

SENATE BILL No. 941

May 3, 2016, Introduced by Senators JONES, HORN, GREGORY, SHIRKEY, COLBECK, PROOS, EMMONS, WARREN, BRANDENBURG, KNOLLENBERG, GREEN, BOOHER, NOFS and SCHMIDT and referred to the Committee on Michigan Competitiveness.

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

1 section ~~is applicable, OR SECTION 44A APPLIES~~, regardless of when
2 they were sentenced.

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

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

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

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

1 ~~to interpose.~~ If the sentencing judge and the prosecuting attorney,
2 or their successors in office, do not respond ~~within~~ **AFTER NOT**
3 **FEWER THAN** 30 days, the parole board shall proceed on the
4 application or initiation.

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

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

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

1 of the attorney general's staff.

2 (g) ~~At least~~ **NOT FEWER THAN** 30 days before conducting the
3 public hearing, provide written notice of the public hearing by
4 mail to the attorney general, the sentencing trial judge, and the
5 prosecuting attorney, or their successors in office, and each
6 victim who requests notice ~~pursuant to~~ **UNDER** the **WILLIAM VAN**
7 **REGENMORTER** crime victim's rights act, 1985 PA 87, MCL 780.751 to
8 780.834.

9 (h) Conduct the public hearing ~~pursuant to~~ **UNDER** the rules
10 promulgated by the department. Except as otherwise provided in this
11 subdivision, ~~any~~ **A** 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) Except for medical records protected by the doctor-patient
23 privilege of confidentiality, the files of the parole board in
24 cases under this section ~~shall be~~ **ARE** matters of public record.

25 **SEC. 44A. (1) UPON A REQUEST FROM THE GOVERNOR UNDER THIS**
26 **SECTION TO EXPEDITE THE REVIEW AND HEARING PROCESS FOR A REPRIEVE,**
27 **COMMUTATION, OR PARDON BASED IN PART ON A PRISONER'S MEDICAL**

1 CONDITION, THE PAROLE BOARD SHALL DO ALL OF THE FOLLOWING, AS
2 APPLICABLE:

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

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

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

24 (D) DIRECT THE BUREAU OF HEALTH CARE SERVICES TO EVALUATE THE
25 PHYSICAL AND MENTAL CONDITION OF THE PRISONER AND REPORT ON THAT
26 CONDITION. IF THE BUREAU OF HEALTH CARE SERVICES DETERMINES THAT
27 THE PRISONER IS PHYSICALLY OR MENTALLY INCAPACITATED, THE BUREAU

1 SHALL APPOINT A SPECIALIST IN THE APPROPRIATE FIELD OF MEDICINE WHO
2 IS NOT EMPLOYED BY THE DEPARTMENT TO EVALUATE THE CONDITION OF THE
3 PRISONER AND TO REPORT ON THAT CONDITION. THESE REPORTS ARE
4 PROTECTED BY THE DOCTOR-PATIENT PRIVILEGE OF CONFIDENTIALITY,
5 EXCEPT THAT THEY SHALL BE PROVIDED TO THE GOVERNOR FOR HIS OR HER
6 REVIEW.

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

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

21 (G) CONDUCT THE PUBLIC HEARING UNDER THE RULES PROMULGATED BY
22 THE DEPARTMENT. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBDIVISION,
23 ANY PERSON HAVING INFORMATION IN CONNECTION WITH THE PARDON,
24 COMMUTATION, OR REPRIEVE SHALL BE SWORN AS A WITNESS. A PERSON WHO
25 IS A VICTIM SHALL BE GIVEN AN OPPORTUNITY TO ADDRESS AND BE
26 QUESTIONED BY THE PAROLE BOARD AT THE HEARING OR TO SUBMIT WRITTEN
27 TESTIMONY FOR THE HEARING. IN HEARING TESTIMONY, THE PAROLE BOARD

1 SHALL GIVE LIBERAL CONSTRUCTION TO ANY RULES OF EVIDENCE.

2 (H) TRANSMIT ITS FORMAL RECOMMENDATION TO THE GOVERNOR.

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

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

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