

SENATE BILL No. 116

January 28, 2009, Introduced by Senators SWITALSKI, CLARK-COLEMAN, BRATER, SCOTT, CLARKE, HUNTER and JACOBS and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 31a and 34 (MCL 791.231a and 791.234), section 31a as added by 1992 PA 181 and section 34 as amended by 2006 PA 167, and by adding section 31b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 31a. (1) ~~Beginning October 1, 1992, there~~ **THERE** is
 2 established in the department ~~—~~a parole board consisting of 10
 3 members who shall be appointed by the director and who shall not be
 4 within the state civil service.

5 (2) Members of the parole board shall be appointed to terms of
 6 4 years each. ~~—except that of the members first appointed, 4 shall~~
 7 ~~serve for terms of 4 years each, 3 shall serve for terms of 3 years~~
 8 ~~each, and 3 shall serve for terms of 2 year each.~~ A member may be
 9 reappointed. The director may remove a member of the parole board

1 for incompetency, dereliction of duty, malfeasance, misfeasance, or
2 nonfeasance in office. If a vacancy occurs on the parole board, the
3 director shall make an appointment for the unexpired term in the
4 same manner as an original appointment. At least 4 members of the
5 parole board shall be persons who, at the time of their
6 appointment, have never been employed by or appointed to a position
7 in the department of corrections.

8 (3) Each member of the parole board shall receive an annual
9 salary as established by the legislature and shall be entitled to
10 necessary traveling expenses incurred in the performance of
11 official duties subject to the standardized travel regulations of
12 the state.

13 (4) The chairperson of the parole board shall be designated by
14 the director. The chairperson of the parole board is responsible
15 for the administration and operation of the parole board. The
16 chairperson may conduct interviews and participate in the parole
17 decision-making process. The chairperson shall select secretaries
18 and other assistants as the chairperson considers to be necessary.

19 (5) The parole board created in this section ~~shall exist for~~
20 ~~purposes of appointment and training on October 1, 1992, and as of~~
21 ~~November 15, 1992, shall exercise and perform the powers and duties~~
22 ~~prescribed and conferred by this act~~ **DOES NOT HAVE JURISDICTION**
23 **OVER ANY PRISONER WHO IS SERVING A SENTENCE OF LIFE IMPRISONMENT**
24 **AND HAS SERVED 30 YEARS OR MORE OF THAT SENTENCE. A PRISONER**
25 **SERVING A SENTENCE OF LIFE IMPRISONMENT WHO HAS SERVED 30 YEARS OR**
26 **MORE OF THAT SENTENCE IS SUBJECT TO THE JURISDICTION OF THE LIFE**
27 **SENTENCE PAROLE PANEL CREATED IN SECTION 31B. THIS SUBSECTION DOES**

1 NOT APPLY TO A PRISONER SERVING A LIFE SENTENCE WITHOUT THE
2 POSSIBILITY OF PAROLE.

3 SEC. 31B. (1) BEGINNING JANUARY 1, 2010, THERE IS ESTABLISHED
4 IN THE DEPARTMENT A LIFE SENTENCE PAROLE PANEL CONSISTING OF 3
5 MEMBERS WHO SHALL BE APPOINTED BY THE DIRECTOR AND WHO SHALL NOT BE
6 WITHIN THE STATE CIVIL SERVICE. EACH MEMBER OF THE PAROLE PANEL
7 SHALL BE A RETIRED JUDGE WHO SERVED IN COURT IN THIS STATE.

8 (2) MEMBERS OF THE LIFE SENTENCE PAROLE PANEL SHALL BE
9 APPOINTED TO TERMS OF 4 YEARS EACH, EXCEPT THAT OF THE MEMBERS
10 FIRST APPOINTED, 1 SHALL SERVE FOR A TERM OF 4 YEARS, 1 SHALL SERVE
11 FOR A TERM OF 3 YEARS, AND 1 SHALL SERVE FOR A TERM OF 2 YEARS. A
12 MEMBER MAY BE REAPPOINTED. THE DIRECTOR MAY REMOVE A MEMBER OF THE
13 PAROLE PANEL FOR INCOMPETENCY, DERELICTION OF DUTY, MALFEASANCE,
14 MISFEASANCE, OR NONFEASANCE IN OFFICE. IF A VACANCY OCCURS ON THE
15 PAROLE PANEL, THE DIRECTOR SHALL MAKE AN APPOINTMENT FOR THE
16 UNEXPIRED TERM IN THE SAME MANNER AS AN ORIGINAL APPOINTMENT.

