

# HOUSE BILL No. 5243

November 9, 2017, Introduced by Reps. Kesto, Rendon, Whiteford, Wentworth, Vaupel and Kosowski and referred to the Committee on Law and Justice.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending section 35 (MCL 791.235), as amended by 2012 PA 24.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 35. (1) The release of a prisoner on parole ~~shall~~**MUST** 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 January 26, 1996,~~ the parole board may grant a  
5 parole without interviewing the prisoner only if, after evaluating  
6 the prisoner according to the parole guidelines, the parole board  
7 determines that the prisoner has a high probability of being  
8 paroled and the parole board therefore intends to parole the  
9 prisoner. Except as provided in subsection (2), a prisoner ~~shall~~  
10 **MUST** not be denied parole without an interview before 1 member of  
11 the parole board. The interview ~~shall~~**MUST** be conducted at least 1

1 month before the expiration of the prisoner's minimum sentence less  
2 applicable good time and disciplinary credits for a prisoner  
3 eligible for good time and disciplinary credits, or at least 1  
4 month before the expiration of the prisoner's minimum sentence for  
5 a prisoner subject to disciplinary time. The parole board shall  
6 consider any statement made to the parole board by a crime victim  
7 under the William Van Regenmorter crime victim's rights act, 1985  
8 PA 87, MCL 780.751 to 780.834, or under any other provision of law.  
9 The parole board shall not consider any of the following factors in  
10 making a parole determination:

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

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

19 (2) ~~Beginning January 26, 1996, if, IF,~~ after evaluating a  
20 prisoner according to the parole guidelines, the parole board  
21 determines that the prisoner has a low probability of being paroled  
22 and the parole board therefore does not intend to parole the  
23 prisoner, the parole board is not required to interview the  
24 prisoner before denying parole to the prisoner.

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

27 (a) A prisoner's marital history.

1 (b) Prior arrests not resulting in conviction or adjudication  
2 of delinquency.

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

13 (5) Except for good cause, the parole board member conducting  
14 the interview shall not have cast a vote for or against the  
15 prisoner's release before conducting the current interview. Before  
16 the interview, the parole board member who is to conduct the  
17 interview shall review pertinent information relative to the notice  
18 of intent to conduct an interview.

19 (6) A prisoner may waive the right to an interview by 1 member  
20 of the parole board. The waiver of the right to be interviewed  
21 ~~shall~~**MUST** be given not more than 30 days after the notice of  
22 intent to conduct an interview is issued and ~~shall~~**MUST** be made in  
23 writing. During the interview held pursuant to a notice of intent  
24 to conduct an interview, the prisoner may be represented by an  
25 individual of his or her choice. The representative ~~shall~~**MUST** not  
26 be another prisoner or an attorney. A prisoner is not entitled to  
27 appointed counsel at public expense. The prisoner or representative

1 may present relevant evidence in support of release.

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

12 (a) A statement of all major misconduct charges of which the  
13 prisoner was found guilty and the punishment served for the  
14 misconduct.

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

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

18 (d) Whether the prisoner fully cooperated with the state by  
19 providing complete financial information as required under section  
20 3a of the state correctional facility reimbursement act, 1935 PA  
21 253, MCL 800.403a.

22 (e) Whether the prisoner refused to attempt to obtain  
23 identification documents under section 34c, if applicable.

24 (f) For a prisoner subject to disciplinary time, a statement  
25 of all disciplinary time submitted for the parole board's  
26 consideration under section 34 of 1893 PA 118, MCL 800.34.

27 (8) The preparer of the report shall not include a

1 recommendation as to release on parole.

