

HOUSE BILL No. 5514

December 14, 2005, Introduced by Rep. Condino 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 a prisoner
8 sentenced for life for murder in the first degree or sentenced for
9 life for a violation of section 16(5) or 18(7) or chapter XXXIII of
10 the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18, and
11 750.200 to 750.212a, or section 17764(7) of the public health code,
12 1978 PA 368, MCL 333.17764, who has served 10 calendar years of the
13 sentence in the case of a prisoner sentenced for a crime committed
14 before October 1, 1992, or, except as provided in subsection (10),
15 who has served 20 calendar years of the sentence in the case of a
16 prisoner sentenced to imprisonment for life for violating or
17 conspiring to violate section 7401(2)(a)(i) of the public health
18 code, 1978 PA 368, MCL 333.7401, who has another conviction for a
19 serious crime, or, except as provided in subsection (10), who has
20 served 17-1/2 calendar years of the sentence in the case of a
21 prisoner sentenced to imprisonment for life for violating or
22 conspiring to violate section 7401(2)(a)(i) of the public health
23 code, 1978 PA 368, MCL 333.7401, who does not have another
24 conviction for a serious crime, or who has served 15 calendar years
25 of the sentence in the case of a prisoner sentenced for a crime
26 committed on or after October 1, 1992, is subject to the
27 jurisdiction of the parole board and may be released on parole by

1 the parole board, subject to the following conditions:

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

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

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

1 written objections shall be made part of the prisoner's file.

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

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

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

18 (a) The prisoner shall be given written notice, not less than
19 30 days before the interview date, stating that the interview will
20 be conducted.

21 (b) The prisoner may be represented at the interview by an
22 individual of his or her choice. The representative shall not be
23 another prisoner. A prisoner is not entitled to appointed counsel
24 at public expense. The prisoner or representative may present
25 relevant evidence in favor of holding a public hearing as described
26 in subsection (6)(b).

27 (8) In determining whether a prisoner convicted of violating

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

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

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

10 (c) Any of the following:

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

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

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

26 (iv) Whether the violation involved the delivery of a
27 controlled substance to an individual less than 17 years of age or

1 possession with intent to deliver a controlled substance to an
2 individual less than 17 years of age.

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

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

27 (11) An individual convicted of violating or conspiring to

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

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

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

23 (14) NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS
24 SECTION, AN INDIVIDUAL WHO WAS LESS THAN 18 YEARS OF AGE WHEN HE OR
25 SHE COMMITTED A CRIME FOR WHICH HE OR SHE WAS SENTENCED TO SERVE A
26 MINIMUM TERM OF IMPRISONMENT OF 10 YEARS OR MORE, OR WHO WAS
27 SENTENCED TO IMPRISONMENT FOR LIFE, INCLUDING IMPRISONMENT FOR LIFE

1 WITHOUT PAROLE ELIGIBILITY, WHO HAS SERVED 10 YEARS OF HIS OR HER
2 SENTENCE IS SUBJECT TO THE JURISDICTION OF THE PAROLE BOARD AND MAY
3 BE RELEASED ON PAROLE BY THE PAROLE BOARD. IN DETERMINING WHETHER
4 TO RELEASE AN INDIVIDUAL ON PAROLE UNDER THIS SUBSECTION, THE
5 PAROLE BOARD SHALL CONSIDER ALL OF THE FOLLOWING;

6 (A) THE INDIVIDUAL'S AGE AND LEVEL OF MATURITY AT THE TIME OF
7 THE OFFENSE.

8 (B) THE INDIVIDUAL'S DEGREE OF PARTICIPATION IN THE OFFENSE.

9 (C) THE NATURE OF THE OFFENSE.

10 (D) THE SEVERITY OF THE OFFENSE.

11 (E) THE INDIVIDUAL'S PRIOR JUVENILE OR CRIMINAL HISTORY.

12 (F) THE INDIVIDUAL'S LIKELIHOOD TO COMMIT FURTHER OFFENSES.

13 (G) ANY OTHER INFORMATION CONSIDERED RELEVANT BY THE PAROLE
14 BOARD.

15 (15) ~~-(14)-~~ The parole board shall provide notice to the
16 prosecuting attorney of the county in which the individual was
17 convicted before granting parole to the individual under subsection
18 (11), (12), ~~or~~ (13), OR (14).

19 (16) ~~-(15)-~~ As used in this section:

20 (a) "Serious crime" means violating or conspiring to violate
21 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
22 333.7545, that is punishable by imprisonment for more than 4 years,
23 or an offense against a person in violation of section 83, 84, 86,
24 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
25 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
26 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
27 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,

1 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

6 Enacting section 1. This amendatory act does not take effect
7 unless all of the following bills of the 93rd Legislature are
8 enacted into law:

9 (a) Senate Bill No.____ or House Bill No. 5512(request no.
10 04358'05).

11 (b) Senate Bill No.____ or House Bill No. 5513(request no.
12 04358'05 a).

13 (c) Senate Bill No.____ or House Bill No. 5515(request no.
14 04358'05 c).