

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).