

Act No. 14
Public Acts of 2019
Approved by the Governor
May 22, 2019
Filed with the Secretary of State
May 23, 2019
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019**

Introduced by Reps. Tyrone Carter, Bolden and Filler

ENROLLED HOUSE BILL No. 4130

AN ACT to amend 1953 PA 232, entitled “An act to revise, consolidate, and codify the laws relating to probationers and probation officers, to pardons, reprieves, commutations, and paroles, to the administration of correctional institutions, correctional farms, and probation recovery camps, to prisoner labor and correctional industries, and to the supervision and inspection of local jails and houses of correction; to provide for the siting of correctional facilities; to create a state department of corrections, and to prescribe its powers and duties; to provide for the transfer to and vesting in said department of powers and duties vested by law in certain other state boards, commissions, and officers, and to abolish certain boards, commissions, and offices the powers and duties of which are transferred by this act; to allow for the operation of certain facilities by private entities; to prescribe the powers and duties of certain other state departments and agencies; to provide for the creation of a local lockup advisory board; to provide for a lifetime electronic monitoring program; to prescribe penalties for the violation of the provisions of this act; to make certain appropriations; to repeal certain parts of this act on specific dates; and to repeal all acts and parts of acts inconsistent with the provisions of this act,” 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:

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

(a) A prisoner must not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner’s mental and social attitude, that the prisoner will not become a menace to society or to the public safety.

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

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

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

(e) A prisoner must not be released on parole until the parole board has satisfactory evidence that arrangements have been made for such honorable and useful employment as the prisoner is capable of performing, for the prisoner's education, or for the prisoner's care if the prisoner is mentally or physically ill or incapacitated.

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

(2) Paroles-in-custody to answer warrants filed by local or out-of-state agencies, or immigration officials, are permissible if an accredited agent of the agency filing the warrant calls for the prisoner to be paroled in custody.

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

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

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

(3) Except for a prisoner granted parole under section 35(10), if a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences must be added to compute the new maximum term under this subsection, and discharge must be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In addition to the interview schedule prescribed in subdivision (a), the parole board shall review the prisoner's file at the conclusion of 15 calendar years of the prisoner's sentence and every 5 years thereafter until the prisoner is paroled, discharged, or deceased. A prisoner whose file is to be reviewed under this subdivision must be notified of the upcoming file review at least 30 days before the file review takes place and must be allowed to submit written statements or documentary evidence for the parole board's consideration in conducting the file review.

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

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

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

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

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

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

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

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

(c) Any of the following:

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

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

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

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

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

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

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

(14) Except for a prisoner granted parole under section 35(10) and notwithstanding subsections (1) and (2), a prisoner who was convicted of violating, or attempting or conspiring to violate, section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred before March 1, 2003, and who was sentenced according to those sections as they existed before March 1, 2003, is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

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

(16) Except for a prisoner granted parole under section 35(10) and notwithstanding subsections (1) and (2), a prisoner who was convicted of violating, or attempting or conspiring to violate, section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, whose offense occurred before March 1, 2003, who was sentenced according to those sections of law as they existed before March 1, 2003 to consecutive terms of imprisonment for 2 or more violations of section 7401(2)(a) or 7403(2)(a) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403. This subsection applies only to sentences imposed for violations of section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and does not apply if the sentence was imposed for a conviction for a new offense committed while the individual was on probation or parole.

(17) Except for a prisoner granted parole under section 35(10) and notwithstanding subsections (1) and (2), a prisoner who was convicted of violating, or attempting or conspiring to violate, section 7401(2)(a)(ii) or (iii) or 7403(2)(a)(ii) or (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, who had a prior conviction for a violation of section 7401(2)(a)(ii) or (iii) or 7403(2)(a)(ii) or (iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and who was sentenced to life without parole under section 7413(1) of the public health code, 1978 PA 368, MCL 333.7413, according to that section as it existed before March 28, 2018 is eligible for parole after serving 5 years of each sentence imposed for that violation.

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

(19) The prosecuting attorney or victim or, in the case of a homicide, the victim's immediate family, may object to the parole board's decision to recommend parole by filing a motion in the circuit court in the county in which the prisoner was convicted within 30 days of receiving notice under subsection (18). Upon notification under subsection (18) and request by the victim, or, in the case of a homicide, the victim's immediate family, the prosecuting attorney must confer with the victim, or in the case of a homicide, the victim's immediate family, before making a decision regarding whether or not to object to the parole board's determination. A motion filed under this subsection must be heard by the sentencing judge or the judge's successor in office. The prosecuting attorney shall inform the parole board if a motion was filed under this subsection. A prosecutor who files a motion under this subsection may seek an independent medical examination of the prisoner being considered for parole under section 35(10). If an appeal is initiated under this subsection, a subsequent appeal under subsection (11) may not be initiated upon the granting of parole.

(20) Both of the following apply to a hearing conducted on a motion filed under subsection (19):

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

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

(21) The decision of the sentencing judge or the judge's successor on a motion filed under subsection (19) is binding on the parole board with respect to whether a prisoner must be considered medically frail or not. However, the decision of the sentencing judge or the judge's successor is subject to appeal by leave to the court of appeals granted to the department, the prosecuting attorney, or the victim or victim's immediate family in the case of a homicide.

(22) As used in this section:

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

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

(c) "State correctional facility" means a facility that houses prisoners committed to the jurisdiction of the department.

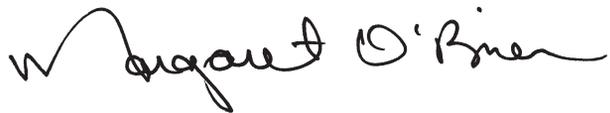
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4129 of the 100th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor