

# HOUSE BILL No. 4920

May 12, 2009, Introduced by Reps. Johnson, Scripps, Rick Jones, Durhal, Bettie Scott, Nathan, Miller, Constan, Liss, Jackson, Tlaib, Geiss, Young, Stanley and Leland 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 2006 PA 167.

**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  
11 confined in a state correctional facility with a minimum in terms

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

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

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

27 (5) If a prisoner other than a prisoner subject to

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

5 (6) A prisoner sentenced to imprisonment for life for any of  
6 the following is not eligible for parole and is instead subject to  
7 the provisions of section 44:

8 (a) First degree murder in violation of section 316 of the  
9 Michigan penal code, 1931 PA 328, MCL 750.316.

10 (b) A violation of section 16(5) or 18(7) of the Michigan  
11 penal code, 1931 PA 328, MCL 750.16 and 750.18.

12 (c) A violation of chapter XXXIII of the Michigan penal code,  
13 1931 PA 328, MCL 750.200 to 750.212a.

14 (d) A violation of section 17764(7) of the public health code,  
15 1978 PA 368, MCL 333.17764.

16 (e) First degree criminal sexual conduct in violation of  
17 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL  
18 750.520b.

19 (f) Any other violation for which parole eligibility is  
20 expressly denied under state law.

21 (7) A prisoner sentenced to imprisonment for life, other than  
22 a prisoner described in subsection (6), is subject to the  
23 jurisdiction of the parole board and may be placed on parole  
24 according to the conditions prescribed in subsection (8) if he or  
25 she meets any of the following criteria:

26 (a) Except as provided in subdivision (b), ~~or (c)~~, **OR (D)**, the  
27 prisoner has served 10 calendar years of the sentence for a crime

1 committed before October 1, 1992 or 15 calendar years of the  
2 sentence for a crime committed on or after October 1, 1992.

3 (b) Except as provided in subsection (12), the prisoner has  
4 served 20 calendar years of a sentence for violating, **OR ATTEMPTING**  
5 or conspiring to violate, section 7401(2)(a)(i) of the public health  
6 code, 1978 PA 368, MCL 333.7401, and has another conviction for a  
7 serious crime.

8 (c) Except as provided in subsection (12), the prisoner has  
9 served 17-1/2 calendar years of the sentence for violating, **OR**  
10 **ATTEMPTING** or conspiring to violate, section 7401(2)(a)(i) of the  
11 public health code, 1978 PA 368, MCL 333.7401, and does not have  
12 another conviction for a serious crime.

13 **(D) THE PRISONER HAS SERVED 15 YEARS OF A LIFE SENTENCE FOR**  
14 **VIOLATING, OR ATTEMPTING OR CONSPIRING TO VIOLATE, SECTION**  
15 **7401(2)(A)(ii) OR (iii) OR 7403(2)(A)(ii) OR (iii) OF THE PUBLIC HEALTH**  
16 **CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, REGARDLESS OF WHEN**  
17 **THE CRIME WAS COMMITTED.**

18 (8) A parole granted to a prisoner under subsection (7) is  
19 subject to the following conditions:

20 (a) At the conclusion of 10 calendar years of the prisoner's  
21 sentence and thereafter as determined by the parole board until the  
22 prisoner is paroled, discharged, or deceased, and in accordance  
23 with the procedures described in subsection (9), 1 member of the  
24 parole board shall interview the prisoner. The interview schedule  
25 prescribed in this subdivision applies to all prisoners to whom  
26 subsection (7) applies, regardless of the date on which they were  
27 sentenced.

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

11           (c) A decision to grant or deny parole to the prisoner shall  
12 not be made until after a public hearing held in the manner  
13 prescribed for pardons and commutations in sections 44 and 45.  
14 Notice of the public hearing shall be given to the sentencing  
15 judge, or the judge's successor in office, and parole shall not be  
16 granted if the sentencing judge, or the judge's successor in  
17 office, files written objections to the granting of the parole  
18 within 30 days of receipt of the notice of hearing. The written  
19 objections shall be made part of the prisoner's file.

20           (d) A parole granted under subsection (7) shall be for a  
21 period of not less than 4 years and subject to the usual rules  
22 pertaining to paroles granted by the parole board. A parole granted  
23 under subsection (7) is not valid until the transcript of the  
24 record is filed with the attorney general whose certification of  
25 receipt of the transcript shall be returnable to the office of the  
26 parole board within 5 days. Except for medical records protected  
27 under section 2157 of the revised judicature act of 1961, 1961 PA

1 236, MCL 600.2157, the file of a prisoner granted a parole under  
2 subsection (7) is a public record.

3 (9) An interview conducted under subsection (8)(a) is subject  
4 to both of the following requirements:

5 (a) The prisoner shall be given written notice, not less than  
6 30 days before the interview date, stating that the interview will  
7 be conducted.

8 (b) The prisoner may be represented at the interview by an  
9 individual of his or her choice. The representative shall not be  
10 another prisoner. A prisoner is not entitled to appointed counsel  
11 at public expense. The prisoner or representative may present  
12 relevant evidence in favor of holding a public hearing as allowed  
13 in subsection (8)(b).

