

Act No. 28
Public Acts of 2022
Approved by the Governor
March 11, 2022
Filed with the Secretary of State
March 11, 2022
EFFECTIVE DATE: March 11, 2022

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2022**

Introduced by Reps. Lightner and Witwer

ENROLLED HOUSE BILL No. 4562

AN ACT to amend 1953 PA 232, entitled “An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act,” by amending section 33e (MCL 791.233e), as amended by 2018 PA 339.

The People of the State of Michigan enact:

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

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

- (a) The offense for which the prisoner is incarcerated at the time of parole consideration.
- (b) The prisoner's institutional program performance.
- (c) The prisoner's institutional conduct.

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

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

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

- (a) The prisoner's statistical risk screening.
- (b) The prisoner's age.

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

(5) The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that prescribe the parole guidelines.

(6) The parole board may depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines or by granting parole to a prisoner who has a low probability of parole as determined under the parole guidelines. A departure under this subsection must be for substantial and compelling objective reasons stated in writing. The parole board shall not use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) The parole board may conduct a subsequent review of a prisoner, except for a prisoner serving a life sentence, not more than 5 years after the review denying the prisoner parole, if a majority of the parole board agrees to and signs a written recommendation to waive the requirements under subsection (9). A waiver under this subsection may be issued only if a majority of the parole board finds and includes a statement in the waiver that all of the following apply:

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

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

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

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

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

(12) By March 1 of each year, the department shall report to the standing committees of the senate and the house of representatives having jurisdiction of corrections issues all of the following information:

(a) The number of prisoners who scored high probability of parole and were granted parole during the preceding calendar year.

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

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

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

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

(i) Homicide.

(ii) Sexual offense.

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

(iv) A nonassaultive offense.

(v) A controlled substance offense.

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

(i) Less than 1 year.

(ii) One year or more but less than 2 years.

(iii) Two years or more but less than 3 years.

(iv) Three years or more but less than 4 years.

(v) Four or more years.

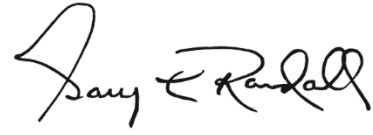
(g) The number of prisoners issued a waiver under subsection (10).

(13) The department shall immediately advise the standing committees of the senate and house of representatives having jurisdiction of corrections issues of any changes made to the scoring of the parole guidelines after December 12, 2018, including a change in the number of points that define "high probability of parole".

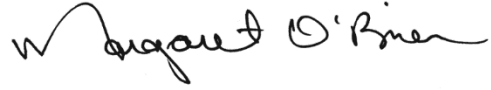
(14) Subsections (6), (7), and (8), as amended or added by 2018 PA 339, apply only to prisoners whose controlling offense was committed on or after December 12, 2018. Subsections (7) and (8) do not apply to a prisoner serving a life sentence, regardless of the date of his or her controlling offense.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor