25 its, or at least 90 days before the expiration of the prisoner's
26 minimum sentence ~~plus disciplinary time~~ for a prisoner subject
27 to disciplinary time, or the expiration of a 12-month continuance

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1 for any prisoner, a parole eligibility report shall be prepared
2 by appropriate institutional staff. The parole eligibility
3 report shall be considered pertinent information for purposes of
4 subsection (5). The report shall include all of the following:

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

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

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

12 (d) Whether the prisoner fully cooperated with the state by
13 providing complete financial information as required under sec-
14 tion 3a of the state correctional facility reimbursement act,
15 ~~Act No. 253 of the Public Acts of 1935, being section 800.403a~~
16 ~~of the Michigan Compiled Laws~~ 1935 PA 253, MCL 800.403A.

17 (E) FOR A PRISONER SUBJECT TO DISCIPLINARY TIME, A STATEMENT
18 OF ALL DISCIPLINARY TIME SUBMITTED FOR THE PAROLE BOARD'S CONSID-
19 ERATION PURSUANT TO SECTION 34 OF 1893 PA 118, MCL 800.34.

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

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

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1 (10) 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 bureau of health care services and shall be
5 reached only after a review of the medical, institutional, and
6 criminal records of the prisoner.

7 (11) The department shall submit a petition to the ~~probate~~
8 APPROPRIATE court under section 434 of the mental health code,
9 ~~Act No. 258 of the Public Acts of 1974, being section 330.1434~~
10 ~~of the Michigan Compiled Laws~~ 1974 PA 258, MCL 330.1434, for any
11 prisoner being paroled or being released after serving his or her
12 maximum sentence whom the department considers to be a person
13 requiring treatment. The parole board shall require mental
14 health treatment as a special condition of parole for any parolee
15 whom the department has determined to be a person requiring
16 treatment whether or not the petition filed for that prisoner is
17 granted by the ~~probate~~ court. As used in this subsection,
18 "person requiring treatment" means that term as defined in
19 section 401 of ~~Act No. 258 of the Public Acts of 1974, being~~
20 ~~section 330.1401 of the Michigan Compiled Laws~~ THE MENTAL HEALTH
21 CODE, 1974 PA 258, MCL 330.1401.

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

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

4 Sec. 36. (1) All paroles shall be ordered by the parole
5 board and shall be signed by the chairperson. Written notice of
6 the order shall be given to the sheriff or other police officer
7 of the municipality or county in which the prisoner was con-
8 victed, and to the sheriff or other local police officer of the
9 municipality or county to which the paroled prisoner is sent.

10 (2) ~~An order of~~ A parole ORDER may be amended or rescinded
11 at the discretion of the parole board for cause. If a paroled
12 prisoner who is required to register pursuant to the sex offend-
13 ers registration act, ~~Act No. 295 of the Public Acts of 1994,~~
14 ~~being sections 28.721 to 28.732 of the Michigan Compiled Laws~~
15 1994 PA 295, MCL 28.721 TO 28.732, willfully violates that act,
16 the parole board shall rescind the parole. IF A PRISONER CON-
17 VICTED OF VIOLATING OR CONSPIRING TO VIOLATE SECTION
18 7401(2)(A)(i) OR (ii) OR 7403(2)(A)(i) OR (ii) OF THE PUBLIC
19 HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, IS RELEASED
20 ON PAROLE AND VIOLATES OR CONSPIRES TO VIOLATE ARTICLE 7 OF THE
21 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 TO 333.7545, AND
22 THAT VIOLATION OR CONSPIRACY TO VIOLATE IS PUNISHABLE BY IMPRIS-
23 ONMENT FOR 4 OR MORE YEARS, OR COMMITS A VIOLENT FELONY DURING
24 HIS OR HER RELEASE ON PAROLE, PAROLE SHALL BE REVOKED.

25 (3) A parole shall not be rescinded unless an interview is
26 conducted by 1 member of the parole board. The purpose of the
27 interview is to consider and act upon information received by the

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1 board after the original parole release decision. A rescission
2 interview shall be conducted within 45 days after receiving the
3 new information. At least 10 days before the interview, the
4 parolee shall receive a copy or summary of the new evidence that
5 is the basis for the interview. An amendment to a parole order
6 shall be in writing and is not effective until notice of the
7 amendment is given to the parolee.

8 (4) ~~-(3)-~~ When ~~an order for~~ A parole ORDER is issued, the
9 order shall contain the conditions of the parole and shall spe-
10 cifically provide proper means of supervision of the paroled
11 prisoner in accordance with the rules of the bureau of field
12 services.

