

HOUSE BILL No. 4021

January 22, 2009, Introduced by Rep. Rick Jones 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

determines that the prisoner has a high probability of being paroled and the parole board therefore intends to parole the prisoner. Except as provided in subsection (2), a prisoner shall not be denied parole without an interview before 1 member of the parole board. The interview shall be conducted at least 1 month before the expiration of the prisoner's minimum sentence less applicable good time and disciplinary credits for a prisoner eligible for good time and disciplinary credits, or at least 1 month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. The parole board shall consider any statement made to the parole board by a crime victim under the **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under any other provision of law. The parole board shall not consider any of the following factors in making a parole determination:

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

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

~~(2) Beginning on the date on which the administrative rules prescribing the parole guidelines take effect pursuant to section 33e(5) **JANUARY 26, 1996**, if, after evaluating a prisoner according~~
to the parole guidelines, the parole board determines that the

1 prisoner has a low probability of being paroled and the parole
2 board therefore does not intend to parole the prisoner, the parole
3 board ~~shall~~**IS** not ~~be~~ required to interview the prisoner before
4 denying parole to the prisoner.

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

7 (a) A prisoner's marital history.

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

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

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

26 (6) A prisoner may waive the right to an interview by 1 member
27 of the parole board. The waiver of the right to be interviewed

1 shall be given not more than 30 days after the notice of intent to
2 conduct an interview is issued and shall be made in writing. During
3 the interview held pursuant to a notice of intent to conduct an
4 interview, the prisoner may be represented by an individual of his
5 or her choice. The representative shall not be another prisoner or
6 an attorney. A prisoner is not entitled to appointed counsel at
7 public expense. The prisoner or representative may present relevant
8 evidence in support of release. This subsection does not apply
9 until April 1, 1983.

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

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

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

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

26 (d) Whether the prisoner fully cooperated with the state by
27 providing complete financial information as required under section

1 3a of the state correctional facility reimbursement act, 1935 PA
2 253, MCL 800.403a.

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

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

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

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

21 (11) The department shall submit a petition to the appropriate
22 court under section 434 of the mental health code, 1974 PA 258, MCL
23 330.1434, for any prisoner being paroled or being released after
24 serving his or her maximum sentence whom the department considers
25 to be a person requiring treatment. The parole board shall require
26 mental health treatment as a special condition of parole for any
27 parolee whom the department has determined to be a person requiring

1 treatment whether or not the petition filed for that prisoner is
2 granted by the court. As used in this subsection, "person requiring
3 treatment" means that term as defined in section 401 of the mental
4 health code, 1974 PA 258, MCL 330.1401.

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

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

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

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

26 (a) Not more than 60 days after receipt of an application,
27 conduct a review to determine whether the application for a

1 reprieve, commutation, or pardon has merit.

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

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

26 (d) If an application or initiation for commutation is based
27 on physical or mental incapacity, direct the bureau of health care

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

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

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

23 (g) ~~At least 30 days before~~ **BEFORE** conducting the public
24 hearing, provide written notice of the public hearing by mail to
25 the attorney general, the sentencing trial judge, and the
26 prosecuting attorney, or their successors in office, and each
27 victim who requests notice pursuant to the **WILLIAM VAN REGENMORTER**

1 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. IF
2 THE PUBLIC HEARING IS BEING CONDUCTED FOR A PROPOSED COMMUTATION
3 BASED ON PHYSICAL OR MENTAL INCAPACITY AS PROVIDED IN SUBDIVISION
4 (D), THE WRITTEN NOTICE SHALL BE PROVIDED AT LEAST 10 DAYS BEFORE
5 THE PUBLIC HEARING AND MAY BE PROVIDED SIMULTANEOUSLY WITH THE
6 NOTICE REQUIRED UNDER SUBDIVISION (C). FOR ALL OTHER PUBLIC
7 HEARINGS FOR PROPOSED COMMUTATIONS, THE WRITTEN NOTICE SHALL BE
8 PROVIDED AT LEAST 30 DAYS BEFORE THE PUBLIC HEARING.

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

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

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

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

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

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