

HOUSE BILL No. 4138

February 4, 2015, Introduced by Reps. Heise, Kelly, Santana, Chang, Webber and Pagel and referred to the Committee on Criminal Justice.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 11a, 20g, 33, 33e, 35, 39a, and 40a (MCL 791.211a, 791.220g, 791.233, 791.233e, 791.235, 791.239a, and 791.240a), section 11a as amended by 1998 PA 204, section 20g as amended by 2000 PA 211, section 33 as amended by 1998 PA 320, section 33e as added by 1992 PA 181, section 35 as amended by 2012 PA 24, section 39a as added by 1982 PA 314, and section 40a as amended by 2006 PA 532.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11a. (1) The director of corrections may enter into
2 contracts on behalf of this state as the director considers
3 appropriate to implement the participation of this state in the
4 interstate corrections compact ~~pursuant to~~ **ENTERED INTO UNDER 1994**
5 **PA 92, MCL 3.981 TO 3.984, UNDER** article III of **SECTION 3 OF** the

1 interstate corrections compact, 1994 PA 92, MCL 3.983. The
2 contracts may authorize confinement of prisoners in, or transfer of
3 prisoners from, correctional facilities under the jurisdiction of
4 the department of corrections. A contract shall not authorize the
5 confinement of a prisoner who is in the custody of the department
6 in an institution of a state other than a state that is a party to
7 the interstate corrections compact. When transferring prisoners to
8 institutions of other states under this section, the director shall
9 endeavor to ensure that the transfers do not disproportionately
10 affect groups of prisoners according to race, religion, color,
11 creed, or national origin.

12 (2) The director of corrections shall first determine, on the
13 basis of an inspection made by his or her direction, that an
14 institution of another state is a suitable place for confinement of
15 prisoners committed to his or her custody before entering into a
16 contract permitting that confinement, and shall, at least annually,
17 redetermine the suitability of that confinement. In determining the
18 suitability of an institution of another state, the director shall
19 determine that the institution maintains standards of care and
20 discipline not incompatible with those of this state and that all
21 inmates confined in that institution are treated equitably,
22 regardless of race, religion, color, creed, or national origin.

23 (3) In considering transfers of prisoners out-of-state
24 ~~pursuant to UNDER~~ the interstate corrections compact ~~due to ENTERED~~
25 **INTO UNDER 1994 PA 92, MCL 3.981 TO 3.984, BECAUSE OF** bed space
26 needs, the department shall do all of the following:

27 (a) Consider first prisoners who volunteer to transfer ~~as long~~

1 ~~as~~**IF** they meet the eligibility criteria for ~~such~~**THE** transfer.

2 (b) Provide law library materials including Michigan Compiled
3 Laws, Michigan state and federal cases, and U.S. sixth circuit
4 court **OF APPEALS** cases.

5 (c) Not transfer a prisoner who has a significant medical or
6 mental health need.

7 (d) Use objective criteria in determining which prisoners to
8 transfer.

9 (4) Unless a prisoner consents in writing, a prisoner
10 transferred under the interstate corrections compact ~~due to~~**BECAUSE**
11 **OF** bed space needs shall not be confined in another state for more
12 than 1 year.

13 (5) A prisoner who is transferred to an institution of another
14 state under this section shall receive all of the following while
15 in the receiving state:

16 (a) Mail services and access to the court.

17 (b) Visiting and telephone privileges.

18 (c) Occupational and vocational programs such as GED-ABE and
19 appropriate vocational programs for his or her level of custody.

20 (d) Programs such as substance ~~abuse~~**USE** programs, sex
21 offender programs, and life skills development.

22 **(E) HIGH SCHOOL EQUIVALENCY TRAINING AND CERTIFICATION.**

23 **(F)** ~~(e)~~Routine and emergency health care, dental care, and
24 mental health services.

25 (6) ~~One year after April 13, 1994 and annually after that~~
26 ~~date,~~**BY APRIL 13 OF EACH YEAR**, the department shall report all of
27 the following to the senate and house committees responsible for

1 legislation concerning corrections and to the appropriations
2 subcommittees on corrections:

3 (a) The number of prisoners transferred to or from
4 correctional facilities in this state ~~pursuant to~~ **UNDER** the
5 interstate corrections compact **ENTERED INTO UNDER 1994 PA 92, MCL**
6 **3.981 TO 3.984.**

7 (b) The cost to the state of the transfers described in
8 subdivision (a).

9 (c) The reasons for the transfers described in subdivision
10 (a).

11 Sec. 20g. (1) The department may establish a youth
12 correctional facility ~~which~~ **THAT** shall house only prisoners
13 committed to the jurisdiction of the department who are 19 years of
14 age or less. If the department establishes or contracts with a
15 private vendor for the operation of a youth correctional facility,
16 following intake processing in a department operated facility, the
17 department shall house all male prisoners who are 16 years of age
18 or less at the youth correctional facility unless the department
19 determines that the prisoner should be housed at a different
20 facility for reasons of security, safety, or because of the
21 prisoner's specialized physical or mental health care needs.