2 (9) Psychological evaluations performed at the request of the  
3 parole board to assist it in reaching a decision on the release of  
4 a prisoner **MUST BE PERFORMED BY A CLINICIAN FROM A FACILITY**  
5 **OFFICIALLY CERTIFIED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
6 **AS DESCRIBED UNDER SECTION 1026(1) OF THE MENTAL HEALTH CODE, 1974**  
7 **PA 258, MCL 330.2026, AND** may be performed by the same ~~person~~  
8 **CLINICIAN** who provided the prisoner with therapeutic treatment,  
9 unless a different ~~person~~-**CLINICIAN** is requested by the prisoner or  
10 parole board. **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE**  
11 **CLINICIAN MUST COMPLETE THE EXAMINATION FOR THE PSYCHOLOGICAL**  
12 **EVALUATION WITHIN 45 DAYS AFTER THE PSYCHOLOGICAL EVALUATION IS**  
13 **REQUESTED BY THE PAROLE BOARD. THE CLINICIAN MAY APPLY WITH THE**  
14 **PAROLE BOARD FOR AN EXTENSION OF TIME TO COMPLETE THE EXAMINATION**  
15 **FOR GOOD CAUSE THAT THE ADDITIONAL TIME IS NECESSARY FOR THE**  
16 **CLINICIAN TO OBSERVE AND EVALUATE THE PRISONER. THE PAROLE BOARD**  
17 **SHALL GRANT AN EXTENSION OF NOT MORE THAN 15 DAYS FOR COMPLETION OF**  
18 **THE EXAMINATION. IF THE EXAMINATION FOR THE PSYCHOLOGICAL**  
19 **EVALUATION IS NOT COMPLETED IN THE TIME LIMITATIONS UNDER THIS**  
20 **SUBSECTION, THE PAROLE BOARD MAY TAKE IMMEDIATE STEPS TO OBTAIN THE**  
21 **EXAMINATION, INCLUDING, BUT NOT LIMITED TO, REQUESTING A CLINICIAN**  
22 **FROM ANOTHER FACILITY OFFICIALLY CERTIFIED AS DESCRIBED UNDER**  
23 **SECTION 1026(1) OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL**  
24 **330.2026, TO CONDUCT THE EXAMINATION. EXCEPT AS OTHERWISE PROVIDED**  
25 **IN THIS SUBSECTION, THE CLINICIAN WHO CONDUCTED THE EXAMINATION**  
26 **UNDER THIS SUBSECTION SHALL SUBMIT A REPORT OF THE PSYCHOLOGICAL**  
27 **EVALUATION TO THE PAROLE BOARD WITHIN 60 DAYS AFTER THE**

1 PSYCHOLOGICAL EVALUATION IS REQUESTED BY THE PAROLE BOARD. THE  
2 REPORT MUST CONTAIN THE CLINICAL FINDINGS AND THE FACTS, IN  
3 REASONABLE DETAIL, UPON WHICH THE CLINICAL FINDINGS ARE BASED. THE  
4 CLINICIAN MAY APPLY WITH THE PAROLE BOARD FOR AN EXTENSION OF TIME  
5 TO SUBMIT THE REPORT FOR GOOD CAUSE THAT THE ADDITIONAL TIME IS  
6 NECESSARY TO COMPLETE THE REPORT. THE PAROLE BOARD SHALL GRANT AN  
7 EXTENSION OF NOT MORE THAN 15 DAYS FOR COMPLETION OF THE REPORT.

8 (10) The parole board may grant a medical parole for a  
9 prisoner determined to be physically or mentally incapacitated. A  
10 decision to grant a medical parole ~~shall~~**MUST** be initiated upon the  
11 recommendation of the bureau of health care services and ~~shall~~**MUST**  
12 be reached only after a review of the medical, institutional, and  
13 criminal records of the prisoner.

14 (11) The department shall submit a petition to the appropriate  
15 court under section 434 of the mental health code, 1974 PA 258, MCL  
16 330.1434, for any prisoner being paroled or being released after  
17 serving his or her maximum sentence whom the department considers  
18 to be a person requiring treatment. The parole board shall require  
19 mental health treatment as a special condition of parole for any  
20 parolee whom the department has determined to be a person requiring  
21 treatment whether or not the petition filed for that prisoner is  
22 granted by the court. As used in this subsection, "person requiring  
23 treatment" means that term as defined in section 401 of the mental  
24 health code, 1974 PA 258, MCL 330.1401.

25 (12) When the parole board makes a final determination not to  
26 release a prisoner, the prisoner ~~shall~~**MUST** be provided with a  
27 written explanation of the reason for denial and, if appropriate,

1 specific recommendations for corrective action the prisoner may  
2 take to facilitate release.

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

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