17 (3) EACH MEMBER OF THE LIFE SENTENCE PAROLE PANEL SHALL
18 RECEIVE PER DIEM COMPENSATION AS DETERMINED BY THE LEGISLATURE AND
19 IS ENTITLED TO NECESSARY TRAVELING EXPENSES INCURRED IN THE
20 PERFORMANCE OF OFFICIAL DUTIES SUBJECT TO THE STANDARDIZED TRAVEL
21 REGULATIONS OF THE STATE.

22 (4) THE CHAIRPERSON OF THE LIFE SENTENCE PAROLE PANEL SHALL BE
23 DESIGNATED BY THE DIRECTOR. THE CHAIRPERSON OF THE PAROLE PANEL IS
24 RESPONSIBLE FOR THE ADMINISTRATION AND OPERATION OF THE PAROLE
25 PANEL. THE CHAIRPERSON MAY CONDUCT INTERVIEWS AND PARTICIPATE IN
26 THE PAROLE DECISION-MAKING PROCESS. THE CHAIRPERSON SHALL SELECT
27 SECRETARIES AND OTHER ASSISTANTS AS THE CHAIRPERSON CONSIDERS TO BE

1 NECESSARY.

2 (5) THE LIFE SENTENCE PAROLE PANEL CREATED IN THIS SECTION
3 ONLY HAS JURISDICTION OVER ANY PRISONER WHO IS SERVING A SENTENCE
4 OF LIFE IMPRISONMENT AND HAS SERVED 30 YEARS OR MORE OF THAT
5 SENTENCE. THE PANEL DOES NOT HAVE JURISDICTION OVER ANY PRISONER
6 SERVING A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE. A PAROLE
7 GRANTED BY THE PAROLE PANEL IS SUBJECT TO ALL OF THE PROVISIONS OF
8 THIS ACT AND RULES PROMULGATED UNDER THIS ACT THAT APPLY TO PAROLES
9 GRANTED BY THE PAROLE BOARD TO PRISONERS SERVING LIFE SENTENCES
10 PURSUANT TO SECTION 34(7) TO (9), UNLESS SPECIFICALLY PROVIDED
11 OTHERWISE IN THIS ACT. ANY DUTY OR REQUIREMENT IMPOSED ON THE
12 PAROLE BOARD SHALL BE CONSTRUED TO BE A DUTY OR REQUIREMENT OF THE
13 LIFE SENTENCE PAROLE PANEL CREATED IN THIS SECTION WITH RESPECT TO
14 PRISONERS UNDER THE JURISDICTION OF THE LIFE SENTENCE PAROLE PANEL.
15 A PRISONER WHO IS SUBJECT TO THE JURISDICTION OF THE LIFE SENTENCE
16 PAROLE PANEL IS SUBJECT TO THE PROCEDURES PRESCRIBED IN SECTION
17 34(7) TO (9) EXCEPT THAT THE PANEL SHALL INTERVIEW THE PRISONER
18 IMMEDIATELY UPON THE COMPLETION OF 30 YEARS OF THE PRISONER'S
19 SENTENCE AND EVERY 5 YEARS THEREAFTER UNTIL THE PRISONER IS PAROLED
20 OR DECEASED.

21 Sec. 34. (1) Except as provided in section 34a, a prisoner
22 sentenced to an indeterminate sentence and confined in a state
23 correctional facility with a minimum in terms of years other than a
24 prisoner subject to disciplinary time is subject to the
25 jurisdiction of the parole board when the prisoner has served a
26 period of time equal to the minimum sentence imposed by the court
27 for the crime of which he or she was convicted, less good time and

1 disciplinary credits, if applicable.

2 (2) Except as provided in section 34a, a prisoner subject to
3 disciplinary time sentenced to an indeterminate sentence and
4 confined in a state correctional facility with a minimum in terms
5 of years is subject to the jurisdiction of the parole board when
6 the prisoner has served a period of time equal to the minimum
7 sentence imposed by the court for the crime of which he or she was
8 convicted.

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

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

1 only after the total of the maximum sentences has been served,
2 unless the prisoner is paroled and discharged upon satisfactory
3 completion of the parole.

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

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

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

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

16 (c) A violation of chapter XXXIII of the Michigan penal code,
17 1931 PA 328, MCL 750.200 to 750.212a.

18 (d) A violation of section 17764(7) of the public health code,
19 1978 PA 368, MCL 333.17764.

20 (e) First degree criminal sexual conduct in violation of
21 section 520b(2)(c) of the Michigan penal code, 1931 PA 328, MCL
22 750.520b.

