

HOUSE BILL No. 4711

March 26, 2009, Introduced by Reps. Smith, Cushingberry and Meadows and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending sections 6, 39a, 40a, 41, 43, 44, 45, and 46 (MCL
791.206, 791.239a, 791.240a, 791.241, 791.243, 791.244, 791.245,
and 791.246), section 6 as amended by 2006 PA 172, sections 39a and
46 as added by 1982 PA 314, section 40a as amended by 2006 PA 532,
and section 44 as amended by 1999 PA 191, and by adding section
31b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) The director may promulgate rules pursuant to the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
3 24.328, to provide for all of the following:

4 (a) The control, management, and operation of the general
5 affairs of the department.

6 (b) Supervision and control of probationers and probation

1 officers throughout this state.

2 (c) The manner in which applications for pardon, reprieve,
3 medical commutation, or commutation shall be made to the governor;
4 the procedures for handling applications and recommendations by the
5 parole board **AND THE SPECIAL PAROLE BOARD**; the manner in which
6 paroles shall be considered, the criteria to be used to reach
7 release decisions, the procedures for medical and special paroles,
8 and the duties of the parole board in those matters; interviews on
9 paroles and for the notice of intent to conduct an interview; the
10 entering of appropriate orders granting or denying paroles; the
11 supervision and control of paroled prisoners; and the revocation of
12 parole.

13 (d) The management and control of state penal institutions,
14 correctional farms, probation recovery camps, and programs for the
15 care and supervision of youthful trainees separate and apart from
16 persons convicted of crimes within the jurisdiction of the
17 department. Except as provided ~~for~~ in section 62(3), this
18 subdivision does not apply to detention facilities operated by
19 local units of government used to detain persons less than 72
20 hours. The rules may permit the use of portions of penal
21 institutions in which persons convicted of crimes are detained. The
22 rules shall provide that decisions as to the removal of a youth
23 from the youthful trainee facility or the release of a youth from
24 the supervision of the department shall be made by the department
25 and shall assign responsibility for those decisions to a committee.

26 (e) The management and control of prison labor and industry.

27 (f) The director may promulgate rules providing for the

1 creation and operation of a lifetime electronic monitoring program
2 to conduct electronic monitoring of individuals, who have served
3 sentences imposed for certain crimes, following their release from
4 parole, prison, or both parole and prison.

5 (2) The director may promulgate rules providing for a parole
6 board structure **OR SPECIAL PAROLE BOARD STRUCTURE** consisting of 3-
7 member panels.

8 (3) The director may promulgate further rules with respect to
9 the affairs of the department as the director considers necessary
10 or expedient for the proper administration of this act. The
11 director may modify, amend, supplement, or rescind a rule.

12 (4) The director and the corrections commission shall not
13 promulgate a rule or adopt a guideline that does either of the
14 following:

15 (a) Prohibits a probation officer or parole officer from
16 carrying a firearm while on duty.

17 (b) Allows a prisoner to have his or her name changed. If the
18 Michigan supreme court rules that this subdivision is violative of
19 constitutional provisions under the first and fourteenth amendments
20 to the United States constitution and article I, sections 2 and 4
21 of the state constitution of 1963, the remaining provisions of the
22 code shall remain in effect.

23 **SEC. 31B. (1) THERE IS ESTABLISHED IN THE DEPARTMENT A SPECIAL**
24 **PAROLE BOARD CONSISTING OF 5 MEMBERS WHO SHALL BE APPOINTED BY THE**
25 **DIRECTOR.**

26 (2) **TO BE QUALIFIED FOR APPOINTMENT UNDER THIS SECTION, A**
27 **PERSON SHALL HAVE EARNED HIS OR HER BACHELOR'S DEGREE AND SHALL**

1 HAVE AT LEAST 5 YEARS' WORK EXPERIENCE IN CORRECTIONAL FACILITY
2 ADMINISTRATION, PSYCHIATRY, SOCIAL WORK, TRIAL LAW, EDUCATION, OR
3 RESEARCH IN THE FIELD OF CORRECTIONS.

4 (3) A PERSON APPOINTED UNDER THIS SECTION IS AN INDEPENDENT
5 CONTRACTOR PAID ON AN HOURLY BASIS.

6 (4) THE CHAIRPERSON OF THE SPECIAL PAROLE BOARD SHALL BE
7 DESIGNATED BY THE DIRECTOR. THE CHAIRPERSON OF THE SPECIAL PAROLE
8 BOARD IS RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF THE
9 SPECIAL PAROLE BOARD. THE CHAIRPERSON MAY CONDUCT INTERVIEWS AND
10 PARTICIPATE IN THE BOARD'S DECISION-MAKING PROCESS.

