

SENATE BILL NO. 993

March 4, 1998, Introduced by Senators GEAKE, YOUNG, GAST
and NORTH and referred to the Committee on Judiciary.

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 33, 33e, 34, and 35 (MCL 791.233, 791.233e, 791.234, and 791.235), sections 33 and 35 as amended by 1994 PA

217, section 33e as added by 1992 PA 181, and section 34 as amended by 1994 PA 345, and by adding section 35a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) A PAROLE SHALL NOT BE GRANTED TO A prisoner ~~shall not~~
4 ~~be given liberty on parole~~ until the board has reasonable assur-
5 ance, after consideration of all of the facts and circumstances,
6 including the prisoner's mental and social attitude, that the
7 prisoner will not become a menace to society or to the public
8 safety.

9 (b) Except as provided in section 34a, a parole shall not be
10 granted to a prisoner other than a prisoner subject to disci-
11 plinary time until the prisoner has served the minimum term
12 imposed by the court less allowances for good time or special
13 good time to which the prisoner may be entitled by statute,
14 except that a prisoner other than a prisoner subject to disci-
15 plinary time is eligible for parole before the expiration of his
16 or her minimum term of imprisonment whenever the sentencing
17 judge, or the judge's successor in office, gives written approval
18 of the parole of the prisoner before the expiration of the mini-
19 mum term of imprisonment.

20 (c) Except as provided in section 34a, and notwithstanding
21 the provisions of subdivision (b), a parole shall not be granted
22 to a prisoner other than a prisoner subject to disciplinary time
23 sentenced for the commission of a crime described in
24 section 33b(a) to (cc) until the prisoner has served the minimum

1 term imposed by the court less an allowance for disciplinary
2 credits as provided in section 33(5) of ~~Act No. 118 of the~~
3 ~~Public Acts of 1893, being section 800.33 of the Michigan~~
4 ~~Compiled Laws~~ 1893 PA 118, MCL 800.33. A prisoner described in
5 this subdivision is not eligible for special parole.

6 (d) Except as provided in section 34a, a parole shall not be
7 granted to a prisoner subject to disciplinary time until the
8 prisoner has served the minimum term imposed by the court, plus
9 any disciplinary time accumulated pursuant to section 34 of ~~Act~~
10 ~~No. 118 of the Public Acts of 1893, being section 800.34 of the~~
11 ~~Michigan Compiled Laws~~ 1893 PA 118, MCL 800.34.

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

18 (2) Paroles-in-custody to answer warrants filed by local or
19 out-of-state agencies, or immigration officials, are permissible
20 if an accredited agent of the agency filing the warrant calls for
21 the prisoner to be paroled in custody.

22 (3) Pursuant to the administrative procedures act of 1969,
23 ~~Act No. 306 of the Public Acts of 1969, as amended, being sec-~~
24 ~~tions 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA
25 306, MCL 24.201 TO 24.328, the parole board may promulgate rules
26 not inconsistent with this act with respect to conditions to be
27 imposed upon prisoners paroled under this act.

1 (4) THE PROVISIONS OF THIS SECTION REGARDING PRISONERS
2 SUBJECT TO DISCIPLINARY TIME TAKE EFFECT BEGINNING ON THE EFFEC-
3 TIVE DATE OF 1994 PA 217, AS PRESCRIBED IN ENACTING SECTION 2 OF
4 THAT AMENDATORY ACT.

5 Sec. 33e. (1) The department shall develop parole guide-
6 lines that are consistent with section 33(1)(a) and that shall
7 govern the exercise of the parole board's discretion pursuant to
8 sections 34 and 35 as to the release of prisoners on parole under
9 this act. The purpose of the parole guidelines shall be to
10 assist the parole board in making release decisions that enhance
11 the public safety.

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

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

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

18 (c) The prisoner's institutional conduct.

19 (d) The prisoner's prior criminal record. As used in this
20 subdivision, "prior criminal record" means the recorded criminal
21 history of a prisoner, including all misdemeanor and felony con-
22 victions, probation violations, juvenile adjudications for acts
23 that would have been crimes if committed by an adult, parole
24 failures, and delayed sentences.

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

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

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

4 (b) The prisoner's age.

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

8 (5) The department shall promulgate rules pursuant to the
9 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
10 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
11 ~~Compiled Laws~~ 1969 PA 306, MCL 24.201 TO 24.328, which shall
12 prescribe the parole guidelines. The department shall submit the
13 proposed rules to the joint committee on administrative rules not
14 later than April 1, 1994. Until the rules take effect, the
15 director shall require that the parole guidelines be considered
16 by the parole board in making release decisions. After the rules
17 take effect, the director shall require that the parole board
18 follow the parole guidelines.

19 (6) The parole board may depart from the parole guidelines
20 by denying parole to a prisoner who has a high probability of
21 parole as determined under the parole guidelines or by granting
22 parole to a prisoner who has a low probability of parole as
23 determined under the parole guidelines. A departure under this
24 subsection shall be for substantial and compelling reasons stated
25 in writing. The parole board shall not use a prisoner's gender,
26 race, ethnicity, alienage, national origin, or religion to depart
27 from the recommended parole guidelines.

