

SENATE BILL NO. 298

February 11, 1999, Introduced by Senators STILLE, BENNETT, GOSCHKA, BULLARD, HAMMERSTROM and JAYE and referred to the Committee on Judiciary.

A bill 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 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 sections 34 and 44 (MCL 791.234 and 791.244), section 34 as amended by 1998 PA 512 and section 44 as amended by 1992 PA 181.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34. (1) Except as provided in section 34a, a prisoner
2 sentenced to an indeterminate sentence and confined in a state
3 correctional facility with a minimum in terms of years other than
4 a prisoner subject to disciplinary time is subject to the juris-
5 diction of the parole board when the prisoner has served a period
6 of time equal to the minimum sentence imposed by the court for
7 the crime of which he or she was convicted, less good time and
8 disciplinary credits, if applicable.

9 (2) Except as provided in section 34a, a prisoner subject to
10 disciplinary time sentenced to an indeterminate sentence and con-
11 fined in a state correctional facility with a minimum in terms of
12 years is subject to the jurisdiction of the parole board when the
13 prisoner has served a period of time equal to the minimum sen-
14 tence imposed by the court for the crime of which he or she was
15 convicted.

16 (3) If a prisoner other than a prisoner subject to disci-
17 plinary time is sentenced for consecutive terms, whether received
18 at the same time or at any time during the life of the original
19 sentence, the parole board has jurisdiction over the prisoner for
20 purposes of parole when the prisoner has served the total time of
21 the added minimum terms, less the good time and disciplinary
22 credits allowed by statute. The maximum terms of the sentences
23 shall be added to compute the new maximum term under this subsec-
24 tion, and discharge shall be issued only after the total of the
25 maximum sentences has been served less good time and disciplinary

1 credits, unless the prisoner is paroled and discharged upon
2 satisfactory completion of the parole.

3 (4) If a prisoner subject to disciplinary time is sentenced
4 for consecutive terms, whether received at the same time or at
5 any time during the life of the original sentence, the parole
6 board has jurisdiction over the prisoner for purposes of parole
7 when the prisoner has served the total time of the added minimum
8 terms. The maximum terms of the sentences shall be added to com-
9 pute the new maximum term under this subsection, and discharge
10 shall be issued only after the total of the maximum sentences has
11 been served, unless the prisoner is paroled and discharged upon
12 satisfactory completion of the parole.

13 (5) If a prisoner other than a prisoner subject to disci-
14 plinary time has 1 or more consecutive terms remaining to serve
15 in addition to the term he or she is serving, the parole board
16 may terminate the sentence the prisoner is presently serving at
17 any time after the minimum term of the sentence has been served.

18 (6) A prisoner under sentence for life or for a term of
19 years, other than a prisoner sentenced for life for murder in the
20 first degree, or sentenced for life for a violation of
21 chapter XXXVIII of the Michigan penal code, 1931 PA 328,
22 MCL 750.200 to 750.212a, who has served 10 calendar years of the
23 sentence in the case of a prisoner sentenced for any other crime
24 committed before October 1, 1992, or, except as provided in sub-
25 section (9), who has served 20 calendar years of the sentence in
26 the case of a prisoner sentenced to imprisonment for life for
27 violating or conspiring to violate section 7401(2)(a)(i) of the

1 public health code, 1978 PA 368, MCL 333.7401, who has another
2 conviction for a serious crime, or, except as provided in subsec-
3 tion (9), who has served 17-1/2 calendar years of the sentence in
4 the case of a prisoner sentenced to imprisonment for life for
5 violating or conspiring to violate section 7401(2)(a)(i) of the
6 public health code, 1978 PA 368, MCL 333.7401, who does not have
7 another conviction for a serious crime, or who has served 15 cal-
8 endar years of the sentence in the case of a prisoner sentenced
9 for any other crime committed on or after October 1, 1992, is
10 subject to the jurisdiction of the parole board and may be
11 released on parole by the parole board, subject to the following
12 conditions:

13 (a) At the conclusion of 10 calendar years of the prisoner's
14 sentence and ~~every 5 years~~ thereafter AS DETERMINED BY THE
15 PAROLE BOARD until the prisoner is paroled, discharged, or
16 deceased, and in accordance with the procedures described in
17 section 35(4) to (6), 1 member of the parole board shall inter-
18 view the prisoner. The interview schedule prescribed in this
19 subdivision applies to all prisoners to whom this subsection is
20 applicable, regardless of the date on which they were sentenced.