13 (5) ~~-(4)-~~ The ~~order of~~ parole ORDER shall contain a condi-
14 tion to pay restitution to the victim of the prisoner's crime or
15 the victim's estate if the prisoner was ordered to make restitui-
16 tion pursuant to the crime victim's rights act, ~~Act No. 87 of~~
17 ~~the Public Acts of 1985, being sections 780.751 to 780.834 of the~~
18 ~~Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO 780.834, or
19 the code of criminal procedure, ~~Act No. 175 of the Public Acts~~
20 ~~of 1927, being sections 760.1 to 776.21 of the Michigan Compiled~~
21 ~~Laws~~ 1927 PA 175, MCL 760.1 TO 776.22.

22 (6) ~~-(5)-~~ The ~~order of~~ parole ORDER shall contain a condi-
23 tion requiring the parolee to pay a parole supervision fee as
24 prescribed in section 36a.

25 (7) ~~-(6)-~~ The ~~order of~~ parole ORDER shall contain a condi-
26 tion requiring the parolee to pay any assessment the prisoner was
27 ordered to pay pursuant to section 5 of ~~Act No. 196 of the~~

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1 ~~Public Acts of 1989, being section 780.905 of the Michigan~~
2 ~~Compiled Laws~~ 1989 PA 196, MCL 780.905.

3 (8) ~~(7)~~ If the parolee is required to be registered under
4 ~~Act No. 295 of the Public Acts of 1994~~ THE SEX OFFENDERS REGIS-
5 TRATION ACT, 1994 PA 295, MCL 28.721 TO 28.732, the ~~order of~~
6 parole ORDER shall contain a condition requiring the parolee to
7 comply with that act.

8 (9) IF A PRISONER CONVICTED OF VIOLATING OR CONSPIRING TO
9 VIOLATE SECTION 7401(2)(A)(i) OR (ii) OR 7403(2)(A)(i) OR (ii) OF
10 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403,
11 IS RELEASED ON PAROLE, THE PAROLE ORDER SHALL CONTAIN A NOTICE
12 THAT IF THE PAROLEE VIOLATES OR CONSPIRES TO VIOLATE ARTICLE 7 OF
13 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 TO 333.7545,
14 AND THAT VIOLATION OR CONSPIRACY TO VIOLATE IS PUNISHABLE BY
15 IMPRISONMENT FOR 4 OR MORE YEARS, OR COMMITS A VIOLENT FELONY
16 DURING HIS OR HER RELEASE ON PAROLE, PAROLE SHALL BE REVOKED.

17 (10) ~~(8) An order of~~ A parole ORDER issued for a prisoner
18 subject to disciplinary time ~~shall~~ MAY contain a condition
19 requiring the parolee to be housed in a community corrections
20 center or a community residential home for not less than the
21 first 30 days but not more than the first 180 days of his or her
22 term of parole. As used in this subsection, "community correc-
23 tions center" and "community residential home" mean those terms
24 as defined in section 65a. ~~This subsection applies beginning on~~
25 ~~the date that sentencing guidelines are enacted into law after~~
26 ~~the sentencing commission submits recommended sentencing~~
27 ~~guidelines to the secretary of the senate and the clerk of the~~

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1 ~~house of representatives pursuant to section 33 of chapter IX of~~
2 ~~the code of criminal procedure, Act No. 175 of the Public Acts of~~
3 ~~1927, being section 769.33 of the Michigan Compiled Laws.~~

4 (11) ~~(9)~~ The ~~order of~~ parole ORDER shall contain a con-
5 dition requiring the parolee to pay the following amounts owed by
6 the prisoner, if applicable:

7 (a) The balance of filing fees and costs ordered to be paid
8 under section 2963 of the revised judicature act of 1961, ~~Act~~
9 ~~No. 236 of the Public Acts of 1961, being section 600.2963 of the~~
10 ~~Michigan Compiled Laws~~ 1961 PA 236, MCL 600.2963.

11 (b) The balance of any filing fee ordered to be paid by a
12 federal court under section 1915 of title 28 of the United States
13 Code, 28 U.S.C. 1915 and any unpaid order of costs assessed
14 against the prisoner.

15 (12) ~~(10)~~ In each case in which payment of restitution is
16 ordered as a condition of parole, a parole officer assigned to a
17 case shall review the case not less than twice yearly to ensure
18 that restitution is being paid as ordered. The final review
19 shall be conducted not less than 60 days before the expiration of
20 the parole period. If the parole officer determines that resti-
21 tution is not being paid as ordered, the parole officer shall
22 file a written report of the violation with the parole board on a
23 form prescribed by the parole board. The report shall include a
24 statement of the amount of arrearage and any reasons for the
25 arrearage known by the parole officer. The parole board shall
26 immediately provide a copy of the report to the court, the
27 prosecuting attorney, and the victim.

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1 (13) ~~(11)~~ If a parolee is required to register pursuant to
2 ~~Act No. 295 of the Public Acts of 1994~~ THE SEX OFFENDERS REGIS-
3 TRATION ACT, 1994 PA 295, MCL 28.721 TO 28.732, the parole offi-
4 cer shall register the parolee as provided in that act.

