

HOUSE BILL No. 4475

March 15, 2007, Introduced by Reps. Meadows, Condino and Coulouris and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 35 and 44 (MCL 791.235 and 791.244), section 35 as amended by 1998 PA 315 and section 44 as amended by 1999 PA 191.

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 parole
3 board may grant a parole without interviewing the prisoner.
4 However, beginning ~~on the date on which the administrative rules~~
5 ~~prescribing parole guidelines pursuant to section 33e(5) take~~
6 ~~effect~~ **JANUARY 26, 1996**, 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

1 paroled and the parole board therefore intends to parole the
2 prisoner. Except as provided in subsection (2), a prisoner shall
3 not be denied parole without an interview before 1 member of the
4 parole board. The interview shall be conducted at least 1 month
5 before the expiration of the prisoner's minimum sentence less
6 applicable good time and disciplinary credits for a prisoner
7 eligible for good time and disciplinary credits, or at least 1
8 month before the expiration of the prisoner's minimum sentence for
9 a prisoner subject to disciplinary time. The parole board shall
10 consider any statement made to the parole board by a crime victim
11 under the crime victim's rights act, 1985 PA 87, MCL 780.751 to
12 780.834, or under any other provision of law. The parole board
13 shall not consider any of the following factors in making a parole
14 determination:

15 (a) A juvenile record that a court has ordered the department
16 to expunge.

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

23 (2) Beginning ~~on the date on which the administrative rules~~
24 ~~prescribing the parole guidelines take effect pursuant to section~~
25 ~~33e(5)~~ **JANUARY 26, 1996**, if, after evaluating a prisoner according
26 to the parole guidelines, the parole board determines that the
27 prisoner has a low probability of being paroled and the parole

1 board therefore does not intend to parole the prisoner, the parole
2 board ~~shall~~**IS** not ~~be~~ required to interview the prisoner before
3 denying parole to the prisoner.

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

6 (a) A prisoner's marital history.

7 (b) Prior arrests not resulting in conviction or adjudication
8 of delinquency.

9 (4) If an interview is to be conducted, the prisoner shall be
10 sent a notice of intent to conduct an interview at least 1 month
11 before the date of the interview. The notice shall state the
12 specific issues and concerns that shall be discussed at the
13 interview and that may be a basis for a denial of parole. A denial
14 of parole shall not be based on reasons other than those stated in
15 the notice of intent to conduct an interview except for good cause
16 stated to the prisoner at or before the interview and in the
17 written explanation required by subsection (12). This subsection
18 does not apply until April 1, 1983.

19 (5) Except for good cause, the parole board member conducting
20 the interview shall not have cast a vote for or against the
21 prisoner's release before conducting the current interview. Before
22 the interview, the parole board member who is to conduct the
23 interview shall review pertinent information relative to the notice
24 of intent to conduct an interview.

25 (6) A prisoner may waive the right to an interview by 1 member
26 of the parole board. The waiver of the right to be interviewed
27 shall be given not more than 30 days after the notice of intent to

1 conduct an interview is issued and shall be made in writing. During
2 the interview held pursuant to a notice of intent to conduct an
3 interview, the prisoner may be represented by an individual of his
4 or her choice. The representative shall not be another prisoner or
5 an attorney. A prisoner is not entitled to appointed counsel at
6 public expense. The prisoner or representative may present relevant
7 evidence in support of release. This subsection does not apply
8 until April 1, 1983.

9 (7) At least 90 days before the expiration of the prisoner's
10 minimum sentence less applicable good time and disciplinary credits
11 for a prisoner eligible for good time or disciplinary credits, or
12 at least 90 days before the expiration of the prisoner's minimum
13 sentence for a prisoner subject to disciplinary time, or the
14 expiration of a 12-month continuance for any prisoner, a parole
15 eligibility report shall be prepared by appropriate institutional
16 staff. The parole eligibility report shall be considered pertinent
17 information for purposes of subsection (5). The report shall
18 include all of the following:

19 (a) A statement of all major misconduct charges of which the
20 prisoner was found guilty and the punishment served for the
21 misconduct.

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

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

25 (d) Whether the prisoner fully cooperated with the state by
26 providing complete financial information as required under section
27 3a of the state correctional facility reimbursement act, 1935 PA

1 253, MCL 800.403a.

2 (e) For a prisoner subject to disciplinary time, a statement
3 of all disciplinary time submitted for the parole board's
4 consideration pursuant to section 34 of 1893 PA 118, MCL 800.34.

