

HOUSE BILL NO. 4130

February 06, 2019, Introduced by Reps. Carter, Bolden and Filler and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled "Corrections code of 1953," by amending sections 33 and 34 (MCL 791.233 and 791.234), section 33 as amended by 2017 PA 14 and section 34 as amended by 2017 PA 265.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33. (1) The grant of a parole is subject to all of the
2 following conditions:

3 (a) A prisoner must not be given liberty on parole until the
4 board has reasonable assurance, after consideration of all of the

1 facts and circumstances, including the prisoner's mental and social
2 attitude, that the prisoner will not become a menace to society or
3 to the public safety.

4 (b) Except as provided in section 34a **and section 35(10)**, a
5 parole must not be granted to a prisoner other than a prisoner
6 subject to disciplinary time until the prisoner has served the
7 minimum term imposed by the court less allowances for good time or
8 special good time to which the prisoner may be entitled by statute,
9 except that a prisoner other than a prisoner subject to
10 disciplinary time is eligible for parole before the expiration of
11 his or her minimum term of imprisonment ~~whenever~~**if** the sentencing
12 judge, or the judge's successor in office, gives written approval
13 of the parole of the prisoner before the expiration of the minimum
14 term of imprisonment.

15 (c) Except as provided in section 34a **and section 35(10)**, and
16 notwithstanding the provisions of subdivision (b), a parole must
17 not be granted to a prisoner other than a prisoner subject to
18 disciplinary time sentenced for the commission of a crime described
19 in section 33b(a) to (cc) until the prisoner has served the minimum
20 term imposed by the court less an allowance for disciplinary
21 credits as provided in section 33(5) of 1893 PA 118, MCL 800.33. A
22 prisoner described in this subdivision is not eligible for special
23 parole.

24 (d) Except as provided in section 34a **and section 35(10)**, a
25 parole must not be granted to a prisoner subject to disciplinary
26 time until the prisoner has served the minimum term imposed by the
27 court.

28 (e) A prisoner must not be released on parole until the parole
29 board has satisfactory evidence that arrangements have been made

1 for such honorable and useful employment as the prisoner is capable
2 of performing, for the prisoner's education, or for the prisoner's
3 care if the prisoner is mentally or physically ill or
4 incapacitated.

5 (f) ~~A~~**Except as provided in section 35(10)**, a prisoner whose
6 minimum term of imprisonment is 2 years or more must not be
7 released on parole unless he or she has either earned a high school
8 diploma or a high school equivalency certificate. The director of
9 the department may waive the restriction imposed by this
10 subdivision as to any prisoner who is over the age of 65 or who was
11 gainfully employed immediately before committing the crime for
12 which he or she was incarcerated. The department may also waive the
13 restriction imposed by this subdivision as to any prisoner who has
14 a learning disability, who does not have the necessary proficiency
15 in English, or who for some other reason that is not the fault of
16 the prisoner is unable to successfully complete the requirements
17 for a high school diploma or a high school equivalency certificate.
18 If the prisoner does not have the necessary proficiency in English,
19 the department shall provide English language training for that
20 prisoner necessary for the prisoner to begin working toward the
21 completion of the requirements for a high school equivalency
22 certificate. This subdivision applies to prisoners sentenced for
23 crimes committed after December 15, 1998. In providing an
24 educational program leading to a high school diploma or a high
25 school equivalency certificate, the department shall give priority
26 to prisoners sentenced for crimes committed on or before December
27 15, 1998.

28 (2) Paroles-in-custody to answer warrants filed by local or
29 out-of-state agencies, or immigration officials, are permissible if

1 an accredited agent of the agency filing the warrant calls for the
2 prisoner to be paroled in custody.

3 (3) The parole board may promulgate rules under the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328, that are not inconsistent with this act with respect to
6 conditions imposed upon prisoners paroled under this act.

7 Sec. 34. (1) Except **for a prisoner granted parole under**
8 **section 35(10) or** as provided in section 34a, a prisoner sentenced
9 to an indeterminate sentence and confined in a state correctional
10 facility with a minimum in terms of years other than a prisoner
11 subject to disciplinary time is subject to the jurisdiction of the
12 parole board when the prisoner has served a period of time equal to
13 the minimum sentence imposed by the court for the crime of which he
14 or she was convicted, less good time and disciplinary credits, if
15 applicable.