14 (10) In determining whether a prisoner convicted of violating,  
15 **OR ATTEMPTING** or conspiring to violate, section 7401(2)(a)(i) of the  
16 public health code, 1978 PA 368, MCL 333.7401, and sentenced to  
17 imprisonment for life before October 1, 1998 is to be released on  
18 parole, the parole board shall consider all of the following:

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

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

24 (c) Any of the following:

25 (i) Whether the individual was a principal administrator,  
26 organizer, or leader of an entity that the individual knew or had  
27 reason to know was organized, in whole or in part, to commit

1 violations of section 7401 or 7403 of the public health code, 1978  
2 PA 368, MCL 333.7401 and 333.7403, and whether the violation for  
3 which the individual was convicted was committed to further the  
4 interests of that entity.

5 (ii) Whether the individual was a principal administrator,  
6 organizer, or leader of an entity that the individual knew or had  
7 reason to know committed violations of section 7401 or 7403 of the  
8 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and  
9 whether the violation for which the individual was convicted was  
10 committed to further the interests of that entity.

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

13 (iv) Whether the violation involved the delivery of a  
14 controlled substance to an individual less than 17 years of age or  
15 possession with intent to deliver a controlled substance to an  
16 individual less than 17 years of age.

17 (11) Except as provided in section 34a, a prisoner's release  
18 on parole is discretionary with the parole board. The action of the  
19 parole board in granting a parole is appealable by the prosecutor  
20 of the county from which the prisoner was committed or the victim  
21 of the crime for which the prisoner was convicted. The appeal shall  
22 be to the circuit court in the county from which the prisoner was  
23 committed, by leave of the court.

24 (12) If the sentencing judge, or his or her successor in  
25 office, determines on the record that a prisoner described in  
26 subsection (7) (b) or (c) sentenced to imprisonment for life for  
27 violating, **OR ATTEMPTING** or conspiring to violate, section

1 7401(2) (a) (i) of the public health code, 1978 PA 368, MCL 333.7401,  
2 has cooperated with law enforcement, the prisoner is subject to the  
3 jurisdiction of the parole board and may be released on parole as  
4 provided in subsection (7) (b) or (c) 2-1/2 years earlier than the  
5 time otherwise indicated in subsection (7) (b) or (c). The prisoner  
6 is considered to have cooperated with law enforcement if the court  
7 determines on the record that the prisoner had no relevant or  
8 useful information to provide. The court shall not make a  
9 determination that the prisoner failed or refused to cooperate with  
10 law enforcement on grounds that the defendant exercised his or her  
11 constitutional right to trial by jury. If the court determines at  
12 sentencing that the defendant cooperated with law enforcement, the  
13 court shall include its determination in the judgment of sentence.

14 **(13) NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN INDIVIDUAL**  
15 **CONVICTED OF VIOLATING, OR ATTEMPTING OR CONSPIRING TO VIOLATE,**  
16 **SECTION 7401(2) (A) (i) OR 7403(2) (A) (i) OF THE PUBLIC HEALTH CODE,**  
17 **1978 PA 368, MCL 333.7401 AND 333.7403, WHOSE OFFENSE OCCURRED**  
18 **BEFORE MARCH 1, 2003, AND WHO WAS SENTENCED TO A TERM OF YEARS, IS**  
19 **ELIGIBLE FOR PAROLE AFTER SERVING 20 YEARS OF THE SENTENCE IMPOSED**  
20 **FOR THE VIOLATION IF THE INDIVIDUAL HAS ANOTHER SERIOUS CRIME OR**  
21 **17-1/2 YEARS OF THE SENTENCE IF THE INDIVIDUAL DOES NOT HAVE**  
22 **ANOTHER CONVICTION FOR A SERIOUS CRIME, OR AFTER SERVING THE**  
23 **MINIMUM SENTENCE IMPOSED FOR THAT VIOLATION, WHICHEVER IS LESS.**

24 **(14) ~~(13) An~~ NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**  
25 **individual WHO WAS convicted of violating, or ATTEMPTING OR**  
26 **conspiring to violate, section 7401(2) (a) (ii) or 7403(2) (a) (ii) of**  
27 **the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,**



1 **WHOSE OFFENSE OCCURRED** before March 1, 2003, **AND WHO WAS SENTENCED**  
 2 **ACCORDING TO THOSE SECTIONS AS THEY EXISTED 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 (15) ~~(14) An~~ **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**  
 7 individual **WHO WAS** convicted of violating, or **ATTEMPTING OR**  
 8 conspiring to violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii) of  
 9 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,  
 10 **WHOSE OFFENSE OCCURRED** before March 1, 2003, **AND WHO WAS SENTENCED**  
 11 **ACCORDING TO THOSE SECTIONS AS THEY EXISTED BEFORE MARCH 1, 2003,**  
 12 is eligible for parole after serving the minimum of each sentence  
 13 imposed for that violation or 5 years of each sentence imposed for  
 14 that violation, whichever is less.

