

HOUSE BILL No. 5797

August 15, 2012, Introduced by Rep. Graves 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 2010 PA 353.

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

17 (4) If a prisoner subject to disciplinary time is sentenced
18 for consecutive terms, whether received at the same time or at any
19 time during the life of the original sentence, the parole board has
20 jurisdiction over the prisoner for purposes of parole when the
21 prisoner has served the total time of the added minimum terms. The
22 maximum terms of the sentences shall be added to compute the new
23 maximum term under this subsection, and discharge shall be issued
24 only after the total of the maximum sentences has been served,
25 unless the prisoner is paroled and discharged upon satisfactory
26 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), the prisoner
27 has served 10 calendar years of the sentence for a crime committed

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

3 (b) Except as provided in subsection ~~(12)~~, **(14)**, the prisoner
4 has served 20 calendar years of a sentence for violating, or
5 attempting or conspiring to violate, section 7401(2)(a)(i) of the
6 public health code, 1978 PA 368, MCL 333.7401, and has another
7 conviction for a serious crime.

8 (c) Except as provided in subsection ~~(12)~~, **(14)**, the prisoner
9 has 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 (8) A parole granted to a prisoner under subsection (7) is
14 subject to the following conditions:

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

23 (b) In addition to the interview schedule prescribed in
24 subdivision (a), the parole board shall review the prisoner's file
25 at the conclusion of 15 calendar years of the prisoner's sentence
26 and every 5 years thereafter until the prisoner is paroled,
27 discharged, or deceased. A prisoner whose file is to be reviewed

1 under this subdivision shall be notified of the upcoming file
2 review at least 30 days before the file review takes place and
3 shall be allowed to submit written statements or documentary
4 evidence for the parole board's consideration in conducting the
5 file review.

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

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

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

27 (a) The prisoner shall be given written notice, not less than

1 30 days before the interview date, stating that the interview will
2 be conducted.

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

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

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

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

19 (c) Any of the following:

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

27 (ii) Whether the individual was a principal administrator,

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

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

8 (iv) Whether the violation involved the delivery of a
9 controlled substance to an individual less than 17 years of age or
10 possession with intent to deliver a controlled substance to an
11 individual less than 17 years of age.

12 (11) Except as provided in **SUBSECTION (12) AND** section 34a, a
13 prisoner's release on parole is discretionary with the parole
14 board. The action of the parole board in granting a parole is
15 appealable by the prosecutor of the county from which the prisoner
16 was committed, **THE STATE ATTORNEY GENERAL**, or the victim of the
17 crime for which the prisoner was convicted. The appeal shall be to
18 the circuit court in the county from which the prisoner was
19 committed, by leave of the court. **REVIEW OF THE DECISION TO RELEASE**
20 **A PRISONER ON PAROLE SHALL BE UNDER AN ABUSE OF DISCRETION**
21 **STANDARD. THE STANDARD SHALL CONSIDER WHETHER THE PAROLE BOARD'S**
22 **DETERMINATION FALLS OUTSIDE OF A PRINCIPLED RANGE OF OUTCOMES.**

23 (12) **IN THE CASE OF A PRISONER CONVICTED OF A VIOLATION**
24 **DESCRIBED IN SUBSECTION (13), THE PAROLE BOARD SHALL MAINTAIN A**
25 **COMPLETE RECORD OF ALL PROCEEDINGS RELATING TO A PAROLE**
26 **DETERMINATION UNDER THIS SECTION. THE RECORD SHALL INCLUDE THE**
27 **SPECIFIC FINDINGS OF THE PAROLE BOARD REGARDING THE PRISONER'S**

1 ELIGIBILITY FOR PAROLE AND SHALL SET FORTH THE FACTUAL BASIS FOR
2 EACH OF THOSE FINDINGS. IF PAROLE IS GRANTED, THE DEPARTMENT SHALL
3 MAINTAIN THE RECORD FOR A PERIOD OF NOT LESS THAN 6 MONTHS AFTER
4 THE DATE THE PROSECUTING ATTORNEY IS NOTIFIED OF THAT PAROLE.