1 (7) THE PAROLE GUIDELINES DO NOT APPLY TO THE PAROLE OF
2 PRISONERS UNDER SECTION 35A.

3 (8) ~~—(7)—~~ Not less than once every 2 years, the department
4 shall review the correlation between the implementation of the
5 parole guidelines and the recidivism rate of paroled prisoners,
6 and shall submit to the joint committee on administrative rules
7 any proposed revisions to the administrative rules that the
8 department considers appropriate after conducting the review.

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

17 (2) Except as provided in section 34a, a prisoner subject to
18 disciplinary time sentenced to an indeterminate sentence and con-
19 fined in a state correctional facility with a minimum in terms of
20 years is subject to the jurisdiction of the parole board when the
21 prisoner has served a period of time equal to the minimum sen-
22 tence imposed by the court for the crime of which he or she was
23 convicted, plus any disciplinary time accumulated pursuant to
24 section 34 of ~~Act No. 118 of the Public Acts of 1893, being sec-~~
25 ~~tion 800.34 of the Michigan Compiled Laws~~ 1893 PA 118, MCL
26 800.34.

1 (3) If a prisoner other than a prisoner subject to
2 disciplinary time is sentenced for consecutive terms, whether
3 received at the same time or at any time during the life of the
4 original sentence, the parole board has jurisdiction over the
5 prisoner for purposes of parole when the prisoner has served the
6 total time of the added minimum terms, less the good time and
7 disciplinary credits allowed by statute. The maximum terms of
8 the sentences shall be added to compute the new maximum term
9 under this subsection, and discharge shall be issued only after
10 the total of the maximum sentences has been served less good time
11 and disciplinary credits, unless the prisoner is paroled and dis-
12 charged upon satisfactory completion of the parole.

13 (4) If a prisoner subject to disciplinary time is sentenced
14 for consecutive terms, whether received at the same time or at
15 any time during the life of the original sentence, the parole
16 board has jurisdiction over the prisoner for purposes of parole
17 when the prisoner has served the total time of the added minimum
18 terms, plus any disciplinary time. The maximum terms of the sen-
19 tences shall be added to compute the new maximum term under this
20 subsection, and discharge shall be issued only after the total of
21 the maximum sentences has been served, unless the prisoner is
22 paroled and discharged upon satisfactory completion of the
23 parole.

24 (5) If a prisoner other than a prisoner subject to disci-
25 plinary time has 1 or more consecutive terms remaining to serve
26 in addition to the term he or she is serving, the parole board

1 may terminate the sentence the prisoner is presently serving at
2 any time after the minimum term of the sentence has been served.

3 (6) A prisoner under sentence for life or for a term of
4 years, other than a prisoner sentenced for life for murder in the
5 first degree or sentenced for life or for a minimum term of
6 imprisonment for a major controlled substance offense, who has
7 served 10 calendar years of the sentence in the case of a pris-
8 oner sentenced for a crime committed before October 1, 1992, or
9 who has served 15 calendar years of the sentence in the case of a
10 prisoner sentenced for a crime committed on or after October 1,
11 1992, is subject to the jurisdiction of the parole board and may
12 be released on parole by the parole board, subject to the follow-
13 ing conditions:

14 (a) One member of the parole board shall interview the pris-
15 oner at the conclusion of 10 calendar years of the sentence and
16 every 5 years thereafter until such time as the prisoner is
17 paroled, discharged, or deceased. The interview schedule pre-
18 scribed in this subdivision applies to all prisoners to whom this
19 subsection is applicable, whether sentenced before, on, or after
20 the effective date of the 1992 amendatory act that amended this
21 subdivision.

22 (b) A parole shall not be granted a prisoner so sentenced
23 until after a public hearing held in the manner prescribed for
24 pardons and commutations in sections ~~44(2)(f) to (h)~~ 44 and
25 45. Notice of the public hearing shall be given to the sentenc-
26 ing judge, or the judge's successor in office, and parole shall
27 not be granted if the sentencing judge, or the judge's successor

1 in office, files written objections to the granting of the parole
2 within 30 days of receipt of the notice of hearing. The written
3 objections shall be made part of the prisoner's file.

4 (c) A parole granted under this subsection shall be for a
5 period of not less than 4 years and subject to the usual rules
6 pertaining to paroles granted by the parole board. A parole
7 ordered under this subsection is not valid until the transcript
8 of the record is filed with the attorney general whose certifica-
9 tion of receipt of the transcript shall be returnable to the
10 office of the parole board within 5 days. Except for medical
11 records protected under section 2157 of the revised judicature
12 act of 1961, ~~Act No. 236 of the Public Acts of 1961, being sec-~~
13 ~~tion 600.2157 of the Michigan Compiled Laws~~ 1961 PA 236, MCL
14 600.2157, the file of a prisoner granted a parole under this sub-
15 section is a public record.

