

HOUSE BILL No. 5535

December 29, 2005, Introduced by Rep. Byrnes 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~~ **SENTENCED TO IMPRISONMENT** for
8 life ~~, other than a prisoner sentenced for life for murder in the~~
9 ~~first degree or 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, who~~ **FOR ANY OF**
13 **THE FOLLOWING IS NOT ELIGIBLE FOR PAROLE AND IS INSTEAD SUBJECT TO**
14 **THE PROVISIONS OF SECTION 44:**

15 (A) **FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE**
16 **MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316.**

17 (B) **A VIOLATION OF SECTION 16(5) OR 18(7) OF THE MICHIGAN**
18 **PENAL CODE, 1931 PA 328, MCL 750.16 AND 750.18.**

19 (C) **A VIOLATION OF CHAPTER XXXIII OF THE MICHIGAN PENAL CODE,**
20 **1931 PA 328, MCL 750.200 TO 750.212A.**

21 (D) **A VIOLATION OF SECTION 17764(7) OF THE PUBLIC HEALTH CODE,**
22 **1978 PA 368, MCL 333.17764.**

23 (E) **ANY OTHER VIOLATION FOR WHICH PAROLE ELIGIBILITY IS**
24 **EXPRESSLY DENIED UNDER STATE LAW.**

25 (7) **A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE, OTHER THAN**
26 **A PRISONER DESCRIBED IN SUBSECTION (6), IS SUBJECT TO THE**
27 **JURISDICTION OF THE PAROLE BOARD AND MAY BE PLACED ON PAROLE**

1 ACCORDING TO THE CONDITIONS PRESCRIBED IN SUBSECTION (8) IF HE OR
2 SHE MEETS ANY OF THE FOLLOWING CRITERIA:

3 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B) OR (C), THE PRISONER
4 has served 10 calendar years of the sentence ~~in the case of a~~
5 ~~prisoner sentenced~~ for a crime committed before October 1, 1992 ~~,~~
6 or ~~, except~~ 15 CALENDAR YEARS OF THE SENTENCE FOR A CRIME
7 COMMITTED ON OR AFTER OCTOBER 1, 1992.

8 (B) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE
9 PRISONER has served 20 calendar years of ~~the~~ A sentence ~~in the~~
10 ~~ease of a prisoner sentenced to imprisonment for life~~ for
11 violating or conspiring to violate section 7401(2)(a)(i) of the
12 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND has
13 another conviction for a serious crime. ~~, or, except~~

14 (C) EXCEPT as provided in subsection ~~(10)~~ (12), ~~who~~ THE
15 PRISONER has served 17-1/2 calendar years of the sentence ~~in the~~
16 ~~ease of a prisoner sentenced to imprisonment for life~~ for
17 violating or conspiring to violate section 7401(2)(a)(i) of the
18 public health code, 1978 PA 368, MCL 333.7401, ~~who~~ AND does not
19 have another conviction for a serious crime. ~~, or who has served~~
20 ~~15 calendar years of the sentence in the case of a prisoner~~
21 ~~sentenced for a crime committed on or after October 1, 1992, is~~
22 ~~subject to the jurisdiction of the parole board and may be released~~
23 ~~on parole by the parole board,~~

24 (D) THE PRISONER HAS SERVED 25 YEARS OF THE SENTENCE FOR
25 FIRST-DEGREE CRIMINAL SEXUAL CONDUCT AGAINST AN INDIVIDUAL LESS
26 THAN 13 YEARS OF AGE.

27 (8) A PAROLE GRANTED TO A PRISONER UNDER SUBSECTION (7) IS

1 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)~~ **(9)**, 1 member of
6 the parole board shall interview the prisoner. The interview
7 schedule prescribed in this subdivision applies to all prisoners to
8 whom ~~this~~ subsection ~~is applicable~~ **(7) APPLIES**, regardless of
9 the date on which they 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~~ **THE** prisoner ~~se~~
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 **(7)(A) TO (C)**
3 shall be for a period of not less than 4 years and subject to the
4 usual rules pertaining to paroles granted by the parole board. **A**
5 **PAROLE GRANTED UNDER SUBSECTION (7)(D) SHALL BE FOR LIFE AND**
6 **SUBJECT TO THE USUAL RULE PERTAINING TO PAROLES GRANTED BY THE**
7 **PAROLE BOARD. IN ADDITION, A PRISONER GRANTED PAROLE UNDER**
8 **SUBSECTION (7)(D) SHALL HAVE HIS OR HER LOCATION SUBJECT TO**
9 **MONITORING BY GLOBAL POSITIONING SATELLITE DURING THE ENTIRE PERIOD**
10 **THAT HE OR SHE IS ON PAROLE.** A parole ~~ordered~~ **GRANTED** under ~~this~~
11 subsection **(7)** is not valid until the transcript of the record is
12 filed with the attorney general whose certification of receipt of
13 the transcript shall be returnable to the office of the parole
14 board within 5 days. Except for medical records protected under
15 section 2157 of the revised judicature act of 1961, 1961 PA 236,
16 MCL 600.2157, the file of a prisoner granted a parole under ~~this~~
17 subsection **(7)** is a public record.

