



HOUSE BILL No. 5712

May 2, 2000, Introduced by Reps. Schauer, Basham, Vander Roest, Jamnick, Gielegem, Dennis, Hale and Pappageorge and referred to the Committee on Criminal Law and Corrections.

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 section 35 (MCL 791.235), as amended by 1998 PA 315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 the
4 prisoner. However, beginning on the date on which the adminis-
5 trative rules prescribing parole guidelines pursuant to
6 section 33e(5) take effect, the parole board may grant a parole
7 without interviewing the prisoner only if, after evaluating the
8 prisoner according to the parole guidelines, the parole board
9 determines that the prisoner has a high probability of being
10 paroled and the parole board therefore intends to parole the
11 prisoner. Except as provided in subsection (2), a prisoner shall
12 not be denied parole without an interview before 1 member of the
13 parole board. The interview shall be conducted at least 1 month
14 before the expiration of the prisoner's minimum sentence less
15 applicable good time and disciplinary credits for a prisoner eli-
16 gible for good time and disciplinary credits, or at least 1 month
17 before the expiration of the prisoner's minimum sentence for a
18 prisoner subject to disciplinary time. The parole board shall
19 consider any statement made to the parole board by a crime victim
20 under the crime victim's rights act, 1985 PA 87, MCL 780.751 to
21 780.834, or under any other provision of law. The parole board
22 shall not consider any of the following factors in making a
23 parole determination:

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

26 (b) Information that is determined by the parole board to be
27 inaccurate or irrelevant after a challenge and presentation of

1 relevant evidence by a prisoner who has received a notice of
2 intent to conduct an interview as provided in subsection (4).
3 This subdivision applies only to presentence investigation
4 reports prepared before April 1, 1983.

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

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

15 (a) A prisoner's marital history.

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

18 (4) If an interview is to be conducted, the prisoner shall
19 be sent a notice of intent to conduct an interview at least 1
20 month before the date of the interview. The notice shall state
21 the specific issues and concerns that shall be discussed at the
22 interview and that may be a basis for a denial of parole. A
23 denial of parole shall not be based on reasons other than those
24 stated in the notice of intent to conduct an interview except for
25 good cause stated to the prisoner at or before the interview and
26 in the written explanation required by subsection (12). This
27 subsection does not apply until April 1, 1983.

1 (5) Except for good cause, the parole board member
2 conducting the interview shall not have cast a vote for or
3 against the prisoner's release before conducting the current
4 interview. Before the interview, the parole board member who is
5 to conduct the interview shall review pertinent information rela-
6 tive to the notice of intent to conduct an interview.

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

18 (7) At least 90 days before the expiration of the prisoner's
19 minimum sentence less applicable good time and disciplinary cred-
20 its for a prisoner eligible for good time or disciplinary cred-
21 its, or at least 90 days before the expiration of the prisoner's
22 minimum sentence for a prisoner subject to disciplinary time, or
23 the expiration of a 12-month continuance for any prisoner, a
24 parole eligibility report shall be prepared by appropriate insti-
25 tutional staff. The parole eligibility report shall be consid-
26 ered pertinent information for purposes of subsection (5). The
27 report shall include all of the following:

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

4 (b) The prisoner's work and educational record while
5 confined.

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

8 (d) Whether the prisoner fully cooperated with the state by
9 providing complete financial information as required under sec-
10 tion 3a of the state correctional facility reimbursement act,
11 1935 PA 253, MCL 800.403a.

12 (e) For a prisoner subject to disciplinary time, a statement
13 of all disciplinary time submitted for the parole board's consid-
14 eration pursuant to section 34 of 1893 PA 118, MCL 800.34.

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

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

22 (10) The parole board may grant a medical parole for a pris-
23 oner determined to be physically or mentally incapacitated. A
24 decision to grant a medical parole shall be initiated upon the
25 recommendation of the bureau of health care services and shall be
26 reached only after a review of the medical, institutional, and
27 criminal records of the prisoner.

1 (11) The department shall submit a petition to the
2 appropriate court under section 434 of the mental health code,
3 1974 PA 258, MCL 330.1434, for any prisoner being paroled or
4 being released after serving his or her maximum sentence whom the
5 department considers to be a person requiring treatment. The
6 parole board shall require mental health treatment as a special
7 condition of parole for any parolee whom the department has
8 determined to be a person requiring treatment whether or not the
9 petition filed for that prisoner is granted by the court. As
10 used in this subsection, "person requiring treatment" means that
11 term as defined in section 401 of the mental health code, 1974
12 PA 258, MCL 330.1401.

13 (12) IF A PAROLE INTERVIEW IS TO BE CONDUCTED FOR A PRISONER
14 WHO IS SERVING A SENTENCE FOR COMMITTING A VIOLENT FELONY, AS
15 THAT TERM IS DEFINED IN SECTION 36, THAT INTERVIEW SHALL NOT BE
16 CONDUCTED UNLESS PRIOR WRITTEN NOTICE IS SENT TO ANY LOCAL POLICE
17 DEPARTMENT WHOSE OFFICERS INVESTIGATED OR TESTIFIED IN THE
18 PRISONER'S PROSECUTION AND TO THE COUNTY SHERIFF AND PROSECUTING
19 ATTORNEY FOR THE COUNTY IN WHICH THE PRISONER WAS CONVICTED. THE
20 NOTICE SHALL BE SENT AT LEAST 30 DAYS BEFORE THE DATE OF THE
21 INTERVIEW AND SHALL INCLUDE THE NAME OF THE PRISONER AND THE
22 TIME, DATE, AND PLACE OF THE PROPOSED INTERVIEW. A PARTY RECEIV-
23 ING PRIOR WRITTEN NOTICE UNDER THIS SUBSECTION, OR THAT PARTY'S
24 DESIGNEE, HAS THE RIGHT TO APPEAR AT THE PAROLE HEARING AND MAY
25 OFFER VERBAL OR WRITTEN TESTIMONY AT THAT HEARING ON THE ISSUE OF
26 GRANTING OR DENYING PAROLE. A PARTY RECEIVING PRIOR WRITTEN
27 NOTICE UNDER THIS SUBSECTION ALSO SHALL BE SENT WRITTEN NOTICE OF

1 THE PAROLE BOARD'S DECISION TO GRANT OR DENY PAROLE FOR THAT
2 PRISONER.

3 (13) ~~-(12)-~~ When the parole board makes a final determina-
4 tion not to release a prisoner, the prisoner shall be provided
5 with a written explanation of the reason for denial and, if
6 appropriate, specific recommendations for corrective action the
7 prisoner may take to facilitate release.

8 (14) ~~-(13)-~~ This section does not apply to the placement on
9 parole of a person in conjunction with special alternative incar-
10 ceration under section 34a(7).