

SENATE BILL No. 12

January 18, 2017, Introduced by Senators JONES, O'BRIEN, PROOS, COLBECK, KNOLLENBERG, BOOHER, HORN, SCHUITMAKER, BRANDENBURG, HANSEN, KOWALL, GREGORY, JOHNSON and WARREN 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
10 section ~~is applicable,~~ **OR SECTION 44A APPLIES**, regardless of when

1 they were sentenced.

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

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

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

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

1 or their successors in office, do not respond ~~within~~ **AFTER NOT**
2 **FEWER THAN** 30 days, the parole board shall proceed on the
3 application or initiation.

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

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

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

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

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

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

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

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

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

1 APPLICABLE:

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

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

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

23 (D) DIRECT THE BUREAU OF HEALTH CARE SERVICES TO EVALUATE THE
24 PHYSICAL AND MENTAL CONDITION OF THE PRISONER AND REPORT ON THAT
25 CONDITION. IF THE BUREAU OF HEALTH CARE SERVICES DETERMINES THAT
26 THE PRISONER IS PHYSICALLY OR MENTALLY INCAPACITATED, THE BUREAU
27 SHALL APPOINT A SPECIALIST IN THE APPROPRIATE FIELD OF MEDICINE WHO

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

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

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

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

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

1 IS A VICTIM MUST BE GIVEN AN OPPORTUNITY TO ADDRESS AND BE
2 QUESTIONED BY THE PAROLE BOARD AT THE HEARING OR TO SUBMIT WRITTEN
3 TESTIMONY FOR THE HEARING. IN HEARING TESTIMONY, THE PAROLE BOARD
4 SHALL GIVE LIBERAL CONSTRUCTION TO ANY RULES OF EVIDENCE.

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

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

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

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