

HOUSE BILL No. 6014

November 8, 2012, Introduced by Rep. Haveman 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,
and by adding section 34d.

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

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

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

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

1 completion of the parole.

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

7 (6) ~~A~~**EXCEPT AS PROVIDED IN SECTION 34D, A** prisoner sentenced
8 to imprisonment for life for any of the following is not eligible
9 for parole and is instead subject to the provisions of section 44:

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

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

14 (c) A violation of chapter XXXIII of the Michigan penal code,
15 1931 PA 328, MCL 750.200 to 750.212a.

16 (d) A violation of section 17764(7) of the public health code,
17 1978 PA 368, MCL 333.17764.

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

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

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

1 (a) Except as provided in subdivision (b) or (c), the prisoner
2 has served 10 calendar years of the sentence for a crime committed
3 before October 1, 1992 or 15 calendar years of the sentence for a
4 crime committed on or after October 1, 1992.

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

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

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

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

25 (b) In addition to the interview schedule prescribed in
26 subdivision (a), the parole board shall review the prisoner's file
27 at the conclusion of 15 calendar years of the prisoner's sentence

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

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

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

27 (9) An interview conducted under subsection (8)(a) is subject

1 to both of the following requirements:

2 (a) The prisoner shall be given written notice, not less than
3 30 days before the interview date, stating that the interview will
4 be conducted.

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

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

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

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

21 (c) Any of the following:

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

1 interests of that entity.

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

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

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

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

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

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

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

21 (14) Notwithstanding subsections (1) and (2), an individual
22 who was convicted of violating, or attempting or conspiring to
23 violate, section 7401(2) (a) (ii) or 7403(2) (a) (ii) of the public
24 health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
25 occurred before March 1, 2003, and who was sentenced according to
26 those sections as they existed before March 1, 2003, is eligible
27 for parole after serving the minimum of each sentence imposed for

1 that violation or 10 years of each sentence imposed for that
2 violation, whichever is less.

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

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

26 (17) The parole board shall provide notice to the prosecuting
27 attorney of the county in which the individual was convicted before

1 granting parole to the individual under subsection (13), (14),
2 (15), or (16).

3 (18) 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.

15 **SEC. 34D. (1) TO COMPLY WITH MILLER V ALABAMA, 567 U.S. ____;**
16 **132 S. CT. 2455; 183 L ED 2D 407 (2012), THE PAROLE BOARD HAS**
17 **JURISDICTION OVER AN INDIVIDUAL WHO WAS SENTENCED BEFORE JUNE 25,**
18 **2012 TO IMPRISONMENT FOR LIFE WITHOUT PAROLE ELIGIBILITY FOR AN**
19 **OFFENSE COMMITTED BEFORE THE INDIVIDUAL WAS 18 YEARS OF AGE AS**
20 **FOLLOWS:**

21 **(A) IF THE INDIVIDUAL WAS UNDER 16 YEARS OF AGE AT THE TIME OF**
22 **THE OFFENSE, WHEN THE INDIVIDUAL HAS SERVED 15 YEARS OF HIS OR HER**
23 **TERM OF IMPRISONMENT.**

24 **(B) IF THE INDIVIDUAL WAS 16 YEARS OF AGE OR OLDER BUT LESS**
25 **THAN 18 YEARS OF AGE AT THE TIME OF THE OFFENSE, WHEN THE**
26 **INDIVIDUAL HAS SERVED 20 YEARS OF HIS OR HER TERM OF IMPRISONMENT.**

27 **(2) IN DETERMINING WHETHER THE INDIVIDUAL IS TO BE RELEASED ON**

1 PAROLE, THE PAROLE BOARD SHALL CONSIDER ALL OF THE FOLLOWING:

2 (A) WHETHER THE INDIVIDUAL WAS THE PRINCIPAL ACTOR OR
3 INITIATED THE EVENTS THAT LED TO THE OFFENSE OR HAD A MORE LIMITED
4 ROLE, SUCH AS AIDING OR ABETTING THE OFFENSE.

5 (B) WHETHER THE OFFENSE OCCURRED DURING AN ACT OF TERRORISM OR
6 WAS PART OF A CONTINUING SERIES OF CRIMINAL ACTS.

7 (C) WHETHER THE INDIVIDUAL ACTED IN CONCERT WITH 2 OR MORE
8 INDIVIDUALS IN COMMITTING THE OFFENSE.

9 (D) WHETHER THE INDIVIDUAL WAS CONVICTED OF MULTIPLE MURDERS
10 OR THERE WERE MULTIPLE VICTIMS.

11 (E) WHETHER THE VICTIM WAS A MINOR, A VULNERABLE ADULT, OR AN
12 OFFICER OR EMPLOYEE OF LAW ENFORCEMENT OR A CORRECTIONAL AGENCY OR
13 THE INDIVIDUAL EXPLOITED A VICTIM'S PHYSICAL DISABILITY, MENTAL
14 DISABILITY, OR A DOMESTIC RELATIONSHIP.

15 (F) WHETHER THE VICTIM WAS TREATED WITH SADISM, TORTURE, OR
16 EXCESSIVE BRUTALITY, OR CONDUCT DESIGNED TO SUBSTANTIALLY INCREASE
17 THE FEAR AND ANXIETY OF THE VICTIM.

18 (G) WHETHER THE VICTIM OF THE OFFENSE WAS A WITNESS TO A CRIME
19 AND THE OFFENSE WAS COMMITTED TO PREVENT THE VICTIM FROM
20 TESTIFYING.

21 (H) WHETHER THE INDIVIDUAL HAD NO SIGNIFICANT PRIOR CRIMINAL
22 CONDUCT BEFORE COMMITTING THE OFFENSE FOR WHICH HE OR SHE WAS
23 SENTENCED TO LIFE.

24 (I) WHETHER THE INDIVIDUAL WAS UNDER THE INFLUENCE OF EXTREME
25 MENTAL OR EMOTIONAL DISTURBANCE WHEN THE OFFENSE WAS COMMITTED.

26 (J) WHETHER THE INDIVIDUAL WAS UNDER THE SUBSTANTIAL
27 DOMINATION OF ANOTHER PERSON DURING THE COMMISSION OF THE OFFENSE.

1 (K) WHETHER THE INDIVIDUAL'S CAPACITY TO APPRECIATE THE
2 CRIMINALITY OF HIS OR HER CONDUCT OR TO CONFORM THAT CONDUCT TO THE
3 REQUIREMENTS OF LAW WAS SUBSTANTIALLY IMPAIRED AS A RESULT OF
4 MENTAL ILLNESS OR MENTAL DISABILITY.

5 (l) WHETHER THE INDIVIDUAL'S AGE, FAMILY CIRCUMSTANCES, OR
6 MENTAL DEVELOPMENT SUBSTANTIALLY AFFECTED HIS OR HER ABILITY TO
7 APPRECIATE THE CONSEQUENCES OF HIS OR HER ACTIONS.

8 (M) ANY OTHER CIRCUMSTANCES THE COURT DETERMINES ARE
9 APPROPRIATE FOR ITS CONSIDERATION.