15 (16) ~~(15) An~~ **NOTWITHSTANDING SUBSECTIONS (1) AND (2), AN**  
 16 individual **WHO WAS** convicted of violating, or **ATTEMPTING OR**  
 17 conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of  
 18 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,  
 19 **WHOSE OFFENSE OCCURRED** before March 1, 2003, who ~~is~~ **WAS** sentenced  
 20 **ACCORDING TO THOSE SECTIONS OF LAW AS THEY EXISTED BEFORE MARCH 1,**  
 21 **2003 to a term** ~~CONSECUTIVE TERMS~~ of imprisonment ~~that is~~  
 22 ~~consecutive to a term of imprisonment imposed for any other~~  
 23 ~~violation~~ **FOR 2 OR MORE VIOLATIONS** of section 7401(2)(a)(i) ~~to (iv)~~  
 24 ~~or section 7403(2)(a)(i) to (iv)~~ **7401(2)(A) OR 7403(2)(A),** is  
 25 eligible for parole after serving 1/2 of the minimum sentence  
 26 imposed for each violation of section 7401(2)(a)(iv) or  
 27 7403(2)(a)(iv). This subsection **APPLIES ONLY TO SENTENCES IMPOSED**

1 FOR VIOLATIONS OF SECTION 7401(2) (A) (iv) OR 7403(2) (A) (iv) AND does  
2 not apply if the sentence was imposed for a conviction for a new  
3 offense committed while the individual ~~is~~ WAS on probation or  
4 parole.

5 (17) NOTWITHSTANDING SUBSECTIONS (1), (2), (3), AND (4), AN  
6 INDIVIDUAL SENTENCED TO CONSECUTIVE TERMS FOR 2 OR MORE CONVICTIONS  
7 FOR VIOLATING, OR CONSPIRING OR ATTEMPTING TO VIOLATE, SECTION  
8 7401(2) (A) OR 7403(2) (A) OF THE PUBLIC HEALTH CODE, 1978 PA 368,  
9 MCL 333.7401 AND 333.7403, WHOSE OFFENSES OCCURRED BEFORE MARCH 1,  
10 2003, AND WHO WAS SENTENCED ACCORDING TO THOSE SECTIONS AS THEY  
11 EXISTED BEFORE MARCH 1, 2003, IS SUBJECT TO THE JURISDICTION OF THE  
12 PAROLE BOARD AND MAY BE RELEASED ON PAROLE WHEN THE INDIVIDUAL HAS  
13 SERVED THE LONGEST PERIOD REQUIRED FOR PAROLE ELIGIBILITY FOR ANY  
14 OF THE SENTENCES, AS DETERMINED UNDER SUBSECTIONS (7) AND (12) TO  
15 (16). THIS SUBSECTION APPLIES TO ALL SENTENCES IMPOSED FOR  
16 VIOLATIONS OF OR ATTEMPTS TO VIOLATE SECTION 7401 OR 7403 OF THE  
17 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, ARISING  
18 FROM A SINGLE INCIDENT AND TO ALL SENTENCES IMPOSED FOR CONSPIRING  
19 TO VIOLATE SECTION 7401(2) (A) OR 7403(2) (A) OF THE PUBLIC HEALTH  
20 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403. SENTENCES ARISING  
21 FROM A SINGLE INCIDENT INCLUDE, BUT ARE NOT LIMITED TO, SENTENCES  
22 IMPOSED FOR CONVICTIONS ARISING FROM ANY OF THE FOLLOWING:

23 (A) AN ARREST AND RELATED SEARCH OF PROPERTY ASSOCIATED WITH  
24 THE INDIVIDUAL.

25 (B) CONTEMPORANEOUS OFFENSES INVOLVING MORE THAN 1 CONTROLLED  
26 SUBSTANCE OR MORE THAN 1 QUANTITY OF THE SAME CONTROLLED SUBSTANCE.

27 (C) VIOLATIONS OF SECTION 7401 OR 7403 OF THE PUBLIC HEALTH

1 CODE, 1978 PA 368, MCL 333.7401 AND 333.7403, THAT WERE PROSECUTED  
2 IN MORE THAN 1 COUNTY AND INVOLVED THE SAME CONTROLLED SUBSTANCES.

3 (18) ~~(16)~~—The parole board shall provide notice to the  
4 prosecuting attorney of the county in which the individual was  
5 convicted before granting parole to the individual under subsection  
6 (13), (14), ~~or~~ (15), (16), OR (17).

7 (19) ~~(17)~~—As used in this section:

8 (a) "Serious crime" means violating or conspiring to violate  
9 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to  
10 333.7545, that is punishable by imprisonment for more than ~~4~~20  
11 years, or an offense against a person in violation of section 83,  
12 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c,  
13 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA  
14 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,  
15 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,  
16 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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

21 Enacting section 1. This amendatory act does not take effect  
22 unless all of the following bills of the 95th Legislature are  
23 enacted into law:

24 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 4919 (request no.  
25 01348'09 a).

26 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 4918 (request no.  
27 01348'09 b).

1 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 4921 (request no.  
2 01349'09).