5 (13) SUBSECTION (12) APPLIES TO ALL OF THE FOLLOWING
6 VIOLATIONS:

7 (A) FIRST DEGREE CHILD ABUSE IN VIOLATION OF SECTION 136B(2)
8 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.

9 (B) FIRST DEGREE MURDER IN VIOLATION OF SECTION 316 OF THE
10 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.316.

11 (C) SECOND DEGREE MURDER IN VIOLATION OF SECTION 317 OF THE
12 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.317.

13 (D) HUMAN TRAFFICKING IN VIOLATION OF CHAPTER LXVIIA OF THE
14 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.462A TO 750.462J.

15 (E) FIRST DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF
16 SECTION 520B OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B.

17 (F) SECOND DEGREE CRIMINAL SEXUAL CONDUCT IN VIOLATION OF
18 SECTION 520C OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520C.

19 (G) TERRORISM IN VIOLATION OF CHAPTER LXXXIIIA OF THE MICHIGAN
20 PENAL CODE, 1931 PA 328, MCL 750.543A TO 750.543Z, THAT DOES NOT
21 CAUSE THE DEATH OF ANY INDIVIDUAL.

22 (14) ~~(12)~~ If the sentencing judge, or his or her successor in
23 office, determines on the record that a prisoner described in
24 subsection (7)(b) or (c) sentenced to imprisonment for life for
25 violating, or attempting or conspiring to violate, section
26 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401,
27 has cooperated with law enforcement, the prisoner is subject to the

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

12 (15) ~~(13)~~ Notwithstanding subsections (1) and (2), an
13 individual convicted of violating, or attempting or conspiring to
14 violate, section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health
15 code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
16 occurred before March 1, 2003, and who was sentenced to a term of
17 years, is eligible for parole after serving 20 years of the
18 sentence imposed for the violation if the individual has another
19 serious crime or 17-1/2 years of the sentence if the individual
20 does not have another conviction for a serious crime, or after
21 serving the minimum sentence imposed for that violation, whichever
22 is less.

23 (16) ~~(14)~~ Notwithstanding subsections (1) and (2), an
24 individual who was convicted of violating, or attempting or
25 conspiring to violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of
26 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
27 whose offense occurred before March 1, 2003, and who was sentenced

1 according to those sections as they existed before March 1, 2003,
2 is eligible for parole after serving the minimum of each sentence
3 imposed for that violation or 10 years of each sentence imposed for
4 that violation, whichever is less.

5 (17) ~~(15)~~—Notwithstanding subsections (1) and (2), an
6 individual who was convicted of violating, or attempting or
7 conspiring to violate, section 7401(2)(a)(iii) or 7403(2)(a)(iii) of
8 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
9 whose offense occurred before March 1, 2003, and who was sentenced
10 according to those sections as they existed before March 1, 2003,
11 is eligible for parole after serving the minimum of each sentence
12 imposed for that violation or 5 years of each sentence imposed for
13 that violation, whichever is less.

14 (18) ~~(16)~~—Notwithstanding subsections (1) and (2), an
15 individual who was convicted of violating, or attempting or
16 conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of
17 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
18 whose offense occurred before March 1, 2003, who was sentenced
19 according to those sections of law as they existed before March 1,
20 2003 to consecutive terms of imprisonment for 2 or more violations
21 of section 7401(2)(a) or 7403(2)(a), is eligible for parole after
22 serving 1/2 of the minimum sentence imposed for each violation of
23 section 7401(2)(a)(iv) or 7403(2)(a)(iv). This subsection applies
24 only to sentences imposed for violations of section 7401(2)(a)(iv)
25 or 7403(2)(a)(iv) and does not apply if the sentence was imposed for
26 a conviction for a new offense committed while the individual was
27 on probation or parole.

1 (19) ~~(17)~~ 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 ~~(13), (14), (15), or (16)~~. (15), (16), (17), OR (18).

5 (20) ~~(18)~~ 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.