5 (14) AS USED IN THIS SECTION, "VIOLENT FELONY" MEANS AN
6 OFFENSE AGAINST A PERSON IN VIOLATION OF SECTION 82, 83, 84, 86,
7 87, 88, 89, 316, 317, 321, 349, 349A, 350, 397, 520B, 520C, 520D,
8 520E, 520G, 529, 529A, OR 530 OF THE MICHIGAN PENAL CODE, 1931
9 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88,
10 750.89, 750.316, 750.317, 750.321, 750.349, 750.349A, 750.350,
11 750.397, 750.520B, 750.520C, 750.520D, 750.520E, 750.520G,
12 750.529, 750.529A, AND 750.530.

13 Sec. 65a. (1) Under prescribed conditions, the director may
14 extend the limits of confinement of a prisoner when there is rea-
15 sonable assurance, after consideration of all facts and circum-
16 stances, that the prisoner will not become a menace to society or
17 to the public safety, by authorizing the prisoner to do any of
18 the following:

19 (a) Visit a specifically designated place or places. An
20 extension of limits may be granted only to a prisoner housed in a
21 state correctional facility to permit a visit to a critically ill
22 relative, attendance at the funeral of a relative, or contacting
23 prospective employers. The maximum amount of time a prisoner is
24 eligible for an extension of the limits of confinement under this
25 subdivision shall not exceed a cumulative total period of 30
26 days.

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

3 (c) Work at paid employment, participate in a training or
4 educational program, or participate in a community residential
5 drug treatment program while continuing as a prisoner housed on a
6 voluntary basis at a community corrections center or in a commu-
7 nity residential home.

8 (2) The director shall promulgate rules to implement this
9 section.

10 (3) The willful failure of a prisoner to remain within the
11 extended limits of his or her confinement or to return within the
12 time prescribed to an institution or facility designated by the
13 director shall be considered an escape from custody as provided
14 in section 193 of the Michigan penal code, 1931 PA 328,
15 MCL 750.193.

16 (4) Subject to subsection ~~-(6)-~~ (8), a prisoner, other than
17 a prisoner subject to disciplinary time, who is convicted of a
18 crime of violence or any assaultive crime is not eligible for the
19 extensions of the limits of confinement provided in subsection
20 (1) until the minimum sentence imposed for the crime has less
21 than 180 days remaining.

22 (5) Subject to subsection ~~-(6)-~~ (8), a prisoner subject to
23 disciplinary time is not eligible for the extensions of the
24 limits of confinement provided in subsection (1) until he or she
25 has served the minimum sentence imposed for the crime. ~~plus any~~
26 ~~disciplinary time.~~

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1 (6) However, NOTWITHSTANDING SUBSECTIONS (4) OR (5), if the
2 reason for the extension is to visit a critically ill relative,
3 attend the funeral of a relative, or obtain medical services not
4 otherwise available, the director may allow the extension under
5 escort as provided in subsection (1).

6 (7) ~~-(5)-~~ A prisoner serving a sentence for murder in the
7 first degree is not eligible for the extensions of confinement
8 under this section until a parole release date is established by
9 the parole board and in no case before serving 15 calendar years
10 with a good institutional adjustment.

11 (8) ~~-(6)-~~ A prisoner who is convicted of a crime of violence
12 or any assaultive crime, and whose minimum sentence imposed for
13 the crime is 10 years or more, shall not be placed in a community
14 residential home during any portion of his or her sentence.

15 ~~-(7) The provisions of this section regarding prisoners~~
16 ~~subject to disciplinary time take effect beginning on the effec-~~
17 ~~tive date of 1994 PA 217, as prescribed in enacting section 2 of~~
18 ~~that amendatory act.~~

19 (9) ~~-(8)-~~ As used in this section:

20 (a) "Community corrections center" means a facility either
21 contracted for or operated by the department in which a security
22 staff is on duty 7 days per week, 24 hours per day.

23 (b) "Community residential home" means a location where
24 electronic monitoring of prisoner presence is provided by the
25 department 7 days per week, 24 hours per day, except that the
26 department may waive the requirement that electronic monitoring

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1 be provided as to any prisoner who is within 3 months of his or
2 her parole date.

3 (c) "State correctional facility" means a facility owned or
4 leased by the department. State correctional facility does not
5 include a community corrections center or community residential
6 home.

7 Enacting section 1. This amendatory act takes effect
8 December 15, 1998.

9 Enacting section 2. This amendatory act does not take
10 effect unless all of the following bills of the 89th Legislature
11 are enacted into law:

12 (a) Senate Bill No. 826.

13 (b) House Bill No. 4065.

14 (c) House Bill No. 4444.

15 (d) House Bill No. 4445.

16 (e) House Bill No. 4446.

17 (f) House Bill No. 4515.

18 (g) House Bill No. 5419.

19 (h) House Bill No. 5876.