5 (8) The preparer of the report shall not include a
6 recommendation as to release on parole.

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

12 (10) The parole board may grant a medical parole for a
13 prisoner determined to be physically or mentally incapacitated. A
14 decision to grant a medical parole shall be initiated upon the
15 recommendation of the bureau of health care services and shall be
16 reached only after a review of the medical, institutional, and
17 criminal records of the prisoner. **THIS SUBSECTION DOES NOT PRECLUDE**
18 **A PRISONER FROM SEEKING A COMMUTATION BASED ON PHYSICAL OR MENTAL**
19 **INCAPACITY UNDER SECTION 44.**

20 (11) The department shall submit a petition to the appropriate
21 court under section 434 of the mental health code, 1974 PA 258, MCL
22 330.1434, for any prisoner being paroled or being released after
23 serving his or her maximum sentence whom the department considers
24 to be a person requiring treatment. The parole board shall require
25 mental health treatment as a special condition of parole for any
26 parolee whom the department has determined to be a person requiring
27 treatment whether or not the petition filed for that prisoner is

1 granted by the court. As used in this subsection, "person requiring
2 treatment" means that term as defined in section 401 of the mental
3 health code, 1974 PA 258, MCL 330.1401.

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

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

12 Sec. 44. (1) Subject to the constitutional authority of the
13 governor to grant reprieves, commutations, and pardons, 1 member of
14 the parole board shall interview a prisoner serving a sentence for
15 murder in the first degree or a sentence of imprisonment for life
16 without parole at the conclusion of 10 calendar years and
17 thereafter as determined appropriate by the parole board, until
18 ~~such time as~~ the prisoner is granted a reprieve, commutation, or
19 pardon by the governor, or is deceased. The interview schedule
20 prescribed in this subsection applies to all prisoners to whom this
21 section is applicable, regardless of when they were sentenced.

22 (2) Upon its own initiation of, or upon receipt of any
23 application for, a reprieve, commutation, or pardon, the parole
24 board shall do all of the following, as applicable:

25 (a) Not more than 60 days after receipt of an application,
26 conduct a review to determine whether the application for a
27 reprieve, commutation, or pardon has merit.

1 (b) Deliver either the written documentation of the initiation
2 or the original application with the parole board's determination
3 regarding merit, to the governor and retain a copy of each in its
4 file, pending an investigation and hearing.

5 (c) Within 10 days after initiation, or after determining that
6 an application has merit, forward to the sentencing judge and to
7 the prosecuting attorney of the county having original jurisdiction
8 of the case, or their successors in office, a written notice of the
9 filing of the application or initiation, together with copies of
10 the application or initiation, any supporting affidavits, and a
11 brief summary of the case. ~~Within 30 days after receipt of notice~~
12 ~~of the filing of any application or initiation, the~~ **THE** sentencing
13 judge and the prosecuting attorney, or their successors in office,
14 may file information at their disposal, together with any
15 objections, in writing, which they may desire to interpose. **A**
16 **RESPONSE FROM A SENTENCING JUDGE OR PROSECUTING ATTORNEY MUST BE**
17 **FILED WITHIN 10 DAYS AFTER HE OR SHE RECEIVED THE WRITTEN NOTICE IN**
18 **THE CASE OF A PROPOSED COMMUTATION BASED ON PHYSICAL OR MENTAL**
19 **INCAPACITY AS PROVIDED IN SUBDIVISION (D) OR WITHIN 30 DAYS AFTER**
20 **HE OR SHE RECEIVED THE WRITTEN NOTICE IN THE CASE OF ANY OTHER**
21 **PROPOSED COMMUTATION.** If the sentencing judge and the prosecuting
22 attorney, or their successors in office, do not respond within ~~30~~
23 ~~days~~ **THE APPLICABLE TIME PERIOD**, the parole board shall proceed on
24 the application or initiation.

25 (d) If an application or initiation for commutation is based
26 on physical or mental incapacity, direct the bureau of health care
27 services to evaluate the condition of the prisoner and report on

1 that condition. If the bureau of health care services determines
2 that the prisoner is physically or mentally incapacitated, the
3 bureau shall appoint a specialist in the appropriate field of
4 medicine, who is not employed by the department, to evaluate the
5 condition of the prisoner and to report on that condition. These
6 reports are protected by the doctor-patient privilege of
7 confidentiality, except that these reports shall be provided to the
8 governor for his or her review.