22 (2) Except as provided in subsection (3), a prisoner who is 16
23 years of age or less and housed at a youth correctional facility
24 shall only be placed in a general population housing unit with
25 prisoners who are 16 years of age or less.

26 (3) A prisoner who becomes 17 years of age while being housed
27 at a youth correctional facility and who has a satisfactory prison

1 record may remain in a general population housing unit for no more
2 than 1 year with prisoners who are 16 years of age or less.

3 (4) Except as provided in subsection (3), a prisoner who is 16
4 years of age or less and housed at a youth correctional facility
5 shall not ~~be allowed to be~~ in the proximity of a prisoner who is 17
6 years of age or more without the presence and direct supervision of
7 custody personnel in the immediate vicinity.

8 (5) The department may establish and operate the youth
9 correctional facility or may contract on behalf of the state with a
10 private vendor for the construction or operation, or both, of the
11 youth correctional facility. If the department contracts with a
12 private vendor to construct, rehabilitate, develop, renovate, or
13 operate any existing or anticipated facility ~~pursuant to~~ **UNDER** this
14 section, the department shall require a written certification from
15 the private vendor regarding all of the following:

16 (a) If practicable to efficiently and effectively complete the
17 project, the private vendor shall follow a competitive bid process
18 for the construction, rehabilitation, development, or renovation of
19 the facility, and this process shall be open to all Michigan
20 residents and firms. The private vendor shall not discriminate
21 against any contractor on the basis of its affiliation or
22 nonaffiliation with any collective bargaining organization.

23 (b) The private vendor shall make a good faith effort to
24 employ, if qualified, Michigan residents at the facility.

25 (c) The private vendor shall make a good faith effort to
26 employ or contract with Michigan residents and firms to construct,
27 rehabilitate, develop, or renovate the facility.

(6) If the department contracts with a private vendor for the operation of the youth correctional facility, the department shall require by contract that the personnel employed by the private vendor in the operation of the facility be certified as correctional officers to the same extent as would be required if those personnel were employed in a correctional facility operated by the department. The department also shall require by contract that the private vendor meet requirements specified by the department regarding security, protection of the public, inspections by the department, programming, liability and insurance, conditions of confinement, educational services required under subsection (11), and any other issues the department considers necessary for the operation of the youth correctional facility. The department shall also require that the contract include provisions to protect the public's interest if the private vendor defaults on the contract. Before finalizing a contract with a private vendor for the construction or operation of the youth correctional facility, the department shall submit the proposed contract to the standing committees of the senate and the house of representatives having jurisdiction of corrections issues, the corrections subcommittees of the standing committees on appropriations of the senate and the house of representatives, and, with regard to proposed construction contracts, the joint committee on capital outlay. A contract between the department and a private vendor for the construction or operation of the youth correctional facility ~~shall be~~ **IS** contingent upon appropriation of the required funding. If the department contracts with a private vendor under

1 this section, the selection of that private vendor shall be by
2 open, competitive bid.

3 (7) The department shall not site a youth correctional
4 facility under this section in a city, village, or township unless
5 the local legislative body of that city, village, or township
6 adopts a resolution approving the location.

7 (8) A private vendor operating a youth correctional facility
8 under a contract under this section shall not do any of the
9 following, unless directed to do so by the department policy:

10 (a) Calculate inmate release and parole eligibility dates.

11 (b) Award good time or disciplinary credits, or impose
12 disciplinary time.

13 (c) Approve inmates for extensions of limits of confinement.

14 (9) The youth correctional facility shall be open to visits
15 during all business hours, and during nonbusiness hours unless an
16 emergency prevents it, by any elected state senator or state
17 representative.

18 (10) Once each year, the department shall report on the
19 operation of the facility. ~~Copies of~~ **THE DEPARTMENT SHALL SUBMIT**
20 ~~the report shall be submitted to~~ the chairpersons of the house and
21 senate committees responsible for legislation on corrections or
22 judicial issues, and to the clerk of the house of representatives
23 and the secretary of the senate.

24 (11) Regardless of whether the department itself operates the
25 youth correctional facility or contracts with a private vendor to
26 operate the youth correctional facility, all of the following
27 educational services shall be provided for juvenile prisoners

1 housed at the facility who have not earned a high school diploma or
2 received a general education certificate (GED):

3 (a) The department or private vendor shall require that a
4 prisoner whose academic achievement level is not sufficient to
5 allow the prisoner to participate effectively in a program leading
6 to the attainment of a ~~GED certificate~~ participate in classes that
7 ~~will prepare him or her to participate effectively in the GED~~
8 ~~program,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall provide
9 those classes in the facility.