11 (5) THE SPECIAL PAROLE BOARD ONLY HAS JURISDICTION OVER
12 MATTERS DESCRIBED IN SECTIONS 39A, 40A, 41, 43, 44, AND 45.

13 (6) THE SPECIAL PAROLE BOARD CREATED UNDER THIS SECTION IS
14 ABOLISHED 5 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
15 THAT ADDED THIS SECTION, OR THE DATE ON WHICH THE NUMBER OF
16 PRISONERS WHO ARE IMPRISONED BEYOND THEIR EARLIEST RELEASE DATE IS
17 REDUCED TO 10% OF THE TOTAL PRISONER POPULATION, WHICHEVER OCCURS
18 FIRST. UPON ITS ABOLITION, ANY REFERENCE IN SECTION 39A, 40A, 41,
19 43, 44, 45, OR 46 TO THE SPECIAL PAROLE BOARD SHALL BE CONSIDERED
20 TO BE A REFERENCE TO THE BOARD RESPONSIBLE FOR PAROLES GENERALLY.

21 Sec. 39a. (1) Within 10 days after an arrest for an alleged
22 violation of parole, the parolee shall be entitled to a preliminary
23 hearing CONDUCTED BY OR ON BEHALF OF THE SPECIAL PAROLE BOARD to
24 determine whether there is probable cause to believe that the
25 conditions of parole have been violated or a fact-finding hearing
26 held pursuant to section 40a.

27 (2) Prior to the preliminary hearing, the accused parolee

1 shall be given written notice of the charges, time, place, and
2 purpose of the preliminary hearing.

3 (3) At the preliminary hearing, the accused parolee is
4 entitled to the following rights:

5 (a) Disclosure of the evidence against him or her.

6 (b) The right to testify and present relevant witnesses and
7 documentary evidence.

8 (c) The right to confront and cross-examine adverse witnesses
9 unless the person conducting the preliminary hearing finds on the
10 record that a witness may be subjected to risk of harm if his or
11 her identity is revealed.

12 (4) A preliminary hearing may be postponed beyond the 10-day
13 time limit on the written request of the parolee, but shall not be
14 postponed by the department.

15 (5) If a preliminary hearing is not held pursuant to
16 subsection (1), an accused parolee shall be given written notice of
17 the charges against him or her, the time, place and purpose of the
18 fact-finding hearing and a written summary of the evidence to be
19 presented against him or her.

20 (6) If a preliminary hearing is not held pursuant to
21 subsection (1), an accused parolee may not be found guilty of a
22 violation based on evidence that was not summarized in the notice
23 provided pursuant to subsection (5) except for good cause stated on
24 the record and included in the written findings of fact provided to
25 the parolee.

26 Sec. 40a. (1) After a prisoner is released on parole, the
27 prisoner's parole order is subject to revocation at the discretion

1 of the **SPECIAL** parole board for cause as provided in this section.

2 (2) If a paroled prisoner who is required to register pursuant
3 to the sex offenders registration act, 1994 PA 295, MCL 28.721 to
4 28.736, willfully violates that act, the **SPECIAL** parole board shall
5 revoke the parole. If a prisoner convicted of violating or
6 conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i)
7 or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and
8 333.7403, is released on parole and violates or conspires to
9 violate article 7 of the public health code, 1978 PA 368, MCL
10 333.7101 to 333.7545, and that violation or conspiracy to violate
11 is punishable by imprisonment for 4 or more years, or commits a
12 violent felony during his or her release on parole, parole shall be
13 revoked.

14 (3) Within 45 days after a paroled prisoner has been returned
15 or is available for return to a state correctional facility under
16 accusation of a parole violation other than conviction for a felony
17 or misdemeanor punishable by imprisonment under the laws of this
18 state, the United States, or any other state or territory of the
19 United States, the prisoner is entitled to a fact-finding hearing
20 on the charges before 1 member of the **SPECIAL** parole board or an
21 attorney hearings officer designated by the chairperson of the
22 **SPECIAL** parole board. The fact-finding hearing shall be conducted
23 only after the accused parolee has had a reasonable amount of time
24 to prepare a defense. The fact-finding hearing may be held at a
25 state correctional facility or at or near the location of the
26 alleged violation.

