

# HOUSE BILL No. 5654

February 8, 2006, Introduced by Reps. McConico, Vagnozzi, Leland, Condino, Tobocman, Virgil Smith, Lipsey, Drolet, Adamini, Cushingberry and Lemmons, III 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~~ **EXCEPT AS PROVIDED IN SUBSECTION (17), IF** a prisoner  
8 other than a prisoner subject to disciplinary time is sentenced for  
9 consecutive terms, whether received at the same time or at any time  
10 during the life of the original sentence, the parole board has  
11 jurisdiction over the prisoner for purposes of parole when the  
12 prisoner has served the total time of the added minimum terms, less  
13 the good time and disciplinary credits allowed by statute. The  
14 maximum terms of the sentences shall be added to compute the new  
15 maximum term under this subsection, and discharge shall be issued  
16 only after the total of the maximum sentences has been served less  
17 good time and disciplinary credits, unless the prisoner is paroled  
18 and discharged upon satisfactory completion of the parole.

19 (4) ~~If~~ **EXCEPT AS PROVIDED IN SUBSECTION (17), IF** a prisoner  
20 subject to disciplinary time is sentenced for consecutive terms,  
21 whether received at the same time or at any time during the life of  
22 the original sentence, the parole board has jurisdiction over the  
23 prisoner for purposes of parole when the prisoner has served the  
24 total time of the added minimum terms. The maximum terms of the  
25 sentences shall be added to compute the new maximum term under this  
26 subsection, and discharge shall be issued only after the total of  
27 the maximum sentences has been served, unless the prisoner is

1 paroled and discharged upon satisfactory 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~~ **WITHOUT**  
13 **THE POSSIBILITY OF PAROLE FOR ANY OF THE FOLLOWING OFFENSES IS NOT**  
14 **ELIGIBLE FOR PAROLE AND IS INSTEAD SUBJECT TO THE PROVISIONS OF**  
15 **SECTION 44:**

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

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

20 (C) **A VIOLATION OF CHAPTER XXXIII OF THE MICHIGAN PENAL CODE,**  
21 **1931 PA 328, MCL 750.200 TO 750.212A.**

22 (7) **A PRISONER SENTENCED TO IMPRISONMENT FOR LIFE, OTHER THAN**  
23 **A PRISONER DESCRIBED IN SUBSECTION (6), IS SUBJECT TO THE**  
24 **JURISDICTION OF THE PAROLE BOARD AND MAY BE PLACED ON PAROLE**  
25 **ACCORDING TO THE CONDITIONS PRESCRIBED IN SUBSECTION (8) IF HE OR**  
26 **SHE MEETS ANY OF THE FOLLOWING CRITERIA:**

27 (A) **EXCEPT AS PROVIDED IN SUBDIVISION (B), (C), OR (D), THE**

1 PRISONER has served 10 calendar years of the sentence ~~in the case~~  
2 ~~of a prisoner sentenced~~ for a crime committed before October 1,  
3 1992 ~~, or , except~~ 15 CALENDAR YEARS OF THE SENTENCE FOR A  
4 CRIME COMMITTED ON OR AFTER OCTOBER 1, 1992.

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

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

21 (D) THE PRISONER HAS SERVED 15 YEARS OF A LIFE SENTENCE  
22 IMPOSED UNDER FORMER SECTION 7413 OF THE PUBLIC HEALTH CODE, 1978  
23 PA 368, FOR VIOLATING OR CONSPIRING TO VIOLATE SECTION  
24 7401(2)(A)(ii) OR (iii) OR 7403(2)(A)(ii) OR (iii) OF THE PUBLIC HEALTH  
25 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, REGARDLESS OF WHEN  
26 THE CRIME WAS COMMITTED.