18 ~~— (e) A parole shall not be granted under this subsection in the~~
19 ~~ease of a prisoner who is otherwise prohibited by law from parole~~
20 ~~consideration. In such cases the interview procedures in section 44~~
21 ~~shall be followed.~~

22 **(9) ~~(7)~~** An interview conducted under subsection ~~(6)(a)~~
23 **(8)(A)** is subject to both of the following requirements:

24 (a) The prisoner shall be given written notice, not less than
25 30 days before the interview date, stating that the interview will
26 be conducted.

27 (b) The prisoner may be represented at the interview by an

1 individual of his or her choice. The representative shall not be
2 another prisoner. A prisoner is not entitled to appointed counsel
3 at public expense. The prisoner or representative may present
4 relevant evidence in favor of holding a public hearing as
5 ~~described~~ **ALLOWED** in subsection ~~-(6)(b)-~~ **(8)(A)**.

6 **(10)** ~~-(8)-~~ In determining whether a prisoner convicted of
7 violating or conspiring to violate section 7401(2)(a)(i) of the
8 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
9 imprisonment for life before October 1, 1998 is to be released on
10 parole, the parole board shall consider all of the following:

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

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

16 (c) Any of the following:

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

24 (ii) Whether the individual was a principal administrator,
25 organizer, or leader of an entity that the individual knew or had
26 reason to know committed violations of section 7401 or 7403 of the
27 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and

1 whether the violation for which the individual was convicted was
2 committed to further the interests of that entity.

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

5 (iv) Whether the violation involved the delivery of a
6 controlled substance to an individual less than 17 years of age or
7 possession with intent to deliver a controlled substance to an
8 individual less than 17 years of age.

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

16 (12) ~~-(10)-~~ If the sentencing judge, or his or her successor
17 in office, determines on the record that a prisoner described in
18 subsection ~~-(6)-~~ (7)(B) OR (C) sentenced to imprisonment for life
19 for violating or conspiring to violate section 7401(2)(a)(i) of the
20 public health code, 1978 PA 368, MCL 333.7401, has cooperated with
21 law enforcement, the prisoner is subject to the jurisdiction of the
22 parole board and may be released on parole as provided in
23 subsection ~~-(6)-~~ (7)(B) OR (C) 2-1/2 years earlier than the time
24 otherwise indicated in subsection ~~-(6)-~~ (7)(B) OR (C). The prisoner
25 is considered to have cooperated with law enforcement if the court
26 determines on the record that the prisoner had no relevant or
27 useful information to provide. The court shall not make a

1 determination that the prisoner failed or refused to cooperate with
2 law enforcement on grounds that the defendant exercised his or her
3 constitutional right to trial by jury. If the court determines at
4 sentencing that the defendant cooperated with law enforcement, the
5 court shall include its determination in the judgment of sentence.

6 **(13)** ~~—(11)—~~ An individual convicted of violating or conspiring
7 to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public
8 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
9 1, 2003 is eligible for parole after serving the minimum of each
10 sentence imposed for that violation or 10 years of each sentence
11 imposed for that violation, whichever is less.

12 **(14)** ~~—(12)—~~ An individual convicted of violating or conspiring
13 to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public
14 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
15 1, 2003 is eligible for parole after serving the minimum of each
16 sentence imposed for that violation or 5 years of each sentence
17 imposed for that violation, whichever is less.

18 **(15)** ~~—(13)—~~ An individual convicted of violating or conspiring
19 to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
20 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
21 1, 2003 who is sentenced to a term of imprisonment that is
22 consecutive to a term of imprisonment imposed for any other
23 violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)
24 to (iv) is eligible for parole after serving 1/2 of the minimum
25 sentence imposed for each violation of section 7401(2)(a)(iv) or
26 7403(2)(a)(iv). This subsection does not apply if the sentence was
27 imposed for a conviction for a new offense committed while the

1 individual is on probation or parole.

2 **(16)** ~~—(14)—~~ The parole board shall provide notice to the
3 prosecuting attorney of the county in which the individual was
4 convicted before granting parole to the individual under subsection
5 ~~(11), (12), or~~ (13), **(14)**, **OR (15)**.

6 **(17)** ~~—(15)—~~ As used in this section:

7 (a) "Serious crime" means violating or conspiring to violate
8 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
9 333.7545, that is punishable by imprisonment for more than 4 years,
10 or an offense against a person in violation of section 83, 84, 86,
11 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
12 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
13 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
14 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
15 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

20 Enacting section 1. This amendatory act does not take effect
21 unless Senate Bill No.____ or House Bill No. 5534(request no.
22 04897'05 *) of the 93rd Legislature is enacted into law.