

SUBSTITUTE FOR
SENATE BILL NO. 12

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 44 (MCL 791.244), as amended by 1999 PA 191,
and by adding section 44a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (2) ~~Upon~~ **EXCEPT IN CASES IN WHICH A COMMUTATION IS REQUESTED**
2 **BASED IN PART ON A PRISONER'S MEDICAL CONDITION AND IN WHICH THE**
3 **GOVERNOR HAS REQUESTED THAT THE PAROLE BOARD EXPEDITE ITS REVIEW**
4 **AND HEARING PROCESS UNDER SECTION 44A, UPON** its own initiation of,
5 or upon receipt of ~~any~~ **AN** application for, a reprieve, commutation,
6 or pardon, the parole board shall do all of the following, as
7 applicable:

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

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

15 (c) Within 10 days after initiation, or after determining that
16 an application has merit, forward to the sentencing judge and to
17 the prosecuting attorney of the county having original jurisdiction
18 of the case, or their successors in office, a written notice of the
19 filing of the application or initiation, together with copies of
20 the application or initiation, any supporting affidavits, and a
21 brief summary of the case. ~~Within~~ **NOT MORE THAN** 30 days after
22 receipt of notice of the filing of any application or initiation,
23 the sentencing judge and the prosecuting attorney, or their
24 successors in office, may file information at their disposal,
25 together with any objections, in writing. ~~, which they may desire~~
26 ~~to interpose.~~ If the sentencing judge and the prosecuting attorney,
27 or their successors in office, do not respond ~~within~~ **AFTER NOT MORE**

1 **THAN** 30 days, the parole board shall proceed on the application or
2 initiation.

3 (d) If an application or initiation for commutation is based
4 on physical or mental incapacity, direct the bureau of health care
5 services to evaluate the condition of the prisoner and report on
6 that condition. If the bureau of health care services determines
7 that the prisoner is physically or mentally incapacitated, the
8 bureau shall appoint a specialist in the appropriate field of
9 medicine ~~—~~who is not employed by the department ~~—~~to evaluate the
10 condition of the prisoner and to report on that condition. These
11 reports are protected by the doctor-patient privilege of
12 confidentiality, except that these reports shall be provided to the
13 governor for his or her review.

14 (e) Within 270 days after initiation by the parole board or
15 receipt of an application that the parole board has determined to
16 have merit ~~pursuant to~~ **UNDER** subdivision (a), make a full
17 investigation and determination on whether or not to proceed to a
18 public hearing.

19 (f) Conduct a public hearing not later than 90 days after
20 making a decision to proceed with consideration of a recommendation
21 for the granting of a reprieve, commutation, or pardon. The public
22 hearing ~~shall~~ **MUST** be held before a formal recommendation is
23 transmitted to the governor. One member of the parole board who
24 will be involved in the formal recommendation may conduct the
25 hearing, and the public ~~shall~~ **MUST** be represented by the attorney
26 general or a member of the attorney general's staff.

27 (g) ~~At least~~ **NOT FEWER THAN** 30 days before conducting the

1 public hearing, provide written notice of the public hearing by
2 mail to the attorney general, the sentencing trial judge, and the
3 prosecuting attorney, or their successors in office, and each
4 victim who requests notice ~~pursuant to~~ **UNDER** the **WILLIAM VAN**
5 **REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751 to
6 780.834.

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

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

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

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

23 **SEC. 44A. (1) UPON A REQUEST FROM THE GOVERNOR UNDER THIS**
24 **SECTION TO EXPEDITE THE REVIEW AND HEARING PROCESS FOR A REPRIEVE,**
25 **COMMUTATION, OR PARDON BASED IN PART ON A PRISONER'S MEDICAL**
26 **CONDITION, THE PAROLE BOARD SHALL DO ALL OF THE FOLLOWING, AS**
27 **APPLICABLE:**

1 (A) NOT MORE THAN 10 DAYS AFTER RECEIPT OF AN APPLICATION,
2 CONDUCT A REVIEW TO DETERMINE WHETHER THE APPLICATION FOR A
3 REPRIEVE, COMMUTATION, OR PARDON HAS MERIT.

4 (B) DELIVER EITHER THE WRITTEN DOCUMENTATION OF THE INITIATION
5 OR THE ORIGINAL APPLICATION WITH THE PAROLE BOARD'S DETERMINATION
6 REGARDING MERIT TO THE GOVERNOR AND RETAIN A COPY OF EACH IN ITS
7 FILE, PENDING AN INVESTIGATION AND HEARING.