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 AT THE CONCLUSION OF 15 CALENDAR YEARS OF THE**  
4 **PRISONER'S SENTENCE, and EVERY 2-1/2 CALENDAR YEARS** thereafter ~~as~~  
5 ~~determined by the parole board~~ until the prisoner is paroled,  
6 discharged, or deceased, and in accordance with the procedures  
7 described in subsection ~~(7)~~ **(9)**, 1 member of the parole board  
8 shall interview the prisoner. The interview schedule prescribed in  
9 this subdivision applies to all prisoners to whom ~~this~~ subsection  
10 ~~is applicable~~ **(7) APPLIES**, regardless of the date on which they  
11 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 **(B)** ~~(c)~~ A decision to grant or deny parole to ~~a~~ **THE**  
23 prisoner ~~so sentenced~~ shall not be made until after a public  
24 hearing held in the manner prescribed for pardons and commutations  
25 in sections 44 and 45. Notice of the public hearing shall be given  
26 to the sentencing judge, or the judge's successor in office, and  
27 parole 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 (C) ~~(d)~~ A parole granted under ~~this~~ subsection (7) shall  
5 be for a period of not less than 4 years and **IS** subject to the  
6 usual rules pertaining to paroles granted by the parole board. A  
7 parole ~~ordered~~ **GRANTED** under ~~this~~ subsection (7) is not valid  
8 until the transcript of the record is filed with the attorney  
9 general whose certification of receipt of the transcript shall be  
10 returnable to the office of the parole board within 5 days. Except  
11 for medical records protected under section 2157 of the revised  
12 judicature act of 1961, 1961 PA 236, MCL 600.2157, the file of a  
13 prisoner granted a parole under ~~this~~ subsection (7) is a public  
14 record.

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

19 (9) ~~(7)~~ An interview conducted under subsection ~~(6)(a)~~  
20 (8)(A) is subject to both of the following requirements:

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

24 (b) The prisoner may be represented at the interview by an  
25 individual of his or her choice. The representative shall not be  
26 another prisoner. A prisoner is not entitled to appointed counsel  
27 at public expense. The prisoner or representative may present

1 relevant evidence in favor of holding ~~a~~ **THE** public hearing as  
2 ~~described in~~ **REQUIRED BY** subsection ~~(6)(b)~~ **(8)(B)**.

3 **(10)** ~~(8)~~ In determining whether a prisoner convicted of  
4 violating or conspiring to violate section 7401(2)(a)(i) of the  
5 public health code, 1978 PA 368, MCL 333.7401, and sentenced to  
6 imprisonment for life before October 1, 1998 is to be released on  
7 parole, the parole board shall consider all of the following:

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

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

13 (c) Any of the following:

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

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

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

1 zone.

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

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

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



1 sentencing that the defendant cooperated with law enforcement, the  
2 court shall include its determination in the judgment of sentence.

3 (13) NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN INDIVIDUAL  
4 CONVICTED OF VIOLATING OR CONSPIRING TO VIOLATE SECTION  
5 7401(2)(A)(i) OR 7403(2)(A)(i) OF THE PUBLIC HEALTH CODE, 1978 PA  
6 368, MCL 333.7401 AND 333.7403, WHOSE OFFENSE OCCURRED BEFORE MARCH  
7 1, 2003, AND WHO WAS SENTENCED TO A TERM OF YEARS, IS ELIGIBLE FOR  
8 PAROLE AFTER SERVING 20 YEARS OF THE SENTENCE IMPOSED FOR THE  
9 VIOLATION IF THE INDIVIDUAL HAS ANOTHER SERIOUS CRIME OR 17-1/2  
10 YEARS OF THE SENTENCE IF THE INDIVIDUAL DOES NOT HAVE ANOTHER  
11 CONVICTION FOR A SERIOUS CRIME, OR AFTER SERVING THE MINIMUM  
12 SENTENCE, WHICHEVER IS LESS.