21 (b) A parole shall not be granted a prisoner so sentenced
22 until after a public hearing held in the manner prescribed for
23 pardons and commutations in sections 44 and 45. Notice of the
24 public hearing shall be given to the sentencing judge, or the
25 judge's successor in office, and parole shall not be granted if
26 the sentencing judge, or the judge's successor in office, files
27 written objections to the granting of the parole within 30 days

1 of receipt of the notice of hearing. The written objections
2 shall be made part of the prisoner's file.

3 (c) A parole granted under this subsection shall be for a
4 period of not less than 4 years and subject to the usual rules
5 pertaining to paroles granted by the parole board. A parole
6 ordered under this subsection is not valid until the transcript
7 of the record is filed with the attorney general whose certifica-
8 tion of receipt of the transcript shall be returnable to the
9 office of the parole board within 5 days. Except for medical
10 records protected under section 2157 of the revised judicature
11 act of 1961, 1961 PA 236, MCL 600.2157, the file of a prisoner
12 granted a parole under this subsection is a public record.

13 (d) A parole shall not be granted under this subsection in
14 the case of a prisoner who is otherwise prohibited by law from
15 parole consideration. In such cases the interview procedures in
16 section 44 shall be followed.

17 (7) In determining whether a prisoner convicted of violating
18 or conspiring to violate section 7401(2)(a)(i) of the public
19 health code, 1978 PA 368, MCL 333.7401, and sentenced to impris-
20 onment for life before October 1, 1998 is to be released on
21 parole, the parole board shall consider all of the following:

22 (a) Whether the violation was part of a continuing series of
23 violations of section 7401 or 7403 of the public health code,
24 1978 PA 368, MCL 333.7401 and 333.7403, by that individual.

25 (b) Whether the violation was committed by the individual in
26 concert with 5 or more other individuals.

1 (c) Any of the following:

2 (i) Whether the individual was a principal administrator,
3 organizer, or leader of an entity that the individual knew or had
4 reason to know was organized, in whole or in part, to commit vio-
5 lations of section 7401 or 7403 of the public health code, 1978
6 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
7 which the individual was convicted was committed to further the
8 interests of that entity.

9 (ii) Whether the individual was a principal administrator,
10 organizer, or leader of an entity that the individual knew or had
11 reason to know committed violations of section 7401 or 7403 of
12 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
13 and whether the violation for which the individual was convicted
14 was committed to further the interests of that entity.

15 (iii) Whether the violation was committed in a drug-free
16 school zone.

17 (iv) Whether the violation involved the delivery of a con-
18 trolled substance to an individual less than 17 years of age or
19 possession with intent to deliver a controlled substance to an
20 individual less than 17 years of age.

21 (8) Except as provided in section 34a, a prisoner's release
22 on parole is discretionary with the parole board. The action of
23 the parole board in granting or denying a parole is appealable by
24 ~~the prisoner,~~ the prosecutor of the county from which the pris-
25 oner was committed ~~,~~ or the victim of the crime for which the
26 prisoner was convicted. The appeal shall be to the circuit court

1 in the county from which the prisoner was committed, by leave of
2 the court.

3 (9) If the sentencing judge, or his or her successor in
4 office, determines on the record that a prisoner described in
5 subsection (6) sentenced to imprisonment for life for violating
6 or conspiring to violate section 7401(2)(a)(i) of the public
7 health code, 1978 PA 368, MCL 333.7401, has cooperated with law
8 enforcement, the prisoner is subject to the jurisdiction of the
9 parole board and may be released on parole as provided in subsec-
10 tion (6), 2-1/2 years earlier than the time otherwise indicated
11 in subsection (6). The prisoner is considered to have cooperated
12 with law enforcement if the court determines on the record that
13 the prisoner had no relevant or useful information to provide.
14 The court shall not make a determination that the prisoner failed
15 or refused to cooperate with law enforcement on grounds that the
16 defendant exercised his or her constitutional right to trial by
17 jury. If the court determines at sentencing that the defendant
18 cooperated with law enforcement, the court shall include its
19 determination in the judgment of sentence.

20 (10) As used in this section:

21 (a) "Serious crime" means violating or conspiring to violate
22 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
23 333.7545, that is punishable by imprisonment for more than 4
24 years, or an offense against a person in violation of section 83,
25 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b,
26 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal code,
27 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89,

1 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397,
2 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and
3 750.530.

