

HOUSE BILL No. 4090

February 1, 2005, Introduced by Reps. Taub, Stakoe, Pastor and Schuitmaker and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34 (MCL 791.234), as amended by 2004 PA 218.

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 a
4 prisoner subject to disciplinary time is subject to the
5 jurisdiction of the parole board when the prisoner has served a
6 period of time equal to the minimum sentence imposed by the court
7 for 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

1 disciplinary time sentenced to an indeterminate sentence and
2 confined in a state correctional facility with a minimum in terms
3 of years is subject to the jurisdiction of the parole board when
4 the prisoner has served a period of time equal to the minimum
5 sentence imposed by the court for the crime of which he or she was
6 convicted.

7 (3) If a prisoner other than a prisoner subject to
8 disciplinary time is sentenced for consecutive terms, whether
9 received at the same time or at any time during the life of the
10 original sentence, the parole board has jurisdiction over the
11 prisoner for purposes of parole when the prisoner has served the
12 total time of the added minimum terms, less the good time and
13 disciplinary credits allowed by statute. The maximum terms of the
14 sentences shall be added to compute the new maximum term under this
15 subsection, and discharge shall be issued only after the total of
16 the maximum sentences has been served less good time and
17 disciplinary credits, unless the prisoner is paroled and discharged
18 upon satisfactory completion of the parole.

19 (4) If a prisoner subject to disciplinary time is sentenced
20 for consecutive terms, whether received at the same time or at any
21 time during the life of the original sentence, the parole board has
22 jurisdiction over the prisoner for purposes of parole when the
23 prisoner has served the total time of the added minimum terms. The
24 maximum terms of the sentences shall be added to compute the new
25 maximum term under this subsection, and discharge shall be issued
26 only after the total of the maximum sentences has been served,
27 unless the prisoner is paroled and discharged upon satisfactory

1 completion of the parole.

2 (5) If a prisoner other than a prisoner subject to
3 disciplinary time has 1 or more consecutive terms remaining to
4 serve in addition to the term he or she is serving, the parole
5 board may terminate the sentence the prisoner is presently serving
6 at any time after the minimum term of the sentence has been served.

7 (6) ~~A prisoner under sentence for life, other than~~ **EXCEPT**
8 **FOR** a prisoner sentenced for life for murder in the first degree,
9 ~~or~~ **A PRISONER** sentenced for life for a violation of section 16(5)
10 or 18(7) or chapter XXXIII of the Michigan penal code, 1931 PA 328,
11 MCL 750.16, 750.18, and 750.200 to 750.212a, or section 17764(7) of
12 the public health code, 1978 PA 368, MCL 333.17764, **OR A PRISONER**
13 **DESCRIBED IN SUBSECTION (15), A PRISONER UNDER SENTENCE FOR LIFE**
14 who has served 10 calendar years of the sentence in the case of a
15 prisoner sentenced for a crime committed before October 1, 1992,
16 or, except as provided in subsection (10), who has served 20
17 calendar years of the sentence in the case of a prisoner sentenced
18 to imprisonment for life for violating or conspiring to violate
19 section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL
20 333.7401, who has another conviction for a serious crime, or,
21 except as provided in subsection (10), who has served 17-1/2
22 calendar years of the sentence in the case of a prisoner sentenced
23 to imprisonment for life for violating or conspiring to violate
24 section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL
25 333.7401, who does not have another conviction for a serious crime,
26 or who has served 15 calendar years of the sentence in the case of
27 a prisoner sentenced for a crime committed on or after October 1,

1 1992, is subject to the jurisdiction of the parole board and may be
2 released on parole by the parole board, subject to the following
3 conditions:

4 (a) At the conclusion of 10 calendar years of the prisoner's
5 sentence and thereafter as determined by the parole board until the
6 prisoner is paroled, discharged, or deceased, and in accordance
7 with the procedures described in subsection (7), 1 member of the
8 parole board shall interview the prisoner. The interview schedule
9 prescribed in this subdivision applies to all prisoners to whom
10 this subsection ~~is applicable~~ **APPLIES**, regardless of the date on
11 which they were sentenced.

12 (b) In addition to the interview schedule prescribed in
13 subdivision (a), the parole board shall review the prisoner's file
14 at the conclusion of 15 calendar years of the prisoner's sentence
15 and every 5 years thereafter until the prisoner is paroled,
16 discharged, or deceased. A prisoner whose file is to be reviewed
17 under this subdivision shall be notified of the upcoming file
18 review at least 30 days before the file review takes place and
19 shall be allowed to submit written statements or documentary
20 evidence for the parole board's consideration in conducting the
21 file review.

22 (c) A decision to grant or deny parole to a prisoner so
23 sentenced shall not be made until after a public hearing held in
24 the manner prescribed for pardons and commutations in sections 44
25 and 45. Notice of the public hearing shall be given to the
26 sentencing judge, or the judge's successor in office, and parole
27 shall not be granted if the sentencing judge, or the judge's

1 successor in office, files written objections to the granting of
2 the parole within 30 days of receipt of the notice of hearing. The
3 written objections shall be made part of the prisoner's file.