13 (14) ~~-(11) An~~ NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN  
14 individual WHO WAS convicted of violating or conspiring to violate  
15 section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code,  
16 1978 PA 368, MCL 333.7401 and 333.7403, WHOSE OFFENSE OCCURRED  
17 before March 1, 2003 AND WHO WAS SENTENCED ACCORDING TO THOSE  
18 SECTIONS OF LAW AS THEY EXISTED BEFORE MARCH 1, 2003, is eligible  
19 for parole after serving the minimum of each sentence imposed for  
20 that violation or 10 years of each sentence imposed for that  
21 violation, whichever is less.

22 (15) ~~-(12) An~~ NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN  
23 individual WHO WAS convicted of violating or conspiring to violate  
24 section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health code,  
25 1978 PA 368, MCL 333.7401 and 333.7403, WHOSE OFFENSE OCCURRED  
26 before March 1, 2003 AND WHO WAS SENTENCED ACCORDING TO THOSE  
27 SECTIONS OF LAW AS THEY EXISTED BEFORE MARCH 1, 2003, is eligible

1 for parole after serving the minimum of each sentence imposed for  
2 that violation or 5 years of each sentence imposed for that  
3 violation, whichever is less.

4       **(16) —(13) An** **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**  
5 individual convicted of violating or conspiring to violate section  
6 7401(2)(a)(iv) or 7403(2)(a)(iv) **OR (v)** of the public health code,  
7 1978 PA 368, MCL 333.7401 and 333.7403, **WHOSE OFFENSE OCCURRED**  
8 before March 1, 2003 ~~who is sentenced to a term of imprisonment~~  
9 ~~that is consecutive to a term of imprisonment imposed for any other~~  
10 ~~violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)~~  
11 ~~to (iv)~~ **AND WHO WAS SENTENCED ACCORDING TO THOSE SECTIONS OF LAW AS**  
12 **THEY EXISTED BEFORE MARCH 1, 2003,** is eligible for parole after  
13 serving 1/2 of the minimum sentence imposed for each violation of  
14 section 7401(2)(a)(iv) or 7403(2)(a)(iv) **OR (v)**. This subsection does  
15 not apply if the sentence was imposed for a conviction for a new  
16 offense committed while the individual ~~is~~ **WAS** on probation or  
17 parole.

18       **(17) NOTWITHSTANDING SUBSECTIONS (1), (2), (3), AND (4), AN**  
19 **INDIVIDUAL SENTENCED TO CONSECUTIVE TERMS FOR 2 OR MORE CONVICTIONS**  
20 **FOR VIOLATING OR CONSPIRING TO VIOLATE SECTION 7401(2)(A) OR**  
21 **7403(2)(A) OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND**  
22 **333.7403, FOR AN OFFENSE OR OFFENSES COMMITTED BEFORE MARCH 1,**  
23 **2003, AND SENTENCED ACCORDING TO THOSE SECTIONS AS THEY EXISTED**  
24 **BEFORE MARCH 1, 2003, IS SUBJECT TO THE JURISDICTION OF THE PAROLE**  
25 **BOARD AND MAY BE RELEASED ON PAROLE WHEN THE INDIVIDUAL HAS SERVED**  
26 **THE LONGEST PERIOD REQUIRED FOR PAROLE ELIGIBILITY BY ANY OF THE**  
27 **SENTENCES, AS DETERMINED IN SUBSECTIONS (7) AND (12) TO (16).**

1           **(18)** ~~—(14)—~~ The parole board shall provide notice to the  
2 prosecuting attorney of the county in which the individual was  
3 convicted before granting parole to the individual under subsection  
4 ~~(11), (12), or (13)~~ **(14), (15), OR (16)**.

5           **(19)** ~~—(15)—~~ As used in this section:

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

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

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

22           (a) Senate Bill No.\_\_\_\_ or House Bill No. 5655(request no.  
23 00727'05 a \*).

24           (b) Senate Bill No.\_\_\_\_ or House Bill No. 5656(request no.  
25 00727'05 b \*).