10 (b) The department or private vendor shall require that a
11 prisoner who successfully completes classes described in
12 subdivision (a), or whose academic achievement level is otherwise
13 sufficient, participate in classes leading to the attainment of a
14 ~~GED certificate,~~ **HIGH SCHOOL EQUIVALENCY CERTIFICATION**, and shall
15 provide those classes.

16 (12) Neither the department nor the private vendor shall seek
17 to have the youth correctional facility authorized as a public
18 school academy under the revised school code, 1976 PA 451, MCL
19 380.1 to 380.1852.

20 (13) A private vendor that operates the youth correctional
21 facility under a contract with the department shall provide written
22 notice of its intention to discontinue its operation of the
23 facility. This subsection does not authorize or limit liability for
24 a breach or default of contract. If the reason for the
25 discontinuance is that the private vendor intends not to renew the
26 contract, the notice shall be delivered to the director of the
27 department at least 1 year before the contract expiration date. If

1 the discontinuance is for any other reason, the notice shall be
2 delivered to the director of the department at least 6 months
3 before the date ~~on which~~ **THAT** the private vendor will discontinue
4 its operation of the facility. This subsection does not authorize
5 or limit liability for a breach or default of contract.

6 Sec. 33. (1) The grant of a parole is subject to all of the
7 following:

8 (a) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED IN SECTION 33E, A** prisoner
9 shall ~~not be given liberty on parole until~~ **WHEN THE PRISONER HAS**
10 **SERVED THE MINIMUM SENTENCE IMPOSED BY THE COURT. A PRISONER SHALL**
11 **NOT BE GIVEN LIBERTY ON PAROLE IF** the board has ~~reasonable~~
12 ~~assurance, after consideration of all of the facts and~~
13 ~~circumstances, including the prisoner's mental and social attitude,~~
14 **A SUBSTANTIAL AND COMPELLING REASON TO CONCLUDE** that the prisoner
15 **IF RELEASED** will ~~not become~~ a menace to society or to the public
16 safety. **THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE FOLLOWING**
17 **PRISONERS:**

18 (i) **A PRISONER SENTENCED FOR A FELONY FOR WHICH THE MAXIMUM**
19 **PENALTY IS IMPRISONMENT FOR LIFE.**

20 (ii) **A PRISONER WHO HAS PENDING FELONY CHARGES OR DETAINERS.**

21 (iii) **A PRISONER WHO WAS INTERVIEWED BY THE PAROLE BOARD AND**
22 **DENIED PAROLE UNDER SECTION 33E.**

23 (b) Except as provided in section 34a, a parole shall not be
24 granted to a prisoner other than a prisoner subject to disciplinary
25 time until the prisoner has served the minimum term imposed by the
26 court less allowances for good time or special good time to which
27 the prisoner may be entitled by statute, except that a prisoner

1 other than a prisoner subject to disciplinary time is eligible for
2 parole before the expiration of his or her minimum term of
3 imprisonment ~~whenever~~ **IF** the sentencing judge, or the judge's
4 successor in office, gives written approval of the parole of the
5 prisoner before the expiration of the minimum term of imprisonment.

6 (c) Except as provided in section 34a, and notwithstanding ~~the~~
7 ~~provisions of~~ subdivision (b), a parole shall not be granted to a
8 prisoner other than a prisoner subject to disciplinary time
9 sentenced for the commission of a crime described in section 33b(a)
10 to (cc) until the prisoner has served the minimum term imposed by
11 the court less an allowance for disciplinary credits as provided in
12 section 33(5) of 1893 PA 118, MCL 800.33. A prisoner described in
13 this subdivision is not eligible for special parole.

14 (d) Except as provided in section 34a, a parole shall not be
15 granted to a prisoner subject to disciplinary time until the
16 prisoner has served the minimum term imposed by the court.

17 (e) A prisoner shall not be released on parole until the
18 parole board has satisfactory evidence that arrangements have been
19 made for such honorable and useful employment as the prisoner is
20 capable of performing, for the prisoner's education, or for the
21 prisoner's care if the prisoner is mentally or physically ill or
22 incapacitated. **THE PAROLE BOARD SHALL IMPOSE CONDITIONS OF PAROLE**
23 **REQUIRING EACH PRISONER TO PARTICIPATE IN PROGRAMMING IDENTIFIED BY**
24 **THE DEPARTMENT AND DESIGNED TO ADDRESS THE PRISONER'S BEHAVIORAL,**
25 **EDUCATIONAL, AND SOCIAL NEEDS.**

26 (f) A prisoner whose minimum term of imprisonment is 2 years
27 or more shall not be released on parole unless he or she has either