16 (2) Except **for a prisoner granted parole under section 35(10)**
17 **or** as provided in section 34a, a prisoner subject to disciplinary
18 time sentenced to an indeterminate sentence and confined in a state
19 correctional facility with a minimum in terms of years is subject
20 to the jurisdiction of the parole board when the prisoner has
21 served a period of time equal to the minimum sentence imposed by
22 the court for the crime of which he or she was convicted.

23 (3) ~~If~~ **Except for a prisoner granted parole under section**
24 **35(10), if** a prisoner other than a prisoner subject to disciplinary
25 time is sentenced for consecutive terms, whether received at the
26 same time or at any time during the life of the original sentence,
27 the parole board has jurisdiction over the prisoner for purposes of
28 parole when the prisoner has served the total time of the added
29 minimum terms, less the good time and disciplinary credits allowed

1 by statute. The maximum terms of the sentences must be added to
 2 compute the new maximum term under this subsection, and discharge
 3 must be issued only after the total of the maximum sentences has
 4 been served less good time and disciplinary credits, unless the
 5 prisoner is paroled and discharged upon satisfactory completion of
 6 the parole.

7 (4) ~~If~~ **Except for a prisoner granted parole under section**
 8 **35(10), if** a prisoner subject to disciplinary time is sentenced for
 9 consecutive terms, whether received at the same time or at any time
 10 during the life of the original sentence, the parole board has
 11 jurisdiction over the prisoner for purposes of parole when the
 12 prisoner has served the total time of the added minimum terms. The
 13 maximum terms of the sentences must be added to compute the new
 14 maximum term under this subsection, and discharge must be issued
 15 only after the total of the maximum sentences has been served,
 16 unless the prisoner is paroled and discharged upon satisfactory
 17 completion of the parole.

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

23 (6) A prisoner sentenced to imprisonment for life for ~~any~~
 24 **either** of the following is not eligible for parole and is instead
 25 subject to the provisions of section 44 **or 44a**:

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

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

1 ~~(c) A violation of chapter XXXIII of the Michigan penal code,~~
 2 ~~1931 PA 328, MCL 750.200 to 750.212a.~~

3 ~~(d) A violation of section 17764(7) of the public health code,~~
 4 ~~1978 PA 368, MCL 333.17764.~~

5 **(b)** ~~(e)~~ First degree criminal sexual conduct in violation of
 6 section ~~520b(2)(e)~~ **520b** of the Michigan penal code, 1931 PA 328,
 7 MCL 750.520b.

8 ~~(f) Any other violation for which parole eligibility is~~
 9 ~~expressly denied under state law.~~

10 **(7) Except for a prisoner granted parole under section 35(10),**
 11 **a prisoner sentenced to imprisonment for life for any of the**
 12 **following is not eligible for parole and is otherwise subject to**
 13 **the provisions of section 44 or 44a:**

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

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

20 **(d) Any other violation for which parole eligibility is**
 21 **expressly denied under state law.**

22 **(8)** ~~(7)~~ **A** Except for a prisoner granted parole under section
 23 **35(10), a prisoner sentenced to imprisonment for life, other than a**
 24 **prisoner described in ~~subsection~~ subsections (6) and (7), is**
 25 **subject to the jurisdiction of the parole board and may be placed**
 26 **on parole according to the conditions prescribed in subsection ~~(8)~~**
 27 **(9) if he or she meets any of the following criteria:**

28 **(a) Except as provided in subdivision (b) or (c), the prisoner**
 29 **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)~~, **(13)**, 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)~~, **(13)**, 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 **(9)** ~~(8)~~—A parole granted to a prisoner under subsection ~~(7)~~
14 **(8)** is 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)~~, **(10)**, 1 member of
19 the parole board shall interview the prisoner. The interview
20 schedule prescribed in this subdivision applies to all prisoners to
21 whom subsection ~~(7)~~ **(8)** applies, regardless of the date on which
22 they were 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
28 under this subdivision ~~shall~~ **must** be notified of the upcoming file
29 review at least 30 days before the file review takes place and must

1 be allowed to submit written statements or documentary evidence for
2 the parole board's consideration in conducting the file review.

3 (c) A decision to grant or deny parole to the prisoner must
4 not be made until after a public hearing held in the manner
5 prescribed for pardons and commutations in sections 44 and 45.
6 Notice of the public hearing must be given to the sentencing judge,
7 or the judge's successor in office. Parole must not be granted if
8 the sentencing judge files written objections to the granting of
9 the parole within 30 days of receipt of the notice of hearing, but
10 the sentencing judge's written objections bar the granting of
11 parole only if the sentencing judge is still in office in the court
12 before which the prisoner was convicted and sentenced. A sentencing
13 judge's successor in office may file written objections to the
14 granting of parole, but a successor judge's objections must not bar
15 the granting of parole under subsection ~~(7)~~—**(8)**. If written
16 objections are filed by either the sentencing judge or the judge's
17 successor in office, ~~they~~ **the objections** must be made part of the
18 prisoner's file.