27 (4) If, before a fact-finding hearing begins, the accused

1 parolee alleges that he or she is indigent and requests that an
2 attorney be appointed to represent him or her, the **SPECIAL** parole
3 board member or attorney hearings officer who will conduct the
4 hearing shall determine whether the accused parolee is indigent. If
5 the accused parolee is determined to be indigent, the **SPECIAL**
6 parole board member or hearings officer shall cause the appointment
7 of an attorney to represent the accused parolee at the fact-finding
8 hearing. The cost of the appointed attorney shall be paid from the
9 department's general operating budget.

10 (5) An accused parolee shall be given written notice of the
11 charges against him or her and the time, place, and purpose of the
12 fact-finding hearing. At the fact-finding hearing, the accused
13 parolee may be represented by a retained attorney or an attorney
14 appointed under subsection (4) and is entitled to the following
15 rights:

16 (a) Full disclosure of the evidence against him or her.

17 (b) To testify and present relevant witnesses and documentary
18 evidence.

19 (c) To confront and cross-examine adverse witnesses unless the
20 person conducting the fact-finding hearing finds on the record that
21 a witness is subject to risk of harm if his or her identity is
22 revealed.

23 (d) To present other relevant evidence in mitigation of the
24 charges.

25 (6) A fact-finding hearing may be postponed for cause beyond
26 the 45-day time limit on the written request of the parolee, the
27 parolee's attorney, or, if a postponement of the preliminary parole

1 violation hearing required under section 39a has been granted
2 beyond the 10-day time limit, by the **SPECIAL** parole board.

3 (7) The director or a deputy director designated by the
4 director shall be notified in writing if the preliminary parole
5 violation hearing is not conducted within the 10-day time limit,
6 and the hearing shall be conducted as soon as possible. The
7 director or a deputy director designated by the director shall be
8 notified in writing if the fact-finding hearing is not conducted
9 within the 45-day time limit, and the hearing shall be conducted as
10 soon as possible. A parolee held in custody shall not be released
11 pending disposition of either hearing.

12 (8) If the evidence presented is insufficient to support the
13 allegation that a parole violation occurred, the parolee shall be
14 reinstated to parole status.

15 (9) If the **SPECIAL** parole board member or hearings officer
16 conducting the fact-finding hearing determines from a preponderance
17 of the evidence that a parole violation has occurred, the **SPECIAL**
18 parole board member or hearings officer shall present the relevant
19 facts to the **SPECIAL** parole board and make a recommendation as to
20 the disposition of the charges.

21 (10) If a preponderance of the evidence supports the
22 allegation that a parole violation occurred, the **SPECIAL** parole
23 board may revoke parole, and the parolee shall be provided with a
24 written statement of the findings of fact and the reasons for the
25 determination within ~~60~~ 30 days after the paroled prisoner has been
26 returned or is available for return to a state correctional
27 facility.

1 (11) A parolee who is ordered to make restitution under the
2 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
3 780.751 to 780.834, or the code of criminal procedure, 1927 PA 175,
4 MCL 760.1 to 777.69, or to pay an assessment ordered under section
5 5 of 1989 PA 196, MCL 780.905, as a condition of parole may have
6 his or her parole revoked by the **SPECIAL** parole board if the
7 parolee fails to comply with the order and if the parolee has not
8 made a good faith effort to comply with the order. In determining
9 whether to revoke parole, the **SPECIAL** parole board shall consider
10 the parolee's employment status, earning ability, and financial
11 resources, the willfulness of the parolee's failure to comply with
12 the order, and any other special circumstances that may have a
13 bearing on the parolee's ability to comply with the order.

14 (12) As used in this section, "violent felony" means that term
15 as defined in section 36.

16 Sec. 41. (1) When the **SPECIAL** parole board has determined ~~the~~
17 **A matter UNDER SECTION 40A**, it shall enter an order rescinding ~~such~~
18 parole ~~—~~or reinstating the original order of parole or **SHALL** enter
19 ~~such~~ **ANY** other order ~~as it may see fit~~ **IT CONSIDERS APPROPRIATE.**

20 (2) **THE RESCISSION PERIOD RESULTING FROM THE FIRST**
21 **DETERMINATION OF A PRISONER'S VIOLATION OF A CONDITION OF PAROLE**
22 **SHALL NOT EXCEED 270 DAYS. THE RESCISSION PERIOD RESULTING FROM THE**
23 **SECOND DETERMINATION OF A PRISONER'S VIOLATION OF A CONDITION OF**
24 **PAROLE, OR THAT RESULTS FROM AN EVENT OTHER THAN A VIOLATION OF A**
25 **CONDITION OF PAROLE, SHALL NOT EXTEND BEYOND A DATE THAT IS 270**
26 **DAYS BEFORE THE EXPIRATION OF THE PRISONER'S MAXIMUM SENTENCE.**