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

25 (7) ~~A-SUBJECT TO SUBSECTION (10)~~, A prisoner sentenced to
26 imprisonment for life, other than a prisoner described in
27 subsection (6), is subject to the jurisdiction of the parole board

1 and may be placed on parole according to the conditions prescribed
2 in subsection (8) if he or 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 for a crime committed
5 before October 1, 1992 or 15 calendar years of the sentence for a
6 crime committed on or after October 1, 1992.

7 (b) Except as provided in subsection ~~(12)~~-(13), the prisoner
8 has served 20 calendar years of a sentence for violating or
9 conspiring to violate section 7401(2)(a)(i) of the public health
10 code, 1978 PA 368, MCL 333.7401, and has another conviction for a
11 serious crime.

12 (c) Except as provided in subsection ~~(12)~~-(13), the prisoner
13 has served 17-1/2 calendar years of the sentence for violating or
14 conspiring to violate section 7401(2)(a)(i) of the public health
15 code, 1978 PA 368, MCL 333.7401, and does not have another
16 conviction for a serious crime.

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

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

27 (b) In addition to the interview schedule prescribed in

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

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

19 (d) A parole granted under subsection (7) shall be for a
20 period of not less than 4 years and subject to the usual rules
21 pertaining to paroles granted by the parole board. A parole granted
22 under subsection (7) is not valid until the transcript of the
23 record is filed with the attorney general whose certification of
24 receipt of the transcript shall be returnable to the office of the
25 parole board within 5 days. Except for medical records protected
26 under section 2157 of the revised judicature act of 1961, 1961 PA
27 236, MCL 600.2157, the file of a prisoner granted a parole under

1 subsection (7) is a public record.

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

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

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

13 **(10) WHEN A PRISONER DESCRIBED IN SUBSECTION (7) COMPLETES 30**
14 **YEARS OF HIS OR HER LIFE SENTENCE, HE OR SHE IS NO LONGER SUBJECT**
15 **TO THE JURISDICTION OF THE PAROLE BOARD AND INSTEAD BECOMES SUBJECT**
16 **TO THE JURISDICTION OF THE LIFE SENTENCE PAROLE PANEL UNDER SECTION**
17 **31B.**

18 **(11)** ~~(10)~~—In determining whether a prisoner convicted of
19 violating or conspiring to violate section 7401(2)(a)(i) of the
20 public health code, 1978 PA 368, MCL 333.7401, and sentenced to
21 imprisonment for life before October 1, 1998 is to be released on
22 parole, the parole board shall consider all of the following:

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

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

1 (c) Any of the following:

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

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

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

17 (iv) Whether the violation involved the delivery of a
18 controlled substance to an individual less than 17 years of age or
19 possession with intent to deliver a controlled substance to an
20 individual less than 17 years of age.

21 (12) ~~(11)~~—Except as provided in section 34a, a prisoner's
22 release on parole is discretionary with the parole board. The
23 action of the parole board in granting a parole is appealable by
24 the prosecutor of the county from which the prisoner was committed
25 or the victim of the crime for which the prisoner was convicted.
26 The appeal shall be to the circuit court in the county from which
27 the prisoner was committed, by leave of the court.

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

18 (14) ~~(13)~~—An individual convicted of violating or conspiring
19 to violate section 7401(2) (a) (ii) or 7403(2) (a) (ii) of the public
20 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
21 1, 2003 is eligible for parole after serving the minimum of each
22 sentence imposed for that violation or 10 years of each sentence
23 imposed for that violation, whichever is less.

24 (15) ~~(14)~~—An individual convicted of violating or conspiring
25 to violate section 7401(2) (a) (iii) or 7403(2) (a) (iii) of the public
26 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
27 1, 2003 is eligible for parole after serving the minimum of each

1 sentence imposed for that violation or 5 years of each sentence
2 imposed for that violation, whichever is less.

3 (16) ~~(15)~~—An individual convicted of violating or conspiring
4 to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public
5 health code, 1978 PA 368, MCL 333.7401 and 333.7403, before March
6 1, 2003 who is sentenced to a term of imprisonment that is
7 consecutive to a term of imprisonment imposed for any other
8 violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i)
9 to (iv) is eligible for parole after serving 1/2 of the minimum
10 sentence imposed for each violation of section 7401(2)(a)(iv) or
11 7403(2)(a)(iv). This subsection does not apply if the sentence was
12 imposed for a conviction for a new offense committed while the
13 individual is on probation or parole.

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

18 (18) ~~(17)~~—As used in this section:

19 (a) "Serious crime" means violating or conspiring to violate
20 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
21 333.7545, that is punishable by imprisonment for more than 4 years,
22 or an offense against a person in violation of section 83, 84, 86,
23 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d,
24 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328,
25 MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
26 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
27 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

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