19 (d) A parole granted under subsection ~~(7)~~—**(8)** must 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)~~—**(8)** is not valid until the transcript of the
23 record is filed with the attorney general whose certification of
24 receipt of the transcript must be returned 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
28 subsection ~~(7)~~—**(8)** is a public record.

29 **(10)** ~~(9)~~—An interview conducted under subsection ~~(8)(a)~~—**(9)(a)**

1 is subject to both of the following requirements:

2 (a) The prisoner must 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 must 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)(e)~~ **(9)(c)**.

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

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

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

22 (c) Any of the following:

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

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

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

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

13 (12) ~~(11)~~—Except as provided in **subsection (20) and** section
14 34a, a prisoner's release on parole is discretionary with the
15 parole board. The action of the parole board in granting a parole
16 is appealable by the prosecutor of the county from which the
17 prisoner was committed or the victim of the crime for which the
18 prisoner was convicted. The appeal ~~shall~~**must** be to the circuit
19 court in the county from which the prisoner was committed, by leave
20 of the court.

21 (13) ~~(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)~~**(8) (b)** or (c) sentenced to imprisonment for life
24 for 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
28 provided in subsection ~~(7) (b)~~**(8) (b)** or (c) 2-1/2 years earlier
29 than the time otherwise indicated in subsection ~~(7) (b)~~**(8) (b)** or

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

10 **(14) ~~(13) Notwithstanding~~ Except for a prisoner granted parole**
11 **under section 35(10) and notwithstanding** subsections (1) and (2), a
12 prisoner convicted of violating, or attempting or conspiring to
13 violate, section 7401(2)(a)(i) or 7403(2)(a)(i) of the public health
14 code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense
15 occurred before March 1, 2003, and who was sentenced to a term of
16 years, is eligible for parole after serving 20 years of the
17 sentence imposed for the violation if the individual has another
18 serious crime or 17-1/2 years of the sentence if the individual
19 does not have another conviction for a serious crime, or after
20 serving the minimum sentence imposed for that violation, whichever
21 is less.

22 **(15) ~~(14) Notwithstanding~~ Except for a prisoner granted parole**
23 **under section 35(10) and notwithstanding** subsections (1) and (2), a
24 prisoner 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
28 according to those sections as they existed before March 1, 2003,
29 is eligible for parole after serving the minimum of each sentence

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

3 **(16) ~~(15) Notwithstanding~~ Except for a prisoner granted parole**
4 **under section 35(10) and notwithstanding** subsections (1) and (2), a
5 prisoner who was convicted of violating, or attempting or
6 conspiring to violate, section 7401(2) (a) (iii) or 7403(2) (a) (iii) of
7 the public health code, 1978 PA 368, MCL 333.7401 and 333.7403,
8 whose offense occurred before March 1, 2003, and who was sentenced
9 according to those sections as they existed before March 1, 2003,
10 is eligible for parole after serving the minimum of each sentence
11 imposed for that violation or 5 years of each sentence imposed for
12 that violation, whichever is less.

13 **(17) ~~(16) Notwithstanding~~ Except for a prisoner granted parole**
14 **under section 35(10) and notwithstanding** subsections (1) and (2), a
15 prisoner 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) of the public health code, 1978
22 PA 368, MCL 333.7401 and 333.7403, is eligible for parole after
23 serving 1/2 of the minimum sentence imposed for each violation of
24 section 7401(2) (a) (iv) or 7403(2) (a) (iv) of the public health code,
25 1978 PA 368, MCL 333.7401 and 333.7403. This subsection applies
26 only to sentences imposed for violations of section 7401(2) (a) (iv)
27 or 7403(2) (a) (iv) of the public health code, 1978 PA 368, MCL
28 333.7401 and 333.7403, and does not apply if the sentence was
29 imposed for a conviction for a new offense committed while the

1 individual was on probation or parole.

2 **(18)** ~~(17) Notwithstanding~~ **Except for a prisoner granted parole**
 3 **under section 35(10) and notwithstanding** subsections (1) and (2), a
 4 prisoner who was convicted of violating, or attempting or
 5 conspiring to violate, section 7401(2) (a) (ii) or (iii) or
 6 7403(2) (a) (ii) or (iii) of the public health code, 1978 PA 368, MCL
 7 333.7401 and 333.7403, who had a prior conviction for a violation
 8 of section 7401(2) (a) (ii) or (iii) or 7403(2) (a) (ii) or (iii) of the
 9 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who
 10 was sentenced to life without parole under section 7413(1) of the
 11 public health code, 1978 PA 368, MCL 333.7413, according to that
 12 section as it existed before ~~the effective date of the amendatory~~
 13 ~~act that added this subsection~~ **March 28, 2018** is eligible for
 14 parole after serving 5 years of each sentence imposed for that
 15 violation.

16 **(19)** ~~(18)~~ The parole board shall provide notice to the
 17 prosecuting attorney of the county in which the prisoner was
 18 convicted before granting parole to the prisoner under subsection
 19 ~~(13),~~ (14), (15), (16), ~~or~~ (17), **or (18) or under section 35(10).**
 20 **The parole board shall provide the relevant medical records to the**
 21 **prosecuting attorney of the county in which the prisoner was**
 22 **convicted for a prisoner being considered for parole under section**
 23 **35(10) at the same time the parole board provides the notice**
 24 **required under this subsection. The parole board shall also provide**
 25 **notice to any known victim or, in the case of a homicide, the**
 26 **victim's immediate family, that it is considering a prisoner for**
 27 **parole under section 35(10) at the same time it provides notice to**
 28 **the prosecuting attorney under this subsection.**

29 **(20)** The prosecuting attorney or victim or, in the case of a

1 homicide, the victim's immediate family, may object to the parole
2 board's decision to recommend parole by filing a motion in the
3 circuit court in the county in which the prisoner was convicted
4 within 30 days of receiving notice under subsection (19). If the
5 victim or, in the case of a homicide, the victim's immediate
6 family, objects to the parole board's determination to consider the
7 prisoner for parole under section 35(10), the prosecuting attorney
8 of the county in which the prisoner was convicted shall review the
9 case with the victim or his or her immediate family, as applicable,
10 before filing a motion in the circuit court as provided in this
11 subsection. A motion filed under this subsection must be heard by
12 the sentencing judge or the judge's successor in office. The
13 prosecuting attorney shall inform the parole board if a motion was
14 filed under this subsection. A prosecutor who files a motion under
15 this subsection may seek an independent medical examination of the
16 prisoner being considered for parole under section 35(10). If an
17 appeal is initiated under this subsection, A subsequent appeal
18 under subsection (12) may not be initiated upon the granting of
19 parole.

20 (21) Both of the following apply to a hearing conducted on a
21 motion filed under subsection (20):

22 (a) The prosecutor and the parole board may present evidence
23 in support of or in opposition to the determination that a prisoner
24 is medically frail, including the results of any independent
25 medical examination.

26 (b) The sentencing judge or the judge's successor shall
27 determine whether the prisoner is eligible for parole as a result
28 of being medically frail.

29 (22) The decision of the sentencing judge or the judge's

1 successor on a motion filed under subsection (20) is binding on the
 2 parole board with respect to whether a prisoner must be considered
 3 medically frail or not. However, the decision of the sentencing
 4 judge is subject to appeal by leave to the court of appeals granted
 5 to the department, the prosecuting attorney, or the victim or
 6 victim's immediate family in the case of a homicide.

7 (23) ~~(19)~~—As used in this section:

8 (a) "Medically frail" means that term as defined in section
 9 35(22).

10 (b) ~~(a)~~—"Serious crime" means violating or conspiring to
 11 violate article 7 of the public health code, 1978 PA 368, MCL
 12 333.7101 to 333.7545, that is punishable by imprisonment for more
 13 than 4 years, or an offense against a person in violation of
 14 section 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397,
 15 520b, 520c, 520d, 520g, 529, 529a, or 530 of the Michigan penal
 16 code, 1931 PA 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88,
 17 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350,
 18 750.397, 750.520b, 750.520c, 750.520d, 750.520g, 750.529, 750.529a,
 19 and 750.530.

20 (c) ~~(b)~~—"State correctional facility" means a facility that
 21 houses prisoners committed to the jurisdiction of the department.

22 Enacting section 1. This amendatory act takes effect 90 days
 23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect
 25 unless Senate Bill No.____ or House Bill No.____ (request no.
 26 01446'19) of the 100th Legislature is enacted into law.