

# SENATE BILL No. 1008

January 26, 2006, Introduced by Senator SWITALSKI 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  
10 disciplinary time sentenced to an indeterminate sentence and

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **(8) A PRISONER WHO IS AN ALIEN AND WHO IS SUBJECT TO AN ORDER**  
27 **OF DEPORTATION UPON RELEASE FROM INCARCERATION SHALL BE INTERVIEWED**

1 BY 1 MEMBER OF THE PAROLE BOARD EACH YEAR UNTIL THE PRISONER IS  
2 PAROLED OR DISCHARGED.

3 (9) ~~—(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 (10) ~~-(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 (11) ~~-(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) sentenced to imprisonment for life for violating or  
16 conspiring to violate section 7401(2)(a)(i) of the public health  
17 code, 1978 PA 368, MCL 333.7401, has cooperated with law  
18 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), 2-1/2 years earlier than the time otherwise  
21 indicated in subsection (6). The prisoner is considered to have  
22 cooperated with law enforcement if the court determines on the  
23 record that the prisoner had no relevant or useful information to  
24 provide. The court shall not make a determination that the prisoner  
25 failed or refused to cooperate with law enforcement on grounds that  
26 the defendant exercised his or her constitutional right to trial by  
27 jury. If the court determines at sentencing that the defendant

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

3       (12) —~~(11)~~— An individual convicted of violating or conspiring  
4 to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public  
5 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March  
6 1, 2003 is eligible for parole after serving the minimum of each  
7 sentence imposed for that violation or 10 years of each sentence  
8 imposed for that violation, whichever is less.

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

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

26       (15) —~~(14)~~— The parole board shall provide notice to the  
27 prosecuting attorney of the county in which the individual was



1 convicted before granting parole to the individual under subsection  
2 ~~(11), (12), or (13)~~ (12), (13), OR (14).

3 (16) ~~(15)~~ As used in this section:

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

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