8 (C) WITHIN 5 DAYS AFTER INITIATION, OR AFTER DETERMINING THAT
9 AN APPLICATION HAS MERIT, FORWARD TO THE SENTENCING JUDGE AND TO
10 THE PROSECUTING ATTORNEY OF THE COUNTY HAVING ORIGINAL JURISDICTION
11 OF THE CASE, OR THEIR SUCCESSORS IN OFFICE, A WRITTEN NOTICE OF THE
12 FILING OF THE APPLICATION OR INITIATION, TOGETHER WITH COPIES OF
13 THE APPLICATION OR INITIATION, ANY SUPPORTING AFFIDAVITS, AND A
14 BRIEF SUMMARY OF THE CASE. NOT MORE THAN 30 DAYS AFTER RECEIPT OF
15 NOTICE OF THE FILING OF ANY APPLICATION OR INITIATION, THE
16 SENTENCING JUDGE AND THE PROSECUTING ATTORNEY, OR THEIR SUCCESSORS
17 IN OFFICE, MAY FILE INFORMATION AT THEIR DISPOSAL, TOGETHER WITH
18 ANY OBJECTIONS, IN WRITING. IF THE SENTENCING JUDGE AND THE
19 PROSECUTING ATTORNEY, OR THEIR SUCCESSORS IN OFFICE, DO NOT RESPOND
20 AFTER NOT MORE THAN 30 DAYS, THE PAROLE BOARD SHALL PROCEED ON THE
21 APPLICATION OR INITIATION.

22 (D) DIRECT THE BUREAU OF HEALTH CARE SERVICES TO EVALUATE THE
23 PHYSICAL AND MENTAL CONDITION OF THE PRISONER AND REPORT ON THAT
24 CONDITION. IF THE BUREAU OF HEALTH CARE SERVICES DETERMINES THAT
25 THE PRISONER IS PHYSICALLY OR MENTALLY INCAPACITATED, THE BUREAU
26 SHALL APPOINT A SPECIALIST IN THE APPROPRIATE FIELD OF MEDICINE WHO
27 IS NOT EMPLOYED BY THE DEPARTMENT TO EVALUATE THE CONDITION OF THE

1 PRISONER AND TO REPORT ON THAT CONDITION. THESE REPORTS ARE
2 PROTECTED BY THE DOCTOR-PATIENT PRIVILEGE OF CONFIDENTIALITY,
3 EXCEPT THAT THEY SHALL BE PROVIDED TO THE GOVERNOR FOR HIS OR HER
4 REVIEW.

5 (E) NOT MORE THAN 90 DAYS AFTER INITIATION BY THE PAROLE BOARD
6 OR RECEIPT OF AN APPLICATION THAT THE PAROLE BOARD HAS DETERMINED
7 TO HAVE MERIT UNDER SUBDIVISION (A), MAKE A FULL INVESTIGATION AND
8 DETERMINATION ON WHETHER OR NOT TO PROCEED TO A PUBLIC HEARING.

9 (F) CONDUCT A PUBLIC HEARING NOT LATER THAN 90 DAYS AFTER
10 MAKING A DECISION TO PROCEED WITH CONSIDERATION OF A RECOMMENDATION
11 FOR THE GRANTING OF A REPRIEVE, COMMUTATION, OR PARDON. THE PUBLIC
12 HEARING SHALL BE HELD BEFORE A FORMAL RECOMMENDATION IS TRANSMITTED
13 TO THE GOVERNOR. ONE MEMBER OF THE PAROLE BOARD WHO WILL BE
14 INVOLVED IN THE FORMAL RECOMMENDATION MAY CONDUCT THE HEARING, AND
15 THE PUBLIC MUST BE REPRESENTED BY THE ATTORNEY GENERAL OR A MEMBER
16 OF THE ATTORNEY GENERAL'S STAFF.

17 (G) NOT FEWER THAN 30 DAYS BEFORE CONDUCTING THE PUBLIC
18 HEARING, PROVIDE WRITTEN NOTICE OF THE PUBLIC HEARING BY MAIL TO
19 THE ATTORNEY GENERAL, THE SENTENCING JUDGE, AND THE PROSECUTING
20 ATTORNEY, OR THEIR SUCCESSORS IN OFFICE, AND EACH VICTIM WHO
21 REQUESTS NOTICE UNDER THE WILLIAM VAN REGENMORTER CRIME VICTIM'S
22 RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834.

23 (H) CONDUCT THE PUBLIC HEARING UNDER THE RULES PROMULGATED BY
24 THE DEPARTMENT. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,
25 ANY PERSON HAVING INFORMATION IN CONNECTION WITH THE PARDON,
26 COMMUTATION, OR REPRIEVE MUST BE SWORN AS A WITNESS. A PERSON WHO
27 IS A VICTIM MUST BE GIVEN AN OPPORTUNITY TO ADDRESS AND BE

1 QUESTIONED BY THE PAROLE BOARD AT THE HEARING OR TO SUBMIT WRITTEN
2 TESTIMONY FOR THE HEARING. IN HEARING TESTIMONY, THE PAROLE BOARD
3 SHALL GIVE LIBERAL CONSTRUCTION TO ANY RULES OF EVIDENCE.

4 (I) TRANSMIT ITS FORMAL RECOMMENDATION TO THE GOVERNOR.

5 (J) MAKE ALL DATA IN ITS FILES AVAILABLE TO THE GOVERNOR IF
6 THE PAROLE BOARD RECOMMENDS THE GRANTING OF A REPRIEVE,
7 COMMUTATION, OR PARDON.

8 (2) EXCEPT FOR MEDICAL RECORDS PROTECTED BY THE DOCTOR-PATIENT
9 PRIVILEGE OF CONFIDENTIALITY, THE FILES OF THE PAROLE BOARD IN
10 CASES UNDER THIS SECTION ARE MATTERS OF PUBLIC RECORD.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.