9 (e) Within 270 days after initiation by the parole board or
10 receipt of an application that the parole board has determined to
11 have merit pursuant to subdivision (a), make a full investigation
12 and determination on whether or not to proceed to a public hearing.

13 (f) ~~Conduct~~ **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3),**
14 **CONDUCT** a public hearing not later than 90 days after making a
15 decision to proceed with consideration of a recommendation for the
16 granting of a reprieve, commutation, or pardon. The public hearing
17 shall be held before a formal recommendation is transmitted to the
18 governor. One member of the parole board who will be involved in
19 the formal recommendation may conduct the hearing, and the public
20 shall be represented by the attorney general or a member of the
21 attorney general's staff.

22 (g) ~~At least 30 days before~~ **BEFORE** conducting the public
23 hearing, provide written notice of the public hearing by mail to
24 the attorney general, the sentencing trial judge, and the
25 prosecuting attorney, or their successors in office, and each
26 victim who requests notice pursuant to the **WILLIAM VAN REGENMORTER**
27 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. **IF**

1 THE PUBLIC HEARING IS BEING CONDUCTED FOR A PROPOSED COMMUTATION
2 BASED ON PHYSICAL OR MENTAL INCAPACITY AS PROVIDED IN SUBDIVISION
3 (D), THE WRITTEN NOTICE SHALL BE PROVIDED AT LEAST 10 DAYS BEFORE
4 THE PUBLIC HEARING AND MAY BE PROVIDED SIMULTANEOUSLY WITH THE
5 NOTICE REQUIRED UNDER SUBDIVISION (C). FOR ALL OTHER PUBLIC
6 HEARINGS FOR PROPOSED COMMUTATIONS, THE WRITTEN NOTICE SHALL BE
7 PROVIDED AT LEAST 30 DAYS BEFORE THE PUBLIC HEARING.

8 (h) Conduct the public hearing pursuant to the rules
9 promulgated by the department. Except as otherwise provided in this
10 subdivision, any person having information in connection with the
11 pardon, commutation, or reprieve shall be sworn as a witness. A
12 person who is a victim shall be given an opportunity to address and
13 be questioned by the parole board at the hearing or to submit
14 written testimony for the hearing. In hearing testimony, the parole
15 board shall give liberal construction to any technical rules of
16 evidence.

17 (i) Transmit its formal recommendation to the governor.

18 (j) Make all data in its files available to the governor if
19 the parole board recommends the granting of a reprieve,
20 commutation, or pardon.

21 (3) NOTWITHSTANDING SUBSECTION (2), A PUBLIC HEARING IS NOT
22 REQUIRED FOR A PROPOSED COMMUTATION BASED ON PHYSICAL OR MENTAL
23 INCAPACITY UNDER SUBSECTION (2) (D) IF BOTH MEDICAL REPORTS PREPARED
24 PURSUANT TO SUBSECTION (2) (D) GIVE THE PRISONER A LIFE EXPECTANCY
25 OF 6 MONTHS OR LESS AND IF THE PAROLE BOARD GIVES WRITTEN NOTICE OF
26 THE PROPOSED COMMUTATION TO THE ATTORNEY GENERAL, THE SENTENCING
27 JUDGE, AND THE PROSECUTING ATTORNEY, OR THEIR SUCCESSORS IN OFFICE,

1 AND EACH VICTIM WHO REQUESTS NOTICE PURSUANT TO THE WILLIAM VAN
2 REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.751 TO
3 780.834. THE WRITTEN NOTICE SHALL REQUEST A WRITTEN RESPONSE WITHIN
4 10 DAYS AS TO THE PROPOSED COMMUTATION AND MAY BE MADE
5 SIMULTANEOUSLY WITH THE NOTICE REQUIRED UNDER SUBSECTION (2) (C) .
6 ANY WRITTEN RESPONSES SHALL BE FORWARDED TO THE GOVERNOR WITH THE
7 PAROLE BOARD'S FINAL RECOMMENDATION AND SHALL BE MATTERS OF PUBLIC
8 RECORD. THIS SUBSECTION DOES NOT APPLY TO A PRISONER SERVING A
9 SENTENCE FOR A LISTED OFFENSE AS DEFINED IN SECTION 2 OF THE SEX
10 OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.722.

11 (4) ~~(3)~~—Except for medical records protected by the doctor-
12 patient privilege of confidentiality, the files of the parole board
13 in cases under this section ~~shall be~~ **ARE** matters of public record.