1 earned a high school diploma or ~~earned its equivalent in the form~~
2 ~~of a general education development (GED)~~ **A HIGH SCHOOL EQUIVALENCY**
3 certificate. The director of the department may waive the
4 restriction imposed by this subdivision ~~as to any~~ **FOR A** prisoner
5 who is over the age of 65 or who was gainfully employed immediately
6 before committing the crime for which he or she was incarcerated.
7 The department of corrections may also waive the restriction
8 imposed by this subdivision ~~as to any~~ **FOR A** prisoner who has a
9 learning disability, who does not have the necessary proficiency in
10 English, or who for some other reason that is not the fault of the
11 prisoner is unable to successfully complete the requirements for a
12 high school diploma or a ~~general education development~~ **HIGH SCHOOL**
13 **EQUIVALENCY** certificate. If the prisoner does not have the
14 necessary proficiency in English, the department of corrections
15 shall provide English language training for that prisoner necessary
16 for the prisoner to begin working toward the completion of the
17 requirements for a ~~general education development~~ **HIGH SCHOOL**
18 **EQUIVALENCY** certificate. This subdivision applies to prisoners
19 sentenced for crimes committed after December 15, 1998. In
20 providing an educational program leading to a high school degree or
21 ~~general education development~~ **HIGH SCHOOL EQUIVALENCY** certificate,
22 the department shall give priority to prisoners sentenced for
23 crimes committed on or before December 15, 1998.

24 (G) **A PRISONER WHO IS SENTENCED ON OR AFTER THE EFFECTIVE DATE**
25 **OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION WHO IS NOT PLACED**
26 **ON PAROLE UPON SERVICE OF HIS OR HER MINIMUM SENTENCE UNDER SECTION**
27 **33E SHALL BE PLACED ON PAROLE NOT LATER THAN 9 MONTHS BEFORE THE**

1 **EXPIRATION OF THE PRISONER'S MAXIMUM SENTENCE TO ENSURE A PERIOD OF**
2 **INTENSIVE SUPERVISION IN THE COMMUNITY.**

3 (2) Paroles-in-custody to answer warrants filed by local or
4 out-of-state agencies, or immigration officials, are permissible if
5 an accredited agent of the agency filing the warrant calls for the
6 prisoner to be paroled in custody.

7 (3) ~~Pursuant to~~**UNDER** the administrative procedures act of
8 1969, 1969 PA 306, MCL 24.201 to 24.328, the parole board may
9 promulgate rules not inconsistent with this act with respect to
10 conditions to be imposed upon prisoners paroled under this act.

11 Sec. 33e. (1) The department shall develop parole guidelines
12 that are consistent with section 33(1)(a) ~~and that shall~~**TO** govern
13 the exercise of the parole board's discretion ~~pursuant to~~**UNDER**
14 sections 34 and 35 as to the release of prisoners on parole under
15 this act. The purpose of the parole guidelines ~~shall be~~**IS** to
16 assist the parole board in making release decisions that enhance
17 the public safety.

18 (2) In developing the parole guidelines, the department shall
19 consider factors including, but not limited to, the following:

20 (a) The offense for which the prisoner is incarcerated at the
21 time of parole consideration.

22 (b) The prisoner's institutional program performance.

23 (c) The prisoner's institutional conduct.

24 (d) The prisoner's prior criminal record. As used in this
25 subdivision, "prior criminal record" means the recorded criminal
26 history of a prisoner, including all misdemeanor and felony
27 convictions, probation violations, juvenile adjudications for acts

1 that would have been crimes if committed by an adult, parole
2 failures, and delayed sentences.

3 (e) Other relevant factors as determined by the department, if
4 not otherwise prohibited by law.

5 (3) In developing the parole guidelines, the department may
6 consider both of the following factors:

7 (a) The prisoner's statistical risk screening.

8 (b) The prisoner's age.

9 (4) The department shall ensure that the parole guidelines do
10 not create disparities in release decisions based on race, color,
11 national origin, gender, religion, or disability.

12 (5) The department shall promulgate rules ~~pursuant to~~ **UNDER**
13 the administrative procedures act of 1969, ~~Act No. 306 of the~~
14 ~~Public Acts of 1969, being sections 24.201 to 24.328 of the~~
15 ~~Michigan Compiled Laws, which shall~~ **1969 PA 306, MCL 24.201 TO**
16 **24.328, THAT** prescribe the parole guidelines. ~~The department shall~~
17 ~~submit the proposed rules to the joint committee on administrative~~
18 ~~rules not later than April 1, 1994. Until the rules take effect,~~
19 ~~the director shall require that the parole guidelines be considered~~
20 ~~by the parole board in making release decisions. After the rules~~
21 ~~take effect, the director shall require that the parole board~~
22 ~~follow the parole guidelines.~~

23 (6) ~~The parole board may depart from the parole guidelines by~~
24 ~~denying parole to a prisoner who has a high probability of parole~~
25 ~~as determined under the parole guidelines or by granting parole to~~
26 ~~a prisoner who has a low probability of parole as determined under~~
27 ~~the parole guidelines. A departure under this subsection shall be~~

1 ~~for substantial and compelling reasons stated in writing. The~~
2 ~~parole board shall not use a prisoner's gender, race, ethnicity,~~
3 ~~alienage, national origin, or religion to depart from the~~
4 ~~recommended parole guidelines.~~ SHALL RELEASE A PRISONER WHO SCORES
5 HIGH OR AVERAGE PROBABILITY OF RELEASE UPON SERVICE OF THE
6 PRISONER'S MINIMUM SENTENCE, UNLESS 1 OF THE FOLLOWING
7 CIRCUMSTANCES IS PRESENT:

8 (A) THE PRISONER HAS AN INSTITUTIONAL MISCONDUCT SCORE LOWER
9 THAN -1.