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

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

18 (7) An interview conducted under subsection (6)(a) is subject
19 to both of the following requirements:

20 (a) The prisoner shall be given written notice, not less than
21 30 days before the interview date, stating that the interview will
22 be conducted.

23 (b) The prisoner may be represented at the interview by an
24 individual of his or her choice. The representative shall not be
25 another prisoner. A prisoner is not entitled to appointed counsel
26 at public expense. The prisoner or representative may present
27 relevant evidence in favor of holding a public hearing as described

1 in subsection ~~-(6)(b)-~~ **(6)(C)**.

2 (8) In determining whether a prisoner convicted of violating
3 or conspiring to violate section 7401(2)(a)(i) of the public health
4 code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for
5 life before October 1, 1998 is to be released on parole, the parole
6 board shall consider all of the following:

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

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

12 (c) Any of the following:

13 (i) Whether the individual was a principal administrator,
14 organizer, or leader of an entity that the individual knew or had
15 reason to know was organized, in whole or in part, to commit
16 violations of section 7401 or 7403 of the public health code, 1978
17 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
18 which the individual was convicted was committed to further the
19 interests of that entity.

20 (ii) Whether the individual was a principal administrator,
21 organizer, or leader of an entity that the individual knew or had
22 reason to know committed violations of section 7401 or 7403 of the
23 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and
24 whether the violation for which the individual was convicted was
25 committed to further the interests of that entity.

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

1 (iv) Whether the violation involved the delivery of a
2 controlled substance to an individual less than 17 years of age or
3 possession with intent to deliver a controlled substance to an
4 individual less than 17 years of age.

5 (9) Except as provided in section 34a, a prisoner's release on
6 parole is discretionary with the parole board. The action of the
7 parole board in granting a parole is appealable by the prosecutor
8 of the county from which the prisoner was committed or the victim
9 of the crime for which the prisoner was convicted. The appeal shall
10 be to the circuit court in the county from which the prisoner was
11 committed, by leave of the court.

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

1 determination in the judgment of sentence.

2 (11) An individual convicted of violating or conspiring to
3 violate section 7401(2)(a)(*ii*) or 7403(2)(a)(*ii*) of the public health
4 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
5 is eligible for parole after serving the minimum of each sentence
6 imposed for that violation or 10 years of each sentence imposed for
7 that violation, whichever is less.

8 (12) An individual convicted of violating or conspiring to
9 violate section 7401(2)(a)(*iii*) or 7403(2)(a)(*iii*) of the public health
10 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
11 is eligible for parole after serving the minimum of each sentence
12 imposed for that violation or 5 years of each sentence imposed for
13 that violation, whichever is less.

14 (13) An individual convicted of violating or conspiring to
15 violate section 7401(2)(a)(*iv*) or 7403(2)(a)(*iv*) of the public health
16 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
17 who is sentenced to a term of imprisonment that is consecutive to a
18 term of imprisonment imposed for any other violation of section
19 7401(2)(a)(*i*) to (*iv*) or section 7403(2)(a)(*i*) to (*iv*) is eligible for
20 parole after serving 1/2 of the minimum sentence imposed for each
21 violation of section 7401(2)(a)(*iv*) or 7403(2)(a)(*iv*). This
22 subsection does not apply if the sentence was imposed for a
23 conviction for a new offense committed while the individual is on
24 probation or parole.

25 (14) The parole board shall provide notice to the prosecuting
26 attorney of the county in which the individual was convicted before
27 granting parole to the individual under subsection (11), (12), or

1 (13).

2 (15) THE PAROLE BOARD SHALL NOT GRANT PAROLE TO A PRISONER
3 SENTENCED TO IMPRISONMENT FOR LIFE FOR A VIOLATION OF SECTION 520B
4 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, IF THE
5 INDIVIDUAL WAS PREVIOUSLY CONVICTED OF ANY OF THE FOLLOWING:

6 (A) A VIOLATION OF SECTION 520B, 520C, OR 520D OF THE MICHIGAN
7 PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C, OR 750.520D.

8 (B) A VIOLATION OF A LAW OF ANOTHER STATE, OF A POLITICAL
9 SUBDIVISION OF ANOTHER STATE, OR OF THE UNITED STATES SUBSTANTIALLY
10 CORRESPONDING TO A VIOLATION DESCRIBED IN SUBDIVISION (A).

11 (16) ~~-(15)-~~ As used in this section:

12 (a) "Serious crime" means violating or conspiring to violate
13 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
14 333.7545, that is punishable by imprisonment for more than 4 years,
15 or an offense against a person in violation of section 83, 84, 86,
16 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
17 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
18 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
19 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
20 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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