27 Sec. 43. All applications for pardons, reprieves, and

1 commutations shall be filed with the **SPECIAL** parole board upon
2 forms provided ~~therefor~~ **FOR THAT PURPOSE** by the **SPECIAL** parole
3 board ~~—~~ and shall contain ~~such~~ information, records, and documents
4 ~~as~~ **THAT** the **SPECIAL** parole board ~~may~~ **REQUIRES** by rule. ~~require.~~

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

16 (2) Upon its own initiation of, or upon receipt of any
17 application for, a reprieve, commutation, or pardon, the **SPECIAL**
18 parole board shall do all of the following, as applicable:

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

22 (b) Deliver either the written documentation of the initiation
23 or the original application with the **SPECIAL** parole board's
24 determination regarding merit, to the governor and retain a copy of
25 each in its file, pending an investigation and hearing.

26 (c) Within 10 days after initiation, or after determining that
27 an application has merit, forward to the sentencing judge and to

1 the prosecuting attorney of the county having original jurisdiction
2 of the case, or their successors in office, a written notice of the
3 filing of the application or initiation, together with copies of
4 the application or initiation, any supporting affidavits, and a
5 brief summary of the case. Within 30 days after receipt of notice
6 of the filing of any application or initiation, the sentencing
7 judge and the prosecuting attorney, or their successors in office,
8 may file information at their disposal, together with any
9 objections, in writing, ~~which~~**THAT** they may desire to interpose. If
10 the sentencing judge and the prosecuting attorney, or their
11 successors in office, do not respond within 30 days, the parole
12 board shall proceed on the application or initiation.

13 (d) If an application or initiation for commutation is based
14 on physical or mental incapacity, direct the bureau of health care
15 services to evaluate the condition of the prisoner and report on
16 that condition. If the bureau of health care services determines
17 that the prisoner is physically or mentally incapacitated, the
18 bureau shall appoint a specialist in the appropriate field of
19 medicine ~~—~~who is not employed by the department ~~—~~to evaluate the
20 condition of the prisoner and to report on that condition. These
21 reports are protected by the doctor-patient privilege of
22 confidentiality, except that these reports shall be provided to the
23 governor for his or her review.

24 (e) Within 270 days after initiation by the **SPECIAL** parole
25 board or receipt of an application that the **SPECIAL** parole board
26 has determined to have merit pursuant to subdivision (a), make a
27 full investigation and determination on whether or not to proceed

1 to a public hearing.

2 (f) Conduct a public hearing not later than 90 days after
3 making a decision to proceed with consideration of a recommendation
4 for the granting of a reprieve, commutation, or pardon. The public
5 hearing shall be held before a formal recommendation is transmitted
6 to the governor. One member of the **SPECIAL** parole board who will be
7 involved in the formal recommendation may conduct the hearing, and
8 the public shall be represented by the attorney general or a member
9 of the attorney general's staff.

10 (g) At least 30 days before conducting the public hearing,
11 provide written notice of the public hearing by mail to the
12 attorney general, the sentencing trial judge, and the prosecuting
13 attorney, or their successors in office, and each victim who
14 requests notice pursuant to the **WILLIAM VAN REGENMORTER** crime
15 victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

16 (h) Conduct the public hearing pursuant to the rules
17 promulgated by the department. Except as otherwise provided in this
18 subdivision, any person having information in connection with the
19 pardon, commutation, or reprieve shall be sworn as a witness. A
20 person who is a victim shall be given an opportunity to address and
21 be questioned by the **SPECIAL** parole board at the hearing or to
22 submit written testimony for the hearing. In hearing testimony, the
23 **SPECIAL** parole board shall give liberal construction to any
24 technical rules of evidence.

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

26 (j) Make all data in its files available to the governor if
27 the **SPECIAL** parole board recommends the granting of a reprieve,

1 commutation, or pardon.

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

5 Sec. 45. In the conduct of any hearing or investigation as
6 ~~herein provided~~ **IN THIS ACT**, any member of the **SPECIAL** parole board
7 may administer the oath to any witness.

8 Sec. 46. All decisions and recommendations of the parole board
9 **OR THE SPECIAL PAROLE BOARD** required by this act shall be by a
10 majority vote of the parole board **OR SPECIAL PAROLE BOARD** or a
11 parole board panel **OR SPECIAL PAROLE BOARD PANEL** created pursuant
12 to section 6(2).

13 Enacting section 1. This amendatory act does not take effect
14 unless Senate Bill No.____ or House Bill No. 4710(request no.
15 02240'09 *) of the 95th Legislature is enacted into law.