10 (B) THERE IS OBJECTIVE AND VERIFIABLE EVIDENCE OF
11 POSTSENTENCING CONDUCT NOT ALREADY SCORED IN THE PAROLE GUIDELINES
12 THAT DEMONSTRATES THAT THE PRISONER WOULD PRESENT A HIGH RISK TO
13 PUBLIC SAFETY IF RELEASED.

14 (C) THE PRISONER HAS A PENDING FELONY CHARGE OR DETAINER.

15 (D) THE RELEASE OF THE PRISONER IS OTHERWISE BARRED BY LAW.

16 (7) THE PAROLE BOARD SHALL CONDUCT A REVIEW OF A PRISONER WHO
17 HAS BEEN DENIED RELEASE UNDER SUBSECTION (6) AS FOLLOWS:

18 (A) IF THE PRISONER SCORED HIGH OR AVERAGE PROBABILITY OF
19 RELEASE, CONDUCT A REVIEW NOT LESS THAN ANNUALLY.

20 (B) IF THE PRISONER SCORED LOW PROBABILITY OF RELEASE, CONDUCT
21 A REVIEW NOT LESS THAN EVERY 2 YEARS UNTIL A SCORE OF HIGH OR
22 AVERAGE PROBABILITY IS ATTAINED.

23 (8) THE PAROLE BOARD MAY DEFER A RELEASE UPON THE SERVICE OF
24 THE PRISONER'S MINIMUM SENTENCE UNDER SUBSECTION (6) FOR UP TO 4
25 MONTHS TO ALLOW THE PRISONER TO COMPLETE A TREATMENT PROGRAM THAT
26 IS REASONABLY NECESSARY TO REDUCE THE RISK TO PUBLIC SAFETY FROM
27 THE PRISONER'S RELEASE.

1 (9) ~~(7)~~ Not less than once every 2 years, the department shall
 2 review the correlation between the implementation of the parole
 3 guidelines and the recidivism rate of paroled prisoners, and shall
 4 submit to the joint committee on administrative rules **AND THE**
 5 **CRIMINAL JUSTICE POLICY COMMISSION** any proposed revisions to the
 6 administrative rules that the department considers appropriate
 7 after conducting the review.

8 Sec. 35. (1) The release of a prisoner on parole shall be
 9 granted solely upon the initiative of the parole board. The parole
 10 board may grant a parole without interviewing the prisoner -
 11 ~~However, beginning January 26, 1996, the parole board may grant a~~
 12 ~~parole without interviewing the prisoner only if, after evaluating~~
 13 the prisoner according to the parole guidelines, the parole board
 14 determines that the prisoner has a high probability of being
 15 paroled and the parole board therefore intends to parole the
 16 prisoner. Except as provided in subsection (2), a prisoner shall
 17 not be denied parole without an interview before 1 member of the
 18 parole board. The interview shall be conducted at least 1 month
 19 before the expiration of the prisoner's minimum sentence less
 20 applicable good time and disciplinary credits for a prisoner
 21 eligible for good time and disciplinary credits, or at least 1
 22 month before the expiration of the prisoner's minimum sentence for
 23 a prisoner subject to disciplinary time. The parole board shall
 24 consider any statement made to the parole board by a crime victim
 25 under the William Van Regenmorter crime victim's rights act, 1985
 26 PA 87, MCL 780.751 to 780.834, or under any other provision of law.
 27 The parole board shall not consider any of the following factors in

1 making a parole determination:

2 (a) A juvenile record that a court has ordered the department
3 to expunge.

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

10 (2) ~~Beginning January 26, 1996, if, IF,~~ after evaluating a
11 prisoner according to the parole guidelines, the parole board
12 determines that the prisoner has a low probability of being paroled
13 and the parole board therefore does not intend to parole the
14 prisoner, the parole board is not required to interview the
15 prisoner before denying parole to the prisoner.

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

18 (a) A prisoner's marital history.

19 (b) Prior arrests not resulting in conviction or adjudication
20 of delinquency.