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

20 (7) Except as provided in ~~section~~ SECTIONS 34a AND 35A, a
21 prisoner's release on parole is discretionary with the parole
22 board. The action of the parole board in granting or denying a
23 parole is appealable by the prisoner, the prosecutor of the
24 county from which the prisoner was committed, or the victim of
25 the crime for which the prisoner was convicted. The appeal shall
26 be to the circuit court in the county from which the prisoner was
27 committed, by leave of the court.

1 (8) The provisions of this section regarding prisoners
2 subject to disciplinary time take effect beginning on the effec-
3 tive date of ~~Act No. 217 of the Public Acts of 1994~~ 1994 PA
4 217, as prescribed in enacting section 2 of that amendatory act.

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

1 provision of law. The parole board shall not consider any of the
2 following factors in making a parole determination:

3 (a) A juvenile record that a court has ordered the depart-
4 ment to expunge.

5 (b) Information that is determined by the parole board to be
6 inaccurate or irrelevant after a challenge and presentation of
7 relevant evidence by a prisoner who has received a notice of
8 intent to conduct an interview as provided in subsection (4).

9 This subdivision applies only to presentence investigation
10 reports prepared before April 1, 1983.

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

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

21 (a) A prisoner's marital history.

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

24 (4) 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 that shall be discussed at the

1 interview and that 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 (12). This
6 subsection does not apply until April 1, 1983.

7 (5) 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 before conducting the current interview.
10 Before the interview, the parole board member who is to conduct
11 the interview shall review pertinent information relative to the
12 notice of intent to conduct an interview.

13 (6) 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 does not apply until April 1, 1983.

24 (7) At least 90 days before the expiration of the prisoner's
25 minimum sentence less applicable good time and disciplinary cred-
26 its for a prisoner eligible for good time or disciplinary
27 credits, or at least 90 days before the expiration of the

1 prisoner's minimum sentence plus disciplinary time for a prisoner
2 subject to disciplinary time, or the expiration of a 12-month
3 continuance for any prisoner, a parole eligibility report shall
4 be prepared by appropriate institutional staff. The parole eli-
5 gibility report shall be considered pertinent information for
6 purposes of subsection (5). The report shall include all of the
7 following:

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

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

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

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

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.

1 (10) ~~The~~ IN ADDITION TO PAROLES GRANTED TO PRISONERS WHO
2 ARE TERMINALLY ILL OR ARE PERMANENTLY AND SEVERELY PHYSICALLY
3 INCAPACITATED AS REQUIRED UNDER SECTION 35A, THE parole board may
4 grant a medical parole for a prisoner determined to be physically
5 or mentally incapacitated. A decision to grant a medical parole
6 shall be initiated upon the recommendation of the bureau of
7 health care services and shall be reached only after a review of
8 the medical, institutional, and criminal records of the
9 prisoner.

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

25 (12) When the parole board makes a final determination not
26 to release a prisoner, the prisoner shall be provided with a
27 written explanation of the reason for denial and, if appropriate,

1 specific recommendations for corrective action the prisoner may
2 take to facilitate release.

3 (13) This section does not apply to ~~the~~ EITHER OF THE
4 FOLLOWING:

5 (A) THE placement on parole of a person in conjunction with
6 special alternative incarceration under section 34a(7).

7 (B) THE PLACEMENT ON PAROLE OF A PRISONER UNDER SECTION 35A.

8 SEC. 35A. (1) NOTWITHSTANDING SECTIONS 33, 33E, 34, AND 35,
9 THE PAROLE BOARD SHALL PLACE A PRISONER ON PAROLE, OTHER THAN A
10 PRISONER DESCRIBED IN SUBSECTION (3), WHO IS EITHER OF THE
11 FOLLOWING:

12 (A) TERMINALLY ILL WITH AN INCURABLE CONDITION CAUSED BY AN
13 ILLNESS OR DISEASE THAT WOULD PRODUCE DEATH WITHIN 6 MONTHS.

14 (B) PERMANENTLY AND SEVERELY PHYSICALLY INCAPACITATED.

15 (2) A DETERMINATION OF A PRISONER'S MEDICAL AND PHYSICAL
16 CONDITION UNDER SUBSECTION (1) SHALL BE MADE BY A PHYSICIAN
17 EMPLOYED BY, OR UNDER CONTRACT WITH, THE DEPARTMENT.

18 (3) A PRISONER IS NOT ELIGIBLE FOR PAROLE UNDER THIS SECTION
19 IF HE OR SHE IS SENTENCED TO A TERM OF LIFE IMPRISONMENT WITHOUT
20 THE POSSIBILITY OF PAROLE, OR IF THE PAROLE BOARD DETERMINES THAT
21 PLACING THE PRISONER ON PAROLE WOULD POSE A THREAT TO THE SAFETY
22 OF THE PUBLIC.