

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4562**

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 33e (MCL 791.233e), as amended by 2018 PA 339.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33e. (1) The department shall develop parole guidelines
2 that are consistent with section 33(1)(a) to govern the exercise of
3 the parole board's discretion under sections 34 and 35 as to the
4 release of prisoners on parole under this act. The purpose of the
5 parole guidelines is to assist the parole board in making
6 objective, evidence-based release decisions that enhance the public
7 safety.

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

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

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

4 (c) The prisoner's institutional conduct.

5 (d) The prisoner's prior criminal record. As used in this
6 subdivision, "prior criminal record" means the recorded criminal
7 history of a prisoner, including all misdemeanor and felony
8 convictions, probation violations, juvenile adjudications for acts
9 that would have been crimes if committed by an adult, parole
10 failures, and delayed sentences.

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

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

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

16 (b) The prisoner's age.

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

20 (5) The department shall promulgate rules under the
21 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
22 24.328, that prescribe 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 must be
28 for substantial and compelling objective reasons stated in writing.
29 The parole board shall not use a prisoner's gender, race,

1 ethnicity, alienage, national origin, or religion to depart from
2 the recommended parole guidelines.

3 (7) Substantial and compelling objective reasons for a
4 departure from the parole guidelines for a prisoner with high
5 probability of parole are limited to the following circumstances:

6 (a) The prisoner exhibits a pattern of ongoing behavior while
7 incarcerated indicating that he or she would be a substantial risk
8 to public safety, including major misconducts or additional
9 criminal convictions.

10 (b) The prisoner refuses to participate in programming ordered
11 by the department to reduce the prisoner's risk. A prisoner may not
12 be considered to have refused programming if unable to complete
13 programming due to factors beyond his or her control.

14 (c) There is verified objective evidence of substantial harm
15 to a victim that could not have been available for consideration at
16 the time of sentencing.

17 (d) The prisoner has threatened harm to another person if
18 released.

19 (e) There is objective evidence of post-sentencing conduct,
20 not already scored under the parole guidelines, that the prisoner
21 would present a high risk to public safety if paroled.

22 (f) The prisoner is a suspect in an unsolved criminal case
23 that is being actively investigated.

24 (g) The prisoner has a pending felony charge or is subject to
25 a detainer request from another jurisdiction.

26 (h) The prisoner has not yet completed programming ordered by
27 the department to reduce the prisoner's risk, and the programming
28 is not available in the community and the risk cannot be adequately
29 managed in the community before completion.

1 (i) The release of the prisoner is otherwise barred by law.

2 (j) The prisoner fails to present a sufficient parole plan
3 adequately addressing his or her identified risks and needs to
4 ensure that he or she will not present a risk to public safety if
5 released on parole. If a prisoner is denied parole under this
6 subdivision, the parole board must provide the prisoner a detailed
7 explanation of the deficiencies in the parole plan so that the
8 prisoner may address the deficiencies before his or her next
9 review.

10 (k) The prisoner has received a psychological evaluation in
11 the past 3 years indicating the prisoner would present a high risk
12 to public safety if paroled.

13 (8) The parole board may deny parole for up to 1 year to a
14 prisoner who was denied parole under subsection (7)(h) to allow for
15 the completion of programming ordered by the department. A prisoner
16 denied parole under subsection (7)(h) must receive parole
17 consideration within 30 days after the completion of the
18 programming.

19 (9) ~~The~~ **Unless a waiver is issued under subsection (10), the**
20 parole board shall conduct a review of a prisoner, except for a
21 prisoner serving a life sentence, who has been denied parole as
22 follows:

23 (a) If the prisoner scored high or average probability of
24 parole, not less than annually.

25 (b) If the prisoner scored low probability of parole, not less
26 than every 2 years until a score of high or average probability of
27 parole is attained.