21 (4) If an interview is to be conducted, the prisoner shall be
22 sent a notice of intent to conduct an interview at least 1 month
23 before the date of the interview. The notice shall state the
24 specific issues and concerns that shall be discussed at the
25 interview and that may be a basis for a denial of parole. ~~A denial~~
26 ~~of~~ **THE PAROLE BOARD SHALL NOT DENY** parole ~~shall not be based on~~
27 reasons other than those stated in the notice of intent to conduct

1 an interview except for good cause stated to the prisoner at or
2 before the interview and in the written explanation required by
3 subsection (12). ~~This subsection does not apply until April 1,~~
4 ~~1983.~~

5 (5) Except for good cause, the parole board member conducting
6 the interview shall not have cast a vote for or against the
7 prisoner's release before conducting the current interview. Before
8 the interview, the parole board member who is to conduct the
9 interview shall review pertinent information relative to the notice
10 of intent to conduct an interview.

11 (6) A prisoner may waive the right to an interview by 1 member
12 of the parole board. The waiver of the right to be interviewed
13 shall be **IN WRITING AND** given not more than 30 days after the
14 notice of intent to conduct an interview is issued. ~~and shall be~~
15 ~~made in writing.~~ During the interview held ~~pursuant to~~ **UNDER** a
16 notice of intent to conduct an interview, the prisoner may be
17 represented by an individual of his or her choice. The
18 representative shall not be another prisoner or an attorney. A
19 prisoner is not entitled to appointed counsel at public expense.
20 The prisoner or representative may present relevant evidence in
21 support of release.

22 (7) At least 90 days before the expiration of the prisoner's
23 minimum sentence less applicable good time and disciplinary credits
24 for a prisoner eligible for good time or disciplinary credits, or
25 at least 90 days before the expiration of the prisoner's minimum
26 sentence for a prisoner subject to disciplinary time, or the
27 expiration of a 12-month continuance for any prisoner, **THE**

1 **APPROPRIATE INSTITUTIONAL STAFF SHALL PREPARE** a parole eligibility
2 report. ~~shall be prepared by appropriate institutional staff.~~ The
3 parole eligibility report ~~shall be~~ **IS** considered pertinent
4 information for purposes of subsection (5). The report ~~shall~~ **MUST**
5 include all of the following:

6 (a) A statement of all major misconduct charges of which the
7 prisoner was found guilty and the punishment served for the
8 misconduct.

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

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

12 (d) Whether the prisoner fully cooperated with ~~the~~ **THIS** state
13 by providing complete financial information as required under
14 section 3a of the state correctional facility reimbursement act,
15 1935 PA 253, MCL 800.403a.

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

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

21 (8) The preparer of the report shall not include a
22 recommendation as to release on parole.

23 (9) Psychological evaluations performed at the request of the
24 parole board to assist it in reaching a decision on the release of
25 a prisoner may be performed by the same person who provided the
26 prisoner with therapeutic treatment, unless a different person is
27 requested by the prisoner or parole board.

1 (10) The parole board may grant a medical parole for a
2 prisoner determined to be physically or mentally incapacitated. A
3 decision to grant a medical parole shall be initiated ~~upon~~ **ON** the
4 recommendation of the bureau of health care services and shall be
5 reached only after a review of the medical, institutional, and
6 criminal records of the prisoner.

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

18 (12) When the parole board makes a final determination not to
19 release a prisoner, **THE PAROLE BOARD SHALL PROVIDE** the prisoner
20 ~~shall be provided~~ with a written explanation of the reason for
21 denial and, if appropriate, specific recommendations for corrective
22 action the prisoner may take to facilitate release.

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

26 Sec. 39a. (1) Within 10 days after an arrest for an alleged
27 violation of parole, the parolee ~~shall be~~ **IS** entitled to a

1 preliminary hearing to determine ~~whether~~ **IF** there is probable cause
2 to believe that the conditions of parole have been violated or a
3 fact-finding hearing held ~~pursuant to~~ **UNDER** section 40a.

4 (2) **WITHIN 3 DAYS AFTER AN ARREST FOR AN ALLEGED VIOLATION OF**
5 **PAROLE, THE PAROLE OFFICER MAY WITHDRAW THE WARRANT AND RELEASE THE**
6 **PRISONER TO PAROLE SUPERVISION IF THE OFFICER DETERMINES, AND A**
7 **SUPERVISOR CONFIRMS, THAT THE PAROLED PRISONER COMMITTED ONLY A**
8 **NONCOMPLIANCE VIOLATION. TIME SERVED UNDER THIS SUBSECTION SHALL**
9 **NOT BE CREDITED UNLESS CUMULATIVE CONFINEMENT UNDER THIS SUBSECTION**
10 **EQUALS 30 DAYS, AT WHICH POINT THE 30 DAYS AND ANY FUTURE**
11 **CONFINEMENT UNDER THIS SUBSECTION SHALL BE CREDITED.**

12 (3) ~~(2) Prior to~~ **BEFORE** the preliminary hearing, the accused
13 parolee shall be given written notice of the charges, time, place,
14 and purpose of the preliminary hearing.

15 (4) ~~(3)~~ At the preliminary hearing, the accused parolee is
16 entitled to the following rights:

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

18 (b) The right to testify and present relevant witnesses and
19 documentary evidence.

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

24 (5) ~~(4)~~ A preliminary hearing may be postponed beyond the 10-
25 day time limit on the written request of the parolee, but shall not
26 be postponed by the department.

27 (6) ~~(5)~~ If a preliminary hearing is not held ~~pursuant to~~ **UNDER**

1 subsection (1), an accused parolee shall be given written notice of
2 the charges against him or her, the time, place, and purpose of the
3 fact-finding hearing and a written summary of the evidence to be
4 presented against him or her.

5 (7) ~~(6)~~—If a preliminary hearing is not held ~~pursuant to~~ **UNDER**
6 subsection (1), an accused parolee ~~may~~ **SHALL** not be found guilty of
7 a violation based on evidence that was not summarized in the notice
8 provided ~~pursuant to~~ **UNDER** subsection ~~(5)~~ **(6)** except for good cause
9 stated on the record and included in the written findings of fact
10 provided to the parolee.

11 (8) **AS USED IN THIS SECTION, "NONCOMPLIANCE VIOLATION" MEANS**
12 **THAT TERM AS DEFINED IN SECTION 40A.**

13 Sec. 40a. (1) After a prisoner is released on parole, the
14 prisoner's parole order is subject to **SANCTIONS OR** revocation at
15 the discretion of the **DEPARTMENT AND** parole board for cause as
16 provided in this section **AND SECTION 39A.**

17 (2) If a paroled prisoner who is required to register ~~pursuant~~
18 ~~to~~ **UNDER** the sex offenders registration act, 1994 PA 295, MCL
19 28.721 to 28.736, willfully violates that act, the parole board
20 shall revoke the parole. If a prisoner convicted of violating or
21 conspiring to violate section 7401(2)(a)(i) or (ii) or 7403(2)(a)(i)
22 or (ii) of the public health code, 1978 PA 368, MCL 333.7401 and
23 333.7403, is released on parole and violates or conspires to
24 violate article 7 of the public health code, 1978 PA 368, MCL
25 333.7101 to 333.7545, and that violation or conspiracy to violate
26 is punishable by imprisonment for 4 or more years, or commits a
27 violent felony during his or her release on parole, parole shall be

1 revoked.

2 (3) Within 45 days after a paroled prisoner has been returned
3 or is available for return to a state correctional facility under
4 accusation of a parole violation other than conviction for a felony
5 or misdemeanor punishable by imprisonment under the laws of this
6 state, the United States, or any other state or territory of the
7 United States, the prisoner is entitled to a fact-finding hearing
8 on the charges before 1 member of the parole board or an attorney
9 hearings officer designated by the chairperson of the parole board.
10 The fact-finding hearing shall be conducted only after the accused
11 parolee has had a reasonable amount of time to prepare a defense.
12 The fact-finding hearing may be held at a state correctional
13 facility or at or near the location of the alleged violation.

14 (4) If, before a fact-finding hearing begins, the accused
15 parolee alleges that he or she is indigent and requests that an
16 attorney be appointed to represent him or her, the parole board
17 member or attorney hearings officer who will conduct the hearing
18 shall determine ~~whether~~ **IF** the accused parolee is indigent. If the
19 accused parolee is determined to be indigent, the parole board
20 member or hearings officer shall ~~cause the appointment of~~ **APPOINT**
21 an attorney to represent the accused parolee at the fact-finding
22 hearing. The **DEPARTMENT SHALL PAY THE** cost of the appointed
23 attorney ~~shall be paid from the department's general operating~~
24 budget.

25 (5) An accused parolee shall be given written notice of the
26 charges against him or her and the time, place, and purpose of the
27 fact-finding hearing. At the fact-finding hearing, the accused

1 parolee may be represented by a retained attorney or an attorney
2 appointed under subsection (4) and is entitled to the following
3 rights:

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

5 (b) To testify and present relevant witnesses and documentary
6 evidence.

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

11 (d) To present other relevant evidence in mitigation of the
12 charges.

13 (6) A fact-finding hearing may be postponed for cause beyond
14 the 45-day time limit on the written request of the parolee, the
15 parolee's attorney, or, if a postponement of the preliminary parole
16 violation hearing required under section 39a has been granted
17 beyond the 10-day time limit, by the parole board.

18 (7) The director or a deputy director designated by the
19 director shall be notified in writing if the preliminary parole
20 violation hearing is not conducted within the 10-day time limit,
21 and the hearing shall be conducted as soon as possible. The
22 director or a deputy director designated by the director shall be
23 notified in writing if the fact-finding hearing is not conducted
24 within the 45-day time limit, and the hearing shall be conducted as
25 soon as possible. A parolee held in custody shall not be released
26 pending disposition of either hearing.

27 (8) If the evidence presented is insufficient to support the

1 allegation that a parole violation occurred, the parolee shall be
2 reinstated to parole status.