4 (b) "State correctional facility" means a facility that
5 houses prisoners committed to the jurisdiction of the department,
6 and includes a youth correctional facility operated under section
7 20g by the department or a private vendor.

8 Sec. 44. (1) Subject to the constitutional authority of the
9 governor to grant reprieves, commutations, and pardons, 1 member
10 of the parole board shall interview a prisoner serving a sentence
11 for murder in the first degree or a sentence of imprisonment for
12 life without parole at the conclusion of 10 calendar years and
13 thereafter as determined appropriate by the parole board, ~~but~~
14 ~~not later than every 5 years~~ until such time as the prisoner is
15 granted a reprieve, commutation, or pardon by the governor, or is
16 deceased. The interview schedule prescribed in this subsection
17 applies to all prisoners to whom this section is applicable,
18 ~~whether sentenced before, on, or after the effective date of the~~
19 ~~1992 amendatory act that amended this subsection~~ REGARDLESS OF
20 WHEN THEY WERE SENTENCED.

21 (2) Upon its own initiation of, or upon receipt of any
22 application for, a reprieve, commutation, or pardon, the parole
23 board shall do all of the following, as applicable:

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

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

5 (c) Within 10 days after initiation, or after determining
6 that an application has merit, forward to the sentencing judge
7 and to the prosecuting attorney of the county having original
8 jurisdiction of the case, or their successors in office, a writ-
9 ten notice of the filing of the application or initiation,
10 together with copies of the application or initiation, any sup-
11 porting affidavits, and a brief summary of the case. Within 30
12 days after receipt of notice of the filing of any application or
13 initiation, the sentencing judge and the prosecuting attorney, or
14 their successors in office, may file information at their dispos-
15 al, together with any objections, in writing, which they may
16 desire to interpose. If the sentencing judge and the prosecuting
17 attorney, or their successors in office, do not respond within 30
18 days, the parole board shall proceed on the application or
19 initiation.

20 (d) If an application or initiation for commutation is based
21 on physical or mental incapacity, direct the bureau of health
22 care services to evaluate the condition of the prisoner and
23 report on that condition. If the bureau of health care services
24 determines that the prisoner is physically or mentally incapaci-
25 tated, the bureau shall appoint a specialist in the appropriate
26 field of medicine, who is not employed by the department, to
27 evaluate the condition of the prisoner and to report on that

1 condition. These reports are protected by the doctor-patient
2 privilege of confidentiality, except that these reports shall be
3 provided to the governor for his or her review.

4 (e) Within 270 days after initiation by the parole board or
5 receipt of an application that the parole board has determined to
6 have merit pursuant to subdivision (a), make a full investigation
7 and determination on whether or not to proceed to a public
8 hearing.

9 (f) Conduct a public hearing not later than 90 days after
10 making a decision to proceed with consideration of a recommenda-
11 tion for the granting of a reprieve, commutation, or pardon. The
12 public hearing shall be held before a formal recommendation is
13 transmitted to the governor. One member of the parole board who
14 will be involved in the formal recommendation may conduct the
15 hearing, and the public shall be represented by the attorney gen-
16 eral or a member of the attorney general's staff.

17 (g) At least 30 days before conducting the public hearing,
18 provide written notice of the public hearing by mail to the
19 attorney general, the sentencing trial judge, and the prosecuting
20 attorney, or their successors in office, and each victim who
21 requests notice pursuant to the crime victim's rights act, ~~Act~~
22 ~~No. 87 of the Public Acts of 1985, being sections 780.751 to~~
23 ~~780.834 of the Michigan Compiled Laws— 1985 PA 87, MCL 780.751 TO~~
24 780.834.

25 (h) Conduct the public hearing pursuant to the rules promul-
26 gated by the department. Except as otherwise provided in this
27 subdivision, any person having information in connection with the

1 pardon, commutation, or reprieve shall be sworn as a witness. A
2 person who is a victim shall be given an opportunity to address
3 and be questioned by the parole board at the hearing or to submit
4 written testimony for the hearing. In hearing testimony, the
5 parole board shall give liberal construction to any technical
6 rules of evidence.

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

8 (j) Make all data in its files available to the governor if
9 the parole board recommends the granting of a reprieve, commuta-
10 tion, or pardon.

11 (3) Except for medical records protected by the
12 doctor-patient privilege of confidentiality, the files of the
13 parole board in cases under this section shall be matters of
14 public record.