28 **(10) The parole board may conduct a subsequent review of a**
29 **prisoner, except for a prisoner serving a life sentence, not more**

1 than 5 years after the review denying the prisoner parole, if a
2 majority of the parole board agrees to and signs a written
3 recommendation to waive the requirements under subsection (9). A
4 waiver under this subsection may be issued only if a majority of
5 the parole board finds and includes a statement in the waiver that
6 all of the following apply:

7 (a) The parole board had no interest in granting the prisoner
8 parole in the review denying the prisoner parole.

9 (b) The parole review requirements under subsection (9) would
10 cause additional harm to a victim of a crime for which the prisoner
11 was committed, or to the victim's surviving family members.

12 (c) The harm described under subdivision (b) can be mitigated
13 only by waiving the parole review process under subsection (9).

14 (d) Unique circumstances and factors contributed to the
15 decision to deny the prisoner parole and to waive the parole review
16 process under subsection (9).

17 (11) ~~(10)~~—Not less than once every 2 years, the department
18 shall review the correlation between the implementation of the
19 parole guidelines and the recidivism rate of paroled prisoners, and
20 shall submit to the joint committee on administrative rules any
21 proposed revisions to the administrative rules that the department
22 considers appropriate after conducting the review.

23 (12) ~~(11)~~—By March 1 of each year, the department shall report
24 to the standing committees of the senate and the house of
25 representatives having jurisdiction of corrections issues ~~and the~~
26 ~~criminal justice policy commission created under section 32a of~~
27 ~~chapter IX of the code of criminal procedure, 1927 PA 175, MCL~~
28 ~~769.32a,~~ all of the following information:

29 (a) The number of prisoners who scored high probability of

1 parole and were granted parole during the preceding calendar year.

2 (b) The number of prisoners who scored high probability of
3 parole and for whom parole was deferred to complete necessary
4 programming during the preceding calendar year.

5 (c) The number of prisoners who scored high probability of
6 parole and were incarcerated at least 6 months past their first
7 parole eligibility date as of December 31 of the preceding calendar
8 year.

9 (d) The number of prisoners who scored high probability of
10 parole and were denied parole for a substantial and compelling
11 objective reason, or substantial and compelling objective reasons,
12 under subsection (7) during the preceding calendar year. This
13 information must be provided with a breakdown of parole denials for
14 each of the substantial and compelling objective reasons under
15 subsection (7).

16 (e) The number of prisoners who scored high probability of
17 parole and were denied parole whose controlling offense is in each
18 of the following groups:

19 (i) Homicide.

20 (ii) Sexual offense.

21 (iii) An assaultive offense other than a homicide or sexual
22 offense.

23 (iv) A nonassaultive offense.

24 (v) A controlled substance offense.

25 (f) Of the total number of prisoners subject to subsection (7)
26 who scored high probability of parole and were denied parole, the
27 number who have served the following amount of time after
28 completing their minimum sentence:

29 (i) Less than 1 year.

- 1 (ii) One year or more but less than 2 years.
2 (iii) Two years or more but less than 3 years.
3 (iv) Three years or more but less than 4 years.
4 (v) Four or more years.

5 **(g) The number of prisoners issued a waiver under subsection**
6 **(10).**

7 **(13)** ~~(12)~~The department shall immediately advise the standing
8 committees of the senate and house of representatives having
9 jurisdiction of corrections issues ~~and the criminal justice policy~~
10 ~~commission described in subsection (11)~~ of any changes made to the
11 scoring of the parole guidelines after ~~the effective date of the~~
12 ~~amendatory act that added this subsection,~~ **December 12, 2018,**
13 including a change in the number of points that define "high
14 probability of parole".

15 **(14)** ~~(13)~~Subsections (6), (7), and (8), as amended or added
16 by ~~the amendatory act that added this subsection~~ **2018 PA 339**, apply
17 only to prisoners whose controlling offense was committed on or
18 after ~~the effective date of the amendatory act that added this~~
19 ~~subsection.~~ **December 12, 2018.** Subsections (7) and (8) do not apply
20 to a prisoner serving a life sentence, regardless of the date of
21 his or her controlling offense.

22 Enacting section 1. This amendatory act does not take effect
23 unless House Bill No. 4563 of the 101st Legislature is enacted into
24 law.