3 (9) If the parole board member or hearings officer conducting
4 the fact-finding hearing determines from a preponderance of the
5 evidence that a parole violation has occurred, the parole board
6 member or hearings officer shall present the relevant facts to the
7 parole board and make a recommendation as to the disposition of the
8 charges.

9 (10) If a preponderance of the evidence supports the
10 allegation that a parole violation occurred, the parole board may
11 **IMPOSE A SANCTION OR** revoke parole. ~~and THE PAROLE BOARD SHALL~~
12 **PROVIDE** the parolee ~~shall be provided~~ with a written statement of
13 the findings of fact and the reasons for the determination within
14 **THE SANCTION PERIOD OR WITHIN** 60 days after the paroled prisoner
15 has been returned or is available for return to a state
16 correctional facility, **AS APPLICABLE. THE PRISONER SHALL BE**
17 **SANCTIONED WITH CONFINEMENT IN THE COUNTY JAIL, AND THEN PLACED ON**
18 **PAROLE AGAIN NOT MORE THAN 30 DAYS FOLLOWING THE DATE ON WHICH THE**
19 **DETERMINATION OF A FIRST OR SECOND RISK VIOLATION OCCURS. THE**
20 **PAROLE BOARD MAY REVOKE PAROLE TO THE CUSTODY OF THE DEPARTMENT FOR**
21 **THE THIRD DETERMINATION OF A RISK VIOLATION OR FOR A FIRST**
22 **DETERMINATION OF A MAJOR RISK VIOLATION, AND PLACE THE PRISONER ON**
23 **PAROLE AGAIN.**

24 (11) ~~A THE PAROLE BOARD MAY REVOKE THE PAROLE OF A~~ parolee who
25 is ordered to make restitution under the William Van Regenmorter
26 crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or
27 the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69,

1 or to pay an assessment ordered under section 5 of 1989 PA 196, MCL
 2 780.905, as a condition of parole ~~may have his or her parole~~
 3 ~~revoked by the parole board if the parolee fails to~~ **DOES NOT** comply
 4 with the order and if the parolee has not made a good faith effort
 5 to comply with the order. In determining whether to revoke parole,
 6 the parole board shall consider the parolee's employment status,
 7 earning ability, and financial resources, the willfulness of the
 8 parolee's failure to comply with the order, and any other special
 9 circumstances that may have a bearing on the parolee's ability to
 10 comply with the order.

11 (12) IF A PRISONER HAS TURNED HIMSELF OR HERSELF IN WITHIN 7
 12 DAYS AFTER A WARRANT HAS BEEN ISSUED, THE PAROLE BOARD SHALL NOT
 13 SANCTION OR REVOKE PAROLE FOR ABSCONDING SUPERVISION.

14 (13) ~~(12)~~ As used in this section: ~~"violent~~

15 (A) "ABSCONDING SUPERVISION" MEANS BEING APPREHENDED BY A LAW
 16 ENFORCEMENT OR PAROLE OFFICER, OR BEING ARRESTED FOR A NEW CRIME
 17 OUTSIDE OF THIS STATE. IF THE PRISONER HAS TURNED HIMSELF OR
 18 HERSELF IN WITHIN 7 DAYS AFTER A WARRANT HAS BEEN ISSUED, HE OR SHE
 19 SHALL NOT BE SANCTIONED OR REVOKED FOR ABSCONDING SUPERVISION.

20 (B) "MAJOR RISK VIOLATION" MEANS EITHER OF THE FOLLOWING:

21 (i) THE VIOLATION OF A PROTECTIVE ORDER.

22 (ii) AN ALLEGED VIOLATION OF SECTION 83, 84, 86, 88, 89, 317,
 23 321, 349, 349A, 350, 397, 520B, 520C, 520D, 520G(1), 529, OR 529A
 24 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.83, 750.84,
 25 750.86, 750.88, 750.89, 750.317, 750.321, 750.349, 750.349A,
 26 750.350, 750.397, 750.520B, 750.520C, 750.520D, 750.520G, 750.529,
 27 AND 750.529A.

1 (C) "NONCOMPLIANCE VIOLATION" MEANS A VIOLATION THAT IS NOT A
2 RISK VIOLATION OR A MAJOR RISK VIOLATION.

3 (D) "RISK VIOLATION" MEANS 1 OR MORE OF THE FOLLOWING:

4 (i) CONTACT WITH A SPECIFICALLY PROHIBITED PERSON, OR PROXIMITY
5 TO A SPECIFICALLY PROHIBITED LOCATION.

6 (ii) AN ARREST FOR DOMESTIC VIOLENCE OR OTHER THREATENING OR
7 ASSAULTIVE BEHAVIOR.

8 (iii) AN ARREST FOR A NEW FELONY.

9 (iv) ABSCONDING SUPERVISION.

10 (v) THE PRISONER'S SIXTH OR SUBSEQUENT NONCOMPLIANCE
11 VIOLATION.

12 (E) "VIOLENT felony" means that term as defined in section 36.

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