

CORRECTIONS CODE OF 1953 (EXCERPT)
Act 232 of 1953

***** 791.234.amended THIS AMENDED SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT
OF THE 2024 REGULAR SESSION SINE DIE *****

791.234.amended Prisoners subject to jurisdiction of parole board; indeterminate and other sentences; termination of sentence; prisoner sentenced to imprisonment for life; ineligibility for parole; criteria for placement on parole; conditions; interview; release on parole; discretion of parole board; appeal to circuit court; cooperation with law enforcement by prisoner violating MCL 333.7401 and 333.7403; offenses occurring before certain date; notice to prosecuting attorney before granting parole; motion to object; procedures; definitions.

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 a law of this state.

(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.

(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.

History: 1953, Act 232, Eff. Oct. 2, 1953;—Am. 1955, Act 107, Imd. Eff. June 3, 1955;—Am. 1957, Act 192, Eff. Sept. 27, 1957;—Am. 1958, Act 210, Eff. Sept. 13, 1958;—Am. 1978, Act 81, Eff. Sept. 1, 1978;—Am. 1982, Act 314, Imd. Eff. Oct. 15, 1982;—Am. 1992, Act 22, Imd. Eff. Mar. 19, 1992;—Am. 1992, Act 181, Imd. Eff. Sept. 22, 1992;—Am. 1994, Act 217, Eff. Dec. 15, 1998;—Am. 1994, Act 345, Eff. Jan. 1, 1995;—Am. 1998, Act 209, Eff. Oct. 1, 1998;—Am. 1998, Act 314, Eff. Oct. 1, 1998;—Am. 1998, Act 315, Eff. Dec. 15, 1998;—Am. 1998, Act 512, Imd. Eff. Jan. 8, 1999;—Am. 1999, Act 191, Eff. Mar. 10, 2000;—Am. 2002, Act 670, Eff. Mar. 1, 2003;—Am. 2004, Act 218, Eff. Oct. 12, 2004;—Am. 2006, Act 167, Eff. Aug. 28, 2006;—Am. 2010, Act 353, Imd. Eff. Dec. 22, 2010;—Am. 2016, Act 354, Eff. Mar. 21, 2017;—Am. 2017, Act 265, Eff. Mar. 28, 2018;—Am. 2019, Act 14, Eff. Aug. 21, 2019;—Am. 2024, Act 111, Eff. (sine die).

Constitutionality: A mandatory sentence of life without parole does not violate the prohibition against cruel and unusual punishments of the Eighth Amendment to the United States Constitution, because the Eighth Amendment contains no proportionality guarantee. Neither does the Eighth Amendment prohibit the imposition of mandatory sentences -- "severe, mandatory penalties may be cruel, but they are not unusual in the constitutional sense ... " -- nor does it require consideration of individualized, mitigating circumstances beyond those cases in which a capital sentence is imposed. Harmelin v Michigan, 501 US 957; 111 S Ct 2680; 115 L Ed2d 836 (1991).

In People v Bullock, 440 Mich 15; 485 NW2d 866 (1992), the Michigan Supreme Court held that the Michigan Constitution prohibits cruel or unusual punishment while the Eighth Amendment to the US Constitution bars only punishment that is both cruel and unusual. Basing its decision on the textual difference, the Michigan Supreme Court held that the statutory penalty of mandatory life in prison without parole for possession of 650 grams or more of any mixture containing cocaine is so grossly disproportionate as to be cruel or unusual, the result being that those portions of the statutes denying parole consideration are struck down.

Popular name: Department of Corrections Act